



State Bar of California Rules in Tribal Courts

HON. CHRISTINE WILLIAMS
CHIEF JUDGE
SHINGLE SPRINGS TRIBAL COURT

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Competence

CALIFORNIA RULES OF PROFESSIONAL CONDUCT
RULE 1.1

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Competence Required

(a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.

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Part (b) Skill and Ability

(b) For purposes of this rule, “competence” in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably* necessary for the performance of such service.

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Part (c) Duty to Consult, Learn or Refer

(c) If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer whom the lawyer reasonably believes* to be competent.

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Part (d) Exception for Emergencies

(d) In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required if referral to, or association or consultation with, another lawyer would be impractical. Assistance in an emergency must be limited to that reasonably* necessary in the circumstances.

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Rule 1.1 Summary

Do not appear in Tribal Court without being prepared and knowing the laws of the Tribe.

Know the Rules of Practice and Conduct expected.

Respect the oath you likely took to know and respect the laws and governing documents of the Tribe.



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Pro Tip/Pet Peeve

Although your ethical obligations as a lawyer do follow you into Tribal Court and all courts...

Refrain from this statement...

But your honor, in state court...

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The case at hand is not in state court.

State Court action and law is not controlling and should not be cited unless there is a legal reason to.

Respect the tribal court forum!

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Fairness to Opposing Party and Counsel

CALIFORNIA RULES OF PROFESSIONAL CONDUCT
RULE 3.4

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You can't hide evidence (Parts a-c)

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence, including a witness, 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) suppress any evidence that the lawyer or the lawyer's client has a legal obligation to reveal or to produce;
- (c) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

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You can't unduly influence testimony (Parts d-e)

(d) directly or indirectly pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case. Except where prohibited by law, a lawyer may advance, guarantee, or acquiesce in the payment of:

- (1) expenses reasonably* incurred by a witness in attending or testifying;
 - (2) reasonable* compensation to a witness for loss of time in attending or testifying; or
 - (3) a reasonable* fee for the professional services of an expert witness;
- (e) advise or directly or indirectly cause a person* to secrete himself or herself or to leave the jurisdiction of a tribunal* for the purpose of making that person* unavailable as a witness therein;

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You must listen to the Judge (Part f)

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

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No one wants to hear from you...with exceptions (Part g)

(g) in trial, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the guilt or innocence of an accused.

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The Attorney versus the “Pro Per”



Often only one side represented by an attorney in Tribal Court

What does fairness mean to an unrepresented litigant?

Certainly, all that is included in Rule 3.4 regarding evidence and testimony.

Examples, did the Tribal Attorney/prosecutor have access to see a police video but the respondent/defendant did not?

What about access to other evidence?

Is the tribal police or other agency official appearing to provide testimony or is the Attorney “providing testimony” on their behalf.

Does a “pro per” know they can object?

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Pro Tip/Pet Peeve

Do not be a jerk to unrepresented litigants.

If you are an attorney appearing in Tribal Court, then we all know that you are very likely most educated person in the room.

Be humble, be gracious, show respect.

It may be fun and unusual to snipe back and forth with other attorneys who have had the same access to higher ed as you have, it doesn't impress me with lawyers and definitely not toward an unrepresented litigant, I don't think it impresses very many tribal court judges.

Remember, everyone is someone's family, don't be rude.

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Disclosure of Professional Liability Insurance

CALIFORNIA RULES OF PROFESSIONAL CONDUCT
RULE 1.4.2

(a) A lawyer who knows* or reasonably should know* that the lawyer does not have professional liability insurance shall inform a client in writing,* at the time of the client's engagement of the lawyer, that the lawyer does not have professional liability insurance.

DUTY TO INFORM YOUR CLIENT IF YOU ARE PRACTICING IN ANY COURT WITHOUT PL INSURANCE

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Summary: PL Ins is Not Required

While not required, PL Insurance is a good idea. good enough that we do have CA Rules of Conduct rules around disclosing if you don't have it.

Are you certain your PL Insurance covers your work in Tribal Court?

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Plot Twist for Judges

If you are a California Licensed Attorney and you are ALSO appearing as a judge in tribal court

Your PL Insurance will NOT cover your work as a tribal court judge.

You should consider other protections for yourself if a claim is made against you for acting in your capacity as a judge in tribal court.

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