

**CODE OF PROFESSIONAL CONDUCT AND ETHICS
FOR ATTORNEYS and LAY ADVOCATES
PRACTICING BEFORE THE
KIOWA TRIBE COURTS
(Interim)**

Authorities

Adopted by the Kiowa Judicial Commission of the Kiowa Tribe on September 17, 2023, pursuant to Title 1, Chapter 1, Section 1.1.1, Judicial Power, and Section 1.1.2 Judicial Commission of the Kiowa Constitution and Bylaws and the Kiowa Law and Order Code establishing the Kiowa Tribe Court. (Resolution No. KL-CY-2020-0007), August 8, 2020.

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**KIOWA TRIBE COURT BAR ASSOCIATION
Standards of Professionalism**

Definition

Professionalism for Lawyers and Lay Advocates and Judges requires honesty, integrity, competence, civility and public service.

PREAMBLE

We judges and lawyers of the Kiowa Tribe Courts recognize our responsibility to uphold the longstanding traditions of professionalism and civility within the legal system. The very nature of our adversary system of justice requires respect for the law, the public, the courts, administrative agencies, our clients and each other. While the Rules of Professional Conduct establish the minimum standards a lawyer must meet to avoid discipline, the following Standards of Professionalism represent the level of behavior we expect from each other and the public expects from us in our dealings with tribal members, the public, the courts, our clients and each other. The Standards of Professionalism are not intended to be used as a basis for discipline by the Court on the Judiciary or the Professional Responsibility Tribunal, or for establishing standards of conduct in an action against a lawyer.

SCOPE

SECTION 1

LAWYERS' RESPONSIBILITIES TO THE PUBLIC

1.1 We understand that the law is a learned profession and that among its tenets are devotion to public service, improvement of the administration of justice, and access to justice for our fellow citizens.

1.2 A lawyer's word should be his or her bond. We will not knowingly misstate, distort or improperly exaggerate any fact, opinion or legal authority, and will not improperly permit our silence or inaction to mislead anyone. Further, if this occurs unintentionally and is later discovered, it will immediately be disclosed or otherwise corrected.

1.3 We will donate legal services to persons unable to afford those services.

1.4 We will participate in organized activities designed to improve the courts, the legal system and the practice of law.

1.5 We will contribute time on a pro bono basis to community activities.

1.6 Our conduct with clients, opposing counsel, parties, witnesses and the public will be honest, professional and civil.

1.7 Our public communications will reflect appropriate civility, professional integrity, personal dignity, and respect for the legal system and the judiciary. However, we may make good faith expressions of dissent or criticism in public or private discussions when the purpose is to promote improvements in the legal system.

1.8 We will not make statements which are false, misleading, or which exaggerate, for example, the amount of damages sought in a lawsuit, actual or potential recoveries in settlement or the lawyer's qualifications, experience or fees.

1.9 We will promptly return telephone calls and respond to correspondence from clients, opposing counsel, unrepresented parties and others.

1.10 We will refrain from engaging in professional conduct which exhibits or is intended to appeal to or engender bias against a person based upon that person's race, color, national origin, ethnicity, religion, gender, sexual orientation or disability.

SECTION 2

LAWYERS' RESPONSIBILITIES TO CLIENTS

2.1 We will be loyal and committed to our client's lawful objectives, but will not permit our loyalty to interfere with giving the client objective and independent advice.

2.2 We will advise our client against pursuing litigation (or any other course of action) that does not have merit.

2.3 We will endeavor to achieve our client's lawful and meritorious objectives expeditiously and as efficiently as possible.

2.4 We will continually engage in legal education and recognize our limitations of knowledge and experience.

2.5 We will reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect a client's lawful objectives.

2.6 We will advise our client, if necessary, that the client has no right to demand that we engage in abusive or offensive conduct and that we will not engage in such conduct.

2.7 We understand, and will impress upon our client, that reasonable people can disagree without being disagreeable; and that effective representation does not require, and in fact is impaired by, conduct which objectively can be characterized as uncivil, rude, abrasive, abusive, vulgar, antagonistic, obstructive or obnoxious. Ill feelings between clients will not dictate or influence a lawyer's attitude, demeanor, behavior or conduct.

