No. 19-231

In the

Supreme Court of the United States

March Term 2019

ROBERT R. REYNOLDS,
Petitioner,

v.

WILLIAM SMITH, Chief Probation Officer, Amantonka Nation Probation Services,
JOHN MITCHELL, President, Amantonka Nation,
ELIZABETH NELSON, Chief Judge, Amantonka Nation District Court,
Respondents.

On Writ of Certiorari
To The United States Court of Appeals
For The Thirteenth Circuit

BRIEF FOR THE PETITIONER

Counsel for the Petitioner,
TEAM NUMBER 978

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QUESTIONS PRESENTED

I. Whether a naturalized tribal citizen without any degree of Indian blood is a non-Indian for purposes of special domestic violence criminal jurisdiction and inherent criminal jurisdiction.

II. Whether being denied counsel, as defined by the Sixth Amendment, in a domestic violence case deprives a non-Indian defendant of his right to counsel or deprives an Indian defendant of his right to equal protection under the law.

STATEMENT OF THE CASE

I. Statement of the Facts

The petitioner, Robert R. Reynolds, is a non-Indian, naturalized citizen of the Amantonka Nation, a federally-recognized Indian tribe with a reservation within the State of Rogers. (R. at 6.) Reynolds himself does not have any Indian blood or any other Indian descendancy; he naturalized as a citizen of the Nation after marrying his wife, Lorinda, who is herself an enrolled tribal member of the Amantonka Nation. (R. at 6, 8.) Reynolds and Lorinda live together on the Amantonka Nation Reservation in tribal housing. (R. at 2, 3, 6.) Lorinda has been consistently employed on the reservation. (R. at 6.) Reynolds was briefly unemployed following the closing of the Amantonka shoe factory, but he has previously been and is currently employed on the reservation. (R. at 6.)

On June 15, 2017, Reynolds allegedly struck Lorinda in their apartment. (R. at 6.) The Amantonka Nation police responded to a call at the apartment, arrested Reynolds, and transported him to the Amantonka Nation Jail. (R. at 6.)

II. Statement of the Proceedings

On June 16, 2017, the Chief Prosecutor for the Amantonka Nation filed charges in the Amantonka Nation District Court accusing Reynolds of domestic violence. (R. at 2.) Reynolds

filed three pretrial motions arguing that: (1) he is a non-Indian and the tribal district court lacked jurisdiction over him, (2) he is entitled to an appointed attorney as a non-Indian being prosecuted under the Amantonka Nation's exercise of the special domestic violence criminal jurisdiction ("SDVCJ") granted by the Violence Against Women Reauthorization Act of 2013 ("VAWA"), and (3) his court-appointed counsel is insufficiently qualified and the assignment of this attorney violated the relevant equal protection requirements. (R. at 3–4.)

The Amantonka Nation District Court found that Reynolds is a citizen of the Amantonka Nation and therefore an Indian. (R. at 3.) The court also found that because Reynolds is an Indian, the crime does not fall under SDVCJ and he was not entitled to appointed counsel provided by VAWA. (R. at 3.) The court further found that the court-appointed counsel was sufficiently qualified and, therefore, there were no equal protection violations. (R. at 4.) The court denied all three pretrial motions. (R. at 3–4.)

After the jury returned a guilty verdict, Reynolds made a motion to set aside the verdict based on the same arguments in his pretrial motions. (R. at 5.) The court denied the motion on the same grounds as the pretrial motions and sentenced him to seven months incarceration, $5300 restitution, batterer rehabilitation and alcohol treatment programs, and a $1500 fine. (R. at 5.)

On appeal to the Amantonka Nation Supreme Court, Reynolds raised the same three arguments as in the pretrial motions and in the motion to set aside the verdict. (R. at 7). The Amantonka Nation Supreme Court affirmed Reynolds' conviction. (R. at 7.)

Having exhausted all tribal remedies, Reynolds filed a petition for a writ of habeas corpus in the U.S. District Court for the District of Rogers, naming William Smith, John

Mitchell, and Elizabeth Nelson[1] as respondents (collectively "the respondents"). (R. at 8.) In his petition for writ of habeas corpus, Reynolds alleged violations of his civil rights guaranteed in the U.S. Constitution, the Indian Civil Rights Act of 1968, and the Violence Against Women Reauthorization Act of 2013 based on the same arguments he raised in the Amantonka Nation Supreme Court. (R. at 8.) The court found that because the federal definition of "Indian" required some degree of Indian blood and Reynolds had no Indian blood, he cannot be an Indian for purposes of criminal jurisdiction. (R. at 8.) Since Reynolds is not an Indian, the district court found that the Amantonka Nation exercised its SDVCJ over Reynolds yet failed to provide him with the indigent defense counsel required by VAWA. The district court granted habeas relief. (R. at 8.)

On appeal by the respondents, the U.S. Court of Appeals for the Thirteenth Circuit reversed the ruling of the District Court for the District of Rogers and remanded the action on August 20, 2018 with instructions to deny Reynolds' petition for habeas corpus. (R. at 9.) This Court granted certiorari on October 15, 2018. (R. at 10.)

SUMMARY OF THE ARGUMENT

Indian tribes only have inherent criminal jurisdiction over non-Indians in specific circumstances where Congress has granted it, such as through the special domestic violence criminal jurisdiction ("SDVCJ") of the Violence Against Women Reauthorization Act of 2013 ("VAWA"). Congress intentionally incorporated the two-pronged *Rogers* Test for Indian status into SDVCJ. This test ascertains whether an individual has some degree of Indian blood and whether the individual is politically recognized as an Indian by a tribe, the federal

[1] William Smith is the Chief Probation Officer of the Amantonka Nation Probation Services. John Mitchell is the President of the Amantonka Nation. Elizabeth Nelson is the Chief Judge of the Amantonka Nation District Court.

government, or the community. The *Rogers* Test is used for all questions of tribal and federal criminal jurisdiction to create a uniform, even-handed definition for all courts.

Robert R. Reynolds has no Indian blood—an undisputed fact conceded by the Amantonka Nation. Although he naturalized as a citizen of the Nation, he does not satisfy both prongs of the *Rogers* Test and he is consequently a non-Indian. The Amantonka Nation must exercise SDVCJ to prosecute non-Indians such as Reynolds, and the Nation must afford him the rights and safeguards guaranteed in VAWA.

Defendants prosecuted under SDVCJ must be guaranteed the right to counsel at least equal to counsel guaranteed under the Sixth Amendment. This Court has recognized that the Sixth Amendment guarantees a right to competent counsel and has implied that "counsel" is synonymous with "attorney" or "lawyer." The historical background to the ratification of the Sixth Amendment and legislation around the time of the ratification of the Sixth Amendment illustrates that the Framers understood counsel to be a licensed attorney. Many of the lower circuits have recognized this and held that "counsel" in the Sixth Amendment means an attorney licensed in a state or federal jurisdiction. The history of the Sixth Amendment, implications from this Court's holdings, and lower circuit decisions show that counsel as guaranteed by the Sixth Amendment is best understood as an attorney licensed in a state or federal jurisdiction. As a non-Indian, Reynolds was not provided the right to counsel protected by the Sixth Amendment.

Indian tribes must guarantee equal protection under the laws of the tribe to Indians. This does not always mean constitutional equal protection. However, the legislative history of the Indian Civil Rights Act of 1968 shows the dual goals of Congress to be the protection of constitutional rights regarding administration of justice and respect for tribal sovereignty. The

standard used by some of the circuits embodies these dual purposes and is the best test for determining when constitutional equal protection applies. Under this analysis, constitutional equal protection applies to the Amantonka Nation, and the respondents have failed to show that their law designating different appointed counsel for Indians and non-Indians in domestic violence cases is closely tailored to a substantial government interest. Therefore, this law violates an Indian's guarantee of equal protection under the law.

ARGUMENT

The standard of review in an appeal of an Indian Civil Rights Act of 1968 writ of habeas corpus is the same as the standard of review in a standard habeas corpus case: de novo. *Duro v. Reina*, 851 F.2d 1136, 1139 (9th Cir. 1987), *rev'd on other grounds*, 495 U.S. 676 (1989).

I. Reynolds is a non-Indian as defined by Congress, and the Amantonka Nation can only prosecute him under their special domestic violence criminal jurisdiction.

Although criminal jurisdiction in the tribal courts is a "jurisdictional maze," *see* Addie C. Rolnick, *Tribal Criminal Jurisdiction Beyond Citizenship and Blood*, 39 Am. Indian L. Rev. 337, 343 n.16 (2014), a clear tenet emerging from the labyrinth is that Indian tribes only possess criminal jurisdiction over non-Indians in specific circumstances designated by Congress. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 211–12 (1978). One such circumstance is in cases of domestic violence between a non-Indian defendant and an Indian victim. Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, § 904, 127 Stat. 54, 120–23 (to be codified at 25 U.S.C. § 1304) [hereinafter "VAWA § 1304"].

Tribes still maintain criminal jurisdiction over Indians—both member Indians and nonmember Indians—accused of domestic violence, but tribes must use the special domestic violence criminal jurisdiction ("SDVCJ") granted by Congress in VAWA to prosecute a non-

Indian. SDVCJ is "criminal jurisdiction that a participating tribe may exercise under [VAWA] but could not otherwise exercise" and allows the tribe to criminally prosecute a non-Indian defendant accused of domestic violence against an Indian within Indian country. VAWA § 1304(a)(6). However, in order to exercise SDVCJ, the tribe must also ensure that certain rights of the non-Indian defendant are not infringed. *See id.* § 1304(d). SDVCJ and some of its accompanying safeguards are altered if the defendant is an Indian, as the tribe must prosecute under their inherent criminal jurisdiction.

The respondents argue that Reynolds became an Indian when he naturalized as an Amantonka Nation citizen, and, therefore, the Nation can simply exercise its inherent criminal jurisdiction over him as an Indian. The respondents submit that by virtue of Reynolds' naturalization, SDVCJ and its accompanying safeguards have been lost to him as he is now an Indian. This argument ignores the *Rogers* Test that was incorporated by Congress in all criminal jurisdictional questions of Indian status, including VAWA. Based on the *Rogers* Test, Reynolds is a non-Indian, and the Nation can only exercise jurisdiction over him through SDVCJ.

A. Reynolds is a non-Indian for purposes of the Violence Against Women Reauthorization Act of 2013 because Congress explicitly incorporated the *Rogers* Test into the statute for determinations of Indian status, and he does not satisfy the first prong of the test.

