



THE KAW NATION

People of the Southwind

CODE OF ETHICS FOR THE KAW NATION JUDICIAL BRANCH

A. Purpose

- A. The purpose of this Code is to provide effective and fair administration of justice and customer service for the benefit of the tribal community by providing for a Code of Ethics for Tribal Court employees.

B. Scope

- A. This Code shall apply to all court administrators, court clerks, including deputy and part-time clerks, who are employed within a tribal judicial system and who directly or indirectly affect the court's operation, whether such employment is on a full-time, part-time or pro tempore basis;
- B. This Code is not intended to apply to court employees who are law students, law clerks, attorneys, judges or temporary judges, or members of other professional groups who are held to a higher standard of professional conduct.

C. Professionalism

- A. Employment in the tribal court system is a public trust engendered by the tribes' confidence in the professional knowledge and competency and personal integrity of the officers and employees of the judicial branch. Court employees should uphold the integrity and independence of the judiciary and of the court employee's office in that an independent and honorable judiciary is indispensable to justice in the tribal community;
- B. Court employees should observe and impart to other court employees high standards of professional conduct so that the integrity and the independence of the judiciary may be preserved and so that the court employee's office may reflect a devotion to serving the public;
- C. A court employee should be patient, dignified, respectful, and courteous to all persons with whom the court employee deals in an official capacity, including the general public, and should require similar conduct of personnel subject to the court employee's direction and control;
- D. A court employee should diligently discharge the responsibilities of the office in a prompt, efficient, and professional manner;

D. Competency

- A. A court employee should be faithful to professional standards and maintain competence in the court employee's profession.
- B. Court employees, regardless of their education and experience prior to being appointed or elected as a court employee, should seek further legal and pertinent non-legal professional education and development designed to improve their performance as a court employee. The Judicial Branch will provide on-going training subject to budgetary constraints.

E. Performance of Duties

- A. Every court employee shall endeavor at all times to perform official duties properly and with diligence.
- B. Every court employee shall use the tribe's resources, property and funds under one's official control judiciously and solely in accordance with prescribed procedures.
- C. Every court employee shall carry out responsibilities as a servant of the tribe in as courteous a manner as possible;
- D. Every court employee shall furnish accurate information as requested in a competent, cooperative, and timely manner;
- E. Every court employee shall maintain or obtain current licenses or certificates as a condition of employment as required by law or court rule;

- F. No court employee shall alter, falsify, destroy, mutilate, backdate or fail to make required entries on any records within the employee's control. This provision does not prohibit alteration or expungement of records or documents pursuant to a court order;
- G. No court employee shall refuse to enforce or otherwise carry out any properly issued rule or order of court, nor shall court employees exceed that authority. No court employee shall be required to perform any duties outside the scope of the assigned job description;
- H. No court employee shall attend any meetings, court sessions, workshops, or training sessions while carrying out the official duties of tribal office or otherwise representing the Kaw Nation while under the influence of alcohol or illegal drugs;
- I. Every court employee shall immediately report violations of this Code to the Kaw Nation Chief Justice.

F. Impropriety and the Appearance of Impropriety

- A. A court employee shall avoid both impropriety and the appearance of impropriety and shall avoid activities that would diminish the dignity of the court;
- B. Court employees should not engage in any activity which would put into question the propriety of conduct in carrying out the duties of the office, including but not limited to the following:
 - i. Court employees shall not allow family, social, or other relationships to influence official conduct or judgment. Court personnel shall not lend the prestige of their office to advance the interests of himself/herself or others, nor should court personnel convey, or others be permitted to convey, the impression that they are in a special position to influence the court personnel;
 - ii. Court employees, as well as family member(s) who reside in the same household as the court personnel, should not accept a gift, bequest, favor, or loan from any person whose interests have come, or are likely to come, before said court employee or from any other person under circumstances which might reasonably be regarded as influencing the performances of the duties of the office;
 - iii. Court employees should avoid favoritism, unfairness, or nepotism in connection with the hiring, discharge, or treatment of subordinate court staff;
 - iv. Court employees should never influence or attempt to influence the assignment of cases, or perform any discretionary or ministerial function of the Court in a biased manner, which improperly favors any litigant or attorney or other representative, nor imply that such court personnel is in a position to do so.
 - v. Court Administrators and clerks shall avoid filing pleadings or other documents from immediate family members, close personal relations, or documents in which the administrator or clerk has a direct interest in the matter. Another clerk should be notified to accept the filing.
- C. Each court employee shall immediately report to the Chief Justice any attempt to induce him or her to violate any of the standards set out above.

G. Impartiality

- A. Court employees should act at all times in a manner that promotes public confidence in the impartiality of the tribal judiciary and the respective court employee's office;
- B. Court employees must provide impartial and evenhanded treatment of all persons. All persons coming to the court for assistance are entitled to fair and equitable treatment, regardless of their personal behavior or legal situation. A court employee does not have the right to take sides in a legal dispute, interject himself or herself into the legal decision-making process, second-guess a judge's ruling, or give the appearance of partiality on a political issue that is likely to come before the court. The procedural integrity of the court must be protected at all times.

