

Call for Justice, LLC—United Way 2-1-1 Training Paper
Session 24: Indian Law & Tribal Courts
January 28 and 29, 2016: Ron Walters of the ICWA Law Center.

Featured Speakers' Topics

For this training session, we will cover Indian Law and Tribal Courts in Minnesota and identify the various services that are available to persons within these categories. Our speaker, Ron Walters, is a Staff Attorney with the ICWA Law Center in Minneapolis.

American Indian Law and Tribal Courts: A Very, Very Brief Overview

1. Indian Law

The term "Indians" refers generally to the indigenous peoples who lived in what would become North America at the time of European colonization. The terms "tribe" or "band" designate a group of Indians of the same or similar heritage united in a community under one leadership or government and inhabiting a particular territory. Because Indians have increasingly preferred "nation" or "people," the term "tribe" has become controversial. The terms used may vary from statute to statute as well as case to case.

Federal law recognizes a special kind of Indian sovereign authority which allows Bands to govern themselves, subject to an overriding federal authority. Indian Bands are considered by federal law to be "domestic, dependent nations." Congress enacted this sovereign authority to protect Indian groups from state authority. This sovereign authority extends to Indian **tribal courts**, which adjudicate matters relating to Indian affairs.

One of the most important aspects of Indian Law, and Native American life in general, is the degree of diversity between Bands and even Band members. Some of this diversity is driven by how Bands determine membership; some Bands require a high blood quantum (e.g. the amount of Indian blood one possesses as determined by the number of generations of Native people one has descended from) while other Bands only ask for a direct familial link but not a high blood quantum.

The laws and processes of different Bands are influenced not only by location, but also by population, and the proximity/presence of casinos. For Bands that operate casinos (and depending on competition with other casinos), Band members may receive a monthly "per capita payment" of several hundred dollars which constitutes a distribution of casino revenue.

Because of their sovereignty, Bands are able to make their own decisions about membership, revenues, and legal process. However, there are some overarching federal laws that shape the entire landscape of Indian Law, including the Indian Child Welfare Act of 1978.

Red Flag: CULTURAL COMPETENCY. Terminology: "Indian" and "Native American" are *generally* interchangeable. But it is respectful to listen to the language employed by the caller and mirror

it back to them. “Band” and “Tribe” are also *generally* interchangeable, but again, we suggest you listen carefully to the caller. Some entities, such as the Mille Lacs Band, only use that phrase. People will often feel dismissed if you do not pick up on distinctions between tribes and bands. Listening and taking thorough notes and mirroring language is helpful to avoid this offense. The culturally competent thought process is to not think of Indians as being a homogenous group, but to understand their unique diversity.

2. Tribal Courts

Tribal courts and justice systems are critical components of Band government and empowered to resolve conflict and controversy. Prior to European contact, Native people practiced various forms of conflict and dispute resolution. Band member participation in the debate of issues and in defense of an alleged wrongdoer was not only allowed, it was expected. Unfortunately, these tribal methods were unfamiliar to the settlers and were often discounted and even discouraged.

In 1934, with the enactment of the Indian Reorganization Act (25 U.S.C.A. § 461, et. seq.), Indian tribes were allowed to exercise their inherent sovereignty to establish their own justice codes and operate court systems enforcing those laws. The Act also authorized tribes to organize and adopt constitutions. However, many of the tribally-enacted constitutions were boiler-plate templates, requiring Secretary of the Interior-approval for many tribal government actions. Nevertheless, and despite its flaws, the Act is considered a “success” in providing a framework for tribal self-government.

Today, tribal justice systems are diverse in concept and character. While some are extensively elaborate, others are just beginning to develop a ‘modern’ judicial system within the context, conditions, and circumstances of their individual nations. Some Bands prefer the adversarial process, while others utilize traditional dispute resolution. Many courts apply large bodies of written or positive law while others apply custom and tradition to address controversies and settle disputes.

