

**HO-CHUNK NATION CODE (HCC)
TITLE 2 – GOVERNMENT CODE
SECTION 1 – CODE OF ETHICS ACT**

ENACTED BY LEGISLATURE: OCTOBER 16, 2001

LAST AMENDED AND RESTATED: 5-16-06 B

CITE AS: 2 HCC § 1

*This Act supersedes HCC 97-002, Code of Ethics Act as enacted by Ho-Chunk Nation
Legislative Resolution 1/12/99A and amended by Resolution 2/2/99C.*

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1. Authority.

a. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(f) of the Constitution grants the Legislature the power to set the salaries, terms and conditions of employment for all governmental personnel.

c. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct and imposing penalties upon all persons within the jurisdiction of the Nation.

d. Article V, Section 2(r) of the Constitution requires the Legislature to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

e. Article V, Section 3 of the Constitution provides that the Legislature shall adopt Codes governing Membership, Open Meetings, Elections, Ethics including conflicts of interest, nepotism, and the conduct of all elected and appointed officials and employees, and other Codes as deemed necessary.

2. Purpose. This Act provides the Ho-Chunk Nation with a Code of Ethics as required by the Constitution.

3. Preamble. This Act will be known as the Ho-Chunk Nation Code of Ethics Act and shall be given liberal interpretation in the interest of ensuring voluntary compliance with its requirements. The enforcement of this Code shall be governed by the following goals:

a. To foster a free and good government to the Ho-Chunk Nation by assisting elected and appointed or unclassified employees of the Nation to avoid conflicts between personal interest and public responsibilities.

b. To serve as a useful reference for guidance to avoid conflicts and to improve the level of public service of elected and appointed or unclassified employees of the Nation.

c. To improve standards of public service.

d. To promote and strengthen the faith and confidence of the people of the Ho-Chunk Nation in their government.

4. Declaration of the Code of Ethics Act.

a. It is declared that high moral and ethical standards among Ho-Chunk Nation elected and appointed officials or unclassified employees is essential to the conduct of free government and it is the intent of the Legislature that this Act promoted the highest ethical conduct for all elected and appointed public officials and unclassified of the Ho-Chunk Nation.

b. This Code shall be applied to all elected and appointed officials or unclassified employees of the Ho-Chunk Nation.

c. The Ho-Chunk Nation's Personnel Policy and Procedures Manual or superseding employment law shall be applied to employees of the Nation not expressly cited under paragraph 4b, above, of this Act.

d. Pertaining to Judges and Justices, if there are any conflicts between this Code and any proposed or enacted Code, the Ho-Chunk Nation Code of Judicial Ethics shall control once established by the Ho-Chunk Nation Courts.

5. **Definitions.** As used in this Act, the following shall have the meaning provided here.

a. “Any Thing of Value” means any money or property, favor, service, payment, advance, forbearance, loan, gift, or promise of future employment, but does not include compensation and expenses paid by the Nation, fees and expenses which are permitted, or hospitality extended for a purpose unrelated to the Nation’s business by a person other than an organization.

b. “Associated” when used with reference to an organization, includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly.

c. “Elective Office” means any office regularly filled by a vote of the People of the Ho-Chunk Nation.

d. “Frivolous” means a complaint against an official for an alleged ethics violation that is clearly false or lacking sufficient evidence and is made for the purpose of embarrassing or causing harm to the official.

e. “Gift” means a voluntary transfer of property to another made gratuitously and without consideration.

f. “Honoraria” means a payment of money or anything of value made to a person for services rendered. Any stipends or reimbursement paid to an individual for service to a partially or wholly owned Tribal entity pursuant to a Legislative approved program shall not be considered honoraria for purposes of paragraph 7d of this Act, shall be subject to the prohibition of double payment contained at paragraph 7e.

g. “Immediate Family” means any of the following:

(1) An individual’s spouse.

(2) An individual’s relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the individual or from whom the individual receives, directly or indirectly, more than one-half of his or her support.