The definition of "Indian" for purposes of SDVCJ is not evident through the statute itself but is elucidated by case law and legislative intent. The relevant definition for VAWA's use of "Indian" is in the general definitions section of the Indian Civil Rights Act of 1968 ("ICRA"). The definition in ICRA is itself simply a cross-reference: "'Indian' means any

person who would be subject to the jurisdiction of the United States as an Indian under [the Indian Major Crimes Act ("IMCA")], if that person were to commit an offense listed in that section in Indian country to which that section applies." ICRA, 25 U.S.C. § 1301(4) (2012). IMCA, similarly, does not demarcate the definition, *see* 18 U.S.C. § 1153 (2012), but "Indian" for purposes of IMCA has been judicially defined since 1976 using a standard called the *Rogers* Test. *United States v. Dodge*, 538 F.2d 770, 786 (8th Cir. 1976) (citing *United States v. Rogers*, 45 U.S. 567 (1846)). The *Rogers* Test,[2] as restated by the Ninth Circuit, requires for Indian status: "(1) [some] degree of Indian blood; and (2) tribal or government recognition as an Indian." *United States v. Bruce*, 394 F.3d 1215, 1223 (9th Cir. 2005); *accord Dodge*, 538 F.2d at 786 ("[I]n order to be considered an Indian, an individual must have some degree of Indian blood and must be recognized as an Indian."); *see also Rogers*, 45 U.S. 567. This test was originally created by this Court in *United States v. Rogers* in 1846 for other jurisdictional definitions of "Indian"; however, the Eighth Circuit adopted the test for purposes of IMCA in 1976 and all other circuits have followed. *Dodge*, 538 F.2d at 786; Rolnick, *supra*, at 379. The specific factors of this test are discussed more thoroughly *infra*.

Congress purposefully incorporated the definition of "Indian" found in the *Rogers* Test into ICRA and VAWA. Fifteen years after the *Rogers* Test was used to define "Indian" in IMCA, Congress added the ICRA "Indian" definition as simply a cross-reference to IMCA. Department of Defense Appropriations Act, Pub. L. No. 101-511, § 8077(c), 104 Stat. 1856, 1892–93 (1991) (commonly referred to in Federal Indian Law as "the *Duro* Fix" legislation).

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[2] Most circuits refer to the test as "the *Rogers* Test," referencing *United States v. Rogers*, 45 U.S. 567 (1846). *See, e.g.*, Rolnick, *supra*, at 379. The Ninth Circuit refers to it as "the *Bruce* test" referencing a restatement of the *Rogers* Test within their own circuit. *United States v. Zepeda*, 792 F.3d 1103, 1106 (9th Cir. 2015) (en banc). Although many of the relevant cases are within the Ninth Circuit and use the name "*Bruce* test," the name "*Rogers* Test" is used here as it is the more common name across circuits. The two names are interchangeable.

Senator Daniel K. Inouye of Hawaii explained on the Senate floor that although the new ICRA section and the cross-referenced IMCA section do not "provide a statutory definition," the case law "provides fairly specific guidance" on how "Indian" is defined, and he proceeded to explain the different factors used in the *Rogers* Test. 137 Cong. Rec. 23,673, 23,673–74 (1991). The *Rogers* Test was intended to be incorporated into ICRA's definition of Indian and govern all sections within Title 25 of the United States Code. ICRA, 25 U.S.C. § 1301 ("For purposes of this title, the term . . . .").

Twenty-three years later, when Congress enacted the "Indian" and "non-Indian" clauses of VAWA, several terms were defined in the VAWA statute including "Indian country" and "participating tribe"; however, Congress chose not to redefine "Indian" for purposes of VAWA. *See* VAWA § 1304(a). This leaves VAWA to be governed by the Title-wide definition of "Indian" found in § 1301 of ICRA: the cross-referenced definition incorporating the *Rogers* Test. ICRA, 25 U.S.C. § 1301(4).

VAWA's SDVCJ relies on the two-pronged *Rogers* Test. More specifically, SDVCJ relies on a defendant failing the *Rogers* Test to classify a defendant as a non-Indian; a successful satisfaction of the test would classify an individual as an Indian subject to the tribe's normal inherent criminal jurisdiction. Both prongs of the *Rogers* Test must be met—some degree of Indian blood and political recognition—to be considered an Indian. Failure of either prong would result in classifying an individual as a non-Indian. *See, e.g.*, *Rogers*, 45 U.S. 567 (holding that although an adopted individual had tribal recognition, he did not possess a degree of Indian blood and was therefore a non-Indian).

For the first prong of the *Rogers* Test, an individual "must have a blood connection to a 'once-sovereign political communit[y].'" *United States v. Zepeda*, 792 F.3d 1103, 1110 (9th

Cir. 2015) (en banc) (alteration in original) (quoting *United States v. Antelope*, 430 U.S. 641, 646 (1977)). "The first prong requires ancestry living in America before the Europeans arrived." *Id.* (quoting *Bruce*, 394 F.3d at 1223). There is not a specific blood quantum threshold that is imposed on this prong of the *Rogers* Test; it only requires "some" degree of blood. Rolnick, *supra*, at 380 n.192. Furthermore, this prong neither requires that the blood be of a federally-recognized tribe nor that the blood be of the tribe referenced by the second prong (usually, in which the individual is enrolled). *Zepeda*, 792 F.3d at 1110, 1113. Instead, the individual must simply have some degree of some type of Indian blood. Whether an individual has some degree of Indian blood and satisfies this prong of the analysis is a question of fact that a jury must find beyond a reasonable doubt. *Id.* at 1114.

The second prong of the *Rogers* Test is that an individual has "proof of membership in, or affiliation with, a federally recognized tribe." *Id.* at 1113. This prong is termed the "political recognition prong" as it essentially requires that an individual be politically recognized—either by a tribal government, the federal government, or the community—to be an Indian. *Id.* at 381. Enrollment is not required for this prong, but proof of enrollment does satisfy it. For individuals with Indian blood who are not enrolled in a specific tribe, circuits have created a variety of factors and tests to determine one's affiliation, *see* Rolnick, *supra*, at 380–83; however, these factors do not need to be analyzed as Reynolds is a naturalized citizen of the Amantonka Nation and does not dispute that he satisfies the second prong of the *Rogers* Test.

If either prong of the *Rogers* Test is not met, an individual is a non-Indian. An individual with Indian blood but lacking political recognition is a non-Indian; an individual with political recognition but lacking Indian blood is a non-Indian. *See, e.g.*, *United States v.*

Lawrence, 51 F.3d 150 (8th Cir. 1995) (Indian blood without political recognition); *Rogers*, 45 U.S. 567 (political recognition without Indian blood).

Under the *Rogers* Test, Reynolds is definitively a non-Indian. Although he is an enrolled member of the Amantonka Nation and satisfies the second prong, Reynolds does not possess any degree of Indian blood—a fact undisputed by the Nation. (R. at 8.) This failure of the first prong of the *Rogers* Test results in Reynold's classification as a non-Indian under IMCA, ICRA, and VAWA. Since the first prong of the *Rogers* Test is a question of fact for the jury that must be proven beyond a reasonable doubt—and it has been an undisputed fact since before the trial began that he has no degree of blood—the findings by the Amantonka District Court, the Amantonka Nation Supreme Court, and the U.S. Court of Appeals for the Thirteenth Circuit are all unmistakably erroneous. For the purposes of VAWA, Reynolds is a non-Indian because he lacks any degree of Indian blood.

This result follows this Court's long-established precedent for determining Indian status. The originator of this test, *United States v. Rogers*, followed similar facts. In *Rogers*, the defendant possessed no Indian blood but married a Cherokee woman and became a naturalized citizen of the Cherokee Nation. *Rogers*, 45 U.S. at 571. This Court held that although he had tribal recognition, he did not have any degree of Indian blood and was therefore a non-Indian. *Id.* at 573. The present facts directly mirror *Rogers* in that Reynolds married an Amantonka Nation citizen and became a naturalized citizen himself. (R. at 6.) Following this Court's precedent, Reynolds is still a non-Indian—regardless of any tribal recognition—due to his complete lack of any Indian blood.

B. The Amantonka Nation lacks inherent criminal jurisdiction over Reynolds because he is a non-Indian, and the Nation must exercise their special domestic violence criminal jurisdiction to prosecute him.

The Amantonka Nation's only criminal jurisdiction over Reynolds comes in the form of VAWA's SDVCJ. The Nation does not possess any other criminal jurisdiction over Reynolds due to him being a non-Indian.

This Court has repeatedly held that Indian tribes only have inherent criminal jurisdiction over enrolled Indians; any other criminal jurisdiction must be created by Congress. *Duro v. Reina*, 495 U.S. 676 (1989) (holding that Indian tribes do not have inherent criminal jurisdiction over nonmember Indians); *United States v. Wheeler*, 435 U.S. 313, 324–26 (1978); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) (holding that Indian tribes do not have inherent criminal jurisdiction over non-Indians). Congress extended tribal criminal jurisdiction statutorily over all Indians regardless of membership through the "*Duro* Fix" legislation by adding to the ICRA definition of "powers of self-government" the ability to "exercise criminal jurisdiction over all Indians." Pub. L. No. 101-511, § 8077(c), 104 Stat. 1856, 1892–93 (1991) (codified at ICRA, 25 U.S.C. § 1301). This legislation also added to ICRA the definition of "Indian" discussed *supra* which implicitly includes the *Rogers* Test (i.e., some degree of Indian blood and political recognition). Because of the use of the phrase "all Indians" in the definition of "powers of self-government," the *Rogers* Test is necessary to proving a tribal court's criminal jurisdiction.

Criminal jurisdiction has not been extended to include non-Indians even if they are enrolled members. The *Rogers* Test is a key component of an Indian tribe's criminal jurisdiction because under the tribe's normal criminal jurisdiction they can only prosecute

Indians. Rolnick, *supra*, at 408. Non-Indians cannot be prosecuted under the tribe's normal criminal jurisdiction. *Oliphant*, 435 U.S. 191. When a defendant properly raises the issue of his lack of Indian status, the burden is on the prosecution to prove the defendant qualifies as an Indian under the *Rogers* Test in order to establish the tribal court's jurisdiction. *Bruce*, 394 F.3d at 1222 (citing *United States v. Hester*, 719 F.2d 1041, 1043 (9th Cir. 1983)); *Cohen's Handbook of Federal Indian Law* § 9.04 (Neil Jessup Newton ed., 2017). Review by a federal court of a tribal court's jurisdiction over a specific case is for "testing whether the tribal court's approach violates the overall federal law requirement that a person be Indian—that is, [(1)] he or she has some Indian descent and [(2)] some political affiliation with an Indian tribe, or some claim to Indian legal status under federal law—or be a non-Indian" such that that the tribe may prosecute under SDVCJ. Rolnick, *supra*, at 409.