2.8 We will always look for opportunities to de-escalate a controversy and bring the parties together.

2.9 We will readily stipulate to undisputed facts in order to avoid needless costs, delay, inconvenience, and strife.

2.10 We will consider whether the client's interests can be adequately served and the controversy more expeditiously and economically resolved by arbitration, mediation or some other form of alternative dispute resolution, or by expedited trial; and we will raise the issue of settlement and alternative dispute resolution as soon as a case can be evaluated and meaningful compromise negotiations can be undertaken.

2.11 When involved in an alternative dispute resolution process, we will participate in good faith, and will not use the process for the purpose of delay or for any other improper purpose.

2.12 We will not falsely hold out the possibility of settlement as a means to adjourn discovery or delay trial.

SECTION 3

LAWYERS' RESPONSIBILITIES TO OTHER LAWYERS

3.1 Communications with Adversaries

a. We will be civil, courteous, respectful, honest and fair in communicating with adversaries, orally and in writing.

b. We will promptly return telephone calls and respond to correspondence reasonably requiring a response.

c. The timing and manner of service of papers will not be designed to annoy, inconvenience or cause disadvantage to the person receiving the papers; and papers will not be served at a time or in a manner designed to take advantage of an adversary's known absence from the office.

d. We will not write letters ascribing to an opposing lawyer a position that lawyer has not taken, creating a "record" of events that have not occurred, or otherwise seeking to create an unjustified inference based on that lawyer's statements or conduct.

e. Unless specifically permitted or invited by the court, copies of correspondence between counsel will not be sent to a judge or administrative agency.

3.2 Discovery

a. General

- (1) A reasonable effort should be made to conduct discovery by agreement.
- (2) We will not use discovery, the scheduling of discovery, or the discovery process to annoy or harass opposing counsel, to generate needless expense, or as a means of delaying the timely, efficient and cost-effective resolution of a dispute.
- (3) We will comply with reasonable discovery requests.
- (4) We will object to discovery requests only when we have a good-faith belief in the merit of the objection; and we will not object solely for the purpose of withholding or delaying the disclosure of relevant information or documents.
- (5) We will agree to reasonable requests for extensions of deadlines, scheduling changes and other accommodations, provided the client's legitimate rights and interests will not be adversely affected.
- (6) We will seek court sanctions or disqualification only after conducting a diligent investigation, and then only when justified by the circumstances and necessary to protect the client's legitimate and lawful interests.

b. Depositions

- (1) We will take depositions only when actually needed to ascertain facts or information or to preserve testimony.
- (2) In scheduling depositions, reasonable consideration will be given to accommodating schedules of opposing counsel and the deponent (both professional and personal schedules), when it is possible to do so without prejudicing the client's rights. When practical, we will consult with opposing counsel before scheduling any deposition. If a request is made to schedule a time for a deposition, the lawyer to whom the request is made should confirm that the proposed time is available or advise of a conflict within a reasonable time (preferably the same business day, but in any event, before the end of the following business day).
- (3) When a deposition is scheduled and noticed by another party for the reasonably near future, a lawyer ordinarily should not schedule another deposition for an earlier date without the agreement of opposing counsel.
- (4) We will delay a deposition only for good-faith reasons.
- (5) Prompt notice of cancellation of a deposition will be given to opposing counsel.
- (6) We will not, even when called upon by a client to do so, abuse others or indulge in offensive conduct directed to other counsel, parties or witnesses. We will refrain from disparaging personal remarks or acrimony toward other counsel, parties and witnesses; and will treat adverse parties and witnesses with civility and fair consideration.
- (7) We will not ask questions about a deponent's personal affairs or which needlessly impugns a deponent's integrity when such questions are irrelevant to the subject matter of the action or proceeding, except that questions on these topics may be asked if they are likely to elicit admissible evidence.

(8) We will avoid repetitive and argumentative questions and those asked solely for the purpose of annoyance or harassment.

(9) We will limit deposition objections to those which are well-founded and permitted by (as applicable) the Oklahoma Discovery Code, the Federal Rules of Civil Procedure, any governing local court rules, and any apposite case law. Any such objections will be stated concisely and in a non-argumentative and non-suggestive manner. We will remember that most objections are preserved and need be made only when the form of a question is defective or when privileged information is sought.

(10) Once a question is asked, we will not, through objections or otherwise, coach the deponent or suggest answers.