(3) Any person living in a spousal relationship with another.

(4) A son or daughter (including adopted children), brother, sister, mother, father, grandmother, grandfather, grandson or granddaughter.

h. “Income” has the meaning given under the United States Internal Revenue Code Sec. 61. Except as otherwise provided in this subtitle, income means all income from whatever source derived, including, but not limited to, any of the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items.

(2) Gross income derived from business.

(3) Gains derived from dealings in property.

(4) Interest.

(5) Rents.

(6) Royalties.

(7) Dividends.

(8) Alimony and separate maintenance payments.

(9) Annuities.

(10) Income from life insurance and endowment contracts.

(11) Pensions.

(12) Income from discharge of indebtedness.

(13) Distributive share of partnership gross income.

(14) Income in respect of a decedent.

(15) Income from an interest in an estate or trust.

(16) Per Capita from a Tribe.

i. “Malfeasance” means the commission of an act that is positively unlawful. The doing of an act which a person ought not do at all. The unjust performance of some act which the party had the right to commit. Any wrongful conduct, which affects, interrupts, or interferes with the performance of official duty. An act for which there is no authority.

j. “Ministerial Action” means an action that an individual performs under the authority of a superior without exercise of the individual’s discretion, judgment or skill, as to the propriety of the action being taken.

k. “Misfeasance” means the improper performance of some act, which a person may lawfully do.

l. “Nonfeasance” means the omission of an act, which a person ought to do. The non-performance of an act which a person has a responsibility or obligation to perform. A substantial failure to perform a required legal duty. Total neglect of a duty.

m. “Official” means, but is not limited to, any person who holds elective office or who is a candidate for elective office such as President, Vice-President, Legislator, Justice; appointed professionals such as Judges, Departmental Executive Directors, Executive Board members and alternates, Gaming Commissioners, Election Board members and alternates; various Board members and alternates; persons nominated or confirmed by the Nation, persons employed in a position for which a license is required for employment, i.e. attorneys, doctors and nurses; and persons selected to hold various other positions in the Nation that are unclassified.

n. “Organization” means any corporation, partnership, proprietorship, firm, enterprise, association, trust or other legal entity other than an individual or public body provided that, if the entity is wholly or partly owned by the Nation and the individual serves as an officer or director by virtue of Legislative appointment, the entity shall be deemed an integral part of the Nation and not a separate organization for the purposes of this Act, and the individual shall owe the ethical duties described in this Act to the entity equally with the duties the individual owes to the Nation.

o. "Perjury" means a false statement knowingly made under oath.

p. “Secretary” or “Nation’s Secretary” means the person(s) designated as the Legislative Secretary unless otherwise so identified within this Act.

q. “Treasurer” means the Executive Director of the Ho-Chunk Nation Department of Treasury.

6. Standards of Conduct.

a. The Legislature hereby affirms that an elected or appointed official and unclassified employee of the Ho-Chunk Nation holds his or her position as a public trust with a fiduciary responsibility to the Nation.

b. This Act does not prevent any non-elected, part-time, or volunteer official of the Nation from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her duties to the Nation. The Nation further recognizes that the standards of ethical conduct need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society; and that officials of the Nation may need to engage in employment, professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity, which does not conflict with the specific provisions of this Act, unless specifically provided to the contrary by the Nation's Constitution or other laws.

c. All elected and appointed officials and unclassified employees of the Nation are working in the public interest with a duty to place loyalty to the Ho-Chunk Nation Constitution and adherence to the laws of the Ho-Chunk Nation and ethical principles of conduct above personal and private gain.

d. Elected and appointed officials and unclassified employees of the Nation shall adhere to the laws, customs and traditions of the Nation, be patient, dignified and courteous to constituents, co-officials, and others with whom they deal with in an official capacity.

e. Elected and appointed officials and unclassified employees of the Nation shall put forth an honest effort in the performance of their duties.