There are eleven (11) Tribal Courts in Minnesota. (See listing attached to this paper.) As with any court, an attorney must be “admitted” to practice before a Tribal Court; the requirements for admission vary court to court. Not all courts require lawyers; in many cases the hearings are less formal, with more room for advocacy by non-lawyers. Generalizations across courts are difficult, as each operates and is bound by its own rules and substantive law.

A. Tribal Court Practice Areas

Child Protection and Family Law: The Indian Child Welfare Act (ICWA) gives tribal governments a strong voice concerning child custody proceedings that involve Indian children, by conferring to Bands exclusive jurisdiction over the case when the child resides on, or is domiciled on, the reservation, or when the child is a ward of the Band; and concurrent, but presumptive, jurisdiction over non-reservation Native Americans’ foster care placement proceedings. Under ICWA, the Band is also a party to an action involving a child’s placement; the Band may also have tribe-related child service workers involved in the proceeding.

Notwithstanding the above, the federal Uniform Child Custody Jurisdiction Enforcement Act applies to Tribal Courts; as a result, tribal courts have to respect state court decisions regarding the custody and place of children over which state courts have original jurisdiction (as in where a child is born outside a reservation to a mother who is not a Band member); similarly, Minnesota courts are required to adhere to Tribal Court decisions relative to custody/placement (as in where a child is born to a mother who lives on a reservation).

Other family law cases often involve questions about whether there will be tribal jurisdiction over a non-enrolled (non-Band) parent. Often this involves a “race to the courthouse” where the non-enrolled parent seeks to file a family law action in state court and an enrolled member seeks to file in Tribal Court.

Some Tribal Courts provide counsel to non-enrolled parties to a family law matter.

Probate Law: Some Band Tribal Courts have a probate component or division; others do not. In most instances, the Band owns the real estate within a given nation; as a result, Band members who build homes on tribal/communal land own only the home and not the land on which the home stands. In other instances, a home might be on land ceded by the federal government under a now-abandoned program; this land, called “Dawes Act land,” derives from the Dawes Act of 1887 where the federal government attempted to influence Indian assimilation into white culture by creating incentives to farm and discourage communal living by allocating parcels of land to Band members. This program was ended in the 1930’s. The existence of continued “Dawes Act land” creates on-going probate difficulties.

Bankruptcy: The per capita payments some Band members receive from casino revenues creates a wrinkle for bankruptcy proceedings.

Criminal Law: Tribal criminal jurisdiction over Indians in areas subject to tribal court jurisdiction is complete and exclusive unless there is a federal statute deeming it otherwise or limiting it in some way. Exclusive jurisdiction is given to the tribal courts over non-major crimes committed by Indians against Indians in Indian country, as well as victimless Indian crimes. Jurisdiction is also granted, though not exclusively, to tribal courts over non-major crimes by Indians against non-Indians. In these cases, federal courts also have jurisdiction through the General Crimes Act, so jurisdiction is shared.

Civil Law: Civil Law & Tribal courts have exclusive jurisdiction in civil cases against any Indian in land governed by the Band. This includes cases brought against an Indian by a non-Indian on tribal land, and all cases between tribal members that arise on tribal land. Exclusive jurisdiction over tribal subject matter also belongs to the tribal courts.

Tribal Legal Services Offered in Minnesota

Anishinabe Legal Services:

Anishinabe Legal Services is a Legal Services Corporation (LSC) grantee and independent 501(c)(3) non-profit that provides free legal assistance to low-income individuals living on or near the Leech Lake, Red Lake, & White Earth Reservations in Northwestern Minnesota.

ALS represents clients before tribal courts, state courts, and agencies to help them protect their rights. Anishinabe Legal Services has offices in Leech Lake, Red Lake, and White Earth. Representation for Child Protection; Family Law Matters; Evictions; Garnishment; Wills, Healthcare Directives, & Durable Powers of Attorney; Social Security; Civil Forfeiture; Indian Law; Custody or Visitation; Other legal issues.

