

Title 8. Judiciary - Chapter 810
PROFESSIONAL CONDUCT FOR ATTORNEYS AND ADVOCATES
Téhatilhwaskénhas ahatihwakwalihsyúhake ahatihwatok/hake laotilhwá'ke
The lawyers/advocates will always straighten out the issues for them to always of their affairs be certain

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810.1. Purpose and Policy

810.1-1. *Purpose.* The purpose of this law is to govern the conduct of attorneys and advocates that are admitted to practice law before the Judiciary.

810.1-2. *Policy.* It is the policy of the Nation that the interests of all parties that appear before the Judiciary are protected. In pursuit of this interest, it is to the benefit of all parties that attorneys or advocates are subject to rules governing their professional conduct.

810.2. Adoption, Amendment, Repeal

810.2-1. This law was adopted by the Oneida Business Committee by resolution BC-09-27-17-G.

810.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

810.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

810.2-4. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

810.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

810.2-6. Where precedent for any issue under this law has not been established by the Judiciary, the Judiciary and counsel may refer to established Wisconsin or federal case law precedent or laws for guidance. The Wisconsin State Law Library maintains a section on Legal Ethics and Professional Conduct located at <http://wilawlibrary.gov/topics/legalprof/malpractice.php>.

810.3. Definitions

810.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Advocate” means a non-attorney advocate who is admitted to practice law and is presented to the Court as the representative or advisor to a party. “Advocate” shall not mean a domestic violence advocate present in court for the sole purpose of providing support or a guardian ad litem.

- (b) “Attorney” means a person trained and licensed to represent another person in Court, to prepare documents, and to give advice or counsel on matters of law. “Attorney” shall not mean a guardian ad litem.
- (c) “Counsel” means an attorney or advocate that is admitted to practice before the Judiciary.
- (d) “Ex Parte” shall mean any contact with the Judge regarding a pending case where the opposing party has not received notice, is not present, and has not consented to the communication.
- (e) “Judiciary” means the judicial system responsible for applying the laws of the Oneida Nation. The three branches, as identified in resolutions BC-05-08-13-A and GTC 01-07-13-B are the Family Court, Trial Court and Court of Appeals.
- (f) “Informed consent” means the agreement by a person to a proposed course of conduct after counsel has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.
- (g) “Preponderance of the evidence” means it is more likely than not that the facts presented are true.
- (h) “Prospective client” means a person who consults with counsel about the possibility of forming a client-counsel relationship.
- (i) “Pro Tem Judge” means a decision maker that is not currently seated on the Judiciary, but that is appointed on a temporary (*pro tempore*), case-by-case basis to hear and decide matters in professional conduct panels.
- (j) “Reasonable” or “reasonably” when used in relation to conduct by counsel means the conduct of a reasonably prudent and competent attorney or advocate.

810.4. Competence

810.4-1. Counsel shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

810.5. Scope of Representation

810.5-1. A client develops a privileged relationship protected by section 810.9 of this law and section 804.8-2 of the Oneida Judiciary Rules of Evidence once they consult with counsel to obtain legal services or once counsel performs legal services for the client. Any professional opinion given by counsel without express disclosure negating a privileged relationship shall create a privileged client-counsel relationship.

810.5-2. Counsel shall abide by a client’s decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued. Counsel may take such action on behalf of the client as is impliedly authorized to carry out the representation.

810.5-3. Counsel’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.

810.5-4. Counsel may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed written consent.

810.5-5. Counsel shall not advise a client to engage, or assist a client, in conduct that counsel knows is criminal or fraudulent, but counsel may discuss the legal consequences of any proposed course of conduct with a client and may advise or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

810.6. Diligence

810.6-1. Counsel shall act with reasonable diligence and promptness in representing a client.

810.7. Communication

810.7-1. Counsel shall:

- (a) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by this law;
- (b) Reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (c) Keep the client reasonably informed about the status of the matter;
- (d) Promptly comply with reasonable requests by the client for information; and
- (e) Consult with the client about any relevant limitations on counsel's conduct when counsel knows that the client expects assistance not permitted by this law or other laws or rules.