f. Elected and appointed officials and unclassified employees of the Nation shall make no commitments or promises purporting to bind the Nation without appropriate authorization.

g. No official or unclassified employee of the Nation may use his or her position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated.

h. Elected and appointed officials and unclassified employees of the Nation shall not utilize the Nation's resources and property for unauthorized activities.

i. Elected and appointed officials and unclassified employees of the Nation shall not threaten or intimidate any employee of the Nation in reprisal for the employee acting within the scope of the employee's official duties and authority.

j. Elected and appointed officials and unclassified employees of the Nation shall not give preferential treatment to any private person or organization nor shall preferential treatment be afforded to any elected or appointed official or employee in any position of authority.

k. Elected and appointed officials and unclassified employees of the Nation shall not solicit or accept, directly or indirectly, anything of value and no person may offer to give to any official of the Nation, anything of value, if the gift could reasonably be expected to influence the vote, official actions or judgment of the official or unclassified employee of the Nation, or could reasonably be considered a reward for any official action or inaction.

l. Elected and appointed officials and unclassified employees of the Nation shall not intentionally use or disclose information gained in the course of or by reason of his or her official or unclassified position or activities in any way that could result in the receipt of anything of value for him or her self, for his or her immediate family, or for any other person, if the information is not in the public domain.

m. Elected and appointed officials and unclassified employees of the Nation shall not engage in financial transactions using non-public, government information or allow the improper use of non-public, governmental information to further any private interest.

n. Elected and appointed officials and unclassified employees of the Nation shall not use or attempt to use the position held by the official or unclassified employee to influence or gain unlawful benefits, advantages or privileges personally or for their immediate family.

o. Elected and appointed officials and unclassified employees of the Nation shall adhere to the administrative responsibilities of the Nation, which include, but are not limited to, work product, and conduct of staff as follows:

(1) Prohibiting staff from making statements on behalf of the Nation without permission.

(2) Requiring staff to observe high standards of honesty and diligence.

(3) Initiating appropriate disciplinary measures against professional staff for unprofessional conduct which the official may become aware of.

7. Conflicts of Interest and Nepotism Prohibited.

a. No official or unclassified employee of the Nation may take any official action or participate in decisions in which the official or unclassified employee is associated with or a member of his or her immediate family, or an organization with which they have a substantial financial interest in. See paragraph 8b for exceptions for Legislators.

b. Elected and appointed officials and unclassified employees of the Nation shall not participate in decision making on an issue if his or her action or inaction is reasonably questionable, including but not limited to, personal bias or knowledge that individually the person or any member of the person's family or spouse's immediate family, or anyone residing in their household has a financial interest that could be substantially affected provided, however, that a person may, instead of withdrawing, disclose on the record the basis of the person's interest or involvement in the issue.

c. A governmental official or unclassified employee shall regulate his or her extra governmental activities to minimize the risk of conflict with duties of their office.

d. Elected and appointed officials and unclassified employees of the Nation shall respect and comply with the laws and traditions of the Nation and shall at all times act in a manner that promotes public confidence in the honesty and impartiality of the government by resisting any improper influence of family, social or other personal relationships, avoiding the use of the prestige or resources of the office to advance the private interest of immediate family, and not employing any special influence or being specially influenced.

e. Elected and appointed officials and unclassified employees of the Nation shall not hold financial interests that conflict with the conscientious performance of their duties.

8. Conflicts of Interest, Exceptions.

a. Any exceptions to this Code must have written advice, authorization, and endorsement of the Ethics Review Board and as otherwise provided under Section 7.

b. Exceptions to Paragraph 7a. Legislators must have a recorded and passed motion in the official Area Meeting Minutes from the People of that Legislator's District to vote on any conflicts of interest highlighted under paragraph 7a of this Act.

