



## RULES OF ADMISSION AND PROFESSIONAL CONDUCT GOVERNING THE PRACTICE OF ATTORNEYS FOR THE BLUE LAKE RANCHERIA TRIBAL COURT

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Section 11.1.1030 of the Tribal Court Ordinance of the Blue Lake Rancheria (“Tribe”) authorizes the Chief Judge of the Tribal Court for the Tribe, in consultation with the Business Council of the Tribe (“Tribal Council”), to “promulgate rules of pleading, practice and procedure applicable to any and all proceedings of the Tribal Court.” The following rules are adopted to govern civil proceedings initiated in the Tribal Court.

The following rules are intended to regulate the professional conduct of members of the Bar of the Tribal Court through discipline. These rules together with any standards adopted by the Tribal Council pursuant to ordinance, shall be binding upon all members of the Tribal Bar.

For a willful breach of any of these rules, the Chief of Presiding Judge of the Tribal Court shall have the power to discipline members of the Tribal Bar as provided herein.

Nothing in these rules shall be deemed to create, augment, diminish or eliminate any substantive legal duty imposed upon any lawyer or the consequences of violating such a duty imposed upon any lawyer or the consequences of violating such a duty imposed by any other federal, state or tribal law.

### CHAPTERS:

- 01 Definitions**
- 02 Relationship Among Members**
- 03 Professional Relationship with Clients**
- 04 Financial Relationship with Clients**
- 05 Advocacy and Representation**
- 06 Eligibility and Admission to the Bar**

### Chapter 1

#### Definitions

#### **01 Definitions**

##### **Rule 1. Definitions.**

For purposes of these rules, the following terms shall have the following meaning;

- (a) “Associate” means and employee or fellow employee who is employed as a lawyer.
- (b) “Law Firm” means;
  - (1) Two or more lawyers whose activities constitute the practice of law and who share its profits, expenses and liabilities; or
  - (2) A corporation which employs more than one lawyer; or
  - (3) A division, department, office or group within a business entity, which includes more than one lawyer who performs legal services for the business entity; or
  - (4) A publicly-funded entity which employs more than one lawyer to perform legal services.

- (c) “Lawyer” means a member of the Tribal Bar of the Tribe or a person who is admitted, in good standing of, and eligible to practice before the bar of the Tribe, any United States court or the highest court of the District of Columbia or any state, territory or tribe, or is licensed to practice law in, or is admitted in good standing and eligible to practice before the bar of the highest court of, a foreign country or any political subdivision thereof.
- (d) “Member” means a member of the Tribal Bar of the Tribe.
- (e) “Shareholder” means a shareholder in a professional corporation organized under any tribal, state or federal law.
- (f) “Tribal Court” means the Tribal Court of the Tribe.
- (g) “Tribe” means the Blue Lake Rancheria.

## **Chapter 2**

### **Relationship Among Members**

#### **02 Relationship Among Members**

##### **Rule 2. Communication with a Represented Party.**

While representing a client(s), a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer.

For purpose of this rule, a “party” includes;

- (a) an officer, director, or managing agent of a corporation or association, and a partner or managing agent of a partnership; or
- (b) an association member or an employee of an association, corporation, or partnership, if the subject of the communication is any act or omission of such person in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization.

This rule shall not prohibit;

- (a) communications with a public officer, board, committee or body;
- (b) communications initiated by a party seeking advice or representation from an independent lawyer of the party’s choice; or
- (c) communications otherwise authorized by law.

## **Chapter 3**

### **Professional Relationships with Clients**

**Rule:**

**03 Failing to Act Competently**

**04 Sexual Relations with Client**

**05 Avoiding Interest Adverse to Client**

## **06 Avoiding the Representation of Adverse Interests**

### **07 Limiting Liability to Client**

#### **Rule 3. Failing to Act Competently**

- (a) A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, “competence” in any legal service shall mean to apply the
  - (1) diligence,
  - (2) learning and skill, and
  - (3) mental, emotional and physical ability reasonably necessary for the performance of such service.
- (c) If a member does not have sufficient learning and skill when the legal service is undertaken, the member may nevertheless perform such services competently by;
  - (1) association with or, where appropriate, professionally consulting another lawyer reasonably Believed to be competent, or
  - (2) by acquiring sufficient learning and skill before such performance is required.

#### **Rule 4. Sexual Relations with Client.**

- (a) For purposes of this rule, “sexual relations” means sexual intercourse or the touching of an intimate part of another person for the purpose of sexual arousal, gratification, or abuse
- (b) Members shall not;
  - (1) Require or demand sexual relations with the client incident to or as a condition of any professional representation; or
  - (2) Employ coercion, intimidation, or undue influence in entering into sexual relations with a client; or
  - (3) Continue representation of a client with whom the member has sexual relations if such sexual relations cause the member to perform legal services incompetently in violation of these rules.
- (c) Paragraph (b) above shall not apply to sexual relations between members and their spouses or to ongoing consensual sexual relationships which predate the initiation of the lawyer-client relationship.
- (d) Where a lawyer in a firm has sexual relations with a client but does not participate in the representation of that client, the lawyers in the firm shall not be subject to discipline under this rule solely because of the occurrence of such sexual relationship.