810.7-2. Counsel shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

810.8. Fees

810.8-1. Counsel 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:

- (a) The time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;
- (b) The likelihood, if apparent to the client, that the acceptance of the particular employment will prevent other employment by counsel;
- (c) The fee customarily charged in the locality for similar legal services;
- (d) The amount involved and the results obtained;
- (e) The time limitations imposed by the client or by the circumstances;
- (f) The nature and length of the professional relationship with the client; and
- (g) The experience, reputation, and ability of the attorney or advocate performing the services.

810.8-2. 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 in writing, before or within a reasonable time after commencing the representation. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client.

810.8-3. Counsel shall promptly respond to a client's request for information concerning fees and expenses.

810.9. Confidentiality

810.9-1. Counsel shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation.

810.9-2. Counsel shall reveal information relating to the representation of a client to the extent counsel reasonably believes necessary to prevent the client from committing a criminal or fraudulent act that counsel reasonably believes is likely to result in death or substantial bodily harm or in substantial injury to the financial interest or property of another.

810.9-3. Counsel may reveal information relating to the representation of a client to the extent counsel reasonably believes necessary:

- (a) To prevent reasonably likely death or substantial bodily harm;
- (b) 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 counsel's services;
- (c) To secure legal advice about counsel's conduct under this law;
- (d) To establish a claim or defense on behalf of counsel in a controversy between counsel and the client, to establish a defense to an action seeking to deny admission to practice before the Judiciary, or to respond to allegations in any proceeding concerning counsel's representation of the client;
- (e) To comply with other laws or court orders; or
- (f) To detect and resolve conflicts of interest, but only if the revealed information would not compromise the client-counsel privilege or otherwise prejudice the client.

810.9-4. Counsel shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

810.10. Conflict of Interest

810.10-1. Counsel, except as provided in 810.10-2, shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if:

- (a) The representation of one client will be directly adverse to another client; or
- (b) There is a significant risk that the representation of one or more clients will be significantly limited by counsel's responsibilities to another client, a former client, a third person, or by a personal interest of counsel.

810.10-2. Notwithstanding the existence of a conflict of interest under 810.10-1, counsel may represent a client if:

- (a) Counsel reasonably believes that counsel will be able to provide competent and diligent representation to each affected client;
- (b) The representation is not prohibited by law;
- (c) The representation does not involve the assertion of a claim by one client against another client represented by counsel in the same litigation or other proceeding before the Judiciary; and
- (d) Each affected client gives informed consent, confirmed in writing signed by the client.

810.10-3. Counsel 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 this law.

810.10-4. Counsel shall not provide the client with any financial assistance pertaining to the matter for which counsel represents the client.

810.11. Duties to Former Clients

810.11-1. Counsel 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 written consent.

810.12. Former Judge, Mediator or Peacemaker

810.12-1. Counsel shall not represent anyone in connection with a matter in which counsel participated personally and substantially as a judge, mediator or peacemaker.

810.13. Client with Diminished Capacity

810.13-1. 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, counsel shall, as far as reasonably possible, maintain a normal client-counsel relationship with the client.

810.13-2. When counsel reasonably believes that the client has diminished capacity, counsel may request that the court appoint a guardian ad litem for the client.

810.14. Declining or Terminating Representation

810.14-1. Counsel shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (a) The representation will result in a violation of this law or any other applicable law or rule governing professional conduct;
- (b) Counsel's physical or mental condition significantly impairs counsel's ability to represent the client; or
- (c) Counsel is discharged.

810.14-2. Counsel may withdraw from representing a client if:

- (a) Withdrawal can be accomplished without material adverse effect on the interests of the client;
- (b) The client persists in a course of action involving counsel's services that counsel reasonably believes is criminal or fraudulent;
- (c) The client has used the counsel's services to perpetrate a crime or fraud;
- (d) The client insists upon taking action that counsel considers unacceptable or with which counsel has a fundamental disagreement;
- (e) The client fails substantially to fulfill an obligation to counsel regarding counsel's services and has been given reasonable warning that counsel will withdraw unless the obligation is fulfilled;
- (f) The representation will result in an unreasonable financial burden on counsel or has been rendered unreasonably difficult by the client; or
- (g) Other good cause for withdrawal exists.

