

## TITLE I – COURTS

### CHAPTER 1. ESTABLISHMENT AND OPERATION OF TRIBAL COURT

#### **Sec. 101. Establishment of Tribal Court**

There is hereby established a Chitimacha Tribal Court of general jurisdiction as a court of record.

(Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

#### **Sec. 102. Composition of the Courts**

There shall be a Chitimacha Tribal Court consisting of a Chief Judge, who shall be appointed by the Chitimacha Tribal Council. In the event that the Chief Judge is unable for any reason to hear a case, the Chitimacha Tribal Council shall appoint a Judge Pro Tempore to serve in his or her stead.

(Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

#### **Sec. 103. Records of the Court**

The Chitimacha Tribal Court shall keep a record of all proceedings of the Court, showing the title of the case, the names and addresses of the parties, attorneys, lay counselors and witnesses; the substance of the complaint; the dates of all hearings or trials; the name of the judge; the findings of the Court or verdict of the jury and judgment; the preservation of testimony for perpetual memory by electronic recording, or otherwise; together with any other facts or circumstances deemed of importance to the case. A record of all proceedings leading to incarceration shall be submitted to the Area Director, to be made a part of the records of the Eastern Area Office as required by 25 U.S.C. 200. Unless specifically excepted by this Code, the records of the Court shall be public.

(Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

#### **Sec. 104. Rules of Court**

The Chief Judge of the Chitimacha Tribal Court may prescribe written rules of court, consistent with the provisions of this Code, including rules establishing the time and place of

court sessions. The rules shall be approved by the Chitimacha Tribal Council before becoming effective.

(Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

**Sec. 105. Services to Court by Tribal or Federal Employees**

The Court may request and utilize social service, health, education or other professional services of tribal employees as requested, and of federal employees as authorized by the Secretary of the Interior or his authorized representative.

**Sec. 106. Jurisdiction of the Court**

The jurisdiction of the Chitimacha Tribe of Louisiana, including the Chitimacha Tribal Court, extends to all persons, activities, and property within the territory of the Chitimacha Tribe of Louisiana based on the inherent sovereign authority of the Chitimacha Tribe of Louisiana and federal law. The territory of the Chitimacha Tribe of Louisiana is comprised of all lands within the Chitimacha Tribe of Louisiana Reservation, all lands held by the United States in trust for the Chitimacha Tribe of Louisiana or any member of the Chitimacha Tribe of Louisiana, and all other lands which are now and hereafter owned or acquired by the Chitimacha Tribe of Louisiana. The jurisdiction includes but is not limited to air, water, surface, subsurface, natural and cultural resources, and any interests therein. Jurisdiction over persons shall extend beyond the territory of the Chitimacha Tribe of Louisiana whenever the person is acting pursuant to, or jurisdiction is created or affirmed by, either:

- (a) The inherent sovereign authority of the Chitimacha Tribe of Louisiana;
- (b) A Chitimacha Tribe of Louisiana code, statute, ordinance, resolution, or other authorization;
- (c) Federal statute, regulation or other authorization pertaining to the Chitimacha Tribe of Louisiana or its members; or
- (d) Any compact, contract or other agreement entered into pursuant to applicable law pertaining to the Chitimacha Tribe of Louisiana.

(Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009; Revised by Ordinance #01-17; Effective: February 1, 2017)

**Sec. 107. Jurisdiction Over Suits Commenced by Tribe**

Notwithstanding any other provision of this Code, the Chitimacha Tribal Court shall have jurisdiction of all civil actions commenced by the Chitimacha Tribe of Louisiana, or by any agency or officer thereof expressly authorized to file suit by the Chitimacha Tribal Council.

(Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009; Revised by Ordinance #01-17; Effective: February 1, 2017)

**Sec. 108. Tribe Immune from Suit**

The Chitimacha Tribe of Louisiana shall be immune from suit. Nothing in the Code shall be construed as consent of the Chitimacha Tribe of Louisiana to be sued.

(Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009; Revised by Ordinance #01-17; Effective: February 1, 2017)

**Sec. 109. Limitation on Tribal Judgments**

In a Civil tort action for monetary compensation, the maximum allowable judgment that may be entered against the Chitimacha Tribe of Louisiana, or a corporation or entity owned in whole or in part by the Tribe, shall be Five Hundred Thousand Dollars (\$500,000.00).

(Revised by Ordinance #1-95; Adopted: January 12, 1995; Effective: January 12, 1995; Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009; Revised by Ordinance #01-17; Effective: February 1, 2017)

**CHAPTER 2. ESTABLISHMENT AND OPERATION OF COURT OF APPEALS**

**Sec. 201. Creation of Court of Appeals.**

There is hereby created a Chitimacha Court of Appeals.

(Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

**Sec. 202. Jurisdiction of Court of Appeals**

The jurisdiction of the Chitimacha Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court. The Court of Appeals shall review all determinations

of the Tribal Court on matters of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence. The Court of Appeals shall also have jurisdiction over attorney disciplinary hearings.

(Revised by Ordinance #2-93; Adopted: May 10, 1993; Effective: May 10, 1993; Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

**Sec. 203.      Composition of Court of Appeals**

The Chitimacha Tribal Council shall appoint a Chief Judge and two Associate Judges of the Chitimacha Court of Appeals, none of whom shall be Judges of the Chitimacha Tribal Court. Appointment shall be a two-thirds (2/3) vote, taken by secret ballot, of those members present at a meeting of the Tribal Council at which a quorum is present. The Chitimacha Tribal Council shall set the term of each appointment and the compensation of each Judge.

(Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

**Sec. 204.      Records of Court of Appeals**

The Court of Appeals shall keep a record of all proceedings of the Court, showing the title of the case, the name and addresses of all parties and attorneys, the briefs, the date of any oral argument, the names of the Judges who heard and decided the case, and the judgment, together with any other facts and circumstances deemed of importance to the case. A record of all proceedings leading to incarceration shall be submitted to the Area Director of the Eastern Area Office, to be made a part of the records of the Office as required by 25 U.S.C. Subsection 200. Unless specifically accepted by this Code or Rule of Court, all decisions and opinions of the Court shall be published in a format that shall be available to the public at the Tribal Office.

**Sec. 205.      Right of Appeal**

(a) Criminal cases. The defendant in a criminal case shall have an appeal as of right from a judgment of conviction. The Tribe shall have no right of appeal from a jury verdict of "not guilty" in criminal cases, but shall have a right of appeal from a judgment of "not guilty" rendered by the Tribal Court without a jury. Appeals in criminal cases shall be taken as provided in Section 206.

(b) Civil cases. Any party who is aggrieved by a final order or judgment of the Tribal Court may file a petition requesting the Court of Appeals to review that order or judgment as provided in Section 207.

**Sec. 206. Procedure on Appeal of Criminal Cases**

(a) Time to appeal and how to appeal. Any appeal must be taken within (15) fifteen days of receipt via certified mail of the judgment appealed from by filing a written notice of appeal with the Clerk of Court. No extension of the fifteen (15) day period shall be granted. Upon request, the Clerk of Court shall prepare the notice of appeal.

(b) Notice of appeal. The notice of appeal shall specify the part or parties taking the appeal, shall designate the judgment, or part thereof appealed from, and shall contain a short statement of reasons for the appeal. The Clerk shall mail a copy of the notice of appeal to all parties other than parties taking the appeal.

(c) Release on bond pending appeal. In criminal cases the defendant may be continued on release or be released on bail. The appellant may petition the Court of Appeals, or Chief Judge thereof, to review any decision of the Tribal Court taken under this Section.

(Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

**Sec. 207. Procedure on Decision for Review in Civil Cases**

(a) Time to petition and how to petition. A party to a civil case may petition for review. The petition for review must be taken within fifteen (15) days from the date of receipt via certified mail of the entry of the final order or judgment appealed from by filing such petition with the Clerk of the Tribal Court together with the docket fee and any bond required pursuant to this section. No extensions of the fifteen (15) day period shall be granted.

(b) Contents of petition for review. The petition for review shall specify the parties taking the appeal, shall designate the final order or judgment, or part appealed from, and shall contain a short statement why the petition should be granted. The Clerk shall mail a copy of the petition for review to all parties other than the petitioner. Other parties shall have fifteen (15) days to respond to the petition for review, after which time the Court of Appeals, through its Chief Judge or designated Associate Judge, after consideration of the petition for review and the record

thereof, shall grant the petition and allow the appeal to be heard, or shall deny the petition.