#### **Rule 5. Avoiding Interests Adverse to a Client.**

A member 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 each of the following requirements have been satisfied;

- (a) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and are transmitted in writing to the client in a manner which would reasonably have been understood by the client; and
- (b) The client is advised in writing that the client may seek the advice of the independent lawyer Of the client’s choice and is given a reasonable opportunity to seek that advice; and
- (c) The client thereafter consents in writing to the terms of the transaction or the terms of acquisition.

**Rule 6. Avoiding the Representation of Adverse Interests**

For the purpose of this rule:

- (a) “Disclosure” means informing the client or former client of the relevant circumstances and of actual and reasonably foreseeable adverse consequences to the client or former client
- (b) “Informed written consent” means the client’s or former client’s written agreement to the Representation following written disclosure;
- (c) “Written” means any writing as defined by the Rules of Evidence of the Tribal Court
- (d) Any member shall not accept or continue representation of a client without providing written Disclosure to the where;
  - (1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same manner; or
  - (2) The member knows or reasonably should know that:
    - (i) The member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and
    - (ii) The previous relationship would substantially affect the member’s representation ; or
    - (iii) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or
    - (iv) The member has or had a legal, business, financial, or professional interest in the subject matter of the representation
- (e) A member shall not without the informed written consent of each client;
  - (1) Accept representation of more than one client in a manner in which the interests of the clients potentially conflict; or
  - (2) Accept or continue representation of more than one client in a manner in which the interests of the clients actually conflict; or
  - (3) Represent a client in the matter and at the same time in a separate matter accept as a client, a person or entity whose interest in the first matter is adverse to the client in the first matter
- (f) A member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients without the informed written consent of each client.
- (g) A member shall not without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.
- (h) A member shall not accept compensation for representing a client form one other than the unless;
  - (1) There is no interference with the member’s independence or professional judgment or with the client-lawyer relationship; and
  - (2) The member obtains the client’s informed written consent, provided that no disclosure or consent is required if;

- (i) Such non-disclosure is otherwise authorized by law; or
- (ii) The member is rendering legal services on behalf of any public agency which provides legal services to other public agencies or the public.

**Rule 7. Limiting Liability to Client**

A member shall not;

- (a) Contract with the client prospectively limiting the member's liability to the client for the member's professional malpractice; or
- (b) Settle a claim or potential claim for the member's liability to the client for the member's professional malpractice, unless the client is informed in writing that the client may seek the advice of an independent lawyer of the client's choice regarding the settlement and is given a reasonable opportunity to seek that advice.

**Chapter 4**

**Financial Relationship with Clients**

**Rule:**

**08 Fees for Legal Services**

**09 Preserving Identity of Funds and Property of Client**

**Rule 8. Fees for Legal Services**

- (a) A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee.
- (b) The conscionability shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. Among the factors to be considered, where appropriate, in determining the conscionability of a fee are the following:
  - (1) The amount of the fee in proportion to the value of the services performed;
  - (2) The relative sophistication of the member and the client;
  - (3) The novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly;
  - (4) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the member;
  - (5) The amount involved and the results obtained;
  - (6) The time limitations imposed by the client or by the circumstances;
  - (7) The nature and length of the professional relationship with the client;
  - (8) The experience, reputation and ability of the member or members performing the services;
  - (9) Whether the fee is fixed or contingent;
  - (10) The time and labor required, and
  - (11) The informed consent of the client to the fee.

**Rule 9. Preserving Identity of Funds and Property of a Client.**

- (a) All funds received by a member or law firm shall be held for the benefit of clients, including advances for costs and expenses, and shall be deposited in one or more identifiable bank accounts labeled "Trust Account", "Clients Funds Account", or words of similar import, maintained in the State of California, or, with the written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction. No funds belonging to the member or the law firm shall be deposited therein or otherwise commingled therewith except as follows;

- (1) Funds reasonably sufficient to pay bank charges;
  - (2) In the case of funds belonging in part to a client and in part presently or potentially to the members of the law firm, the portion belonging to the member or law firm must be withdrawn at the earliest reasonable time after the member's interest in that portion becomes fixed. However, when the right of a member or law firm to receive a portion of trust funds is disputed by the client, the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (b) The member shall;
- (1) Promptly notify a client of the receipt of the clients funds, securities, or other properties
  - (2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable
  - (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them; preserve such records for a period of not less than five years after final appropriate distribution of such funds or properties; and comply with any order for any audit of such records issued by the Chief or Presiding Judge of the Tribal Court for the Tribe.
  - (4) Promptly pay and deliver, as requested by the client, any funds, securities or other properties in the possession of the member which the client is entitled to receive.

## Chapter 5

### Advocacy and Representation

**Rule:**

- 10 Member as Witness**
- 11 Contact with Officials**

**Rule 10. Member as Witness.**

A member shall not act as an advocate before a jury or judge which will hear testimony from the member unless;

- (a) The testimony relates to an uncontested matter; or
- (b) The testimony relates to the nature and value of legal services rendered in the case; or
- (c) The member has the informed, written consent of the client. If a member represents the Tribe or a governmental entity, the consent shall be obtained from the head of the office or a designee of the head of the office by which the member is employed and shall be consistent with the principles of recusal.

