



Breakout Session E4

Tribal Court Attorney Regulation: Nation- Building Concerns

NAICJA 50th Anniversary Conference

October 16-18, 2019

Mystic Lake Casino

Shakopee Mdewakanton Sioux Land

Andrew Adams III

Chief Justice, Muscogee Nation Supreme Court

Chief Justice, Santee Sioux Nation of Nebraska

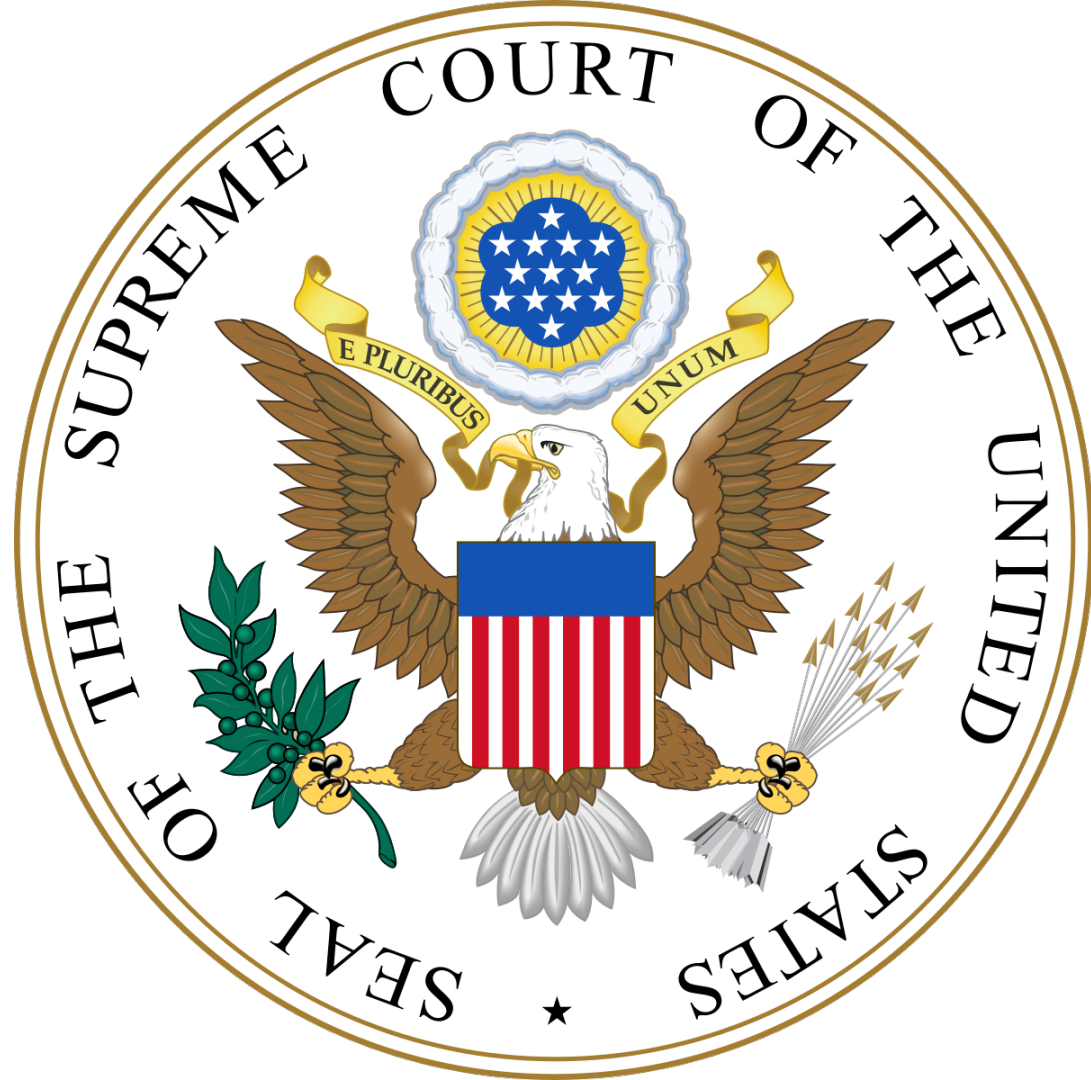
Justice, Gun Lake Tribal Supreme Court

Hogen Adams PLLC











Tribal Courts

- Strong courts and judicial branches are key to tribal sovereignty and self-determination in the generations to come.
- Tribal Courts are vitally important to protecting tribal citizens, developing tribal common law, and resolving disputes.