The legislative intent also supports the *Rogers* Test being used to determine tribal criminal jurisdiction. The cross-reference from ICRA's definition to IMCA's definition is intended to prohibit a defendant from using different definitions of "Indian" in the federal and tribal courts to simultaneously avoid jurisdiction in both. Margo S. Brownell, Note, *Who is an Indian? Searching for an Answer to the Question at the Core of Federal Indian Law*, 34 U. Mich. J.L. Reform 275, 284 (2001). This is evidenced by Senator Inouye's explanation from the Senate floor as to the cross-referenced incorporation of the *Rogers* Test:

> This consistency in definition assures that a person cannot assert that he is an Indian for purposes of [f]ederal jurisdiction and seek to avail himself of another definition for purposes of avoiding tribal jurisdiction. The same would, of course, be true if a person sought to assert himself as an Indian for purposes of the exercise of tribal jurisdiction, and sought to deny his status as an Indian for purposes of a [f]ederal prosecution.

137 Cong. Rec. 23,673 (1991). Likewise, if a person is a non-Indian for purposes of federal jurisdiction, the person is a non-Indian in tribal court, and, consequently, the tribal court would

lack inherent criminal jurisdiction. Senator Inouye continued by explaining the factors used in the *Rogers* Test and that the test is intended to be used in determining a tribal court's jurisdiction. *Id.* at 23,673–74.

The jurisdictional requirements of Indian status are not discarded when an individual enrolls in a tribe. The *Rogers* Test still applies. Enrollment is the hallmark evidence for proving the political recognition prong, but it does not immediately prove the Indian blood prong. Although most tribes require blood quantum as part of enrollment (and in such cases, enrollment would be evidence enough to satisfy the first prong of the *Rogers* Test), jurisdiction is not a foregone conclusion for nations such as the Amantonka Nation that do not require blood quantum for enrollment.

C. A non-Indian cannot consent to criminal jurisdiction by virtue of becoming a naturalized citizen of the tribe.

Some commentators have focused on this Court's use of the terms "member" and "nonmember" interchangeably with "Indian" and "non-Indian" to advance legal theories that tribal courts' jurisdiction is based on an individual's consent as manifested through the individual's enrollment. *See* L. Scott Gould, *The Consent Paradigm: Tribal Sovereignty at the Millennium*, 96 Colum. L. Rev. 809 (1996). These arguments are emboldened by cases such as *Duro*, but all the sparse consent discussions by courts operate on the assumption that only individuals classified as Indians (that is, meeting the *Rogers* Test) would be able to enroll in a tribe. This is evidenced through *Duro*'s discussion on the possibility of consent: "The retained sovereignty of the tribe is but a recognition of certain additional authority the tribes maintain over *Indians* who consent to be tribal members." *Duro*, 495 U.S. at 693 (emphasis added). When discussing consent, this Court was operating on the assumption that tribes generally

require blood quantum to become an enrolled member, and, while this is generally true, it is not universally true of all nations. *See, e.g.*, Amantonka Nation Code tit. 3, § 201; *see generally* Paul Spruhan, *A Legal History of Blood Quantum in Federal Indian Law to 1935*, 51 S.D. L. Rev. 1 (2006). The prerequisite, as evidenced by *Duro*, is that the individual would be classified as an Indian regardless of whether they enroll in the tribe. *Duro*, 495 U.S. at 693. The *Rogers* Test, therefore, still applies.

An incorrect reading of *United States v. Rogers* also suggests to advocates of the consent theory that there is legal precedent for a consent exception to the *Rogers* Test. The *Rogers* Court noted: "[W]e think it very clear, that a white man who at mature age is adopted in an Indian tribe does not thereby become an Indian . . . . He may by such adoption become entitled to certain privileges in the tribe, and make himself amenable to their laws and usages. Yet he is not an Indian[.]" *Rogers*, 45 U.S. at 572–73. This dicta is pre-*Oliphant* in which this Court held that Indian tribes no longer had sovereign territorial jurisdiction. *Oliphant*, 435 U.S. 191. At the time of *Rogers*, any non-Indian who moved into Indian country or even traveled through the territory would be "amenable to their laws." Commentators promoting this consent "precedent" in *Rogers* also concede that the "[*Rogers*] Court explicitly disclaimed any conclusion" on the matter through the use of the word "may." Paul Spruhan, *"Indians, in a Jurisdictional Sense": Tribal Citizenship and Other Forms of Non-Indian Consent to Tribal Criminal Jurisdiction*, 1 Am. Indian L.J. 79, 85 (2012). Aside from the discussion in *Duro* and the "may" in *Rogers*, there is no other case precedent for non-Indian consent within criminal Indian law.

Even if a non-Indian could consent to tribal criminal jurisdiction by becoming a member, the individual would still be considered a non-Indian for federal jurisdiction by failing

the *Rogers* Test. This produces an uneven result; the result that Congress explicitly sought to quash in enacting the *Duro* Fix legislation. *See* Section I.B. *supra*. Congress expressed a clear legislative intent to ensure that there would be a uniform definition of "Indian" between federal and tribal courts. 137 Cong. Rec. 23,673 (1991). This is the entire purpose behind adopting the *Rogers* Test: to ensure an equal determination of Indian status between the federal and tribal judiciaries.

The fact that the Amantonka Nation government recognizes Reynolds as an "Indian" and yet the Amantonka Nation courts cannot exercise inherent criminal jurisdiction is not a disparate result; it is an even-handed application of the rule. Suppose that a prosecution was brought in federal court under IMCA. Under IMCA, the federal court's jurisdiction requires Indian status. Even if the federal government recognizes the defendant as an Indian (e.g. the defendant receives formal or informal federal assistance only available to Indians), satisfying the second prong of the *Rogers* Test, *Zepeda*, 792 F.3d at 1114, the federal courts would not have jurisdiction over the case if there is not some degree of Indian blood. The federal government's recognition of an individual as an Indian does not satisfy the jurisdictional requirements for the federal court. Similarly, the tribal government's recognition of an individual as an Indian does not satisfy the jurisdictional requirements for the tribal court. This result is an even-handed application—as Congress intended.

The Amantonka Nation Supreme Court correctly relied on *Santa Clara Pueblo v. Martinez,* 436 U.S. 49 (1978) for the proposition that the Nation can define and control its own membership. (R. at 7.) However, this is of little relevance as membership does not inherently create jurisdiction where there was none prior. Becoming a citizen can only satisfy the second prong of the *Rogers* Test of Indian status—it does nothing to satisfy the degree of blood

requirement in the first prong. The Amantonka Nation Supreme Court misapplied the holding of *Santa Clara Pueblo* to erroneously find that Reynolds was subject to the jurisdiction of the Amantonka Nation by virtue of his membership—but this disregards the *Rogers* Test.

Regardless of Reynolds' citizenship status, he is a non-Indian and Congress has chosen not to extend the Amantonka Nation's normal criminal jurisdiction to include non-Indians. He has not consented to the Nation's jurisdiction by naturalizing, and he has actively opposed the jurisdiction throughout the proceedings. The *Rogers* Test controls whether the Nation possesses inherent criminal jurisdiction. Based on the undisputed lack of Indian blood, Reynolds fails the test and is a non-Indian. The Amantonka Nation's jurisdiction must therefore be through their SDVCJ as granted to them by Congress in VAWA.

II. Having appointed counsel that does not meet the constitutional definition of "counsel" is a deprivation of a non-Indian's Sixth Amendment rights and a violation of an Indian's right to equal protection under the law in domestic violence cases.

The Amantonka Nation Supreme Court found Reynolds to be a non-Indian with no right to counsel and that his counsel appointment was not a violation of equal protection. But Reynolds lacks any Indian blood and is a non-Indian; thus, he is entitled to counsel at least equal to the counsel guaranteed under the Constitution. Alternatively, even if Reynolds were a non-Indian, appointment of counsel that is unequal to the counsel to which a non-Indian has a right violates the equal protection provisions in ICRA. Because this appointment of separate counsel is not closely tailored to a substantial interest, this Court must redress the violation.

A. Because Reynolds is a non-Indian being prosecuted under VAWA, he is entitled to a state or federally licensed attorney to represent him, and the Amantonka Nation has failed to provide such an attorney.

The Amantonka Nation Supreme Court found that Reynolds is an Indian and is not entitled to counsel as guaranteed by the Sixth Amendment to the United States Constitution. However, as explained above, Reynolds is a non-Indian. Therefore, the Nation must exercise SDVCJ under VAWA and provide Reynolds the right to counsel as guaranteed by the Sixth Amendment.

Congress established SDVCJ for participating tribes that elected to exercise such jurisdiction. VAWA § 1304(b)(1). VAWA defines SDVCJ as "criminal jurisdiction that a participating tribe may exercise under this section but could not otherwise exercise." *Id.* § 1304(a)(6). Under VAWA, participating tribes are empowered to exercise this jurisdiction to prosecute domestic violence, dating violence, and certain violations of protection orders that occur in Indian country. *Id.* § 1304(c). However, participating tribes must provide certain rights and safeguards to defendants under VAWA.

VAWA states that in a trial in which a participating tribe is exercising SDVCJ, the participating tribe must provide the defendant all rights contained in 25 U.S.C. § 1302(c) if imprisonment may be imposed. VAWA § 1304. Section 1302(c) is part of ICRA, and it states that when an Indian tribe imposes a sentence of more than one year on a defendant, the Indian tribe must "provide to the defendant the effective assistance of counsel at least equal to that guaranteed by the United States Constitution." ICRA, 25 U.S.C. § 1302(c)(1).

"In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence." U.S. Const. amend. VI. Of all the rights a defendant enjoys, the

right to counsel is paramount as it affects a defendant's effective assertion of any other rights. *United States v. Cronic*, 466 U.S. 648, 654 (1984). "The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not still be done." *Gideon v. Wainwright*, 372 U.S. 335, 343 (1963) (quoting *Johnson v. Zebst*, 304 U.S. 458, 462 (1938)). The Sixth Amendment right to counsel is a safeguard "deemed necessary to insure fundamental human rights of life and liberty," and "embodies a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty." *Johnson*, 304 U.S. at 462. Though the right to counsel is understood to be crucial, the law surrounding it has taken time to develop.

Originally, the right to counsel was understood to mean the right to employ one's own counsel and not to have counsel provided. *See Bute v. Ill.*, 333 U.S. 640, 663 (1948); *see also* Alexander Holtzoff, *The Right of Counsel under the Sixth Amendment*, 20 N.Y.U. L. Rev. 1, 7 (1944). Although the holding was limited to its facts, this Court first recognized in *Powell* that the right to counsel was of "fundamental character" and found that in a capital case in which the defendant is unable to afford counsel and unable to make his own defense "because of ignorance, feeble mindedness, illiteracy, or the like," a court has a duty to appoint counsel. *Powell v. Ala.*, 287 U.S. 45, 71 (1932). In light of this recognition of the importance of the Sixth Amendment, the Court held in *Johnson v. Zebst* that a federal court must appoint counsel for a defendant that cannot afford it. 304 U.S. 458. Compliance with the constitutional mandate in the Sixth Amendment is a necessary "jurisdictional prerequisite" to depriving an individual of life and liberty. *Id.* To put it differently, a judge must "complete the court" to acquire jurisdiction to proceed when a defendant's life or liberty is at stake. *Id*. at 468.