(11) We will not direct a deponent to refuse to answer a question unless specifically permitted by Kiowa Tribe Court Rules (as applicable) or Federal Rule 30(d)(1), F.R.Civ.P.

(12) We will refrain from self-serving speeches during depositions.

(13) We will not engage in any conduct during a deposition which would not be allowed in the presence of a judicial officer, including disparaging personal remarks or acrimony toward opposing counsel or the witness, as well as gestures, facial expressions, audible comment, or other manifestations of approval or disapproval during the testimony of the witness. We will not engage in undignified or discourteous conduct which degrades the legal proceeding or the legal profession. Our clients, colleagues and staff will be admonished to conduct themselves in the same dignified and courteous manner.

c. Document Requests

(1) We will limit requests for production of documents to materials reasonably believed to be needed for the prosecution or defense of an action; and requests will not be made to annoy, embarrass or harass a party or witness, or to impose an undue burden or expense in responding.

(2) We will not draft a request for document production so broadly that it encompasses documents clearly not relevant to the subject matter of the case or proceeding.

(3) When responding to unclear document requests, receiving counsel will make a good-faith effort to discuss the request with opposing counsel to clarify the scope of the request.

(4) In responding to document requests, we will not strain to interpret the request in an artificially-restrictive manner in an attempt to avoid disclosure.

(5) When responding to document requests, we will withhold documents on the basis of privilege only when appropriate.

(6) We will not produce documents in a disorganized or unintelligible manner, or in a manner calculated to conceal or obscure the existence of particular documents.

(7) We will not delay producing documents to prevent opposing counsel from inspecting documents prior to scheduled depositions or for any improper purpose.

d. Interrogatories and Requests for Admissions

(1) We will exercise discriminating judgment in using written discovery requests, and will not use them to annoy, embarrass or harass a party or witness, or to impose undue burden or expense on the opposing party or counsel.

(2) We will read and respond to written discovery requests in a reasonable manner designed to assure that answers and admissions are truly responsive.

(3) When responding to unclear written discovery requests, receiving counsel should have a good-faith discussion with opposing counsel to obviate or limit the scope of any objections to the discovery requests.

(4) We will object to written discovery requests only when a good-faith belief exists in the merit of the objection. Objections will not be made solely for the purpose of withholding relevant information. If a written discovery request is objectionable only in part, we will answer the unobjectionable portion.

3.3 Scheduling

a. We understand and will advise our clients that civility and courtesy in scheduling meetings, hearings and discovery are expected and do not indicate weakness.

b. We will make reasonable efforts to schedule meetings, hearings and discovery by agreement, and will consider the scheduling interests of opposing counsel, the parties, witnesses and the court or agency. Misunderstandings should be avoided by memorializing any agreements reached.

c. We will not arbitrarily or unreasonably withhold consent to a request for scheduling accommodations

d. We will not engage in delaying tactics in scheduling meetings, hearings and discovery.

e. We will verify the availability of key participants and witnesses either before a meeting, hearing or trial date is set or, if that is not feasible, immediately afterward, and we will promptly notify the court, or other tribunal, and opposing counsel of any problems.

f. We will notify opposing counsel and, if appropriate, the court or other tribunal as early as possible when scheduled meetings, hearings or depositions must be cancelled or rescheduled.

3.4 Continuances and Extensions of Time

a. We will agree, consistent with existing law and court orders, to reasonable requests for extensions of time when the legitimate interests of our clients will not be adversely affected.

b. We will agree to reasonable requests for extensions of time or continuances without requiring motions or other formalities, unless required by court rules.

c. We will agree as a matter of courtesy to first requests for reasonable extensions of time unless time is of the essence.

d. After agreeing to a first extension, we will consider any additional request for extension by balancing the need for prompt resolution of matters against the consideration which should be extended to an adversary's professional and personal schedule, the adversary's willingness to

grant reciprocal extensions, the time actually needed for the task, and whether it is likely a court would grant the extension if requested to do so.

e. We understand and will advise clients that the strategy of refusing reasonable requests for extension of time simply to appear "tough" is inappropriate.

f. We will not seek extensions or continuances for the purpose of harassment or extending litigation.

g. We will not condition an agreement to an extension on unfair and extraneous terms. This Standard does not preclude a lawyer from imposing reasonable terms, such as preserving rights that an extension might jeopardize or seeking fair reciprocal scheduling concessions.

h. We will agree to reasonable requests for extensions of time when new counsel is substituted for prior counsel.