Attorney Regulation

“The regulation of attorney practice is essential to maintain professional and ethical practice before the Court and to protect the litigants who participate in the process.”

“When an applicant acts without regard to the customs and laws of this jurisdiction it raises significant questions as to his or her fitness to practice law. Moreover, it damages the integrity of the profession and the Navajo Court system.”

Matter of Gentile, 2019 WL 3337220 (S. Ct. of Navajo Nation, July 3, 2019)



Attorney Regulation

- Muscogee Nation adopted the 2007 American Bar Association Rules of Professional Conduct by order.
- On June 4, 2018, the Court unanimously adopted Administrative Order 2018-02, In re: Adoption of Rules Governing the Muscogee (Creek) Nation Bar and Attorney Professional Conduct.



Muscogee Bar

- 333 licensed attorneys as of September 7, 2017
- 290 licensed attorneys as of October 1, 2019.
- 43 attorneys have opted not to follow the newly adopted rules and/or pay their bar dues.



NOTICE: From the date of application, up to thirty (30) business days may be required to complete the admission process and become eligible to appear before the Muscogee (Creek) Nation courts.



APPLICATION FOR ADMISSION TO THE MUSCOGEE (CREEK) NATION BAR

FOR OFFICE USE:

Date of Application Submission: _____

Date of Application Acceptance: _____

Bar Number Assigned: _____

I hereby make application for admission to the Muscogee (Creek) Nation Bar and request my name be added to the roll of attorneys admitted to practice before the courts of the Muscogee (Creek) Nation. I acknowledge that as an applicant for admission to the Muscogee (Creek) Nation Bar, I have an affirmative duty to complete the application by responding to the questions herein truthfully, fully and completely, without mental reservation of any kind. I also acknowledge that my failure to complete the application by responding to the questions herein truthfully, fully and completely, will result in denial of the application for admission.

1. ☐ Mr. ☐ Ms. _____

Please list any other name/alias you have gone by _____

2. Date of Birth (month-date-year): _____

3. Place of Birth: _____

4. Firm or Practice Information (Information provided in this section will be used for all official correspondence from M(C)N courts and the M(C)N Bar Association, and will be published in the M(C)N Bar membership listing periodically updated to the M(C)N Supreme Court website.)

a. Firm/Organization Name: _____

b. Address: _____

City: _____ State: _____ Zip: _____

c. Phone Number: _____

d. Fax Number: _____

e. Email Address: _____

f. Areas of Specialty: _____





GRIEVANCE FORM (FOR ATTORNEY PROFESSIONAL MISCONDUCT)

☐ Mr. ☐ Ms. _____

Current Home Address _____

City _____ State _____ Zip _____

Home Phone _____ Cell Phone _____ Work Phone _____

Business Email Address _____ Personal Email Address _____

PART A - DECLARATION OF GRIEVANT UNDER PENALTY OF PERJURY

I, _____ (Print Your Name), HEREBY DECLARE, under penalty of perjury, that all information I provide herein is true and correct to the best of my knowledge and provided in good faith to allege professional misconduct by the attorney named below.

PART B - ATTORNEY IDENTIFICATION

ATTORNEY'S NAME: _____

ATTORNEY'S ADDRESS: _____

ATTORNEY'S CITY, STATE, ZIP CODE: _____

ATTORNEY'S TELEPHONE NUMBER: _____

PART C - DESCRIPTION OF THE GRIEVANCE

1. Was the attorney identified in Part B representing you when the alleged professional misconduct occurred? (check one)
 - ☐ Yes, I hired the attorney to represent me and the attorney still represents me today. (proceed to question 2)
 - ☐ Yes, I hired the attorney to represent me, but I've since hired a different attorney to represent me. (proceed to question 2)
 - ☐ Yes, the attorney was court-appointed to represent me and still represents me today (proceed to question 4)
 - ☐ Yes, the attorney was court-appointed to represent me, but no longer represents me. (proceed to question 4)
 - ☐ No. (proceed to question 5)