The Court's jurisprudence of the Sixth Amendment then shifted its focus to the states. In *Gideon v. Wainwright*, this Court found that the Sixth Amendment right to counsel was a fundamental right incorporated against the states in the Due Process Clause of the Fourteenth Amendment. *Gideon*, 372 U.S. at 345. The Court later clarified that although *Gideon* involved a felony, its rationale has relevance to any criminal trial; thus, the Court held that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense . . . unless he was represented by counsel at his trial." *Argersinger v. Hamlin*, 407 U.S. 25, 32, 37 (1972).

This Court has recognized that the Sixth Amendment right to counsel is to effective assistance of competent counsel. *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970). "The Sixth Amendment recognizes the right to assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results." *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Although the Supreme Court has not specifically declared that "counsel" as used in the Sixth Amendment means a licensed or trained attorney, the Court has used the term "attorney" and "lawyer" interchangeably with the term "counsel" in referring to constitutional guarantees. *See Engle v. Isaac*, 456 U.S. 107, 134 (1982) ("We have long recognized, however, that the Constitution guarantees criminal defendants only a fair trial and a competent attorney."); *Cronic*, 466 U.S. at 658 (1984) ("[W]e presume that the lawyer is competent to provide the guiding hand that the defendant needs[.]"); *see also* Bruce A. Green, *Lethal Fiction: The Meaning of "Counsel" in the Sixth Amendment*, 78 Iowa L. Rev. 433, 444–43 (1993). Lower courts have explicitly taken "counsel" to mean licensed attorney.

In *Solina v. United States*, the Second Circuit Court of Appeals recognized that the historical backdrop and the legislation passed around the time of the adoption of the Sixth

Amendment "lays to rest any speculation that the phrase 'the assistance of counsel' in the Sixth Amendment was meant to signify anything less than representation by a licensed practitioner." 709 F.2d 160, 167 (2d Cir. 1983). The court noted that many courts have found that the term "counsel" in the Sixth Amendment is restricted to "lawyers admitted to practice in state and federal court." *Id.* at 166 (collecting cases). The court relied on the Judiciary Act of 1789 in support of its finding, as the court reasoned that the separate terms "counsel" and "attorney at law" reflected English origins in American law and the English tradition of a bifurcated legal profession. *Id.* at 166. Moreover, Congress used both terms because it "wish[ed] to make sure that members of both branches were accorded the right to appear in federal courts." *Id.*

The actions of Congress in the session following the Judiciary Act of 1789 provided more assurance of Congress' intent. The Second Circuit looked to the Act of April 30, 1790, to further glean Congress' intended meaning of "counsel" in the Sixth Amendment. *Solina,* 709 F.2d at 167. That act used the term "counsel learned in the law" and the court construed this to give effect to the Sixth Amendment. *Id.* This term was also used in equivalent provisions of the right to counsel by English Parliament and some original states. *Id.* at 167, 167 n.7. The Second Circuit understood and recognized that the language of the Sixth Amendment, the understanding of the term "counsel" at the time of the adoption of the Bill of Rights, the Judiciary Act of 1789, and the Act of April 30, 1790, all prove an intent by Congress to afford the right to be represented by licensed attorneys. *Id.* at 167. But the Second Circuit Court of Appeals is not alone in recognizing the historical evidence of Congress' intent behind the Sixth Amendment.

The Seventh Circuit Court of Appeals has recognized that the "counsel" the Sixth Amendment refers to is "a professional advocate who meets the standards set by the court."

Reese v. Peters, 926 F.2d 668, 669 (7th Cir. 1991). The court drew upon the historical reasoning of the Second Circuit in *Solina* and noted that the term "counsel" meant "a person deemed by the court fit to act as another's legal representative and inscribed on the list of attorneys" at the time the Sixth Amendment was ratified. *Id.* at 669. The Seventh Circuit ultimately decided that "[t]he *constitutional* question is whether the court has satisfied itself of the advocate's competence and authorized him to practice law." *Id.* at 670. Essentially, the attorney must be licensed after the court concludes that the attorney was "fit to render legal assistance." *Id*.

At least two other circuits have recognized that the Sixth Amendment meaning of "counsel" refers to a professional attorney. *See Harrison v. United States*, 387 F.2d 203, 212 (D.C. Cir. 1967); *United States v. Wilhelm*, 570 F.2d 461, 465 (3d Cir. 1978) ("Professional qualifications were assumed of all 'counsel' chosen to represent defendants in criminal proceedings."). The D.C. Circuit Court of Appeals has even stated that the demands of the Sixth Amendment are not met if a defendant is not represented by a member of the bar. *Harrison*, 387 F.2d at 212. The right to counsel is so crucial that "[i]t is unthinkable that so precious a right, or so grave a responsibility, can be entrusted to one who has not been admitted to the practice of the law, no matter how intelligent or well educated he may be." *Id.*

One circuit has misconstrued the Judicial Act of 1789 to find that the Sixth Amendment does not limit "counsel" to only licensed attorneys. *See United States v. Whitesel*, 543 F.2d 1176, 1179 (6th Cir. 1976). Rather than recognizing the historical background of the ratification of the Sixth Amendment, the Sixth Circuit Court of Appeals construed the statutory terms "counsel or attorneys at law" in the Judiciary Act of 1789 to indicate that it is "probable the proposers of the Sixth Amendment did not mean to limit representation exclusively to

'attorneys at law.'" *Whitesel*, 543 F.2d at 1179. But the court prefaced this holding. It stated that for a judge to allow an unlicensed person to represent a defendant the court "would at a minimum require a showing that such person was sufficiently learned in the law to be able adequately to represent his client in court." *Id.* at 1180.

The Sixth Circuit's decision in *Whitesel* has been criticized as standing in opposition to the historical understanding of what the Framers meant in using the term "counsel." The *Solina* court criticized the *Whitesel* decision as running "contrary to the holding of many courts that the term 'counsel' as employed in the Sixth Amendment is confined to lawyers admitted to practice in state or federal court." *Solina*, 709 F.2d at 166 (collecting cases). The court in *Whitesel* failed to take into consideration the historical underpinning to the ratification of the Sixth Amendment.

As the *Solina* court pointed out, the alternative terms used in the Judicial Act of 1789 stemmed from the English origins of the American legal profession. *Solina*, 709 F.2d at 166. The historical evidence and legislation preceding the ratification of the Sixth Amendment show that the Framers intended for "counsel" to mean licensed attorney, and the holdings of multiple circuit courts of appeals recognize as much. Therefore, the Amantonka Nation needed to provide Reynolds with a licensed attorney that has been admitted to a state or federal bar to ensure proper criminal jurisdiction over him.

The Amantonka Nation did not provide Reynolds appropriate counsel under the Sixth Amendment at trial. Reynolds' trial counsel was a member of the Amantonka Nation Bar and possessed a JD degree. (R. at 7.) But, according to multiple circuit courts of appeals, this is not counsel under the Sixth Amendment. The historical underpinning and legislation preceding the ratification of the Sixth Amendment indicate that "counsel" was understood to mean a licensed

attorney admitted to practice in state or federal court. Reynolds' attorney was not admitted to practice in any state or federal court. There is no indication that Reynolds' trial counsel has ever taken a state bar exam or attempted to be admitted by a state or federal bar. Reynolds' trial counsel falls short of the counsel guaranteed in the Sixth Amendment, posing jurisdictional problems for the Amantonka Nation.

In order to exercise criminal jurisdiction over Reynolds under VAWA, the Amantonka Nation must provide the assistance of counsel *at least* equal to that guaranteed under the United States Constitution. *See* ICRA, 25 U.S.C. § 1302(c)(1); VAWA § 1304. The Amantonka Nation has failed to provide Reynolds counsel as required by the Sixth Amendment; thus, the Amantonka Nation has failed to provide counsel *at least* equal to counsel guaranteed under the United States Constitution. Jurisdiction over Reynolds was never properly acquired, as the Amantonka Nation failed to "complete the court" and acquire jurisdiction. *Johnson*, 304 U.S. at 468 ("A court's jurisdiction at the beginning of trial may be lost . . . due to failure to complete the court—as the Sixth Amendment requires—by providing counsel for an accused who is unable to obtain counsel . . . and whose life and liberty is at stake.").

The Amantonka Nation Supreme Court looked, in part, to the fact that Reynolds did not allege any error by his appointed counsel in deciding he had been provided adequate counsel. (R. at 7.) However, this fact is irrelevant as to whether Reynolds was provided assistance of counsel in conformity with the Sixth Amendment. Reynolds has not raised a claim of ineffective assistance of counsel that would require him to allege such facts at any stage. *See Strickland*, 466 U.S. 668. Rather, Reynolds has alleged he was deprived of counsel altogether, and having no counsel always requires a new trial. *Reese*, 926 F.2d at 669 (citing *Holloway v. Ark.*, 466 U.S. 475, 489 (1978)). The lack of allegations of any particular errors

by Reynolds' trial counsel has no bearing on whether Reynolds was provided counsel under the Sixth Amendment or VAWA.

For a tribal nation to acquire jurisdiction to prosecute a non-Indian under VAWA, it must follow the demands of the statute. The Amantonka Nation has failed to adhere to all the requirements of VAWA as they failed to provide adequate counsel. Amantonka Nation's failure to provide adequate counsel deprives the Nation of jurisdiction over Reynolds, and, as a result, this Court must reverse the Thirteenth Circuit Court of Appeals and grant habeas corpus relief.

B. Even if Reynolds is found to be an Indian, the equal protection provision of ICRA demands he be provided an attorney that is equivalent to that of a non-Indian, and he is denied that under the laws of the Amantonka Nation.

The Amantonka Nation Supreme Court found Reynolds to be an Indian and that he is not entitled to an attorney that is equivalent to an attorney guaranteed to a non-Indian. However, the equal protection clause of ICRA would be coextensive to that of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in this instance. Therefore, the Amantonka Nation must provide Reynolds the same protection of their laws as non-Indians, and the Amantonka Nation has failed to provide this protection.

i. Constitutional doctrines of equal protection should be applied to determine whether Reynolds was denied equal protection under the law.