(c) Docket fee and bond. The petition for review shall be accompanied by a docket fee and a bond to be set by the Court.

(d) Stay on appeal. In civil cases the petitioner may request the Tribal Court to stay the judgment pending action on the petition and on the appeal if the petition is granted, and either party may request the Tribal Court to grant or stay an injunction pending appeal. The Court may condition a stay or injunction pending appeal on the depositing of cash or bond satisfactory to the Tribal Court. The appellant's bond shall be sufficient to cover the damages awarded by the Tribal Court together with interest. The cash or bond may be deposited at or after the time petition is filed. The stay shall be effective when the deposit of cash or bond is approved by the Tribal Court. The appellant may petition the Court of Appeals to review any decision of the Tribal Court under this Section.

(Revised by Ordinance # 6-95; Adopted: August 31, 1995; Effective: August 31, 1995; Revised by Ordinance #1-98; Adopted: June 18, 1998; Effective: June 18, 1998; Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

#### **Sec. 208.      Judgment Against Surety**

Any surety to a bond in criminal cases thereby submits himself to the jurisdiction of the Tribal Court, and irrevocably appoints the Clerk of the Court as his agent upon whom any papers affecting his liability on the bond may be served. The liability of a surety may be enforced on motion without the necessity of an independent action. The motion and such notice of motion as the Court prescribes may be served on the Clerk of the Court who shall forthwith mail copies to the surety at his last known address.

(Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

#### **Sec. 209.      Record on appeal**

Within thirty (30) days after a notice of appeal is filed in a criminal case or a petition for review is filed in a civil case, the Clerk of the Tribal Court shall certify and file with the Court of Appeals all papers comprising the record of the case.

(Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

**Sec. 210. Briefs and Memoranda**

Within thirty (30) days after the notice of appeal is filed, or a petition for review is granted, or within such other time as the Court allows, the appellant may file a written brief, memorandum or statement in support of his appeal. An original and one (1) copy for each appellee shall be filed with the Clerk who shall mail one copy, registered or certified mail, return receipt requested, to each appellee. The return receipt shall then be filed with the Clerk. The appellee shall have fifteen (15) days after receipt of the appellant's brief, memorandum or statement, or such other time as the Court of Appeals allows, within which to file an answer brief, memorandum or statement if he desires. An original and one (1) copy for each appellant shall be filed with the Clerk who shall mail one copy, registered or certified mail, return receipt requested, to each appellant. The return receipt shall be filed with the Clerk. No further briefs, memoranda or statements shall be allowed, without leave of Court.

**Sec. 211. Oral Argument**

The Court of Appeals shall assign all criminal cases for oral argument. The Court may in its discretion assign civil cases for oral argument or may dispose of civil cases on the briefs without argument.

**CHAPTER 3. JUDGES**

**Sec. 301. Term**

The Chief Judge of the Chitimacha Tribal Court shall hold office for a term of four (4) years and shall be eligible for reappointment. A Judge Pro Tempore may be appointed on a temporary basis on such terms and conditions as the Tribal Court shall establish in making the appointment. A person appointed to fill an existing vacancy created by the death, resignation, or removal for cause of a Judge shall be appointed initially only for the unexpired portion of the term for which the appointment is made, and shall be eligible for reappointment.

(Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

**Sec. 302. Appointment**

The Chief Judge and all Judges Pro Tempore of the Chitimacha Tribal Court shall be appointed by the Chitimacha Tribal Council, by a two-thirds (2/3) vote, taken by secret ballot, of those members present at a meeting of the Tribal Council at which a quorum is present.

(Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

**Sec. 303. Qualifications of Judges**

To be eligible to serve as a Judge, a person must be twenty-five (25) years of age or older, be of good moral character and integrity, possess a high school diploma or its equivalency, be capable of carrying out the duties of office and never have been convicted of a felony offense.

**Sec. 304. Salary and bond**

The Chief Judge of the Chitimacha Tribal Court and any Judges Pro Tempore shall be paid a salary to be determined by the Tribal Council. The salary of any Judge shall not be reduced during his or her term of office. The Chief Judge of the Chitimacha Tribal Court shall be bonded in the amount of Five Thousand Dollars (\$5,000.00) as an authorized collector of fines, fees, and costs for the Tribal Court.

(Revised by Ordinance #02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

**CHAPTER 4. CHITIMACHA CODE OF JUDICIAL CONDUCT**

(Added by Ordinance # 02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

**Sec. 401. Preamble**

The Chitimacha Court System is based on the principle that an unbiased, fair and competent judiciary is essential to the administration of tribal justice. The purpose of the Chitimacha Code of Judicial Conduct is to encourage a spirit of equity toward all persons brought before the courts of the Chitimacha Tribe of Louisiana and to ensure fundamental fairness and due process in all court proceedings.



**Sec. 402. Scope**

The Code of Judicial Conduct is intended to establish basic standards to govern the conduct of all Chitimacha tribal judges. It consists of an Application Section, broad statements called Canons and specific Rules set forth under each Canon. The text of the Application Section, the Canons and the Rules is authoritative.

When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action, which may include removal of a judge from office. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Code is designed to provide guidance to judges and to provide a structure for regulating their conduct in accordance with the laws of the Chitimacha Tribe of Louisiana. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The Code is to be applied consistently with applicable constitutional requirements, tribal laws, rules of court, decisional law, tribal tradition and custom, common sense and in the context of all relevant circumstances.

**Sec. 403. Application**

Any person, whether or not an attorney, who is an officer of the Chitimacha Court System and is performing judicial functions is a judge for the purpose of this Code. All judges should comply with this Code except as provided below:

(a) Part-time judges. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by Chitimacha Tribal law to devote time to some other profession or occupation. A part-time judge:

(1) is required to comply with this Code unless otherwise specifically exempted;

(2) shall not practice law either as an attorney or a lay counselor: (i) in the Chitimacha Tribal Court; or (ii) in the Chitimacha Court of Appeals; and

(3) shall not act as an attorney or lay counselor in a proceeding in which he or she has served as judge or in any related proceeding.

(b) Judge Pro Tempore. A judge pro tempore is a person who is appointed to act temporarily as a judge. A judge pro tempore:

(1) is required to comply with this Code unless otherwise specifically exempted; and

(2) shall not appear as an attorney or lay counselor in a proceeding in which he or she has served as a judge or in related proceedings.

## **Sec. 404. Canons and Rules**

### **CANON 1**

**A judge shall uphold the integrity and independence of the judiciary.**

#### **Rule 1.1**

An independent and honorable judiciary is essential to justice in the Chitimacha tribal community. A Chitimacha tribal judge should help create and maintain such a judiciary, and should observe high standards of conduct toward achieving this goal.

#### **Rule 1.2**

A judge shall maintain a separation between the judicial branch and other branches of tribal government, and shall avoid any contact or duty that violates such a separation.

#### **Rule 1.3**

A judge shall not serve as an elected governmental official of the Chitimacha Tribe of Louisiana.

### **CANON 2**

**A judge shall avoid impropriety and the appearance of impropriety in all of his or her activities.**

## **Rule 2.1**

A judge shall respect and comply with the laws, traditions and customs of the Chitimacha Tribe of Louisiana and should at all times act in a manner that promotes public confidence in the honesty and impartiality of the Chitimacha judiciary.

## **Rule 2.2**

A judge shall not allow family, social or other personal relationships to influence his or her judicial conduct. He or she shall not attempt to use the prestige of his or her judicial office to advance the private interests of others; nor shall he or she convey the impression that anyone has special influence on him or her as judge.

## **CANON 3**

**A judge shall perform the duties of the office impartially and diligently.**

### **Rule 3.1**

The judicial duties of a judge shall take precedence over all other activities. The judicial duties of the judge include all the duties of the office prescribed by Chitimacha Tribal law. In the performance of these, the following standards apply:

(a) Adjudicative responsibilities.

(1) A judge shall adhere to the laws, traditions and customs of the Chitimacha Tribe of Louisiana. He or she shall not be swayed by partisan interests, public clamor, political pressure, or fear of criticism and shall resist influences on the court by other tribal officials, governmental officials or any others attempting to improperly influence the judge.

(2) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, attorneys, lay counselors and others with whom he or she deals in his or her official capacity and should require similar conduct of other persons in court proceedings and those court personnel who are subject to the judge's direction and control.

(3) A judge shall give to every person who is legally interested in a proceeding, or his or her attorney or lay counselor, a full right to be heard according to Chitimacha Tribal law.

