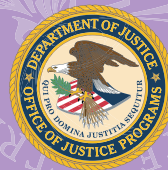


Promising Strategies

Promising Strategies: Tribal-State Court Relations

March 2013



BJA

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Tribal–State Court Relations

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A product of the

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Introduction

Tribal courts and state courts interact across an array of issues, including child welfare, cross-jurisdictional enforcement of domestic violence orders of protection, and civil commitments. In Public Law 280¹ (PL 280) jurisdictions, the concurrent jurisdiction of state and tribal courts over criminal prosecutions and civil actions arising in Indian Country creates even more interactions and complications.

Tensions and misunderstandings have been common features of tribal and state court relations in the past, sometimes erupting in jurisdictional conflicts. The different cultures, legal traditions, political systems, histories, and economic positions of state and tribal courts have contributed to these challenges. Since the early 1990s, however, initiatives by judges' organizations within both judicial systems have focused on an agenda of greater mutual understanding and cooperative action. Individual judges and court systems have also taken up the challenge, devising innovative programs that sidestep conflict in the interests of common goals such as greater community safety and child protection. State court leadership and court improvement organizations, such as the Conference of Chief Justices and the National Center for State Courts, and funding agencies, such as the Bureau of Justice Assistance (BJA) in the U.S. Department of Justice, have supported their undertakings.

This publication spotlights some of the most successful strategies within these initiatives. The authors hope is that other tribes and states seeking to negotiate complicated relationships will discover new options for solutions and find inspiring stories of collaboration within this publication.

Selection Criteria and Methods

The 10 programs featured in this publication were selected according to the following criteria:

- ◇ **INNOVATIVE:** The programs are distinctive and involve innovative processes that appear to present promising solutions to everyday challenges affecting Indian Country justice. The programs contain a coherent strategy or vision that promises to improve a significant aspect of justice relations.
- ◇ **REPLICABLE:** The programs can be replicated or adapted in other tribal communities, their

¹ PL 280 is a law that Congress passed in 1953 that gives certain named states criminal and civil jurisdiction on reservations and withdraws most of the federal government's responsibility for criminal jurisdiction in Indian Country. PL 280 also allowed other states to opt into this jurisdictional arrangement, although since 1968 the states have only been able to do so with the affected tribes' consent. PL 280 did not eliminate any tribal jurisdiction over criminal or civil matters. States that are covered by PL 280, either because they were named in the original act or subsequently opted in, can ask to be removed from PL 280 jurisdiction, a process known as retrocession. Several states, such as New York and Maine, have jurisdictional arrangements that are very similar to PL 280, but those arrangements were established by separate statutes.

approaches can be used in other settings, and the level of investment needed to achieve similar outcomes and sustain the programs is not insurmountable.

- ◇ **SUSTAINABLE:** The programs can be sustained when external funding sources are expended and when the programs are not dependent upon any one person for their continued success.
- ◇ **CULTURALLY COMPATIBLE:** The programs, as situated within a broader justice system, are in accord with the current beliefs, understandings, values, and future goals of the community.
- ◇ **COMMUNITY COMPONENT OF SERVICES:** The programs are strengthening the relationship of the Indian person to his or her community. The programs are well received and have support from the surrounding community and tribal government.
- ◇ **GOVERNMENT OR NONPROFIT OPERATION:** The programs operate within the tribal nations' governments or operate as nonprofit organizations.
- ◇ **RESPECT FOR AND ENHANCEMENT OF TRIBAL AUTHORITY:** The programs demonstrate respect for the jurisdiction of native nations and states and promote tribal administration of justice in tribal territory.
- ◇ **FAIRNESS:** The programs uphold non-arbitrary, just, impartial, and nondiscriminatory treatment of all persons.
- ◇ **INTERGOVERNMENTAL COOPERATION:** The programs achieve benefits of coordinated, consensual, and mutually respectful relations between tribal and nontribal justice agencies.
- ◇ **MANAGEMENT EFFECTIVENESS:** Once program goals are established, the programs are carried out so that goals will be achieved (e.g., appropriate rules, lines of responsibility, personnel selection, communication, and allocation of resources).

In addition, when looking at the group of promising strategies that was selected, the following criteria to exam the group as a whole were used:

- ◇ **CULTURAL DIVERSITY:** The programs include a variety of different cultural backgrounds. Each program has unique cultural aspects and traditions.
- ◇ **GEOGRAPHIC DIVERSITY:** The selected tribal programs represent a variety of different locations and jurisdictional circumstances within the United States.

With these criteria in mind, government publications, law review and newspaper articles, award programs such as Harvard University's Honoring Nations, and web resources were reviewed to determine the most appropriate programs. Program contacts were identified, and interviews were conducted with leaders and key participants for each program.