The guarantees of the United States Constitution have no application to Indian nations unless expressly made applicable to Indian nations by the Constitution itself or by an act of Congress. *Groundhog v. Keeler*, 442 F.2d 674, 681 (10th Cir. 1971). Congress enacted the Indian Civil Rights Act in 1968 with language nearly identical to that of the United States

Constitution. *Wounded Head v. Tribal Council of Olgala Sioux Tribe of the Pine Ridge Reservation*, 507 F.2d 1079, 1082 (8th Cir. 1975). Although there are specific exceptions, ICRA had the effect of imposing "restrictions applicable to federal and state governments" on Indian tribal governments. *Id.* One particular exception to ICRA is some respects of the Equal Protection Clause of the Fourteenth Amendment. *White Eagle v. One Feather*, 478 F.2d 1311, 1313 (8th Cir. 1973) (citing *Groundhog*, 442 F.2d at 682). As this Court posited, equal protection under ICRA differs from that of the Constitution in that it guarantees "'the equal protection of *its* [the tribe's] laws,' rather than of 'the laws.'" *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 63 n.14 (1978) (alteration in original). Although this Court has not pronounced a specific standard for when strict application of constitutional equal protection doctrines is appropriate, there is a common standard among the circuit courts of appeals.

The prevailing standard among the circuits in whether constitutional equal protection doctrines apply under ICRA is to examine whether the strict application would significantly interfere with any important tribal values or significantly alter firmly embedded tribal customs. *See, e.g.*, *Howlett v. Salish & Kootenai Tribes of the Flathead Reservation*, 529 F.2d 233, 238 (9th Cir. 1976); *Martinez v. Santa Clara Pueblo*, 540 F.2d 1039, 1046 (10th Cir. 1976), *rev'd on other grounds*, 436 U.S. 49 (1978); *Wounded Head v. Tribal Council of Oglala Sioux Tribe of the Pine Ridge Reservation*, 507 F.2d 1079, 1083 (8th Cir. 1975); *White Eagle v. One Feather*, 478 F.2d 1311, 1314 (8th Cir. 1973). Under the standard, a court must refrain from applying constitutional doctrines of equal protection if doing so would amount to "forcing an alien culture on . . . [the] tribe." *Wounded Head*, 507 F.2d at 1083 (quoting *White Eagle*, 478 F.2d at 1314). However, where the practices of a tribe are "parallel" to those in American society, there is no problem of forcing an "alien culture" on a tribe and the constitutional

doctrines of the Equal Protection Clause of the Fourteenth Amendment would apply. *Howlett*, 529 F.2d at 238. The legislative history of ICRA shows the concerns of Congress are best served by this standard.

It is clear from the report of the Senate Subcommittee on the Judiciary that "Congress was concerned primarily with tribal administration of justice." *Groundhog*, 442 F.2d at 682. Testimony before the Subcommittee revealed that prior to ICRA, "tribal courts ha[d] a variety of rules of evidence, procedures, and concepts of justice, which in many instances, [were] devoid of fundamental guarantees secured by the Constitution." S. Rep. No. 841, at 11 (1967). The Subcommittee further found that "[i]ndividual Indians have suffered many injustices as a result of vacillating tribal court standards, untrained judges, and unwritten tribal laws." *Id*. Part of the early legislative bills even contained provisions whose purpose was to provide model legislation that would "safeguard the constitutional rights of the American Indian." *Id.* at 6. The legislative history and hearings of the committees indicate that Congress had a broad concern for protecting the constitutional rights of Indians in regard to criminal justice and the administration of justice when it enacted ICRA. *See Martinez*, 540 F.2d at 1043 n.7. Little attention was given to constitutional rights other than those that protect an individual under the criminal law and procedure in tribal courts. *Id.* at 1044.

However, the legislative history of ICRA, the ICRA statute itself, and the court decisions that followed the enactment of ICRA "reflect[] a deliberate attempt to balance the interests in individual justice on the one hand with notions of tribal sovereignty and tradition on the other." Michael Reese, *The Indian Civil Rights Act: Conflict Between Constitutional Assimilation and Tribal Self-Determination*, 20 Se. Pol. Rev. 29, 36 (1992). While Subcommittee members voiced intent to extend broad constitutional protections to individual

Indians at numerous times, there is evidence of a concern for undermining tribal authority. *Martinez,* 540 F.2d at 1044. In passing ICRA, "Congress attempted to guarantee individual rights to reservation Indians without severely disrupting traditional tribal culture." U.S. Comm'n on Civil Rights, *American Indian Civil Rights Handbook* 11 (1972). "[C]ourts will have the serious responsibility of drawing a balance between respect for individual rights and respect for Indian custom and tradition." *Id.*

This Court has even recognized Congress' dual concerns in ICRA. *Santa Clara Pueblo,* 436 U.S. at 62. Congress intended ICRA to strengthen the constitutional rights of individual tribal members as well as "promote the well-established federal 'policy of furthering Indian self-government.'" *Id.* (quoting *Morton v. Mancari,* 417 U.S. 535, 551 (1974)). The legislative history of ICRA indicated that Congress' wording and the final provisions are an accommodation of the competing goals of preventing injustices previously perpetuated by tribal governments and maintaining tribal sovereignty. *See id.* at 66–67.

Congress intended to afford the strong constitutional protections enjoyed by non-Indians to Indians with respect to their governments, and the standard adopted by the Seventh, Eighth, and Tenth Circuits best captures this intent. This standard takes into account the customs and practices of a tribal nation and examines the impact constitutional doctrines would have on them. This standard protects deeply embedded and important traditions of a tribe while ensuring the promises of ICRA are carried out. Because the standard adopted by these circuits serves to both protect the constitutional rights of individual Indians and the traditions of tribal nations, this Court should adopt this standard for determining when the equal protection clause of ICRA requires a strict application of constitutional equal protection doctrines.

Applying the standard above to the facts of this case shows that implementing the constitutional doctrines of the Equal Protection Clause with respect to right to counsel would cause little—if any—impairment to Amantonka Nation traditions or customs. Like state and federal law in other jurisdictions, the Amantonka Nation has statutory provisions allowing for defendants to be represented by professional attorneys and for appointing counsel for those that are unable to afford their own. Amantonka Nation Code tit. 2, § 503. The laws of the Amantonka Nation also have a number of provisions laying out minimum credentials that an attorney must have and ethical rules that professional attorneys must follow. Amantonka Nation Code tit. 2, §§ 501, 602, 607; *compare id.* tit. 2, ch.7 *with* Model Rules of Prof'l Conduct r. 1.1–1.8, 1.14–1.16, 2.1, 3.2–3.5, 3.7–3.8, 4.2, 7.1, 7.3 (Am. Bar Ass'n 2018).[3]

It is evident that the Amantonka Nations' practices regarding right to counsel parallel those found in the law of the United States. Applying constitutional equal protection doctrines to the laws of the Amantonka Nation can hardly be said to be "forcing an alien culture on the tribe." *Wounded Head*, 507 F.2d at 1083 (quoting *White Eagle*, 478 F.2d at 1314). Traditions and deeply rooted customs of tribal nations must be respected and taken into account, but the traditions of the Amantonka Nation are parallel to those found in the United States regarding the appointment and assistance of counsel. Because the traditions of the Amantonka Nation will barely be disturbed by applying constitutional equal protection doctrines, this Court should find that the Amantonka Nation is subject to strict application of the Equal Protection Clause of the Fourteenth Amendment with regard to right to counsel.

[3] The full text of the cited ethical rules of the Amantonka Nation and the Model Rules of Professional Conduct are provided in Appendix C.

ii. Reynolds' right to equal protection under the law was violated under constitutional standards of equal protection.

"No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. When evaluating laws under the Equal Protection Clause, courts must first determine the appropriate burden of justification "by looking to the nature of the classification and the individual interests affected." *Zablocki v. Redhail*, 434 U.S. 374, 382 (1978) (citing *Mem'l Hosp. v. Maricopa Cty.*, 415 U.S. 250, 253 (1974)). Equal protection analysis demands strict scrutiny when a law "impermissibly interferes with the exercise of a fundamental right." *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 312 (1976). "When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests." *Zablocki*, 434 U.S. at 388. This Court has found the right to counsel to be a fundamental right.

The first eight amendments protect certain fundamental rights, "and among them [is] the fundamental right of the accused to the aid of counsel in a criminal trial." *Gideon v. Wainwright*, 372 U.S. 335, 343 (1963) (quoting *Grosjean v. Am. Press. Co.*, 297 U.S. 233, 243–44 (1936)). This Court has recognized that the right to counsel may not be fundamental and essential for a fair trial in other jurisdictions—but it is in the United States. *Id.* "Both equal protection and due process emphasize the central aim of our entire judicial system—all people charged with crime must, so far as the law is concerned, 'stand on an equality before the bar of justice in every American court.'" *Griffin v. Ill.*, 351 U.S. 12, 17 (1956) (quoting *Chambers v. Fla.*, 309 U.S. 227, 241 (1940)).

To establish standing, a party must show an injury as a result of illegal conduct and that the injury may be redressed by the court. *Heckler v. Matthews*, 465 U.S. 728, 738 (1984). Discrimination itself can cause serious noneconomic injuries to people denied equal treatment solely because of their classification. *Heckler*, 465 U.S. at 741. Various opinions from this Court demonstrate that one may gain standing to bring equal protection claims by being part of the group denied equal treatment because of classification. *See Heckler*, 465 U.S. at 741; *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983); *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954). This Court has recognized before that Reynolds may suffer an injury for judicial purposes by being denied equal treatment by a governmental classification—and if this Court finds him to be an Indian, he has suffered this injury. In addition, this Court has authority to declare the Amantonka Nation's statutes void under ICRA. Therefore, because Reynolds was denied equal counsel to what a non-Indian is guaranteed under ICRA for domestic violence charges, he has standing to bring this action.

From the outset, it must be acknowledged that the counsel guaranteed to non-Indians under the Amantonka Nation Code is not adequate under VAWA. As stated above, VAWA demands non-Indian defendants be afforded a state or federal licensed attorney, but the Amantonka Nation Code does not provide this to either non-Indian or Indian defendants. *See* Amantonka Nation Code tit. 2, §§ 503, 607. For purposes of jurisdiction to prosecute non-Indians for domestic violence offenses, the Amantonka Nation Code does not guarantee the necessary counsel. It is against the "counsel" guaranteed under VAWA that Reynolds' right to counsel at trial must be compared.