(4) A judge shall refrain from all out-of-court or other communications with parties, witnesses, tribal officials, agents or others concerning a pending proceeding unless all parties to the proceedings are present or represented. A judge may initiate or consider any ex parte communication when expressly authorized by law. A judge may, however,

obtain the advice of a disinterested expert on federal, state or tribal law, custom or tradition or on other sources of law applicable to a proceeding before the Court if the request for advice is limited to points of law or tradition or custom or on other sources of law applicable to a proceeding before the court and does not involve the particular merits of the case. The parties shall be given a reasonable opportunity to respond to information provided by the expert.

(5) A judge shall maintain order in the court. He or she shall not interfere in the proceedings except where necessary to protect the rights of the parties or the dignity of the court. A judge shall not act as an advocate. A judge shall rely only on those procedures which are prescribed by, or are consistent with, the laws, rules, traditions or customs of the Chitimacha Tribe of Louisiana.

(6) A judge shall dispose promptly of the business of the court.

(7) A judge shall not comment publicly on any proceeding pending in court and shall also prohibit other court personnel from making such public comment.

(b) Administrative Responsibilities

(1) A judge shall discharge the judge's administrative responsibilities without bias or prejudice and shall maintain professional competence in judicial administration. A judge should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall diligently discharge the judge's administrative responsibilities in an efficient and expeditious manner.

(3) A judge shall require his or her staff and court officials to observe high standards of honesty and diligence.

(4) A judge shall take appropriate disciplinary actions against an attorney or lay counselor for unprofessional conduct of which the judge may become aware. A judge having knowledge that another judge has committed a violation of this Code shall inform the Judicial Conduct Review Board.

(c) Disqualification.

(1) A judge shall disqualify himself or herself on the judge's own initiative in any proceeding in which the judge has reason to believe that he or she could not act with complete impartiality. A judge acting under this subsection (1) need not state the grounds of disqualification.

(2) A judge shall disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned, including instances where: (i) The judge has

a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts; (ii) The judge served as attorney, lay counselor or personal representative in the matter before the court, or a person with whom the judge has been associated in a professional capacity served as a lawyer, lay counselor or personal representative concerning the matter; (iii) The judge knows that he or she individually (or any member of the judge's family) has a financial interest in the subject matter in controversy or in a party to the proceeding, or has any other interest that could be substantially affected by the proceedings; (iv) The judge, his or her spouse, or a person in reasonably close family relationship to either of them, or the spouse of such a person: (a) is a party to the proceeding, or an officer, director, or trustee of a party; (b) is acting as an attorney or lay counselor in the proceeding; (c) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or (d) is to the judge's knowledge likely to be a material witness in the proceeding.

(d) Alternatives to Disqualification.

(1) A judge disqualified by the terms of Canon 3, Rule 3.1(c)(2)(iii) or Rule 3.1(c)(2)(iv) may, instead of withdrawing from the proceeding, disclose on the record the basis of his or her qualification. If based on such disclosure, the parties and attorneys, independently of the judge's participation, all agree in writing that the judge's participation is not prejudicial or that his or her financial interest is insubstantial, the judge is no longer disqualified, and may participate in proceeding. The agreement, signed by all parties and attorneys, shall be incorporated in the record of the proceeding.

(2) A judge may decline to disqualify himself or herself in any proceeding in which disqualification might otherwise be required under subsections (1) or (2) of this section, if no other judge is available and disqualification will result in a failure of justice. In such a case, the judge shall disclose on the record the basis for disqualification and shall thereafter disqualify himself or herself if at any time it is possible to transfer the proceeding to another judge without a failure of justice.

## **CANON 4**

**A judge may engage in activities to improve the law, the legal system and the administration of justice.**

### **Rule 4.1**

A judge may engage in the following activities, if in doing so, he or she does not cast doubt on his or her capacity to decide impartially any issue that may come before the court:

(a) The judge may speak, write, lecture, teach and participate in other activities concerning Chitimacha Tribal law, tradition and custom, the legal system of the Chitimacha Tribe of Louisiana and the administration of justice.

(b) The judge may appear at a public hearing before a tribal executive or legislative body or official on matters concerning the tribal judiciary system and the administration of justice, and he or she may otherwise consult with a tribal or executive or legislative body or official but only on matters concerning the general administration of justice or the improvement of the law or the legal system.

## **CANON 5**

**A judge shall regulate his or her extra-judicial activities to minimize the risk of conflict with judicial duties.**

### **Rule 5.1**

(a) Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties.

(b) Avocational Activities.

(1) A judge may write, lecture, teach and speak on legal and non-legal subjects, and engage in the arts, sports and other social and recreational activities of the Chitimacha Tribe of Louisiana or elsewhere if these activities do not interfere with the performance of his or her duties.

(2) No judge shall engage in any form of gaming, of any kind (including charitable games), at the Cypress Bayou Casino, Shorty's or any other gaming enterprise owned or operated by the Chitimacha Tribe of Louisiana. Nothing herein shall preclude judges from utilizing other amenities at Cypress Bayou Casino or Shorty's, including, but not limited to, restaurants, shops, shows, banquet facilities, or hotel accommodations, provided such utilization does not otherwise violate this Code.

(c) Civic and Charitable Activities.

(1) A judge may participate in civic, charitable and other tribal activities that do not adversely reflect upon his or her impartiality or interfere with the performance of his or

her judicial duties. A judge may participate in any tribal educational, religious, charitable or similar organization. A judge shall not participate in any activity if it is likely that the organization will be involved in proceedings which would ordinarily come before him or her or will be involved in adversary proceedings in either the Chitimacha Tribal Court or the Chitimacha Court of Appeals.

(2) A judge shall not use or permit the use of the prestige of judicial office for political fund-raising or membership solicitation. A judge should not be a speaker or the guest of honor at an event held primarily for political fund-raising, but a judge may attend such events. A judge may also participate in an organization's fund-raising events, provided the judge's title or status is not used to support the fund-raising effort.

(d) Financial Activities

(1) A judge should avoid financial and business dealings that tend to reflect adversely on his or her impartiality, interfere with the performance of his or her judicial duties, exploit his or her judicial position or involve him or her in frequent transactions with attorneys or others likely to come before the court on which he or she serves.

(2) Except as allowed by the laws and traditions of the Chitimacha Tribe of Louisiana, neither a judge nor a member of his or her family should accept a gift, meal, bequest, favor or loan from anyone which would affect or appear to affect his or her impartiality in judicial proceedings, or on the judge's appearance of fairness. A judge may accept: (i) a gift incidental to a public testimonial, books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice; (ii) ordinary social hospitality; (iii) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate to the occasion and the relationship; (iv) a gift, meal, bequest, favor or loan from a relative or friend, if the relative or friend is one whose appearance or interest in a case would in any event require the disqualification of the judge under Canon 3, Rule 3.1(c); (v) a loan from a lending institution in its regular course of business on the same terms and based on the criteria applied to other applicants; or (vi) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.

(3) A judge may receive income, honoraria and reimbursement of expenses attributable to the extra-judicial activities permitted by this Code, if the source of payments does not give the appearance of impropriety. (i) Income and honoraria shall not exceed a reasonable amount nor shall they exceed what a person who is not a judge would receive as a result of the same activity. (ii) Expense and reimbursement or payment shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount shall be treated as an honorarium.

(e) Extra-judicial appointments. Unless allowed by Chitimacha Tribal law or tradition, a judge should not accept appointment to any tribal government entity or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the tribal justice system or the administration of justice. A judge, however, may represent the Chitimacha Tribe of Louisiana on ceremonial occasions or in connection with historical, educational and cultural activities.

## **CANON 6**

**A judge shall refrain from political activity inappropriate to his or her judicial office.**

### **Rule 6.1**

Unless authorized by Chitimacha Tribal law or tradition, a judge shall not engage in any tribal political activity except on behalf of measures to improve the law, the tribal justice system or the administration of justice.

### **Sec. 405. Discipline and Removal of Judges**

In order to ensure compliance with the provisions of this Code, it is necessary to establish a means of enforcement. The disciplinary procedures contained within the Code shall not be utilized in substitution for the judicial appeal process. The Judicial Conduct Review Board is the entity charged herein with the responsibility of reviewing complaints made against judges of the Chitimacha Tribe of Louisiana. The Board is comprised of a broad range of persons and is designed to allow for participation in decision-making by both legal professionals and tribal community members.