Common Themes

These 10 Promising Strategies come from PL 280 or similar states (California, Minnesota, New York, and Wisconsin), non-PL 280 states (Arizona, New Mexico, and Michigan), and one state with partial PL 280 jurisdiction (Idaho). They address topics as diverse as domestic violence, civil commitment, driving while intoxicated (DWI) cases, and contract disputes. Nonetheless, certain common features do help explain their effectiveness in achieving good tribal–state court relations.

First, these Promising Strategies reflect **strong and persistent leadership** from state and tribal judiciaries, often leading to the institutionalization of ongoing relations. Thus, for example, the New Mexico Tribal–State Judicial Consortium eventually sought recognition as a formal committee of the state judiciary, which made it possible for tribal court participants to be reimbursed for their travel to meetings. Such regularized encounters between tribal and state court judges, through committees, consortia, or joint judicial associations such as the one developed in Wisconsin, have helped build understanding and trust and have often been the precondition for cooperative initiatives leading to successful outcomes.

Second, these Promising Strategies typically follow from **sustained educational efforts**, some of which provide more general knowledge about respective court systems and communities, others targeted at more specific challenges identified through joint discussions. These educational efforts have often resulted in heightened awareness of and respect for tribal authority and cultures, leading to increased receptivity to cooperative endeavors. Educational institutions, federal granting agencies, and national technical assistance organizations often have been deployed strategically to supply materials and training in a way that makes all participants more receptive to the other’s experience and perspective. For example, the New York State Judicial Institute, the Tribal Judicial Institute at the University of North Dakota, and Syracuse University’s Center for Indigenous Law, Governance, and Citizenship have all played important roles in the development of programs supporting New York’s Federal-State–Tribal Courts and Indian Nations Justice Forum. Some of the Promising Strategies discussed in this publication are actually supplying this educational information to a broad audience on an ongoing basis, including the *Michigan Bar Journal’s* directory of tribal courts and the *Idaho Tribal Court Benchbook*.

Third, progress has most often been achieved when both sides have put **jurisdictional conflicts to the margin**, agreeing to disagree, and have focused on common goals. In Minnesota, for example, the Leech Lake Band and two counties looked past the history of disagreements over state jurisdiction under PL 280 and worked together to reduce recidivism by tribal members who were driving under the influence of drugs or alcohol. Project Passport, a nationwide initiative, draws support from the common desire in tribal and state judiciaries to protect

vulnerable family members from domestic violence. Diversion, shared jurisdiction, and jointly agreed-upon protocols are among the ways of minimizing jurisdictional friction without surrendering strongly held positions. In some instances, state or federal court decisions addressing these conflicts—and acknowledging the importance of tribal courts—have preceded the development of the Promising Strategy, as in the case of involuntary commitment in Arizona or the Teague Protocol in Wisconsin. Although these decisions may strengthen the position of tribal judiciaries, they are often insufficient to address ongoing community challenges without the next step of cooperative tribal–state action. For that, the jurisdictional conflicts must often be removed from the focus of discussion.

Fourth, not only are these Promising Strategies relatively low in cost, they may actually **reduce long-term costs** by avoiding duplicative litigation (the Teague Protocol in Wisconsin) and reducing the number of repeat offenders (the Leech Lake/Cass and Itasca Counties joint jurisdictional arrangements). By directing cases to the most suitable forum (Yurok Tribal Court programs with Del Norte and Humboldt Counties) and preventing law enforcement errors (Project Passport), these programs enhance the effectiveness of justice systems as a whole.

Conclusion

In these Promising Strategies, litigation and confrontation between tribal and state courts have given way to enhanced understanding and cooperative action. Through networks of relationships and innovative programs, they have knit together tribal and state justice systems while respecting their differences. Through the ongoing institutionalization of dialogue and creative responses to common concerns, they hold the promise of more innovative and constructive joint endeavors.