Indians in the Amantonka Nation are not guaranteed counsel that is equal to the counsel guaranteed to non-Indians in cases of domestic violence. Indian defendants may have

assistance of counsel at their own expense or they will be appointed a public defender under Title 2, section 607(a) if they are found to be indigent. Amantonka Nation Code tit. 2, § 503(1)–(2). A public defender under section 607(a) must:

> (1) Be at least 21 years of age; (2) Be of high moral character and integrity; (3) Not have been dishonorably discharged from the armed services; (4) Be physically able to carry out the duties of the office; (5) Successfully complete[], during their probationary period, a bar examination administered as prescribed by the Amantonka Nation's Executive Board; and (6) Must have training in Amantonka law and culture.

Amantonka Nation Code tit. 2, § 607(a). There is no requirement for admission to a state or federal bar in the tribal code. Requirements equivalent to state bar admission such as passage of a state bar exam, educational requirements before being eligible to practice law, educational requirements after being eligible to practice law (e.g., Continuing Legal Education), and passage of a professional conduct exam are not present in the code either.[4] It is apparent that the counsel Reynolds was guaranteed under the Amantonka Nation Code as an Indian is not equal to counsel guaranteed to non-Indians in domestic violence cases. Even under the rationale of the Amantonka Nation Supreme Court, Reynolds has been denied equal protection regarding his right to counsel.

The Amantonka Nation Supreme Court rejected Reynolds' contention that his attorney was less qualified than counsel guaranteed under the Sixth Amendment. (R. at 7.) That court's conclusion is demonstrably false. Reynolds' attorney was only part of the Amantonka Nation Bar Association and had only taken the Amantonka Nation Bar exam. (R. at 7.) The Amantonka Nation Supreme Court stated that there appeared to be no evidence that the

[4] For bar admission requirements across states, *see generally* Nat'l Conference of Bar Exam'rs & Am. Bar Ass'n Section for Legal Educ. and Admissions to the Bar, *Comprehensive Guide to Bar Admissions Requirements 2017* (2017).

Amantonka Nation Bar Exam differed from a state bar exam. (R. at 7.) If other tribal nation bar exams are any indication of the Amantonka Nation Bar Exam, there are discernable discrepancies between it and state bar exams.

Other tribal nations' bar exams are illustrative of the differences between tribal and state bar exams. The Tulalip Tribes require passage of a tribal bar exam to practice law, and this exam is an open book exam consisting of 28 multiple-choice questions. *Tulalip Tribal Bar Exam*, Tulalip Tribes, https://www.tulaliptribes-nsn.gov/Home/Government/Departments/TribalCourt/TribalBarExam.aspx [https://perma.cc/CQ8T-YXDU]. The tribal bar exam of the Navajo Nation provides a more extensive example of tribal bar exams as it tests exam takers on 20 categories of Navajo tribal law and Indian law and 5 categories of United States law. *Bylaws*, Navajo Nation B. Ass'n, http://www.navajolaw.info/bylaws [https://perma.cc/7JTC-63VV]. Whether the Amantonka Nation Bar Exam is more like that of the Tulalip Tribes or the Navajo Nation should carry no weight in this Court's decision, as both substantially differ from most state bar exams.

As of 2019, 31 states administer the Uniform Bar Exam ("UBE"), and, in 2020, 32 will administer it. Nat'l Conference of Bar Exam'rs, *Understanding the Uniform Bar Exam* 2 (2017). A UBE score is transferrable across all UBE jurisdictions. *Id*. Because a majority of states now use the UBE, it serves as an appropriate comparison to the Amantonka Nation Bar Exam of what is standard in a state bar exam.

The UBE has three components that test potential lawyers on "knowledge of general principles of the law, legal analysis and reasoning, factual analysis, and communication skills." Nat'l Conference of Bar Exam'rs, *supra*, at 4. The subjects of law included on the UBE include: "Business Associations, Conflict of Laws, Family Law, Secured Transactions, Trusts

& Estates, Contracts, Constitutional Law and Procedure, Evidence, Real Property, Torts, and Civil Procedure." *Id.* at 5. The UBE is extensive and is administered over two days in four separate three-hour sessions. *Id.* at 11.

Although the record does not contain any details of the Amantonka Nation Bar exam, it is apparent that if it is correlative to other tribal bar exams, it is inadequate compared to the majority of state bar exams. The majority of states require more intense testing on lawyering skills, state law, and federal law. Most states also test far more categories of law than most tribal bar examinations test. While it is understandable for tribes to test knowledge of tribal law, tribal bar exams do not test candidates in areas that states have found important for licensed attorneys to know—such as the subjects on the UBE. The Amantonka Nation Bar Exam is not likely to be equivalent to state bar exams. Thus, counsel who has passed the Amantonka Nation Bar Exam would not be equal to the state licensed counsel guaranteed to non-Indians.

Neither the counsel Reynolds was guaranteed nor the counsel he received are equal to the counsel guaranteed to non-Indians. Therefore, this Court must apply strict scrutiny and determine whether a sufficiently important state (i.e., tribal) interest is at work and whether the classification here was closely tailored to effectuate the interest. *Zablocki*, 434 U.S. at 388.

The Amantonka Nation has an interest in efficient and effective administration of justice, but the Amantonka Nation did not tailor its approach closely to this purpose. Providing different counsel to Indian and non-Indian defendants in domestic violence cases may serve this purpose in light of the requirements of VAWA; however, the Amantonka Nation may have served this purpose in different, more equal ways. All defendants could have been afforded the same type of counsel for domestic violence charges and the same type for all other offenses.

This would not burden the Nation any more than is required by VAWA, as it would only mean assigning all defendants in domestic violence cases VAWA-qualified counsel. A simple reallocation of resources can accomplish the goals of the Amantonka Nation without discriminating in domestic violence cases. The discriminatory measures taken by the Amantonka Nation also only minimally serves the goal of effective administration of justice.

Denying Indians the same counsel as non-Indians in domestic violence cases leads to a dual sense of justice with questionable legitimacy. As this court noted in *Griffin*, the central goal of our system of justice is for all people charged with a crime to be equal before the "bar of justice." *Griffin v. Ill.*, 351 U.S. 12, 17 (1956). Not only does discrimination such as this lack close tailoring to the goal of effective justice, it runs counter to the entire idea of justice where constitutional equal protection applies. The Amantonka Nation has a noble goal of effectively administering justice, but the actions they have taken to implement it are neither closely tailored to it nor effectively progressing it.

Equal protection as incorporated by the Fourteenth Amendment to the United States Constitution must be applied to the Amantonka Nation. Under the constitutional doctrines of equal protection, the Amantonka Nation has failed to provide Reynolds—and all other Indians—equal protection under the law with regard to appointed counsel in domestic violence prosecutions. The counsel an Indian receives when charged with domestic violence is markedly different than the counsel non-Indians are guaranteed under VAWA, and this discrimination is far from closely tailored to the Amantonka Nation's interest in efficient and effective administration of justice. Because Reynolds was not afforded equal protection under the law, we ask that this Court grant his petition for habeas corpus relief.

CONCLUSION

The case tried in the Amantonka Nation District Court lacked jurisdiction. Due to Reynolds' lack of Indian blood, he is a non-Indian. The Amantonka Nation District Court lacked jurisdiction to try the case without exercising the Nation's special domestic violence criminal jurisdiction conferred by Congress in the Violence Against Women Reauthorization Act of 2013. The Amantonka Nation failed to afford Reynolds the attendant safeguards and guarantees within the Act as a non-Indian.

Specifically, the counsel appointed to Reynolds does not satisfy the criteria for "counsel" guaranteed as part of the special domestic violence criminal jurisdiction and the Sixth Amendment to the Constitution. The Amantonka Nation District Court was required to provide Reynolds with counsel at least equal to that guaranteed under the Sixth Amendment to the Constitution to acquire special domestic violence criminal jurisdiction. That court failed to do so and, as a result, failed to gain jurisdiction over Reynolds as a non-Indian.

Even if Reynolds were an Indian, having counsel appointed to him that is not equal to that guaranteed to a non-Indian in cases of domestic violence violates his right to equal protection under the law. Applying constitutional doctrines of equal protection to the appointment of counsel in domestic violence cases would not seriously disrupt any embedded tribal traditions or customs. Therefore, the Amantonka Nation must have a substantial interest in having separate counsel for Indians and non-Indians, and the law must be closely tailored to that interest. Appointment of separate counsel for Indians and non-Indians is not closely tailored to any interest the Amantonka Nation has and is a violation of equal protection.

Therefore, this Court should reverse the U.S. Court of Appeals for the Thirteenth Circuit and grant habeas corpus relief and any other relief this Court sees fit.

APPENDIX A: CONSTITUTIONAL PROVISIONS

U.S. Const. amend. VI

> In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence.

U.S. Const. amend. XIV, § 1, cl. 3

> No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX B: STATUTORY PROVISIONS

Indian Major Crimes Act, 18 U.S.C. § 1153 (2012)

(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

Indian Civil Rights Act of 1968, 25 U.S.C. § 1301 (2012)

For purposes of this title, the term--

(1) "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;

(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;

(3) "Indian court" means any Indian tribal court or court of Indian offense; and

(4) "Indian" mean any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 18, United States Code, if that person were to commit an offense listed in that section in Indian country to which that section applies.

Indian Civil Rights Act of 1968, 25 U.S.C. § 1302 (2012)

(a) In general. No Indian tribe in exercising powers of self-government shall--

. . . .

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

. . . .

(c) Rights of defendants. In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a term of imprisonment of more than 1 year on a defendant, the Indian tribe shall --

(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 attorneys;

. . . .

Indian Civil Rights Act of 1968, 25 U.S.C. § 1303 (2012)

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, § 904, 127 Stat. 54, 120–23 (to be codified at 25 U.S.C. § 1304)

Title II of Public Law 90-284 (25 U.S.C. 1301 et seq.) (commonly known as the "Indian Civil Rights Act of 1968") is amended by adding at the end the following:

SEC. 204 TRIBAL JURISDICTION OVER CRIMES OF DOMESTIC VIOLENCE.

(a) Definitions.—In this section:

. . . .

(2) Domestic violence.—The term "domestic violence" means violence committed by a current or former spouse or intimate partner of the victim . . . under the domestic- or family- violence laws of an Indian tribe that has jurisdiction over the Indian country where the violence occurs.

(3) Indian country.—The term "Indian country" has the meaning given the term in section 1151 of title 18, United States Code.

. . . .

(b) Nature of the criminal jurisdiction.—

(1) In general.—Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by sections 201 and 203, the powers of self-government of a participating tribe include the inherent power of that tribe, which is hereby recognized and affirmed, to exercise special domestic violence criminal jurisdiction over all persons.

. . . .

(4) Exceptions.—

. . . .

(B) Defendant lacks ties to the Indian tribe.—A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant only if the defendant—

(i) resides in the Indian country of the participating tribe;

(ii) is employed in the Indian country of the participating tribe; or

(iii) is a spouse, intimate partner, or dating partner of—

(I) a member of the participating tribe; or

(II) an Indian who resides in the Indian country of the participating tribe.