9. Gifts and Honoraria.

a. Elected and appointed officials and unclassified employees of the Ho-Chunk Nation are encouraged to meet with clubs, conventions, conferences, special interest groups, school groups, and other gatherings when not on official duty.

b. When on official duty, elected and appointed officials and unclassified employees of the Ho-Chunk Nation are encouraged to meet with clubs, conventions, conferences, special interest groups, school groups and other gatherings if it is in the best interests of the Nation. Such official and unclassified employees may take gifts bestowed upon them at such gatherings, so long as the gift is not cash.

c. An elected or appointed official and unclassified employee of the Nation need not make a report of gifts and honoraria that are:

(1) Conveyed during a traditional tribal ceremony, or wedding.

(2) Conveyed during an official ceremony of the Ho-Chunk Nation.

(3) Conveyed during a pow-wow.

(4) Any gifts of nominal value conveyed by co-workers in appreciation of an individual's contribution to the workplace.

(5) Valued at an estimated fair market value of less than \$50.00.

d. If the value of such gift to an elected or appointed official and unclassified employee of the Nation exceeds a fair market value of \$50.00, the recipient shall report the gift to the Ethics Review Board for documentation.

e. An elected or appointed official and unclassified employee of the Nation shall take either (1) only honoraria for participating in an extra-governmental event, ceremony, etc. or (2) only regular work pay/salary, but not both simultaneously if the event occurs

during work hours to avoid double payment by an organization and the tribe or an organization within the tribe.

10. Preliminary Advisory Opinions. For elected officials and unclassified employees of the Executive Branch, such officials and unclassified employees may personally or on behalf of an organization or governmental body, request a Preliminary Advisory Opinion from the Nation's Attorney General's office regarding the propriety of any matter relating to the business of the Nation, to which the person is or may become a party. All advisory opinions and requests for opinions shall be in writing. The Attorney General's Office shall have fourteen (14) days to form and issue a Preliminary Advisory Opinion. Intent to comply with this Act shall be assumed when a person refers a matter to the Attorney General and abides by the Attorney General's opinion, if the material facts are as stated in the opinion request. The Attorney General shall not make public the identity of the individual requesting a Preliminary Advisory Opinion or of individuals or organizations mentioned in the opinion unless compelled to reveal that information by the Nation's Courts or under any other law of the Nation. Copies of all advisory opinions rendered under this section shall be forwarded to the Ethics Review Board within thirty (30) days.

11. Ethics Review Board.

a. The Ho-Chunk Legislature shall establish and fund an Ethics Review Board. The Ethics Review Board shall have three (3) members selected from a pool of seven (7) individuals per incident and shall establish its own standardized process to review complaints. The Ethics Review Board shall review any violations of this Code.

b. A copy of this Act and memorandum providing the names and addresses of the members of the Ethics Review Board shall be made available at each Branch Office for the use and reference of Tribal members and employees.

c. Reporting Violations.

(1) Any person who, in good faith, believes or has reason to believe that an official or unclassified employee subject to this Act has committed a violation of this Act may report such act. The report shall be sent directly to the Ethics Review Board for investigation pursuant to HCN Constitution Article VI, Section 2(1) within one year from the date of the alleged violation.

(2) Any report under this section shall include, but is not limited to, the following information:

(a) The name of the person reporting (with that name remaining confidential if requested) the alleged violation and the name of the person whose alleged violation is in question.

(b) The nature of the alleged violation including the date, time, place, persons involved and/or who may have knowledge pertinent to the alleged violation. The report

must clearly state the provision(s) of the Code (Section 6, Standards of Conduct) allegedly violated.

(c) A sworn statement attesting that the information they have forwarded is true, accurate, and complete to the best of their knowledge.

(3) The report to the Ethics Review Board shall be sent by certified mail, return receipt requested.

(4) Although not necessary, a copy of the report may be furnished to either the President, Legislature, or Chief Justice as appropriate.

d. Frivolous Complaints. Reporting frivolous or unsubstantiated alleged violations will subject the person making the complaint to civil suit brought by the official accused by the false accusation.

e. Ethics Review Board Opinions.