(a) Filing of Complaints. Complaints filed against a judge shall be made in writing and shall be signed by the complainant. Each complaint shall be filed with the Chitimacha Clerk of Court, who shall assign a docket number, and acknowledge receipt of the complaint. Upon receipt of such a complaint, the Clerk shall immediately notify the Judicial Conduct Review Board.

(b) Judicial Conduct Review Board. It is hereby established the Judicial Conduct Review Board which has the authority to hear complaints concerning the conduct of judges, to recommend disciplinary actions against them, and/or to recommend their removal from the Chitimacha judiciary if warranted, after a fair hearing.

(c) Board Composition. The Board shall consist of one judge of the Chitimacha Court of Appeals; the Chief Judge of the Chitimacha Tribal Court, or one other Court of Appeals judge in the event that the Chief Judge is the subject of the Board's focus; one member of the Chitimacha Tribal Bar or of a comparable roll of attorneys admitted to practice before the Court, chosen randomly by the Clerk of Court; and the Chair and Vice-Chair of the Chitimacha Tribal Council, or the designee of the Chair or Vice-Chair of the Chitimacha Tribe Council so long as such



designee is a tribal member of the Chitimacha Tribe of Louisiana. The judge of the Chitimacha Court of Appeals shall serve as chairperson for the Board and shall have the right to vote in all decisions of the Board. If two Court of Appeals judges serve on the Board, the senior Court of Appeals judge shall service as chairperson for the Board.

No person shall serve on the Board if that person has reason to believe that he or she could not act with complete impartiality or if such person's impartiality might be reasonably questioned. No action shall be taken by the Board except by vote of a majority of the Board and except as provided by subsections (m) and (n) herein.

(d) Investigative Authority. The Board shall conduct such investigation as it deems fit. At any stage of such an investigation the Board shall have subpoena power and may require a person to appear or produce evidence before the Board, and to provide evidence under oath. If the Board determines that the complaint is unfounded, the Board shall dismiss the matter, notifying any complainant of its action.

(e) Confidentiality. All proceedings before the Board shall be confidential, and no information shall be published by the Board except:

(1) Upon written request of the Chitimacha Tribal Council in connection with the consideration of the appointment or reappointment of a person who is or has been a Chitimacha judge, the Board shall provide information on any complaints made against the judicial candidate and the Board's disposition thereof; and

(2) Upon request of the person whose conduct is being investigated, or by a majority vote of the Board, after giving that person an opportunity to express his or her views on the question, any hearing held shall be public.

(f) Determination to Proceed. The Board shall meet at the Chitimacha Courthouse on a day not more than fifteen (15) days after the filing of the complaint. The Board shall consider each complaint received to determine whether it is within the Board's authority to hear.

(1) If the Board is unable to make that determination, it may request additional information.

(2) If the Board determines that the complaint is not a type within its authority, it shall dismiss the complaint, notify in writing the complainant of its decision, and notify the judge complained against of the nature of the complaint and the Board's decision.

(3) If the Board determines that a complaint is within its authority to hear, it shall communicate the complaint to the judge complained against by providing him or her with a copy of the complaint and shall request a written response. The Board may conduct such investigation of the matter as it deems appropriate. If the Board determines that the complaint is unfounded or frivolous or otherwise provides insufficient cause for

proceeding, it shall dismiss the complaint and notify the complainant and the judge complained against of its decision.

(4) The dismissal of the complaint does not preclude later consideration of the matters involved in that complaint to the extent that they may evidence a pattern or practice of misconduct, or are otherwise relevant to the consideration of any other complaint or matter properly before the Board under these rules. A dismissed complaint may be reconsidered if new information is received upon the basis of which the Board determines that such reconsideration is necessary to fulfill the purposes of the disciplinary process.

(g) Hearings. The Board shall hold a hearing at the request of a majority of its members or of the individual whose conduct is being investigated. Such hearing shall be had before the Board on the record. The Board shall have subpoena power and every witness shall be sworn.

(h) Rights of the Judge. The judge shall be entitled to be present at the hearing, to be represented by counsel at the judge's own expense, to introduce evidence, to examine and cross-examine witnesses, and to subpoena documents and witnesses.

(i) Written Notice. The Board shall issue to the judge a written notice containing a statement of alleged misconduct, including any section of the Chitimacha Code of Judicial Conduct or Oath taken upon admittance to office alleged to have been violated, or other alleged disability. Such notice shall be served by registered or certified mail, or be personally delivered to the judge. The notice shall state alleged facts upon which such charges are based. The Board shall make available to the judge all information concerning such charges as the Board has acquired.

(j) Response to Notice. Within twenty (20) days after receipt of notice, the judge shall file a written response setting forth any admission, denial, affirmative defense, or other matter upon which he or she intends to rely at the hearing.

(k) Discovery. Discovery shall be allowed under the Board's direction upon request to and with the approval of the Board.

(l) Evidence. The Chitimacha Rules of Evidence shall guide evidentiary matters.

(m) Board Decision. After hearing a matter, the Board shall decide whether it is satisfied by clear and convincing evidence that:

(1) The judge has violated a provision of the Chitimacha Code of Judicial Conduct and that the violation is of such serious nature as to warrant formal disciplinary action; or

(2) The judge has been convicted of a crime the nature of which casts into doubt his or her continued willingness to conform his or her conduct to the Chitimacha Code of Judicial Conduct; or

(3) The judge is suffering from a disability which materially affects his or her ability to perform his or her duties.

(n) Board Findings and Actions. The Board shall make findings of fact and conclusions of law in its written decision. The decision of the Board shall be by unanimous vote. If the Board decides that a charge has not been established, it shall dismiss the matter and provide written notice to both the judge complained against and any complainant. If the Board has decided that a charge has been established, it shall report its written decision to both the judge and the complainant and promptly recommend to the Chitimacha Tribal Council appropriate disciplinary action.

(o) Removal shall be by an affirmative vote by secret ballot of two thirds (2/3) of the members of the Tribal Council present at a valid meeting called for the purpose of considering such removal, after a hearing. The decision by the Tribal Council to remove a Judge shall be final.

**Sec. 406. Miscellaneous**

(a) Title and Citation. This Code may be known and cited as the CHITIMACHA CODE OF JUDICIAL CONDUCT.

(b) Repeal of Inconsistent Laws. Any provisions in the general laws of the Chitimacha Tribe of Louisiana which are inconsistent with the provisions of this Code are hereby repealed.

(c) Effective Date. This Code shall be effective on the date that the Code is adopted by the Chitimacha Tribal Council.

(d) Amendments. Amendments to this Code shall be effective upon adoption by the Chitimacha Tribal Council.

(Added by Ordinance # 02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

**CHAPTER 5. ATTORNEYS AND LAY COUNSELORS**

**Sec. 501. Qualifications for admissions as attorney or lay counselor**

(a) Attorneys. No person may practice as an attorney before the Tribal Court or Court of Appeals unless admitted to practice and enrolled as an attorney of the Tribal Court upon written application and approval of the Chief Judge. To be eligible to practice as an attorney before the Tribal Court, a person;

(1) must be a member in good standing of the bar in any state or federal court; and

(2) must be of high moral character and integrity.

The Chief Judge may make inquiry as to the attorney's knowledge of the Chitimacha Code of Justice and of Federal Indian law before admitting the attorney. Each individual wishing to be admitted to practice before the Tribal Court must be recommended by an individual already admitted; provided that this requirement shall take effect once ten individuals have been admitted to practice.

(b) Lay counselors. Any person who meets the qualifications established in this Section shall be eligible for admission to practices before the Court as a lay counselor upon written application and approval of the Chief Judge. To be eligible to serve as a lay counselor, a person;

- (1) must be at least twenty-one (21) years of age;
- (2) must be of high moral character and integrity;
- (3) must have knowledge of the Chitimacha Tribal Code and of Federal Indian law;
- (4) must be a high school graduate or equivalent; and
- (5) must not have been convicted of a felony in any jurisdiction.

(Added by Ordinance # 3-90; Adopted: November 7, 1990; Effective: March 13, 1992)

**Sec. 502. Roll of attorneys and lay counselors**

A roll of attorneys and lay counselors admitted to practice before the Court shall be maintained by the clerk of court.

(Added by Ordinance # 3-90; Adopted: November 7, 1990; Effective: March 13, 1992)

**Sec. 503. Right to counsel**

Any person at his/her own expense may have assistance of counsel in any proceeding before the Tribal Court.