H. Prohibition Against Giving Legal Advice

- A. Court employees shall serve the tribe and public by providing procedural assistance that is as helpful as possible without giving legal advice;
- B. Given the experience and visibility of court employees, it is natural for those who deal with the court, including attorneys and litigants as well as tribal members, to ask questions such as: "Should I fight this?" "How do I fight this?" "To whom should I go for legal assistance?" "What does the law say?" Court employees shall be responsive to inquiries regarding standard court procedures. Court employees can and should patiently explain how to file forms and pay fines, and should clarify legal language and the court's policies attendant to procedural due process. Court employees shall not give legal advice unless it is required as part of one's official position. Court employees must not, however, cross the line separating a court employee from a licensed legal practitioner by giving their opinion on the law or, worse, giving their opinion as the law.

- C. When the court provides forms to litigants, the employee is prohibited from giving advice as to how to fill out the substance of the form.

I. Conflict of Interest

- A. Every court employee shall avoid conflicts of interest, as defined below, in the performance of professional duties. Even though no misuse of office is involved, such a conflict of interest involving a court employee can seriously undermine tribal member's confidence and trust in the court system. Therefore, every court employee is required to exercise diligence in becoming aware of conflicts of interest, disclosing conflicts to the designated authority and ending them when they arise.
 - i. A conflict of interest exists when the court employee's objective ability or independence of judgment in the performance of his or her job is impaired or may reasonably appear to be impaired or when the court employee, or the employee's immediate family, as defined below, or business would derive financial gain as a result of the employee's position within the court system.
 - 1. For the purposes of this Code, "immediate family" shall include the following, whether related by marriage, blood or adoption: spouse; dependent children; brother; sister; parent; grandparent; grandchildren; father-in-law, mother-in-law; sister-in-law, brother-in-law; son-in-law, daughter-in-law; stepfather, stepmother; stepson, stepdaughter; stepbrother, stepsister; half-brother, half-sister
 - ii. No conflict of interest exists if any benefit or detriment accrues to the employee as a member of a profession, business or group to the same extent as any other member of the profession, business or group who does not hold a position within the court system.
- B. Prohibited Activities:
 - i. No court employee shall enter into any contract with the tribe for services, supplies, equipment, leases or realty, apart from the employment contract relating to the employee's position, nor use that position to assist any member of his or her immediate family in securing a contract with the tribe in a manner not available to any other interested party.
 - ii. No court employee shall receive tips or other compensation for representing, assisting or consulting with parties engaged in transactions or involved in proceedings with the court system.
 - iii. No court employee shall participate in any business decision involving a party with whom either the court employee or any member of the employee's immediate family is negotiating for future employment.
 - iv. No former court employee shall engage in transactions or represent others in transactions or proceedings with the court system for one year after termination of employment in any matter in which the former employee was substantially involved or in any dealings with offices or positions that the former employee once held.
 - v. No court employee shall knowingly employ, advocate or recommend for employment any member of his or her immediate family.
 - vi. No court employee shall solicit, accept or agree to accept any gifts, loans, gratuities, discounts, favors, hospitality or services under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court employee in the performance of official duties.
 - 1. Nothing in this section shall prohibit a court employee from accepting a public award presented in recognition of public service to the tribe.
 - 2. Nothing in this section shall prohibit any person from donating a gift to a group of employees.
 - a. e.g. all the employees of an office or unit of the court system, provided that the value and circumstances of the gift are such that it could not be reasonably inferred that the gift would influence the employees in the performance of their official duties or that such influence was the purpose of the donor, and provided that any employee accepting such a gift promptly report the gift to the supervisor, who shall be responsible for its proper distribution. Gifts received with the understanding that they will influence employees' official actions, decisions or judgments are prohibited as abuse of office in Section F.
 - 3. Nothing in this section shall prohibit any person or group from donating a gift of historical or other significant value that is given for the benefit of the court system, provided that such a gift is received on behalf of the court system by the appropriate designated authority.
 - 4. Gifts of small monetary value given in connection with tribal tradition, custom or ceremony are allowed as long as not intended to gain favor with the court.

- C. To secure conformity to the above standards, every court employee who has authority to enter into or to approve contracts in the name of the court system shall file a financial disclosure statement with the appropriate designated authority upon beginning employment in such position, at termination of employment, and annually while so employed. Such disclosure shall include all sources of and contractual arrangements for personal income, including investments and real property, business entity income and business position income held or received by themselves, their spouses or their dependent children, and shall follow the guidelines established by the appropriate designated authority.
- D. Each full-time court employee's position with the court system must be the employee's primary employment. A court employee shall avoid outside activities, including outside employment, business activities, even subsequent employment and business activities after leaving judicial service, that reflect negatively upon the judicial branch and on one's own professionalism. Outside employment is permissible only if it complies with all the following criteria:
 - i. The outside employment is not with an entity that regularly appears in court or conducts business with the court system, and it does not require the court employee to have frequent contact with attorneys who regularly appear in the court system; and
 - ii. The outside employment is capable of being fulfilled outside of normal working hours and is not incompatible with the performance of the court employee's duties and responsibilities or violate this code; and
 - iii. The outside employment does not require the practice of law; and
 - iv. The outside employment does not require or induce the court employee to disclose confidential information acquired in the course of and by reason of official duties; and
 - v. The outside employment shall not be within another branch of the tribal government without written consent of both employers; and
 - vi. Where a conflict of interest exists or may reasonably appear to exist or where the outside employment reflects adversely on the integrity of the court, the employee shall inform the appropriate designated authority prior to accepting the other employment.