810.14-3. Counsel must comply with applicable court rules requiring notice to or permission of the Judiciary when terminating a representation. When ordered to do so by the Judiciary, counsel shall continue representation notwithstanding good cause for terminating the representation.

810.14-4. Upon termination of representation, counsel 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 seeking other counsel, surrendering papers and property to which the client is entitled and refunding any fees not earned.

810.15. Duties to Prospective Clients

810.15-1. Even when no client-counsel relationship ensues, counsel who has learned information from a prospective client shall not use or reveal that information learned in the consultation, unless:

- (a) The affected client and/or the prospective client have given informed written consent; or
- (b) Counsel who received the information took reasonable measures to avoid exposure to more disqualifying information that was reasonably necessary to determine whether to represent the prospective client.

810.16. Role as Advisor

810.16-1. In representing a client, counsel shall exercise independent professional judgment and render candid advice. In rendering advice, counsel may refer not only to law but to other considerations such as moral, economic, social, cultural, and political factors that may be relevant to the client's situation.

810.16-2. In representing a client, counsel shall not:

- (a) Knowingly advance a claim or defense that is unwarranted under existing law, except that counsel may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law;
- (b) Knowingly advance a factual position unless there is a basis for doing so that is not frivolous; or
- (c) File an action, assert a position, conduct a defense, delay a trial, or take other actions on behalf of the client when counsel knows or when it is obvious that such an action would serve merely to harass or maliciously injure another.

810.16-3. In the course of representing a client, counsel 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.

810.17. Candor and Impartiality toward the Judiciary

810.17-1. Counsel shall not knowingly:

- (a) Make a false statement of fact or law to the Judiciary or fail to correct a false statement of material fact or law previously made to the Judiciary by counsel;
- (b) Fail to disclose to the Judiciary legal authority in the controlling jurisdiction known to the attorney or advocate to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (c) Offer evidence that counsel knows to be false. If counsel, counsel's client, or a witness called by counsel has offered material evidence and counsel comes to know of its falsity, counsel shall take reasonable remedial measures, including, if necessary, disclosure to the Judiciary. Counsel may refuse to offer evidence believed to be false.

810.17-2. Counsel shall not:

- (a) Seek to influence a judge, juror, or other court official;
- (b) Communicate ex parte with a judge during the proceedings unless authorized to do so by law or court order or for scheduling purposes, if permitted by the court; or
- (c) Engage in conduct intended to disrupt the Judiciary.

810.18. Fairness to Opposing Party and Counsel

810.18-1. Counsel 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. Counsel shall not advise or assist another person to do any such act;
- (b) Falsify evidence, advise, or assist a witness to testify falsely;
- (c) Knowingly disobey an obligation under any applicable law or rule, except for 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; or

(e) In trial, allude to any matter that counsel does not reasonably believe is relevant or that will not be supported by admissible evidence.

810.18-2. In representing a client, counsel shall not communicate about the subject of the representation with a person counsel knows to be represented by another attorney or advocate in the matter unless counsel has the consent of the other attorney or advocate or is authorized to do so by law or a court order.

810.18-3. In dealing on behalf of a client with a person who is not represented by an attorney or advocate, counsel shall inform such person of counsel's role in the matter. When counsel knows or reasonably should know that the unrepresented person misunderstands counsel's role in the matter, counsel shall make reasonable efforts to correct this misunderstanding. Counsel shall not give legal advice to an unrepresented person other than the advice to secure counsel.

810.19. Counsel as Witness

810.19-1. Counsel shall not act as an attorney or advocate at a trial in which counsel is likely to be a necessary witness unless:

- (a) The testimony relates to the nature and value of legal services rendered in the case; or
- (b) Disqualification of counsel would work substantial hardship on the client.