(1) The Ethics Review Board shall have fifteen (15) days to form and issue an opinion based on the report and the alleged violation.

(2) The Board's opinion shall be reported to the person that submitted the alleged violation and to the applicable individual as follows:

(a) For Legislative Branch officials and unclassified employees that are the subject of an Ethics Review Board opinion, a copy of the opinion shall be submitted to the Vice President.

(b) For Executive Branch officials and unclassified employees that are the subject of an Ethics Review Board opinion, a copy of the opinion shall be submitted to the President.

(c) For Judicial Branch officials and unclassified employees that are the subject of an Ethics Review Board opinion, a copy of the opinion shall be submitted to the Chief Justice.

(3) All final opinions by the Ethics Review Board shall be made available for public review by tribal members when requested by a tribal member, employee, appointed or elected official and unclassified employee of the Nation. Such reports will contain all information pertinent to the ethics violation investigation, as well as other findings and conclusions.

12. Penalties.

a. In order to advance the goals of free and good government, to provide ethical guidance to the Nation's officials, to improve the level and quality of public service, and

to protect, promote, and strengthen the faith and confidence of the people of the Nation in its government; any violation of this Act by an elected or appointed official or unclassified employee of the Nation is subject to the following penalties, in addition to those allowed under the Constitution of the Ho-Chunk Nation.

b. The Ethics Review Board shall make a final determination of whether a violation of this Act occurred. If a violation is proven, the Ethics Review Board shall assess an adequate penalty for the violation to the President and the Legislature of the Ho-Chunk Nation. The penalties may include, without limitation, restitution of any improperly received benefit and a monetary fine reflecting the severity of the violation.

c. Further investigation by the Ethics Review may lead the Legislature to initiate Removal or Recall pursuant to Article IX of the Constitution of the Ho-Chunk Nation.

d. Removal by operation of law shall occur pursuant to Article IX, Section 7 of the Constitution for officials and Legislative Resolution 12-29-98C for unclassified employees if any elected official or unclassified employee is convicted of a felony while in office.

e. The Nation's *Crimes Against Ho-Chunk Nation Government and Government Officials* (2 HCC § 16) may be applied by the Ethics Review Board.

13. Enforcement of the Code of Ethics.

a. Presidential Enforcement. The President shall enforce penalties for violations of the Code of Ethics for the following persons:

- (1) Department Executive Directors.
- (2) Appointed Presidential Staff Members.
- (3) Department Boards of Director.
- (4) Members of boards and commissions administered by the President, except for members of the Gaming Commission, Election Board, and the Ethics Review Board.
- (5) Employees within the Executive Branch that require a professional license.

b. Legislative Enforcement. The Legislature shall enforce penalties for violation of the Code of Ethics for the following persons:

- (1) Members of the Legislature.
- (2) President. If the President is found to have violated the Code of Ethics, the Legislature shall enforce the penalty, except for removal pursuant to Article IX of the Constitution.

(3) Chief Justice. If the Chief Justice is found to have violated the Code of Ethics, the Legislature shall enforce the penalty, except for removal pursuant to Article IX of the Constitution.

(4) Members of the Gaming Commission, Election Board, and the Ethics Review Board.

c. Judicial Enforcement. The Chief Justice shall enforce penalties for violation of the Code of Ethics for the following persons:

(1) Associate Justices of the Supreme Court.

(2) Trial Court Judges.

14. Former Elected or Appointed Officials.

a. Post-Employment Restrictions.

(1) An elected or appointed official of the Ho-Chunk Nation is restricted from assisting, aiding, advising, or representing other interests for one (1) year after his or her government service terminates when:

(a) the post-employment concerns any compacts, contracts, agreements, or negotiations in which he or she held a fiduciary responsibility to the Nation as an elected or appointed official, and

(b) his or her participation was personal or substantial.

(2) This restriction applies whether or not the elected or appointed official receives compensation.