J. Confidentiality

- A. All court employees shall maintain the legally required confidentiality of the tribal court;
- B. A court employee shall not disclose any confidential information, both written and oral, to any unauthorized person, for any purpose, that is acquired in the course of employment or through unauthorized disclosure by another and shall refuse ever to use such information for personal advantage, and abstain at all times from public comment about pending court proceedings, except for strictly procedural matters;
- C. Confidential information includes, but is not limited to, information on pending cases that is not already a matter of public record and information concerning the work product of any tribal judge, law clerk, attorney or other court employee including, but not limited to, notes, papers, discussions and memoranda;
- D. Confidential information that is available to specific individuals by reason of statute, court rule or administrative policy shall be provided only by persons authorized to do so.
- E. Every court employee shall report confidential information to the appropriate authority when the court employee reasonably believes this information is or may be evidence of a violation of law or of unethical conduct. No court employee shall be disciplined for disclosing such confidential information to an appropriate authority;
- F. A former court employee should not disclose confidential information when disclosure by a current court employee would be a breach of confidentiality;¹
- G. Oath of Confidentiality:
 - i. Court employees have a responsibility to preserve the confidentiality of tribal court cases. Court employees who participate in court cases shall take an oath of confidentiality prior to every case that comes before the Court. [An alternative would be to have the oath taken once a year, or upon taking office.]
 - ii. Court employees who participate in a case shall take the following oath of confidentiality:

"I _____, do solemnly swear and affirm that I will not discuss the proceedings of any case outside of the chambers of the Tribal Courtroom."
 - iii. Violators of this oath may be subject to termination from employment if they are tribal employees, and/or be found guilty of contempt of court.

K. Harassment

- A. Court employees are to renounce any use of positional or personal power to harass another person sexually or in any other way based on that person's religious beliefs, political affiliation, age, national origin, language, appearance, or other personal choices and characteristics;
- B. No court employee shall make sexual advances and insinuations that are inappropriate and offensive, or that could be perceived as such. Harassment may also take nonsexual forms such as verbal, physical, and psychological.

L. Discrimination

- A. No court employee shall discriminate on the basis of nor manifest, by words or conduct, bias or prejudice based on race, gender, age, religion, national origin, language, appearance, or sexual orientation;
- B. No court employee shall discriminate in favor of or against any court employee or applicant for employment on account of political contributions or political activities;
- C. Court employees shall guard against and, when necessary, repudiate any act of discrimination or bias based on race, gender, age, religion, national origin, language, appearance, or sexual orientation. Each day court employees assist users of court services and are expected to treat each other and each user of court services equally and with compassion. Equal access to the tribal court system and equal treatment for all is the cornerstone of the administration of justice. Court employees must expose and discourage discrimination wherever it exists.

M. Refraining from Tribal Political Activity

- A. Court employees should not act as a leader or hold office in a Tribal political organization;
- B. Court employees should not make speeches or publicly endorse a Tribal political organization, candidate or event;
- C. Court employees should not solicit funds for a Tribal political organization, candidate or event;
- D. Court employees may engage in Tribal political activity that does not tend to reflect adversely on the dignity of the judiciary or interfere with the proper performance of official duties;
- E. Court employees retain the right to vote as each employee chooses and are free to participate actively in tribal political campaigns during non-working hours. A court employee who chooses to participate in tribal political activity during non-working hours shall not use his or her position or title within the court system in connection with such political activities;
- F. No court employee shall engage in any tribal political activity during scheduled work hours, or when using tribal vehicles or equipment, or on court property. Tribal political activity includes, but is not limited to:
 - 1. Displaying campaign literature, badges, stickers, signs or other items of tribal political advertising;
 - 2. Using official authority or position, directly or indirectly, to influence or attempt to influence any other employee in the court system to become a member of any tribal political organization or to take part in any political activity;
 - 3. Soliciting signatures for tribal political candidacy;
 - 4. Soliciting or receiving funds for tribal political purposes.

N. Technology

- A. Court employees should protect the technological property of the court by preserving the confidentiality of electronically stored information. Information retained in electronic files should be treated like any other official court document. Its confidentiality should be assumed unless otherwise specified;
- B. To preserve the integrity of electronic systems, court employees shall correct any errors or omissions, guard against sabotage in any form, scan and repair viruses when possible, and avoid using court equipment for purposes other than court business;
- C. Great care should be taken in the transmission of electronic data so that it would not embarrass the court or the sender if read by an unintended recipient.