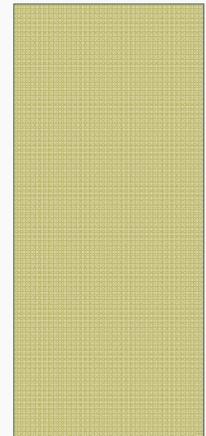


JUDICIAL AND ATTORNEY QUALIFICATIONS, LICENSURE AND ETHICAL STANDARDS

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DO YOU NEED A TRIBAL BAR?

- Changes to Federal Law
 - Tribal Law and Order Act
 - Violence Against Women Act

TLOA

- “Defense attorney” - 25 USC 1302(c)
 - “(1) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and
 - (2) at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law **by any jurisdiction** in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its **licensed** attorney.”
(emphasis added)

TLOA

- “*Law-trained* judge” 25 USC 1302(c)(3)(A)
- “(3) require that the judge presiding over the criminal proceeding—
 - (A) has sufficient legal training to preside over criminal proceedings; and
 - (B) is *licensed* to practice law by any jurisdiction in the United States...”

VAWA

- Protect the rights of defendants described in the Tribal Law and Order Act of 2010, by providing—
 - Effective assistance of counsel for defendants;
 - Free, appointed, licensed attorneys for indigent defendants;
 - Law-trained tribal judges who are also licensed to practice law; ...

WHAT CAN YOU DO?

- Set up a Tribal Bar Association
- Create a Judicial Discipline Commission/Body

WHY A BAR ASSOCIATION/ORGANIZATION?

- Bar Organizations or Association exist for a variety of reasons
 - Assure the public
 - Establish standards for
 - Education or continuing education
 - Professional conduct

STANDARDS

- Education
 - What is your baseline for education or judges, attorneys, lay advocates?
 - Is this important to you whether or not you adopt TLOA or opt in the new provisions for VAWA?
 - What do you think is important for your justice system?
- Ethics
 - Do you have a judicial ethics code?
 - Do you have a code for your court personnel?
 - Do you have a code for attorneys and lay advocates?
- Discipline of Judges, Attorneys, Lay Advocates

DISCIPLINE FOR LAY ADVOCATES/ATTORNEYS

- Bar can have a mechanism to deal with complaints against lay advocates or attorneys:
 - Take complaint
 - Investigate
 - Decide how to proceed
 - Suspension or disbarment
 - Re-admittance

DISCIPLINE FOR JUDGES

- Create a Judicial Discipline Body
- Purpose of the Commission
 - To investigate allegations of Judicial misconduct in office;
 - To address violations of the Code of Judicial Conduct; or
 - To investigate disability of judges.
- Example Composition of a Disciplinary Body
 - Seven members:
 - Two judges appointed by the highest court
 - Two attorneys/lay advocates appointed by the Bar
 - Three lay persons or community members appointed by the executive branch
 - Staff.....

POSSIBLE RULES FOR THE DISCIPLINARY BODY

- Functions as a Court of Judicial Discipline
- Reviews all complaints received
- Does not decide complaint solely on claims made
- Investigates allegations that warrant an investigation
- May dismiss the complaint or conduct a full investigation depending on the merit of the complaint
- May confidentially caution judge, even if complaint dismissed
- Must conduct a formal public hearing and issue a written decision, in cases where discipline is warranted

TYPES OF COMPLAINTS

- Violations of the Code of Judicial Conduct/Code of Judicial Ethics;
- Failure to perform the duties of office; and
- Mental or physical disability that is likely to be permanent in nature, preventing which proper performance of judicial duties.

POWERS

- Pursuant to TRIBAL CODE OR STATUTE.
 - Removal or censure, which can be public or private
 - Pay a fine
 - Serve a term of suspension from office
 - Complete a probationary period pursuant to conditions deemed appropriate by the commission
 - Attend training or educational courses
 - Follow a remedial course of action
 - Issue a public apology
 - Comply with conditions or limitations on future conduct
 - Seek medical, psychiatric or psychological care or counseling and direct the provider of health care or counselor to report to the commission regarding the condition or progress of the justice or judge.
 - Agree not to seek judicial office in the future
 - Perform any combination of the above
 - Nevada Judicial Commission

POWERS THE COMMISSION PROBABLY SHOULD NOT HAVE

- The authority to consider complaints concerning legal errors by a judge
 - This is for your appellate body
- Cannot give legal advice or represent the public
- Cannot consider complaints against attorneys...that is for your tribal bar

ELEMENTS OF YOUR BAR ORGANIZATION

- Mandatory
- Require bar examination
- Yearly dues
- Background checks
- *Pro Bono* work: No states require pro bono service, although several require lawyers to report their pro bono hours. Exception: NY state...50 hours required by law students in law school as condition on getting license (Jan 1, 2013)
 - Encouraged as a means of giving back
- Continuing legal education including ethics hours

MORE ELEMENTS

- Your tribe can decide what it takes to be a “licensed attorney” in your “US jurisdiction”
 - MPRE (Multistate Professional Responsibility Examination) or other ethics training and testing required by the tribe
 - Bar exam drafted to the tribe’s standards and needs
 - Law school or not before attorney applicant can take tribal bar exam
 - ABA-approved school or non-ABA approved (approved by the tribe can be sufficient – states do that!)
 - Other tribally-approved course of study under a tribally licensed attorney or judge
 - National Judicial College certificate program

SOME EXAMPLES

- <http://www.tulaliptribes-nsn.gov/Home/Government/Departments/TribalCourt/TribalBarExam.aspx>
- http://www.navajolaw.org/New2008/examination_4-2.htm
- The Mashentucket Pequot Tribe dropped the mandatory bar requirement in February 2013.

SETTING UP YOUR ORGANIZATION

- Committee or Core Group of Leaders
 - Officers
 - Board members
- Mission Statement
 - Supported by written objectives and goals
 - Objectives are further expressions of the ideas in the statement
 - Goals are the specific and measurable activities that your organization plans to undertake
- Structure
 - Non-profit
 - Tax exempt

SETTING UP

- Financial support
 - Where will the funding come from?
- Management structure
 - All volunteers
 - Staff
 - Some volunteers, some staff
 - Free-standing organization
- Bylaws
 - General to specific
 - Define the relationship between the organization and the members

BAR MEMBERS AND COMMUNITY

- Benefit to members
 - Other than being able to practice in your jurisdiction, how can members benefit?
 - Services
 - Continuing Legal Education opportunities
- Benefit to community
 - Law Day
 - Enhanced confidence in the justice system
 - Free clinics

EXAMPLE

- <http://www.okbar.org>
- Serving the Legal Profession and the Public Since 1904. The Bar is committed to serving the public by making sure the voices of all people in Oklahoma are heard in our justice system.

THANK YOU

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