810.20. Admittance to Practice and Disciplinary Matters

810.20-1. Counsel shall comply with the Judiciary's Rules of Admission to Practice.

810.20-2. An applicant for admission to practice or counsel 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 mistake 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.

810.21. Misconduct

810.21-1. It is professional misconduct for counsel to:

- (a) Violate or attempt to violate this law, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act that reflects adversely on counsel's honesty, trustworthiness, or fitness as counsel in other respects unless such criminal activity has been pardoned or forgiven;
- (c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation unless such conduct is pardoned or forgiven;
- (d) State or imply an ability to influence improperly a tribal or government agency or official or to achieve results by means that violate any applicable law or rule;
- (e) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable canons of judicial conduct or other law or rule;
- (f) Violate the counsel's oath given to the Judiciary; or
- (g) Fail to cooperate in the investigation of a complaint filed with the Judiciary.

810.22. Civil Actions for Negligence or Violation of Duty

810.22-1. A client alleging that counsel was negligent or violated a duty under this law may initiate a civil action by filing a complaint with the Judiciary's Trial Court.

810.22-2. In a civil action against counsel for negligence or violation of duty, the client has the burden of proving all of the following:

- (a) A client-counsel relationship existed;
- (b) That counsel committed acts that were negligent or in violation of duty under this law;
- (c) That the client suffered actual damages;
- (d) That the negligence or violation of duty was the direct cause of the damages; and
- (e) That, but for the negligence or violation of duty on counsel, the client would have been successful in the prosecution or defense of the case.

810.22-3. In making a final determination, the Court shall consider what a particular counsel did or failed to do and what a reasonable or prudent counsel would do in the same circumstance.

810.22-4. If there is enough evidence to substantiate the allegations by a preponderance of the evidence, the Court shall issue a written order awarding monetary damages to the client not to exceed five thousand dollars (\$5,000).

810.22-5. Decisions of the Trial Court under this section may be appealed to the Court of Appeals.

810.23. Disciplinary Actions

810.23-1. The Judiciary's Trial Court is granted jurisdiction to hear complaints filed regarding any disciplinary actions pertaining to this law.

810.23-2. Complaints of alleged violations of this law may be filed on behalf of the client with the Trial Court or initiated by the Judiciary. All complaints shall be forwarded to the Chief Judge of the Trial Court or his or her designee who may screen out and take no action on complaints which are determined to be frivolous or repetitive on their face. The Chief Judge or his or her designee shall communicate in writing any such decision with the complainant.

- (a) The Chief Judge or his or her designee may take no action on an anonymous complaint other than fulfilling the requirements of the Nation's Anonymous Letters Policy.

810.23-3. If a complaint goes forward, the Chief Judge or his or her designee shall assign a judge to preside over the disciplinary proceedings. Current or pro tem judges are eligible to hear disciplinary matters.

- (a) The party being accused of the disciplinary violation shall be given notice of a hearing and an opportunity to meaningfully respond to the allegations.
- (b) The complainant also shall be given notice of any hearings and shall have the right to present evidence.

810.23-4. The judge can dismiss the complaint if it appears frivolous or if there is not enough evidence to substantiate the allegations by a preponderance of the evidence.

810.23-5. If there is enough evidence to substantiate the allegations by a preponderance of the evidence, the Court shall issue a written disciplinary order.

- (a) The Court may opt to choose any combination of the following disciplinary methods:
 - (1) Private reprimand;
 - (2) Public reprimand through publication in the Nation's newspaper;
 - (3) Additional training requirements;
 - (4) Monetary fine not to exceed five thousand dollars (\$5,000); or
 - (5) Suspension or revocation of the right to practice before the Judiciary.

- (b) The Court may also forward their decision to an appropriate outside regulating authority in appropriate situations (e.g. to the State Bar of Wisconsin if counsel is an attorney licensed to practice in Wisconsin).

810.23-6. Decisions of the Trial Court under this section are appealed to the Court of Appeals.

End.