3.5 Motion Practice

a. Motions will be filed or opposed only in good faith, and only when the issue cannot otherwise be resolved.

b. Before filing a non-dispositive motion, we will engage in a reasonable effort to resolve the issue. In particular, we will exercise discriminating judgment in filing any discovery motion.

c. We will not engage in conduct which forces opposing counsel to file a motion and then not oppose the motion.

3.6 Non-Party Witnesses

a. Dealings with a non-party witness will be civil, courteous and professional, and designed to instill in that witness an overall favorable impression of the legal system.

b. We will issue a subpoena to a non-party witness only to compel such person's actual appearance at a hearing, trial or deposition, and not for inappropriate tactical or strategic purposes, such as merely to annoy, humiliate, intimidate or harass such individual.

c. When we obtain documents pursuant to a deposition subpoena, we will offer to make copies of the documents available to all other counsel at their expense even if the deposition is cancelled or adjourned.

d. We will take special care to protect a witness under the age of 14 from undue harassment or embarrassment. We also will take special care to ensure that questions are stated in a form which is appropriate to the age and development of the youthful witness.

3.7 Privacy

a. All matters will be handled with due respect for protecting the privacy of parties and non-parties.

b. We will not inquire into, attempt to use, or threaten to use facts concerning private matters relating to any person for the purpose of gaining psychological advantage in a case. Inquiry into sensitive matters which are relevant to an issue should be pursued as narrowly as reasonably possible.

c. If there is a legitimate basis for inquiry into such private matters, we will cooperate in arranging for protective measures designed to assure that the information obtained is disclosed only to persons who need it in order to present the relevant evidence to the court or administrative agency.

3.8 Default Judgment

We will seek a default judgment in a matter in which an appearance has been made or where it is known that the defaulting party is represented by a lawyer with respect to the matter, only after giving the opposing party sufficient advance written notice to permit cure of the alleged default.

3.9 Social Relationships with Judicial Officers, Court-appointed Experts, Administrative Agency Hearing Officers and Agency Board Members

a. We will avoid the appearance of impropriety or bias in our relationships with judicial officers, court-appointed experts, administrative agency hearing officers and agency board members.

b. Prior to appearing before a judicial officer, administrative agency hearing officer or agency board member with whom we have a social relationship or friendship beyond a normal professional association, we will notify opposing counsel (or an unrepresented party) of the relationship.

c. We will disclose to opposing counsel (or an unrepresented opposing party) any social relationship or friendship between the lawyer and any court-appointed expert.

3.10 Negotiation of Business Transactions

a. We will adhere strictly to an express promise or agreement with the opposing lawyer, whether oral or in writing, and will adhere in good faith to any agreement implied by the circumstances or local custom.

b. Business transactions should be negotiated, documented and consummated in an atmosphere of cooperation and informed mutual agreement.

c. Meetings, conferences and closings with opposing lawyers and clients will be scheduled at the most practical location.

d. We will make every effort to appear promptly with our clients at a scheduled meeting; and the lawyer who provides facilities for a meeting will be prepared to receive the opposing lawyer and his or her client at the scheduled time.

e. We will clearly identify, for other counsel or parties, all requested changes and revisions that we make in documents.

f. Correspondence will not be written to ascribe to an opposing lawyer a position he or she has not taken or to create a "record" of events which have not occurred.

SECTION 4

LAWYERS' RESPONSIBILITIES TO THE COURTS AND ADMINISTRATIVE AGENCIES

4.1 We will speak and write civilly and respectfully in all communications with the court or administrative agency.

4.2 We will be punctual and prepared for all appearances so that all conferences, hearings and trials may commence on time.

4.3 We will be considerate of the time constraints and pressures on the court, agency and related staff inherent in their efforts to fulfill their responsibilities.

4.4 We will not engage in conduct which brings disorder or disruption to a proceeding. We will advise our clients and witnesses of the proper conduct expected and required and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

4.5 We will never knowingly misrepresent, mischaracterize, misquote, miscite facts or authorities, or otherwise engage in conduct which misleads the court or agency.