(c) Criminal conduct.—A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories:

(1) Domestic violence and dating violence.—An act of domestic violence or dating violence that occurs in the Indian country of the participating tribe.

. . . .

(d) Rights of defendants.—In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the participating tribe shall provide to the defendant—

(1) all applicable rights under this Act;

(2) if a term of imprisonment of any length may be imposed, all rights described in section 202(c);

(3) the right to a trial by an impartial jury that is drawn from sources that—

(A) reflect a fair cross section of the community; and

(B) do not systematically exclude any distinctive group in the community, including non-Indians; and

(4) all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise special domestic violence criminal jurisdiction over the defendant.

. . . .

Amantonka Nation Code tit. 2, § 105

(a) Generally. The Amantonka Nation District Court is vested with jurisdiction to enforce all provisions of this Code, as amended from time to time, against any person violating the Code within the boundaries of the Amantonka Nation's Indian country. The Court is also vested with the power to impose protection orders against non-Indians in accordance with the provisions of this Code.

(b) Criminal jurisdiction over non-Indian domestic or dating violence. The Amantonka Nation District Court is vested with jurisdiction to enforce all provisions of this Code against a non-Indian who has committed an act of dating violence or domestic violence against an Indian victim within the Amantonka Nation’s Indian country provided the non-Indian has sufficient ties to the Amantonka Nation.

(1) A non-Indian has sufficient ties to the Amantonka Nation for purposes of jurisdiction if they:

(A) Reside in the Amantonka Nation’s Indian country;

(B) Are employed in the Amantonka Nation's Indian country; or

(C) Are a spouse, intimate partner, or dating partner of either:

(i) A member of the Amantonka Nation, or

(ii) A non-member Indian who resides in the Amantonka Nation's Indian country.

. . . .

Amantonka Nation Code tit. 2, § 501

(a) Attorneys. No person may practice as an attorney before the District Court or Supreme Court unless admitted to practice and enrolled as an attorney of the District Court upon written application. Any attorney at law who is a member in good standing of the bar of any tribal, state, or federal court shall be eligible for admission to practice before the District Court upon approval of the Chief Judge, and successful completion of a bar examination administered as prescribed by the Amantonka Nation's Executive Board.

(b) Lay counselor. Any person who meets qualifications established in this Section shall be eligible for admission to practice before the Court as a lay counselor upon written application and approval of the Chief Judge. To be eligible to serve as a lay counselor, a person

(1) Must be at least twenty-one (21) years of age;

(2) Must be of high moral character and integrity;

(3) Not have been dishonorably discharged from the Armed Services;

(4) Must have successfully completed a bar examination administered as prescribed by the Amantonka Nation's Executive Board;

(5) Must not have been convicted of a felony in any jurisdiction.

(c) Any person whose application to practice as an attorney or lay counselor is denied by the Chief Judge may appeal that determination to the Amantonka Nation's Supreme Court within fifteen (15) days of the denial. The Supreme Court shall request a statement of the reasons for the denial from the Chief Judge, and after receiving such statement shall review the application and any other record which was before the Chief Judge and may, in its discretion, hear oral argument by the applicant. The Supreme Court shall determine de novo whether the applicant shall be admitted, and its determination shall be final.

Amantonka Nation Code tit. 2, § 503

(1) Any person at his/her own expense may have assistance of counsel in any proceeding before the District Court.

(2) Any non-Indian defendant accused of a crime pursuant to the Nation's criminal jurisdiction under Title 2 Section 105(b), who satisfies the Nation's standard for indigence, is entitled to appointment of a public defender qualified under Title 2 Section 607(b).

(3) Any Indian defendant accused of a crime pursuant to the Nation's criminal jurisdiction, who satisfies the Nation's standard for indigence, is entitled to appointment of a public defender qualified under Title 2 Section 607(a).

(4) The District Court in its discretion may appoint counsel to defend any person accused of a crime.

Amantonka Nation Code tit. 2, § 602

To be eligible to serve as chief prosecutor or assistant prosecutor, a person shall

(1) Have an Associate of Arts degree or Bachelor of Arts degree from an accredited college in law and justice or similar field of study;

(2) Be at least twenty-one (21) years of age;

(3) Be of high moral character and integrity;

(4) Not have been dishonorably discharged from the Armed Services;

(5) Be physically able to carry out the duties of the office;

(6) Have successfully completed a bar examination administered as prescribed by the Amantonka Nation's Executive Board; and

(7) must have training in Amantonka Nation law and culture.

Amantonka Nation Code tit. 2, § 607

(a) To be eligible to serve as a public defender or assistant public defender, a person shall:

(1) Be at least 21 years of age;

(2) Be of high moral character and integrity;

(3) Not have been dishonorably discharged from the Armed Services;

(4) Be physically able to carry out the duties of the office;

(5) Successfully completed, during their probationary period, a bar examination administered as prescribed by the Amantonka Nation's Executive Board; and

(6) Must have training in Amantonka law and culture.

(b) A public defender who holds a JD degree from an ABA accredited law school, has taken and passed the Amantonka Nation Bar Exam, and who has taken the oath of office and passed a background check, is sufficiently qualified under the Indian Civil Rights Act to represent a defendant imprisoned more than one year and any defendant charged under the Nation's Special Domestic Violence Criminal Jurisdiction.

Amantonka Nation Code tit. 3, § 201

In recognition of and accordance with the Amantonka Nation's historical practice of adopting into our community those who marry citizens of the Amantonka Nation, the Amantonka National Council has hereby created a process through which those who

marry a citizen of the Amantonka Nation may apply to become a naturalized citizen of the Amantonka Nation. Any person who has

(a) Married a citizen of the Amantonka Nation, and

(b) Lived on the Amantonka reservation for a minimum of two years

May apply to the Amantonka Citizenship Office to initiate the naturalization process.

Amantonka Nation Code tit. 3, § 202

To become a naturalized citizen of the Amantonka Nation, applicants must

(a) Complete a course in Amantonka culture;

(b) Complete a course in Amantonka law and government;

(c) Pass the Amantonka citizenship test;

(d) Perform 100 hours of community service with a unit of the Amantonka Nation government.

Amantonka Nation Code tit. 3, § 203

Upon successful completion of the Naturalization process, the applicant shall be sworn in as a citizen of the Amantonka Nation. The name of each new citizen shall be added to the Amantonka Nation roll, and the new citizen shall be issued an Amantonka Nation ID card. Each new citizen is thereafter entitled to all the privileges afforded all Amnatonka [sic] citizens.

Amantonka Nation Code tit. 5, § 244

(a) A person commits the offense of partner or family member assault if the person:

(1) intentionally causes bodily injury to a partner or family member;

(2) negligently causes bodily injury to a partner or family member with a weapon; or

(3) intentionally causes reasonable apprehension of bodily injury in a partner or family member.

(b) For the purpose of this section, the following definitions apply:

. . . .

(2) Partners means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship.

(c) Violation of this section carries with it a penalty of

• a minimum of 30 days imprisonment and a maximum of three years imprisonment; and/or
• a fine of up to $5000; and/or
• restitution in an amount determined by the District Court; and/or
• participation in a rehabilitation program; and/or
• a term of community service as established by the District Court.

APPENDIX C: STATUTORY ETHICAL PROVISIONS[*]

Amantonka Nation Code tit. 2, ch. 7, Canon 1. *Competence.*

An attorney shall provide competent representation to a client. Competent legal representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. As employed in this Code, the term "attorney" includes lay counselors.

Model Rules of Prof'l Conduct r. 1.1 (Am. Bar Ass'n 2018). *Competence.*

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Amantonka Nation Code tit. 2, ch. 7, Canon 2. *Scope of Representation.*

An attorney shall abide by a client's wishes concerning the goals of legal representation and shall consult with the client concerning the means of pursuing those goals. Attorneys should not pursue legal goals without their client's approval, nor should they assist a client in criminal or fraudulent activity.

Model Rules of Prof'l Conduct r. 1.2 (Am. Bar Ass'n 2018). *Scope of Representation & Allocation of Authority Between Client & Lawyer*.

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer'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.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist

[*] Although these statutory provisions could be included in Appendix B, they have been consolidated to a separate appendix for ease of reference.

a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Amantonka Nation Code tit. 2, ch. 7, Canon 3. *Diligence.*

An attorney shall act with reasonable diligence and promptness in representing a client. Unless the client agrees to modify the scope of representation, the attorney shall complete all matters undertaken on the client's behalf.

Model Rules of Prof'l Conduct r. 1.3 (Am. Bar Ass'n 2018). *Diligence.*

A lawyer shall act with reasonable diligence and promptness in representing a client.

Amantonka Nation Code tit. 2, ch. 7, Canon 4. *Communication.*

An attorney shall keep a client well informed and shall respond promptly to requests for information. An attorney must fulfill reasonable client requests for information in order to help the client make intelligent decisions about his or her case.

Model Rules of Prof'l Conduct r.1.4 (Am. Bar Ass'n 2018). *Communications.*

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Amantonka Nation Code tit. 2, ch. 7, Canon 5. *Fees.*

(1) An attorney's fees shall be reasonable. The determination of reasonable fees should include the following consideration:

(a) The experience and ability of the attorney providing the legal services;

(b) The time and skill involved in performing the service; and

(c) The fee customarily charged on the Amantonka Nation's Reservation and surrounding communities for similar services.

(2) A fee may be contingent on the outcome of the representation. A contingent fee agreement should however, be in writing and state the method by which it shall be calculated. An attorney shall not enter into a fee arrangement contingent upon securing a divorce or upon the amount of support or property settlement thereof. Neither shall

an attorney enter into a contingent fee arrangement for the representation of a defendant in a criminal case.

(3) Representation should not be denied people because they are unable to pay for legal services. The legal profession encourages provision of le- gal services at no fee or at a substantially reduced fee in these circumstances.

Model Rules of Prof'l Conduct r. 1.5 (Am. Bar Ass'n 2018). *Fees.*

(a) A lawyer 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:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) 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, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

Amantonka Nation Code tit. 2, ch. 7, Canon 6. *Confidentiality of Information.*

An attorney shall not reveal information communicated by a client. However, an attorney may reveal information to the extent that attorney reasonably believes necessary to prevent a client from committing a criminal act likely to result in death or serious bodily harm. An attorney may also reveal information necessary to allegations in any proceedings concerning the attorney's representation of a client. An attorney, lay counselor, prosecutor or public defender shall not discuss any case, open or closed, with any member of the Amantonka Nation legislative or executive branches of government, except when a discussion is solicited by the legislative or executive branches of government. Attempts to discuss or discussion with said individuals shall result in sanctions, including disbarment, by the Amantonka Nation District Court.