(3) Within the period of one (1) year after government service terminates, an elected or appointed official will provide written notice to the Ho-Chunk Nation Legislature if he or she seeks or has accepted employment that is in violation of paragraph a(1), above.

(4) The elected or appointed official may be exempted from the post-employment restriction under the following conditions:

(a) the former official is screened from any participation in matters described above and is apportioned no part of the fee from the Nation;

(b) written notice is promptly given to the Ho-Chunk Nation Legislature to enable it to ascertain compliance with the provisions of this law; and

(c) the Ho-Chunk Nation Legislature consents after consultation; such consent not being unreasonably withheld.

(5) This restriction does not apply to employment with the Ho-Chunk Nation.

b. Attorneys.

(1) Attorneys employed by the Nation are subject to Section 20:1.9 (Conflict of Interest: Former Client) of the Wisconsin's Rules of Professional Conduct adopted by the State Bar of Wisconsin.

(2) Successive Government and Private Employment. Except as Ho-Chunk Nation law may otherwise expressly permit, a lawyer shall not represent a private or another governmental client in connection with a matter in which the lawyer participated personally and substantially as an employee of the Nation, unless the Ho-Chunk Nation Legislature consents after consultation; such consent not being unreasonably withheld. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless the lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.

c. Enforcement and Penalties.

(1) Appointed and Elected Officials.

(a) The Ho-Chunk Nation Attorney General may bring a civil action in the Trial Court against any former elected or appointed official who engages in conduct constituting an offense under paragraph a, above.

(b) Whoever engages in conduct constituting the offense and upon proof of such conduct by a preponderance of the evidence shall be subject to a civil penalty of not more than \$5,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater.

(2) Attorneys. The Ho-Chunk Nation Attorney General, upon proof of conduct in violation of any provision of paragraph b(2), above, by a preponderance of the evidence shall notify the Office of Lawyer Regulation of the State Bar of Wisconsin of the alleged violation of the Rules of Professional Conduct.

15. Severability. If any provisions of this Act are determined by the Judiciary to be contrary to the Constitution, the invalid provision shall be severed from this Act and the remaining provisions shall be given full force and effect.

Legislative History:

6/27/96 Rep. Jacob LoneTree requested a draft be submitted to the Administrative Rules Committee.
7/25/96 Administrative Rules, . . . Committee: Rep. MaryAnn Yazzie to table the Code of Ethics and post in all the Branch Offices for public comment for 30 days.

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- 9/26/96 Administrative Rules, . . .Committee: Rep. Greendeer to repost the Code of Ethics in Government Law in all the Branch Offices for 30 days for public comment.
- 11/25/96 Administrative Rules, . . .Committee: Amended changes were added to Sect 304.
- 1/03/97 Administrative Rules, . . . Committee: Rep. Ona Garvin recommended adoption and submission to the Legislature for approval.
- 5/28/97 Ethics in Government Law in Traditional Court for review.
- 1/12/99 Code of Ethics (HCC 97-002) enacted by Legislative Resolution 1/12/99A.
- 2/2/99 Amended by Legislative Resolution 2-2-99C.
- 10/16/01 Enacted as 2 HCC § 1 by Legislative Resolution 10/16/01C.
- 12/30/03 Technical correction renumbering paragraph 13b.
- 5/17/04 Legislature places Ethics Code for 45-Day Public Review.
- 9/15/04 Administration Committee reviews recommended changes to composition of the Ethics Review Board and forwards to Legislature for amendment and restatement.
- 10/19/04 Legislature places out for 45-Day Public Review.
- 12/28/04 Amended and Restated by Legislative Resolution 12/28/04B adding paragraph 5o and amending paragraphs 11a and 11d.
- 2/8/06 Legislature reviews draft Section 14 on Former Elected or Appointed Officials and places out for 45-Day Public Review.
- 4/14/06 45-Day Public Review ends without comment(s).
- 5/16/06 Amended by Legislative Resolution 5/16/06B adding Section 14.