

CILA 2017  
Professional Responsibility Ruminations on the  
Role of Tribal In-House Counsel

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# Professional Responsibility Ruminations on the Role of Tribal In-House Counsel

- 1.) In-House: Who is your client? GM, TC, Enterprises, Tribal Assets, Multiple hats, In-House = different personal relationships. (Perhaps because no \$ paper trail).
  
- 2.) In-House: What are your “rules”: A playground with no whistles.
  - Where there are no rules, or where the rules are paltry
  - Morongo as an example of Tribal rules.



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## SPOKESPERSON'S/ATTORNEY'S OATH

I, \_\_\_\_\_, do solemnly swear that:

- 1.) I have read the Tribal Court Ordinance of the Morongo Band of Mission Indians and am familiar with its contents;
- 2.) I will respect and obey the law of the Morongo Band of Mission Indians in all respects;
- 3.) I will abide by the Rules established by the Morongo Tribal Court;
- 4.) I will, at all times, maintain the respect due the Tribal Court and its officers and acknowledge that I may be penalized if I do otherwise;
- 5.) I will not counsel or appear before the Tribal Court in any suit or proceeding which shall appear to me to be unjust or defend any suit except such as I believe to be honestly debatable under the laws of the Tribe or of the United States;  
and
- 6.) I will employ such means only as are consistent with truth and honor and will never seek to mislead a judge by any false statement.

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Spokesperson/Attorney

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.



# Professional Responsibility Ruminations on the Role of Tribal In-House Counsel

- “I will not counsel or appear before the Tribal Court in any suit or proceeding which shall appear to me to be **unjust**”.
- In-House Counsel role in writing their own Rules of Conduct. Tread carefully.



# Professional Responsibility Ruminations on the Role of Tribal In-House Counsel

Business opportunities, who owns the opportunity?

Leadership opportunities (Boards, Advisory Groups). Who does the individual represent?

The web of interests and the strength of Chinese walls.

Conflicts Ordinances

Chinese Walls and Recusal. What if not a cultural norm?



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In-House vs. Outside Counsel:

- When tension may be good.

- Mathew Fletcher article, Bullshit and The Tribal Client, 2015 Mich. St. L. Rev. 1435 (2015), *“There is potentially a third source of bullshit—in-house counsel.”*

Lawyering for Groups: The Case of American Indian Tribal Attorneys, 81 Fordham L. Rev. 3085 (2013).



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Examples of sticky situations:

*Harassment, Why Not? Thanks Harvey.*

- Kelsey v. Pope, 6<sup>th</sup> Circuit Court reversed decision below which granted habeas relief for Elected Official.

-Does In-House Legal Counsel protect client from the negative impacts of harassment, **policy or legal advice?**

-Collateral damage operationally/reputation to Tribe...but honestly stating the lack of successful civil c-of-a.

-The fact that the Tribe can insulate itself from legal consequences of certain behavior, doesn't mean it can prevail long term of that there are no internal consequences or consequences for other Tribes.



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Privilege: Business vs. legal advice, Check your business card and holding the line because you don't have a super human umbrella.

Just because the Tribe can, doesn't mean the Tribe should, Tribal advantages, Economic Development and arguments why brothels and Rx patents may need to be avoided.