4.6 We will avoid argument or posturing through sending copies of correspondence between counsel to the court or agency, unless specifically permitted or invited by the court or agency.

4.7 Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court or tribunal of any problems.

4.8 We will act and speak civilly and respectfully to all other court and tribunal staff with an awareness that they, too, are an integral part of the system.

4.9 Writings Submitted to the Court or Tribunal

a. Written materials submitted to a court or tribunal will be factual and concise, accurately state current law, and fairly represent the party's position without unfairly attacking the opposing party or opposing counsel.

b. Facts that are not properly introduced in the case and part of the record in the proceeding will not be used in briefs or argument.

c. Copies of any submissions to the court or tribunal will be provided simultaneously to opposing counsel by substantially the same method of delivery by which they are provided to the court or tribunal.

d. We will avoid disparaging the intelligence, ethics, morals, integrity, or personal behavior of the opposing party, counsel or witness unless any such characteristics or actions are directly and necessarily at issue in the proceeding.

e. We will promptly submit to opposing counsel for review and approval any written order or judgment proposed by us prior to submitting it for entry by any court or tribunal.

f. We will promptly review and approve, or submit proposed changes, modifications or revisions of, any order or judgment proposed by opposing counsel within a brief time period of its receipt.

g. We will not unreasonably delay the entry of any order or judgment of any court or tribunal.

4.10 Ex Parte Communications with the Court

a. Except as permitted in Section 4.10(c) below, we will avoid *ex parte* communications involving the substance of a pending matters with an assigned judge (and members of the judge's staff) and an agency hearing officer or board member in an individual proceeding, whether in person (including social, professional or other contexts), by telephone, and in letters or other

forms of written communication, unless such communications relate solely to scheduling or other non-substantive administrative matters, or are made upon advice and consent by all parties, or are otherwise expressly authorized by statute or applicable rule.

b. Even when applicable laws or court or agency rules permit an *ex parte* application or communication to the court or agency, before making any such application or communication, we will make diligent efforts to notify the opposing party or a lawyer known or likely to represent the opposing party; and we will make reasonable efforts to accommodate the schedule of such lawyer to permit the opposing party to be represented.

c. When rules permit an *ex parte* application or communication to the court, hearing officer or board member in an emergency situation, we will make any such application or communication (including an application to shorten an otherwise applicable time period) only when there is a bona fide emergency such that our client will be seriously prejudiced if the application or communication were made with regular notice.

d. We will immediately notify opposing counsel of any oral or written communication with the court or agency.

e. Only lawyers will communicate with a judge or appear in court on substantive matters on behalf of a client. Non-lawyers may communicate with court personnel regarding scheduling matters and other non-substantive matters.

SECTION 5

JUDGES' RESPONSIBILITIES TO LITIGANTS AND LAWYERS

5.1 We will be courteous, respectful and civil to lawyers, parties and witnesses. We will maintain control of the proceedings, recognizing that we have both the obligation and the authority to ensure that all proceedings are conducted in a civil manner.

5.2 If we observe a lawyer being uncivil to another lawyer or others, we will tactfully call it to the attention of the offending lawyer on our own initiative.

5.3 We will not employ hostile, demeaning or humiliating words in opinions or in written or oral communications with lawyers, parties or witnesses.

5.4 We will be punctual in convening all hearings, meetings and conferences; if delayed, we will notify counsel, if possible.

5.5 In scheduling all hearings, meetings and conferences, we will be considerate of time schedules and prior commitments of lawyers, parties and witnesses.

5.6 We will make a reasonable effort to decide promptly all matters presented to us for decision.

5.7 We will give the issues in controversy deliberate, impartial and studied analysis and consideration.

5.8 While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.

5.9 We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a party has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.

5.10 We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom, or the causes which, that lawyer represents.

5.11 We will do our best to ensure that court personnel act civilly and respectfully toward lawyers, parties and witnesses.

5.12 We will avoid procedures that needlessly increase litigation expense.

SECTION 6

JUDGES' RESPONSIBILITIES TO EACH OTHER

6.1 In all opinions and other written and oral communications, we will refrain from disparaging personal remarks, criticisms, or sarcastic or demeaning comments about a judicial colleague.

6.2 We will endeavor to work with other judges in an effort to foster a spirit of cooperation in furtherance of our mutual goal of promoting and nurturing the administration of justice.