(Added by Ordinance # 3-90; Adopted: November 7, 1990; Effective: March 13, 1992)

**CHAPTER 6. CHITIMACHA RULES OF PROFESSIONAL CONDUCT**

(Added by Ordinance # 02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

**Sec. 601. Preamble: A Lawyer's Responsibilities**

A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

**Sec. 602.      Scope**

The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role.

The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general.

Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in

intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

The Preamble and this section on Scope provide general orientation to the Rules, but the text of each Rule is authoritative.

## **Sec. 603.     Rules**

### **Rule 1.0 Terminology**

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers



employed in a legal services organization or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(g) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(h) "Primary responsibility" denotes actual participation in the management and direction of the matter at the policy-making level or responsibility at the operational level as manifested by the continuous day-to-day responsibility for litigation or transaction decisions.

(i) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(j) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(k) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(l) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(m) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(n) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(o) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

### ***Client-Lawyer Relationship***

#### **Rule 1.1 Competence**

(a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

(b) A lawyer shall not:

(1) Handle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence.

(2) Exhibit a pattern of negligence or neglect in the lawyer's handling of legal matters generally.

(c) A lawyer is required to comply with all of the requirements of the Chitimacha Tribal Courts' rules regarding annual registration, including payment of dues.

#### **Rule 1.2 Scope Of Representation And Allocation Of Authority Between Client And Lawyer**

(a) Subject to the provisions of Rule 1.16 and to paragraphs (c) and (d) of this Rule, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

- (e) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal, criminal or fraudulent, or in the preparation of a written instrument containing terms the lawyer knows are expressly prohibited by law, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

### **Rule 1.3 Diligence**

A lawyer shall act with reasonable diligence and promptness in representing a client.

### **Rule 1.4 Communication**

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

(d) A lawyer shall promptly inform the client, in writing, of each and every decision or circumstance whereby the lawyer becomes or will become affiliated in any capacity with a law firm, a firm that provides law-related services or any other entity that provides legal or law-related services other than the firm with which the lawyer was affiliated in connection with the most recent representation agreement concluded between the client and the lawyer. The lawyer shall also obtain the informed consent of a public entity client to the continued representation of

the client by the lawyer following the lawyer's new affiliation, confirmed in writing, within sixty (60) days of receipt by the client of the lawyer's notice. Failure by a public entity client to respond to the lawyer, in writing, within sixty (60) days of receipt by the client of the lawyer's notice, shall constitute a termination of representation by the client of the lawyer as provided in Rule 1.16.

### **Rule 1.5 Fees**

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client. A copy or duplicate original of the executed agreement shall be given to the client at the time of execution of the agreement. The contingency fee agreement shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must

clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the client agrees in writing to the representation by all of the lawyers involved, and is advised in writing as to the share of the fee that each lawyer will receive;

(2) the total fee is reasonable; and

(3) each lawyer renders meaningful legal services for the client in the matter.

(f) Payment of fees in advance of services shall be subject to the following rules:

(1) When the client pays the lawyer a fee to retain the lawyer's general availability to the client and the fee is not related to a particular representation, the funds become the property of the lawyer when paid and may be placed in the lawyer's operating account.

(2) When the client pays the lawyer all or part of a fixed fee or of a minimum fee for particular representation with services to be rendered in the future, the funds become the property of the lawyer when paid, subject to the provisions of Rule 1.5(f)(5). Such funds need not be placed in the lawyer's trust account, but may be placed in the lawyer's operating account.

(3) When the client pays the lawyer an advance deposit against fees which are to accrue in the future on an hourly or other agreed basis, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may transfer these funds as fees are earned from the trust account to the operating account, without further authorization from the client for each transfer, but must render a periodic accounting for these funds as is reasonable under the circumstances.

(4) When the client pays the lawyer an advance deposit to be used for costs and expenses, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may expend these funds as costs and expenses accrue, without further authorization from the client for each expenditure, but must render a periodic accounting for these funds as is reasonable under the circumstances.

(5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration.

### **Rule 1.6 Confidentiality Of Information**

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or a court order.

### **Rule 1.7 Conflict Of Interest: Current Clients**

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing, after full disclosure and consultation, provided, however, that a public entity cannot consent to any such representation. When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved.

(c) In cases or situations creating an appearance of impropriety rather than an actual conflict, multiple representation is not permissible, that is, in those situations in which an ordinary knowledgeable citizen acquainted with the facts would conclude that the multiple representation poses substantial risk of disservice to either the public interest or the interest of one of the clients.

### **Rule 1.8 Conflict Of Interest: Current Clients: Specific Rules**

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing



signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) A lawyer shall not solicit or obtain a power of attorney or mandate from a client which would authorize the attorney, without first obtaining the client's informed consent to settle, to enter into a binding settlement agreement on the client's behalf or to execute on behalf of the client any settlement or release documents. An attorney may obtain a client's authorization to endorse and negotiate an instrument given in settlement of the client's claim, but only after the client has approved the settlement.

(l) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) and paragraph (k) that applies to any one of them shall apply to all of them.

(m) A lawyer employed by a public entity, either as a lawyer or in some other role, shall not undertake the representation of another client if the representation presents a substantial risk that the lawyer's responsibilities to the public entity would limit the lawyer's ability to provide independent advice or diligent and competent representation to either the public entity or the client.

(n) A public entity cannot consent to a representation otherwise prohibited by this Rule.

(o) The provisions of Rule 1.7(c) are applicable as well to situations covered by this Rule.

## **Rule 1.9 Duties To Former Clients**

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed consent, confirmed in writing. Notwithstanding the other provisions of this paragraph, neither consent shall be sought from the client nor screening pursuant to Rule 1.10 permitted in any matter in which the attorney had sole or primary responsibility for the matter in the previous firm.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

(d) A public entity cannot consent to a representation otherwise prohibited by this Rule.

(e) The provisions of Rule 1.7(c) are applicable as well to situations covered by this Rule.

## **Rule 1.10 Imputation Of Conflicts Of Interest: General Rule**

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless

(1) the prohibition is based upon a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or

(2) the prohibition is based upon Rule 1.9(a), or (b) and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;

(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

(iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under RPC 1.9 unless:

(1) the matter does not involve a proceeding in which the personally disqualified lawyer had primary responsibility;

(2) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(3) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.

(d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7, which includes the prohibition against a public entity waiving an attorney conflict of interest.

(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

**Rule 1.11 Special Conflicts Of Interest For Former And Current Government Officers And Employees**

(a) A lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee or for which the lawyer had substantial responsibility as a public officer or employee; or

(3) shall not represent a client in connection with a matter when the interests of the client are materially adverse to the government, provided, however, that the application of this provision shall be limited to a period of six months immediately following the termination of the lawyer's service as a public officer or employee.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the government to enable it to ascertain compliance with the provisions of this rule.

(c) An appearance of impropriety may arise from a lawyer representing a private client in connection with a matter that relates to the lawyer's former employment as a public officer or employee even if the lawyer did not personally and substantially participate in it, have actual knowledge of it, or substantial responsibility for it. In such an event, the lawyer may not represent a private client, but a firm with which that lawyer is associated may undertake or continue representation if:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the government to enable it to ascertain compliance with the provisions of this rule.

(d) A lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information

could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(e) A lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially or for which the lawyer had substantial responsibility while in private practice or nongovernmental employment; or

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially or for which the lawyer has substantial responsibility, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(f) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the government.

### **Rule 1.12 Former Judge, Arbitrator, Mediator Or Other Third-Party Neutral**

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating

personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

### **Rule 1.13 Organization As Client**

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. In this capacity, the lawyer does not represent the organization's directors, officers, employees, members, shareholders, or other constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization,

then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that such explanation is necessary to avoid misunderstanding on their part.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

(h) For purposes of this rule, "organization" includes any corporation, partnership, association, joint stock company, union, trust, pension fund, unincorporated association, proprietorship or other business entity, tribal, state or local government or political subdivision thereof, or non-profit organization.

#### **Rule 1.14 Client With Diminished Capacity**

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a fiduciary such as a guardian, guardian ad litem, conservator, curator or tutor to protect the client's interests.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

### **Rule 1.15 Safekeeping Property**

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in a financial institution in Louisiana. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

### **Rule 1.16 Declining Or Terminating Representation**

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the Rules of Professional Conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;



(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.