Model Rules of Prof'l Conduct r. 1.6 (Am. Bar Ass'n 2018). *Confidentiality of Information.*

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) 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 the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(6) to comply with other law or a court order; or

(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Amantonka Nation Code tit. 2, ch. 7, Canon 7. *Conflict of Interest.*

(1) An attorney should not represent a client if that representation will be adverse to the interests of another client, or if the attorney's own interests conflict with those of a client, unless:

(a) The attorney reasonably believes the representation will not adversely affect his or her ability to represent each client fully and competently; and

(b) Each client consents after disclosure and consultation. Examples of conflict of interest between clients include: representing opposing par- ties in litigation, representing more than one defendant in a criminal case, and representing a client against a party who is a client in another case, even if the two cases are unrelated. Examples of conflicts of interest between a lawyer and client include: entering into any business transaction with a client and acquiring any financial interest adverse to the client.

(2) An attorney who had formerly represented a client shall not thereafter represent another client in a related matter in which that client's interest are adverse to the interests of the former client, unless the former client consents after consultation.

(3) An attorney shall not represent a client in a matter in which that attorney served as a judge or arbitrator without the consent of all parties to the proceeding.

Model Rules of Prof'l Conduct r. 1.7 (Am. Bar Ass'n 2018). *Conflicts of Interest: Current Clients*

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

Amantonka Nation Code tit. 2, ch. 7, Canon 8. *Client under Disability.*

When an attorney believes a client is incapable of acting in his or her own interest the attorney shall seek the appointment of a guardian for the client. Otherwise, the attorney shall as far as practicable maintain a normal attorney-client relationship with the client.

Model Rules of Prof'l Conduct r. 1.14 (Am. Bar Ass'n 2018). *Client with Diminished Capacity.*

(a) 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, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Amantonka Nation Code tit. 2, ch. 7, Canon 9. *Safekeeping Property.*

A client's property held by an attorney in connection with representation of that client shall be kept separate from the attorney's own property. Funds shall also be kept in separate accounts.

Model Rules of Prof'l Conduct r. 1.15 (Am. Bar Ass'n 2018). *Safekeeping Property.*

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of [five years] after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

Amantonka Nation Code tit. 2, ch. 7, Canon 10. *Declining or Terminating Representation.*

(1) An attorney shall terminate representation if a client requests that the attorney engage in illegal or fraudulent conduct or conduct that violates the Amantonka Nation Code of Ethics.

(2) An attorney may withdraw from representing a client if withdrawal can be accomplished without adversely affecting the client's interests, or if:

(a) The client fails substantially to meet an obligation to the attorney regarding the attorney's services and the client has been notified that the attorney will withdraw if the obligation is not met;

(b) The representation will result in an unreasonable financial burden on the attorney or has been made unreasonably difficult by the client; or

(c) Other good cause for withdrawal exists. When the attorney is representing the client in a Court matter, withdrawal can only be accomplished upon motion to the Court. When ordered by a court of the Amantonka Nation to continue representation, an attorney shall do so despite good cause for terminating the representation. If termination of representation is granted, an attorney shall take reasonable steps to

protect the client's interests. Such steps include giving reasonable notice and time to appoint new counsel and surrendering papers and property to which the client is entitled.

Model Rules of Prof'l Conduct r. 1.16 (Am. Bar Ass'n 2018). *Declining or Terminating Representation.*

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer 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 employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Amantonka Nation Code tit. 2, ch. 7, Canon 11. *Advice and Meritorious Claims.*

When representing a client an attorney shall give candid advice based on his or her best professional judgment. An attorney shall not raise or controvert issues without a substantial basis for doing so.

Model Rules of Prof'l Conduct r. 2.1 (Am. Bar Ass'n 2018). *Advisor.*

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

Amantonka Nation Code tit. 2, ch. 7, Canon 12. *Expediting Litigation.*

An attorney shall make reasonable effort to expedite litigation consistent with a client's interests. An attorney shall not engage in delay tactics designed solely to frustrate the opposing party's attempt to obtain a legal remedy.

Model Rules of Prof'l Conduct r. 3.2 (Am. Bar Ass'n 2018). *Expediting Litigation.*

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Amantonka Nation Code tit. 2, ch. 7, Canon 13. *Honesty toward The Amantonka Nation Courts.*

An attorney shall act with honesty toward the Amantonka Nation Courts. An attorney shall not knowingly make false statements to the Courts or knowingly offer false evidence. Nor shall an attorney fail to disclose significant legal authority directly adverse to his or her client's position.

Model Rules of Prof'l Conduct r. 3.3 (Am. Bar Ass'n 2018). *Candor Toward the Tribunal.*

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent

conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Amantonka Nation Code tit. 2, ch. 7, Canon 14. *Fairness to Opposing Party.*

An attorney shall act in a manner fair to the opposing party. In order that fair access to evidence be maintained, an attorney shall not:

(a) Destroy or conceal evidence, including documents or other materials of possible evidentiary value;

(b) Falsify existing evidence or create new evidence; or

(c) Influence a witness to give false or mis- leading testimony.

Model Rules of Prof'l Conduct r. 3.4 (Am. Bar Ass'n 2018). *Fairness to Opposing Party & Counsel.*

A lawyer 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. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an 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;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Amantonka Nation Code tit. 2, ch. 7, Canon 15. *Impartiality and Decorum of The Amantonka Nation Courts.*

An attorney shall not attempt to influence a judge or juror sitting on his or her case other than through authorized legal means. An attorney shall not privately confer with a judge concerning any case before that judge. Nor shall an attorney meet with a juror or prospective juror in a case that attorney is handling.

Model Rules of Prof'l Conduct r. 3.5 (Am. Bar Ass'n 2018). *Impartiality & Decorum of the Tribunal.*

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress or harassment; or

(d) engage in conduct intended to disrupt a tribunal.

Amantonka Nation Code tit. 2, ch. 7, Canon 16. *Conduct Before The Amantonka Nation Courts.*

An attorney shall act with respect and courtesy toward the Amantonka Nation Courts. This requires that an attorney comply with rules established by the Court for courtroom demeanor and procedure.

Amantonka Nation Code tit. 2, ch. 7, Canon 17. *Attorney as Witness.*

An attorney shall not act as an advocate at a trial in which the attorney is likely to be a necessary witness except where:

(a) The testimony relates to an uncontested issue;

(b) The testimony relates to the nature and value of legal services rendered in the case; or

(c) Disqualification of the attorney would substantially burden the client.

Model Rules of Prof'l Conduct r. 3.7 (Am. Bar Ass'n 2018). *Lawyer as Witness.*

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Amantonka Nation Code tit. 2, ch. 7, Canon 18. *Special Responsibilities of a Prosecutor.*

Prosecutors shall uphold their special responsibilities. It is a prosecutor's duty to ensure that a defendant in a criminal case is accorded justice as prescribed by the criminal procedure of the Amantonka Nation Code. In order to carry out this responsibility a prosecutor shall:

(a) Not prosecute a charge the prosecutor knows is not supported by probable cause;

(b) Make efforts to ensure that the accused has the opportunity to obtain counsel;

(c) Not attempt to obtain waivers of important pretrial rights from an unrepresented accused;

(d) Disclose to the defense all evidence and information known to the prosecutor tending to negate and mitigate the guilt of the accused;

(e) Exercise care to prevent other persons associated with the prosecutor in a criminal case from talking publicly about the case prior to trial.

Model Rules of Prof'l Conduct r. 3.8 (Am. Bar Ass'n 2018). *Special Responsibilities of a Prosecutor.*

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

Amantonka Nation Code tit. 2, ch. 7, Canon 19. *Communication with Person Represented By Counsel.*

When representing a client, an attorney shall not communicate about that representation with a party the attorney knows to be represented by another attorney in the same proceedings, unless the attorney has the consent of the other attorney.

Model Rules of Prof'l Conduct r. 4.2 (Am. Bar Ass'n 2018). *Communication with Person Represented by Counsel.*

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

Amantonka Nation Code tit. 2, ch. 7, Canon 20. *Communications Concerning an Attorney's Services.*

> An attorney shall not make false or misleading statements about his or her services. A communication is false or misleading if it contains a material misrepresentation of fact or law or is likely to create unreasonable expectations about the results an attorney can achieve.

Model Rules of Prof'l Conduct r. 7.1 (Am. Bar Ass'n 2018). *Communications Concerning a Lawyer's Services.*

> A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Amantonka Nation Code tit. 2, ch. 7, Canon 21. *Soliciting Clients.*

> An attorney shall not solicit employment from a prospective client through direct communications. Apart from family members, it is unethical for an attorney to contact in person, by phone or mail, prospective clients for the purpose of persuading them to accept legal assistance. This does not include mailings to persons not known to re- quire legal services and which give general information about the attorney's services. An attorney may advertise through public media such as telephone directories, newspapers, and television.

Model Rules of Prof'l Conduct r. 7.3 (Am. Bar Ass'n 2018). *Solicitation of Clients.*

> (a) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.
>
> (b) A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain, unless the contact is with a:
>
> (1) lawyer;
>
> (2) person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm; or
>
> (3) person who routinely uses for business purposes the type of legal services offered by the lawyer.
>
> (c) A lawyer shall not solicit professional employment even when not otherwise prohibited by paragraph (b), if:
>
> (1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
>
> (2) the solicitation involves coercion, duress or harassment.

(d) This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.

(e) Notwithstanding the prohibitions in this Rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses live person-to-person contact to enroll members or sell subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Amantonka Nation Code tit. 2, ch. 7, Canon 22. *Rule of Court for Handling Complaints against Attorneys and Lay Advocates.*

The initial complaint must be written and submitted to the District Court Administrator. The District Court Administrator will review the complaint and request that the complaining party submit an affidavit to support the complaint. The District Court Administrator will forward the complaint to the respondent attorney/ lay advocate and request a response within 10 working days. The District Court Administrator will forward the written complaint, affidavit and response to the Tribal attorney for review. The Tribal attorney will investigate the complaint. If the Tribal attorney decides that the allegations lack probable cause, the complaint will be dismissed. If the Tribal attorney decides that there is probable cause, a hearing will be set. The Tribal attorney or his designee within the prosecutor's office, as long as there is no conflict between the parties, will prosecute the complaint, with all parties present, at a hearing before the Chief Judge. If the Chief Judge initiated the complaint, the judge with the most seniority as a tribal court judge will preside at the hearing. If the complaint is filed against the Tribal attorney, the Chief Prosecutor will investigate the complaint to determine if probable cause exists. If probable cause exists, the Chief Prosecutor or her designee will prosecute the complaint. A final decision by the Chief Judge can be appealed to the Amantonka Nation Supreme Court.