**Rule 11. Contact with Officials**

- (a) A member shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal unless the personal or family relationship between the member and the judge, official or employee is such that gifts are customarily given and exchanged. Nothing contained in this rule shall prohibit the member from providing a gift to a Tribal Judge as a result of the Tribal Judge presiding over or participating in a Tribal Ceremony where such gift is customarily given in accordance with Tribal Custom and tradition.
- (b) A member shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before such judge or judicial officer except;
  - (1) In open court; or
  - (2) With the consent of all other counsel in such matter; or

- (3) In the presence of all other counsel in such matter; or
- (4) In writing with a copy thereof furnished to such other counsel; or
- (5) Where ex parte communications are expressly authorized by law or by a rule of the Tribal Court.

(c) As used in this rule, “judge”, “judicial officer”, shall include law clerks, research attorneys, or other court personnel who participate in the decision-making process.

## **Chapter 6**

### **Disciplinary Action**

**Rule:**

#### **12 Complaint Procedure**

#### **13 Disciplinary Action**

##### **Rule 12. Complaint Procedure.**

Any person believing that a member has violated any rule contained herein may file a complaint with the Chief or Presiding Judge of the Tribal Court on a form provided by the Tribal Court Clerk for that purpose. Upon receipt of the complaint, the Chief or Presiding Judge shall issue an order to show cause why disciplinary action should be imposed. The order shall recite the nature of the complaint against the member and shall provide the member with 14 days advance notice of the day and time set for the hearing on the complaint. At the hearing the burden shall be on the member to prove, based upon a preponderance of the evidence, that the member did not violate these rules. At the conclusion of the hearing, if the Chief or Presiding Judge determines, based upon satisfactory evidence, that the member has violated these rules, the Chief or Presiding Judge may impose disciplinary action upon the member as set forth in Rule 13 below.

##### **Rule 13. Disciplinary Action.**

For any violation of these rules, the Chief or Presiding Judge shall have the authority to impose monetary sanctions upon the member and/or temporarily or permanently disbar the member from practicing before the Tribal Court.

## **Chapter 7**

### **Eligibility and Admission to the Bar**

**Rule:**

#### **14 Eligibility for Admission to Practice**

#### **15 Procedure for Admission**

#### **16 Suspension for Disbarment**

#### **17 Disciplinary Power of the Court Over Attorneys**

##### **Rule 14. Eligibility for Admission to Practice.**

An attorney who has been admitted to practice before a court of any federally recognized Indian Tribe or the United States Supreme Court, or the highest Court of a State, or any United States Court of Appeal, or any United States District court and who has read the Rules of Evidence, Pleading, Practice and Procedure, and Tribal Court Ordinance of the Tribe, and who is of good moral and professional character, is eligible for admission to the bar of the Tribal Court of the Tribe.

##### **Rule 15. Procedure of Admission.**

An applicant for admission shall file with the Clerk of the Tribal Court, on a form approved by the Court and furnished by the Clerk, an application for admission containing the applicant’s personal statement

showing eligibility for membership. At the bottom of the application, the applicant shall take and subscribe to the following oath or affirmation:

I, \_\_\_\_\_, do solemnly swear(or affirm) that I have read the Rules of Evidence, Rules of Pleading, Practice and Procedure and Tribal Court Ordinance of the Blue Lake Rancheria Tribe. I will demean myself as an attorney and counselor of the Blue Lake Rancheria Tribal Court accordingly to the laws of the Tribe, and that I will support the Constitution of the Blue Lake Rancheria.

Thereafter, upon written or oral motion of the applicant, the Court will act upon the application. An applicant may be admitted by oral motion in open court, but it is not necessary that the applicant appear before the Court for the purpose of being admitted, unless the Court shall otherwise order. An applicant shall, upon making application for admission, pay to the Clerk a fee prescribed by rule or order of the Court or by resolution of the Tribal Council of the Tribe.

**Rule 16. Suspension or Disbarment.**

When it is shown to the Court that any member of the bar has been guilty of conduct unbecoming to a member of the bar of the Court, the member will be subject to suspension or disbarment by the Court. The member shall be afforded an opportunity to show good cause, within the time provided in Rule 12 above, why the member should not be suspended or disbarred. Upon the member's response to the order to show cause, after hearing, if requested, or upon expiration of the time prescribed for a response if no response is made, the Court shall enter an appropriate order.

**Rule 17. Disciplinary Power of the Court Over Attorneys.**

The Court may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these rules or any rule of the Court.

**ORDER**

These rules shall take effect and govern all members or actions of members in all proceedings in the Tribal Court on or after April 1<sup>st</sup>, 2007.

/s/ Lester J. Marson  
Chief Judge of the Tribal Court

ATTESTED:

/s/ Elizabeth J. Jackson  
Clerk of the Tribal Court