### **Rule 1.17 Sale Of Law Practice**

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the jurisdiction in which the practice has been conducted;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale.

### **Rule 1.18 Duties To Prospective Client**

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

## *Counselor*

### **Rule 2.1 Advisor**

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

### **Rule 2.2 [Reserved]**

### **Rule 2.3 Evaluation For Use By Third Persons**

(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent in writing.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

### **Rule 2.4 Lawyer Serving As Third-Party Neutral**

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

## *Advocate*

### **Rule 3.1 Meritorious Claims And Contentions**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration,

may nevertheless so defend the proceeding as to require that every element of the case be established.

### **Rule 3.2 Expediting Litigation**

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

### **Rule 3.3 Candor Toward The Tribunal**

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

### **Rule 3.4 Fairness To Opposing Party And Counsel**

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

(g) present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter.

### **Rule 3.5 Impartiality And Decorum Of The Tribunal**

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress or harassment; or

(d) engage in conduct intended to disrupt a tribunal.

### **Rule 3.6 Trial Publicity**

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

### **Rule 3.7 Lawyer As Witness**

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

### **Rule 3.8 Special Responsibilities Of A Prosecutor**

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

- (1) the information sought is not protected from disclosure by any applicable privilege;
- (2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and
- (3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

### **Rule 3.9 Advocate In Non-adjudicative Proceedings**

A lawyer representing a client before a legislative body including, but not limited to, a tribal council, or administrative agency in a non-adjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

### ***Transactions with Persons Other Than Clients***

#### **Rule 4.1 Truthfulness In Statements To Others**

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or



(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

#### **Rule 4.2 Communication With Person Represented By Counsel**

In representing a client, a lawyer shall not communicate about the subject of the representation with:

(a) a person the lawyer knows, or by the exercise of reasonable diligence should know, to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

(b) a person the lawyer knows, or by the exercise of reasonable diligence should know, is presently a director, officer, employee, member, shareholder or other constituent of a represented organization and

(1) who supervises, directs or regularly consults with the organization's lawyer concerning the matter;

(2) who has the authority to obligate the organization with respect to the matter; or

(3) whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability.

Reasonable diligence shall include, but not be limited to, a specific inquiry of the person as to whether that person or organization is represented by counsel.

#### **Rule 4.3 Dealing With Unrepresented Person**

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

#### **Rule 4.4 Respect For Rights Of Third Persons**

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify

the sender and return the document. If the document is an e-mail or other electronic modes of transmission, the lawyer shall promptly notify the sender and immediately delete it.

### *Law Firms And Associations*

#### **Rule 5.1 Responsibilities Of Partners, Managers, And Supervisory Lawyers**

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

#### **Rule 5.2 Responsibilities Of A Subordinate Lawyer**

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

#### **Rule 5.3 Responsibilities Regarding Non-lawyer Assistants**

With respect to a non-lawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

#### **Rule 5.4 Professional Independence Of A Lawyer**

(a) A lawyer or law firm shall not share legal fees with a non-lawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) a lawyer or law firm may include non-lawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

- (1) a non-lawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
- (2) a non-lawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
- (3) a non-lawyer has the right to direct or control the professional judgment of a lawyer.

### **Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law**

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice law in this jurisdiction shall not:

- (1) establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
- (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer who is admitted to practice law in another United States jurisdiction, provided that lawyer is admitted to practice law before the highest court of at least one of the fifty states or the District of Columbia, and not disbarred or suspended from practice in any jurisdiction, may only provide legal services on a temporary basis in this jurisdiction when those services are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter.

(d) A lawyer who is admitted to practice law in another United States jurisdiction, provided that lawyer is admitted to practice law before the highest court of at least one of the fifty states or the District of Columbia, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction provided that the lawyer shall:

- (1) be licensed and in good standing in all jurisdictions of admission and not be the subject of any pending disciplinary proceedings, nor a current or pending license suspension or disbarment;
- (2) be duly admitted to practice in this jurisdiction as authorized and required by these Rules or other law;
- (3) be subject to the Rules of Professional Conduct and the disciplinary authority of the Chitimacha Tribe of Louisiana and the Chitimacha Tribal Courts; and

(4) consent to the appointment of the Clerk of the Chitimacha Tribal Courts as agent upon whom service of process may be made for all actions against the lawyer or the lawyer's firm that may arise out of the lawyer's participation in legal matters in this jurisdiction.

(e) A lawyer shall not employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a disbarred attorney, during the period of disbarment, or any person the attorney knows or reasonably should know is an attorney who has permanently resigned from the practice of law in lieu of discipline.

(f) A lawyer shall not employ, contract with as a consultant, engage as an independent contractor, or otherwise join in any other capacity, in connection with the practice of law, any person the attorney knows or reasonably should know is a suspended attorney, during the period of suspension, unless the lawyer affirmatively provides acceptable proof to this jurisdiction that the lawyer is in compliance with all requirements imposed in such cases by the appropriate authorities of all applicable jurisdictions. For purposes of this paragraph, appropriate authorities include, but are not limited to, state bar associations, offices of disciplinary counsel, attorney disciplinary boards, and state supreme courts.

#### **Rule 5.6 Restrictions On Right To Practice**

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

#### **Rule 5.7 Responsibilities Regarding Law-Related Services**

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a non-lawyer.

### *Public Service*

#### **Rule 6.1 Voluntary Pro Bono Publico Service**

(a) Every lawyer has a professional responsibility to render public interest legal service to include the provision of legal services to those unable to pay. A lawyer should aspire to render at least fifty (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(1) provide a substantial majority of the fifty (50) hours of legal services without fee or expectation of fee to:

(i) persons of limited means or

(ii) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(2) provide any additional services through:

(i) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(ii) delivery of legal services at a substantially reduced fee to persons of limited means; or

(iii) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer may also voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

(b) The responsibility set forth in this Rule shall not be enforced through disciplinary process.

#### **Rule 6.2 [Reserved]**

### **Rule 6.3 Membership In Legal Services Organization**

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

### **Rule 6.4 Law Reform Activities Affecting Client Interests**

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

### **Rule 6.5 Nonprofit And Court-Annexed Limited Legal Services Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

### ***Information About Legal Services***

### **Rule 7.1 Communications Concerning A Lawyer's Services**

(a) A lawyer shall not make or permit to be made a false, misleading or deceptive communication about the lawyer, the lawyer's services, the services of the lawyer's firm or any matter in which the lawyer has or seeks a professional involvement. For example, a communication is false, misleading or deceptive if it:

- (1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the communication, considered as a whole, not materially misleading; or
- (2) contains a statement or implication that the outcome of any particular legal matter was not or will not be related to its facts or merits; or
- (3) contains a statement or implication that the lawyer can unlawfully influence any court, tribunal or other public body or official; or
- (4) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or
- (5) in the case of a bankruptcy matter, fails to clearly state that the matter will involve a bankruptcy proceeding; or
- (6) compares the lawyer's services or the law firm's services with any other lawyers' services; or
- (7) contains an endorsement by a celebrity or public figure without disclosing that:
  - (i) the endorser is not a client of the lawyer or law firm, if such is the case; and
  - (ii) the endorser is being paid or otherwise compensated for his or her endorsement, if such is the case; or
- (8) contains a visual portrayal of a client by a non-client or a lawyer by a non-lawyer without disclosure that the depiction is a dramatization; or
- (9) relates to legal fees other than:
  - (i) a statement of the fee for an initial consultation;
  - (ii) a statement of the fixed or contingent fee charged for a specific legal service, the description of which would not be misunderstood or be deceptive;
  - (iii) a statement of the range of fees for specifically described legal services, provided there is a reasonable disclosure of all relevant variables and considerations so that the statement would not be misunderstood or be deceptive;
  - (iv) a statement of specified hourly rates, provided the statement makes clear that the total charge will vary according to the number of hours devoted to the matter, and in relation to the varying hourly rates charged for the services of different individuals who may be assigned to the matter;



(v) the availability of credit arrangements; and

(vi) a statement of the fees charged by a qualified legal assistance organization in which the lawyer participates for specific legal services the description of which would not be misunderstood or be deceptive

(10) contains misleading fee information. Every communication that contains information about the lawyer's fee shall be subject to the following requirements:

(i) Communications that state or indicate that no fee will be charged in the absence of recovery shall disclose that the client will be liable for certain expenses in addition to the fee, if such is the case.