Central Office:
411 1st St. NW
Cass Lake, MN 56633
1-800-422-1335
(other offices in Red Lake & White Earth)

Band Member Legal Aid (Mille Lacs Band of Ojibwe)

Band Member Legal Aid was established in 2009 to serve the Mille Lacs Band of Ojibwe Community. BMLA provides free civil and criminal legal services to enrolled members of the Mille Lacs Band of Ojibwe.

Band Member Legal Aid has five attorneys available to go to court, provide legal advice, answer questions, and resolve cases on behalf of clients. They also have experienced administrative staff members who can answer questions and provide assistance, including notary services.

Representation for: criminal and traffic cases in tribal court, Aitkin, Benton, Crow Wing, Kanabec, Mille Lacs, Morrison, Pine, Sherburne, Hennepin, and Ramsey Counties. Civil cases (Family Law, Child Protection, ICWA, Domestic Abuse, Housing, Public Benefits, Consumer Law/Debt Collection, Estate Planning, Probate, Elder Law) in Tribal court, Aitkin, Crow Wing, Mille Lacs, Pin, Hennepin, and Ramsey Counties.

Central Office:
4308 Oodena Drive
Onamia, MN 56359
1-320-532-7798

Bureau of Indian Affairs (BIA)

Indian services provide services directly or through contracts or grants. The BIA offers an extensive scope of programs that cover the entire range of Federal, State, and local government services. Programs are administered by either Tribes or Indian Affairs through the Bureau of Indian Education (BIE), Programs administered through the Bureau of Indian Affairs (BIA) Includes social services, subsurface minerals estate, economic development, and economically depressed areas of the United States. Also works in areas pertaining to housing improvement, administration of tribal courts, land and water claims, disaster relief, and replacement and repair of schools.

Central Office:
5600 American Blvd W #500B,
Bloomington, MN 55437
612-713-4400

Indian Child Welfare Law Center

The ICWA Law center seeks to provide the highest quality of legal services for Indian families, to help preserve and reunite Indian families who are impacted by the child protection system. ICWA collaborates with Indian families and tribes to secure safe and loving homes for their children when out of home placement is necessary. They also advocate for the best interests of Indian children and work to end the disparities in the number of out of home placements of Indian children.

Central Office:
1730 Clifton Place, Suite 104
Minneapolis, MN 55403
1-612-879-9165

Indian Legal Assistance Program

Indian Legal Assistance Program is a private non-profit corporation that provides legal services to low income individuals. Although we are unique in emphasizing legal services to the Indian population within our area, we offer legal services to all whom meet our financial guidelines, regardless of race.

Representation for: criminal law (call for specifics); civil law general (collections, garnishment, housing, name change, public assistance, SSI, landlord/tenant, commitment, expungement, general assistance, unemployment, public assistance, unlawful detainer, Native American enrollment); civil law family (dissolution, child support, CHIPS, custody, guardianship, orders for protection, visitation, harassment, long term foster care, paternity, termination of parental rights).

Central Office (Civil & Criminal):
107 W. First Street
Duluth, MN 55802
1-218-727-2881

Regional Native Public Defense Corporation

Serves the Anishinaabe people of Leech Lake and White Earth. This organization represents Leech Lake or White Earth Members in criminal matters. Their service areas are in Cass County, Becker County, Clearwater County, Beltrami County, Mahnommen County, and Itasca County.

Leech Lake Office
232 2nd Street NW
PO Box 487, Cass Lake MN 56633
(218) 339-5680

White Earth Office
Located at the RTC Building
35500 Eagle View Road
PO Box 290, White Earth MN 56591
(218) 983-3285

Closing

We've only summarized what is a very complicated area of the law, with an attempt to identify all of the Minnesota legal resources at hand. It's important to check with those resources specifically and not to make any assumptions about eligibility or services.

Thanks!

Ellie and Brettina
Call for Justice, LLC
www.callforjustice.org