MCN Admin. Order 2018-02

The Muscogee (Creek) Nation Supreme Court ***inherently possesses original and exclusive jurisdiction*** in all matters regarding procedure and standards for ***admission of attorneys*** to practice law before Muscogee (Creek) Nation courts. This Court possesses ***original jurisdiction*** to investigate claims of ***attorney professional misconduct*** and investigate allegations of the ***unauthorized practice of law*** before the Nation's courts. This Court also possesses ***original jurisdiction to discipline*** for cause any and all attorneys duly admitted to practice law before Muscogee (Creek) Nation courts found to have ***engaged in professional misconduct. No attorney duly admitted to the Muscogee (Creek) Nation Bar may place himself beyond the power of this Court to maintain the roll of attorneys in accordance with the following rules by taking unto himself any office or position or shrouding himself in any official title.*** The following rules, effective as of the date of adoption, shall be known as "Rules Governing the Muscogee (Creek) Nation Bar and Attorney Professional Conduct" and shall be amended only by a majority of the Court duly formed.



MCN Admin. Order 2019-01

In re: The Matter of the Continued Adminssion
to the Muscogee (Creek) Nation Bar
Association by Benjamin P. Zvenia

Facts:

- Mr. Zvenia first applied to practice before the Muscogee Courts on January 18, 2005.
- Mr. Zvenia stated that he was a member in good standing of the District of Columbia bar.
- On December 18, 2018, a letter was sent to Mr. Zvenia asking for a certificate of good standing from a jurisdiction.



MCN Admin. Order 2019-01

Facts continued:

- Mr. Zvenia argued that the new Muscogee attorney rules violate Article 1, Section 10 of the U.S. Constitution, forbidding a state to pass “any bill of attainder, ex post facto law, or law impairing the obligation of contracts.”
- The Muscogee Supreme Court determined rules did not violate ex post facto clause as the new rules were not criminal or punitive in nature, but concerned a civil regulatory scheme, clearly rationally related to the Court’s legitimate goal of protecting integrity of the Nation’s Bar.



MCN Admin. Order 2019-01

Facts continued:

- On January 31, 2019, the Court sent another letter requesting a certificate of good standing from Mr. Zvenia.
- The Muscogee Supreme Court never received a certificate of good standing from Mr. Zvenia.

Analysis:

- The Muscogee Supreme Court independently contacted the Bar Association of the District of Columbia to verify Mr. Zvenia's membership in the organization. They could not verify.



MCN Admin. Order 2019-01

Facts continued:

- On January 31, 2019, the Court sent another letter requesting a certificate of good standing from Mr. Zvenia.
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Analysis:

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MCN Admin. Order 2019-01

Analysis:

- In February 2019, the Court located a March 26, 1999 Nevada Supreme Court *Order Removing Benjamin Zvenia from List of Appointed Non-Attorney Arbitrators*.
- Additionally, the Court located a July 26, 2000 *Order of Disbarment* filed by the Duckwater Shoshone Tribal Court concluding that Mr. Zvenia “was not candid with this Court and failed to appraise this Court of his 1994 felony conviction, not graduating from an accredited college of law, and his removal from the Nevada Non-Attorney Arbitrators list.



MCN Admin. Order 2019-01

Analysis:

- Model Rule 8.1
 - An applicant for admission to the bar, or a lawyer in connection with a bar admission application or 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 misapprehension 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, except that this rule does not require disclosure or information otherwise protected by Rule 1.6



MCN Admin. Order 2019-01

Holding:

- Mr. Zvenia failed to disclose his criminal record to the Court and has failed to disclose order from two (2) jurisdictions...
- Mr. Zvenia has also failed to provide proof of membership in a state bar association or the District of Columbia...
- For these reasons the Court issues its Order immediately disbaring Benjamin Zvenia from the practice of law before the courts of the Muscogee (Creek) Nation...



MCN Admin. Order 2019-01

Holding:

- The Court further orders Benjamin Zvenia to give notice to all bar or professional authorities of any jurisdiction in which he currently practices, or in which he applies for membership in the future, of this Court's order, and give notice to any and all clients relying on his admission in this Court of this Court's order.



Mvto (Thank you)