(ii) A lawyer who advertises a specific fee, hourly rate or range of fees for a particular service shall honor the advertised fee for at least ninety (90) days from the date it was last advertised; provided that for advertisements in print media published annually, the advertised fee shall be honored for a period not less than one year following initial publication.

(11) is a failure by a lawyer to comply with the requirements of Rule 1.4(d).

(b) In determining whether a communication violates this rule, the communication shall be considered in its entirety including any qualifying statements or disclaimers contained therein.

(c) A lawyer shall not accept a referral from any person, firm or entity whom the lawyer knows has engaged in any communication or solicitation relating to the referred matter that would violate these rules if the communication or solicitation were made by the lawyer.

(d) It shall be unethical for a lawyer to use an advertisement or other related communication known to have been disapproved by the attorney's state bar association committee on attorney advertising, or one substantially the same as the one disapproved, until or unless modified or reversed by the lawyer's state bar association committee on attorney advertising.

## **Rule 7.2 Advertising**

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) refer clients to another lawyer or a non-lawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

### **Rule 7.3 Direct Contact With Prospective Clients**

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact directly or through others acting at the lawyer's request or on the lawyer's behalf solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact directly or through others acting at the lawyer's request or on the lawyer's behalf even when not otherwise prohibited by paragraph (a), if:

(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertisement" or "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

#### **Rule 7.4 Communication of Fields of Practice and Specialization**

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

(c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.

(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and

(2) the name of the certifying organization is clearly identified in the communication.

#### **Rule 7.5 Firm Names And Letterheads**

(a) A lawyer shall not use a firm name, logo, letterhead, professional designation, trade name or trademark that violates Rule 7.1. A trade name may be used by a law firm or a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office or formerly associated with a firm shall not be used in the name of a law firm, on its letterhead, or in any communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

(e) If otherwise lawful, a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm, or of a predecessor firm in a continuing line of succession.

### **Rule 7.6 Political Contributions To Obtain Legal Engagements Or Appointments By Judges**

A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

### ***Maintaining The Integrity Of The Profession***

#### **Rule 8.1 Tribal Courts Admission And Disciplinary Matters**

An applicant for admission to the Chitimacha Tribal Courts, or a lawyer in connection with a Chitimacha Tribal Courts admission application or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6; or
- (c) fail to cooperate with an entity duly authorized by the laws of the Chitimacha Tribe of Louisiana in its conduct of an inquiry, investigation or other proceeding of any matter before it except for an openly expressed claim of a constitutional privilege.
  - (1) Failure to respond to a disciplinary complaint within the allotted time will result in the allegations of the complaint being deemed admitted.

#### **Rule 8.2 Judicial And Legal Officials**

- (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.
- (b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

### **Rule 8.3 Reporting Professional Misconduct**

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority designated by the laws of the Chitimacha Tribe of Louisiana.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's honesty, trustworthiness, or fitness for office shall inform the Chitimacha Tribal Council.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program or while serving as a member of a state bar ethics advisory service committee.

### **Rule 8.4 Misconduct**

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; or

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; or

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; or

(d) engage in conduct that is prejudicial to the administration of justice; or

(e) state or imply an ability to influence improperly a judge, judicial officer, government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter

(h) fail to cooperate with an entity duly authorized by the laws of the Chitimacha Tribe of Louisiana in its conduct of an inquiry, investigation or other proceeding in connection with a disciplinary matter.

## **Rule 8.5 Jurisdiction**

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct.

## **Sec. 604. Disciplinary Process**

(a) Any claimed violation of the Chitimacha Rules of Professional Conduct as set forth herein may be reported in writing to the Chief Judge of the Chitimacha Court of Appeals, who shall then appoint, at the court's expense, an ad hoc Special Tribal Counsel to conduct an investigation into the matter within a reasonable time after receipt of such complaint. No lawyer shall serve as a Special Tribal Counsel if that lawyer has reason to believe that he or she could not act with complete impartiality or if such person's impartiality might be reasonably questioned.

(b) Written notice of such complaint shall be provided to the lawyer against whom the complaint is filed. Notice to the respondent shall be given by mail addressed to the addresses listed with the lawyer's state bar association membership directory and in the current edition of the roll of attorneys admitted to practice before the Chitimacha Tribal Courts as maintained by the Clerk of Court, or be personally delivered to the lawyer. The lawyer shall have a period of fifteen (15) days from the date of the notice within which to respond to the complaint.

(c) The Chief Judge of the Chitimacha Court of Appeals, in consultation with one other judge of the Court of Appeals, shall determine whether or not there is probable cause to believe that a violation of the Rules of Professional Conduct has been committed. Such determination shall be made within forty-five (45) days of the date that the lawyer's response is due. Both the complainant and the lawyer shall receive written notice of such determination by the court, and the reasons therefore.

(d) When a determination has been made that there is no probable cause that a violation of the Rules of Professional Conduct has been committed, the matter shall be closed, and shall be sealed until further order of the court.

(e) When a determination has been made that there is probable cause that a violation of the Rules of Professional Conduct has been committed, the Chitimacha Court of Appeals shall conduct a hearing with a panel to consist of at least three judges of the Court of Appeals, one of said judges having not made the determination of probable cause. The Special Tribal Counsel shall present the case against the lawyer. The court shall provide notice of such hearing to all parties to the complaint, setting forth the date, time and place at which the hearing will be conducted. Such hearing shall be closed to the public and subject to the following:

(1) continuances may be granted in the discretion of the court for good cause shown;

(2) any motions filed in the matter shall be filed no later than seven (7) days in advance of the date upon which the complaint is to be heard;

(3) any oral or documentary evidence may be received by the court as may be consistent with the Chitimacha Rules of Evidence, but the court shall exclude irrelevant, immaterial or unduly repetitious evidence;

(4) when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

(5) documentary evidence may be received in form of copies or excerpts if the original is not readily available. Upon reasonable and timely requests, the parties may be given an opportunity to compare the copy to the original;

(6) parties may be represented by legal counsel; and

(7) any of the parties or their legal counsel may conduct direct and cross-examination of witnesses.

(f) After the close of the hearing, the panel of the Court of Appeals shall decide by an affirmative vote of at least two-thirds (2/3) of the members whether it is satisfied by clear and convincing evidence that a violation of the Rules of Professional Conduct has been committed, and shall render its decision within thirty (30) business days. Upon completion of the hearing and rendering of a decision, the matter shall be deemed conclusively determined.

(g) The Court of Appeals shall have the power to take any of the following action with respect to a lawyer determined to have violated the Rules of Professional Conduct after hearing duly held:

(1) privately reprimand the lawyer;

(2) publicly reprimand the lawyer;

(3) impose monetary fines against the lawyer;

(4) suspend the lawyer from practice before the courts of the Chitimacha Tribe of Louisiana for a definite period of time; or

(5) order the disbarment of the lawyer.

(h) For any violation of these Rules occurring before the Chitimacha Tribal Court or before the Chitimacha Court of Appeals, the judge observing such violation may take immediate action concerning such violation and shall then refer such matter to the other judicial officers of the Chitimacha Court System in accordance with the procedure set forth herein.

(i) The Chief Judge of the Court of Appeals shall transmit a certified copy of the order imposing discipline, except an order of private reprimand, on the lawyer resulting from the disciplinary proceedings herein to the disciplinary authority of any other jurisdiction in which the disciplined lawyer is licensed or authorized to practice.

**Sec. 605. Reciprocal Discipline**

(a) Upon the receipt of a certified copy of an order that a lawyer admitted to practice before the courts of the Chitimacha Tribe of Louisiana has been subject to discipline in another jurisdiction (including any tribal, state or federal court or any tribal, state or federal administrative body or agency), the Chitimacha Court of Appeals shall enter an order of notice containing a copy of the order from the other jurisdiction and directing the respondent lawyer to inform the Chitimacha Court of Appeals within thirty (30) days from service of the order of notice of any claim that the imposition of the identical discipline by the Chitimacha Court of Appeals would be unwarranted and the reasons therefor. Special Tribal Counsel appointed by the Chief Judge of the Chitimacha Court of Appeals shall cause this order of notice to be served upon the respondent lawyer by registered or certified mail with restricted delivery and return receipt requested.

(b) In the event that the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline to be imposed by the Chitimacha Court of Appeals may, but need not, be deferred.

(c) Upon the expiration of thirty (30) days from service of the notice under subsection (a) above, the Chitimacha Court of Appeals, after reasonable notice and hearing, may enter such order as the evidence warrants and may impose the identical discipline unless Special Tribal Counsel or the respondent lawyer established, or the Chitimacha Court of Appeals concludes, that:

(1) the procedure in the other jurisdiction did not provide reasonable notice or opportunity to be heard;



- (2) there was significant infirmity of proof establishing the misconduct;
- (3) imposition of the same discipline would result in grave injustice; or
- (4) the misconduct established does not justify discipline under these Rules.

**Sec. 606. Conviction of Crimes**

(a) Upon notice of a lawyer's conviction of a crime by any jurisdiction, the Chief Judge of the Chitimacha Court of Appeals shall appoint a Special Tribal Counsel to investigate the circumstances of said conviction. Upon the filing with the Chitimacha Court of Appeals by Special Tribal Counsel of a certificate of the clerk of any court establishing that a lawyer has been convicted of a crime demonstrating unfitness to engage in the practice of law, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after a trial or otherwise, the Chitimacha Court of Appeals shall, if satisfied that the crime demonstrates unfitness to practice law, enter an order to show cause why the lawyer should not be immediately suspended from the practice of law, regardless of the pendency of an appeal of the conviction, pending final disposition of any disciplinary proceeding affording the lawyer opportunity to be heard, may make such order of suspension as may be advisable in the interest of the tribal community and/or the public, the tribal bar or comparable entity if any, and the Chitimacha Tribal Courts. The Chitimacha Court of Appeals may, in its discretion, choose to defer the hearing on the order to show cause until all appeals from the conviction are concluded.

(b) A certificate of final judgment of conviction of a lawyer for any crime shall be conclusive evidence of the commission of a crime in any disciplinary proceeding based upon the conviction subject to the provisions of paragraph (c) below.

(c) A lawyer suspended hereunder will be reinstated immediately upon the filing of a certificate that the underlying conviction for a crime has been reversed or set aside. The reinstatement need not terminate any disciplinary proceeding then pending against the lawyer.

(f) The clerk of the Chitimacha Tribal Court wherein a lawyer has been convicted of a crime covered by paragraph (a) shall transmit a certificate thereof to the Chief Judge of the Chitimacha Court of Appeals and to Special Tribal Counsel within ten (10) days of said conviction.

**Sec. 607. Funding and Reimbursement**

(a) The operational expenses of the Chitimacha Tribal Courts in the performance of duties under these rules, including the Special Tribal Counsel and his or her expenses and administrative costs, and expenses of the Chitimacha Court of Appeals judges, shall be paid from the following sources of revenue:

(1) Fee Assessment. Lawyers admitted to practice law in the Chitimacha Tribal Courts shall pay an annual disciplinary fee assessment in accordance with rules established by the Court.

(2) Annual Payment. On or before November 1, 2009, the Chitimacha Tribe of Louisiana shall pay \$5,000 to a dedicated account established and managed by the Chitimacha Tribal Courts. On or before November 1, 2010, the Chitimacha Tribe of Louisiana shall pay \$2,500 to a dedicated account established and managed by the Chitimacha Tribal Courts. The Chitimacha Tribe of Louisiana shall make no further annual payments after the fiscal year 2010-2011 payment unless it appears in the interests of justice to do so.

(b) Reimbursement of Costs and Expenses

(1) Assessment. Upon order of the court, or upon stipulation, in any case in which a sanction is imposed upon a lawyer, costs and expenses as herein defined may be assessed against the lawyer. Legal interest shall also be assessed on unpaid costs and expenses.

(2) Costs. The term "costs" for the purposes of this rule shall include all obligations in money reasonably and necessarily incurred by the Chitimacha Tribe of Louisiana or the Chitimacha Tribal Courts in the performance of its duties under these rules, whether incurred before or after the filing of formal charges. Costs shall include, by way of illustration and not of limitation:

- (i) investigatory costs;
- (ii) charges for service of process;
- (iii) witness fees;
- (iv) the services of a court reporter;
- (v) copying costs; and
- (vi) telephone charges.

(3) Expenses. "Expenses" for the purposes of this rule shall mean a reasonable charge for attorney fees and administrative and staff expenses incurred by the Chitimacha Tribe of Louisiana or the Chitimacha Tribal Courts.

(4) Payment of Costs and Expenses. A lawyer ordered to pay costs and expenses shall do so within thirty (30) days of the date upon which the assessment becomes final unless a periodic payment plan has been approved by the Chitimacha Court of Appeals and the Special Tribal Counsel.

(5) Failure to Comply with Assessment of Costs and Expenses. Any lawyer who fails to pay costs and expenses when ordered to do so or who fails to comply with the terms of an agreed upon periodic payment plan shall be mailed, at the addresses listed with the lawyer's state bar association membership directory and in the current edition of the roll of attorneys admitted to practice before the Chitimacha Tribal Courts as maintained by the Clerk of Court, or be personally delivered to the lawyer, a notice of delinquency and imminent certification of ineligibility to practice law. Any attorney who fails to comply with this notice within thirty (30) days of mailing shall be summarily certified ineligible to practice law by the court. The certification of ineligibility may be cancelled by the court subsequent to receipt of all outstanding costs and expenses have been paid.

(6) Waiver. In any case in which costs and expenses are sought pursuant to this rule, the assessment of any or all such costs and expenses may be waived where it appears in the interests of justice to do so.

**Sec. 608. Other Provisions and Interpretation of Rules**

(a) Nothing contained in these Rules shall be construed to repeal or limit any provisions contained in Chitimacha Tribal Law regarding the conduct of lawyers and disciplinary measures applicable thereto.

(b) These Rules shall be read in such a manner as to achieve uniformity in interpretation with applicable Chitimacha Tribal law.

(Added by Ordinance # 02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

**CHAPTER 7. PROSECUTOR**

(Added by Ordinance # 02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

**Sec. 701. Term**

A Tribal Prosecutor may be appointed on such terms and conditions as the Chitimacha Tribal Council shall establish in making the appointment. The Tribal Prosecutor shall be eligible for reappointment.

**Sec. 702. Appointment**

The Tribal Prosecutor shall be appointed by the Chitimacha Tribal Council, by a two-thirds (2/3) vote, taken by secret ballot, of those members present at a meeting of the Tribal

Council at which a quorum is present.

**Sec. 703. Qualifications**

To be eligible to serve as the Tribal Prosecutor, a person must be at least twenty-five (25) years of age, must be a member in good standing of the bar in any state or federal court, must be of good moral character and integrity, must be eligible for admission or already admitted to practice and enrolled as an attorney before the Chitimacha Tribal Courts, must have at least one (1) year of experience in criminal litigation, and have knowledge of the Chitimacha Comprehensive Codes of Justice and Federal Indian law.

**Sec. 704. Duties**

The Tribal Prosecutor shall represent the People of the Chitimacha Tribe of Louisiana by enforcing criminal offenses, criminal traffic offenses, civil traffic infractions, environmental infractions and juvenile delinquency matters. The Tribal Prosecutor shall also provide legal assistance and counsel to the Chitimacha Social Services Department and the Chitimacha Police Department.

**Sec. 705. Salary**

The Tribal Prosecutor shall be paid a salary to be determined by the Tribal Council. The salary of the Tribal Prosecutor shall not be reduced during his or her term of office.

(Added by Ordinance # 02-09; Adopted: December 3, 2009; Effective: December 3, 2009)

**CHAPTER 8. COURT ADMINISTRATION**

**Sec. 801. Office of Clerk**

The Tribal Council shall appoint a Clerk of Court to be compensated at a rate fixed by the Tribal Council. The Clerk shall be bonded, and shall be subject to discharge with or without cause by the Tribal Council.

**Sec. 802.      Qualifications**

To be eligible to serve as Clerk of Court, a person;

- (a) must be at least 21 years of age;
- (b) must be of high moral character and integrity;
- (c) must be a high school graduate or equivalent;
- (d) must be proficient in typing;
- (e) must never have been convicted of a felony; and
- (f) must be physically able to carry out the duties of the office.

**Sec. 803.      Duties**

The Clerk shall render assistance to the courts, to the authorized law enforcement officers of the Reservation, and the Indians of the Reservation, in drafting complaints, subpoenas, warrants, (notices of appeal), and any other documents incidental to the lawful functions of the court. The Clerk shall attend, and keep written records of, all proceedings of the court, administer oaths and collect fines, costs, fees and other monies. The Clerk shall be bonded and shall account to the Tribe for all monies collected.