Note on this Publication

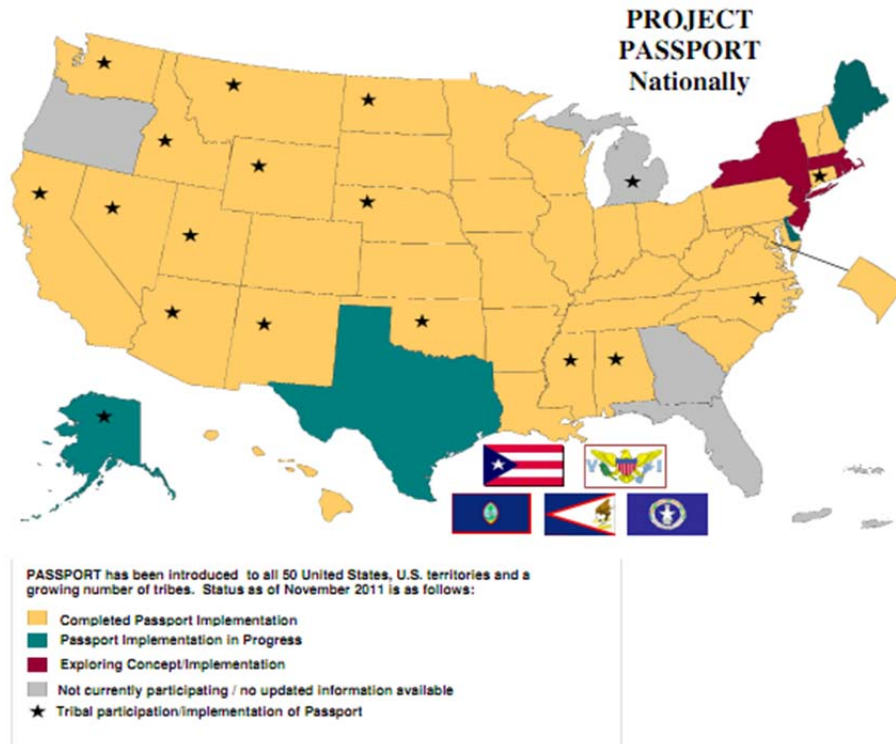
The organization of the 10 Promising Strategy sites in this publication is no indication of a ranking or any other such ordering. There are many promising strategies throughout Indian Country in addition to those listed here, and this listing is in no way presented as exhaustive. Many of the sites highlighted here build upon the successes of previous efforts in Indian Country. One of the goals of this publication is to highlight relatively recent efforts and not to give an historical account of the past efforts. Sites highlighted in this publication were selected based on the authors' research and knowledge, with input from BJA tribal technical assistance project partners, including the Tribal Judicial Institute at the University of North Dakota, School of Law; Fox Valley Technical College; and the National Tribal Judicial Center at the National Judicial College. In addition, the criteria used to select sites were reviewed and vetted through BJA partners.

Introduction

This publication is part of a larger project funded by BJA focusing on collaborations between tribal–state-federal partners. In addition to this publication, the Tribal Law and Policy Institute (TLPI) has developed a companion document titled, *Promising Strategies: Public Law 280*. Under this grant, TLPI has also launched a significantly enhanced and updated Walking On Common Ground web site (www.WalkingOnCommonGround.org). This site provides resources for promoting and facilitating tribal–state-federal collaborations, including an interactive map with cooperative agreements searchable by topic. It also provides electronic versions of this promising strategy publication, the PL 280 publication, and additional promising collaborative strategy publications to come in the near future.

1. National Center for State Courts and National American Indian Court Judges Association

Extending Project Passport



Founded: 2003–4 (NCSC-led effort); 1999–2000 (original Passport effort)

Service area: National

Population: All Native American victims of domestic violence

Source of funding: Office of Violence Against Women, U.S. Department of Justice, and implementing state and tribal jurisdictions

Web site: www.ncsc.org/

www.walkingoncommonground.org/files/Project%20Passport%20Model%20Template.pdf

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Program Description

Project Passport is a response to the fact that domestic violence is mobile, following survivors across tribal and state boundaries. Securing a domestic violence order of protection from a court in one jurisdiction does not necessarily ensure the order will be recognized or enforced if the victim travels, works, goes to school, or moves to another jurisdiction—especially if the police in that new jurisdiction are not comfortable acting upon the original order because it is unfamiliar to them. The Full Faith and Credit provision of the Violence Against Women Act (VAWA), 18 U.S.C. § 2265(a), makes it a federal requirement for states and tribes to recognize and enforce one another’s valid protection orders as if they were issued from their own court. Courts and law enforcement agencies have not always carried out this mandate. Cross-jurisdictional challenges to the enforcement of protection orders can include a lack of access to protection order registries, a lack of awareness of the federal requirement, turnover in personnel, and conflicts in policies. Project Passport encourages the adoption of a recognizable first page (with standardized, common elements and format), known as the Passport Model Template First Page, for domestic violence orders of protection across jurisdictions. This standardization facilitates broader recognition and enforcement of orders of protection across jurisdictions. Through greater consistency in the issuance and enforcement of orders of protection, the safety net for battered women is strengthened, regardless of where they live or where the protection order was issued.

Project Passport began as a regional effort led by the State of Kentucky with its seven surrounding states. Through multidisciplinary collaboration and consensus, that group originated the Passport Model Template First Page and integrated the template into their jurisdictions’ orders of protection. Subsequently, Extending Project Passport has expanded to other regions. The first such effort, the Southeastern Expansion Effort to Passport, was led by Alabama with seven of its neighboring states and tribes. The goal of Extending Project Passport is to build upon the earlier success of the original Project Passport effort and to bring this cooperative tribal–state court endeavor to other parts of the country. Through a series of regional meetings, Extending Project Passport has introduced the model template to additional states and tribes.

The Passport Model Template First Page presents commonly agreed-upon data elements in a standardized format. By making the essential data on an order of protection readily available and easily recognizable, courts can be more confident that a “foreign protection order” (i.e., a protection order issued in another jurisdiction outside of the enforcing jurisdiction) is authentic, valid, and enforceable, and that the presenting parties at the point of enforcement are properly identified. Major elements of the case appear on the first page of the protection order in an easily recognized format, including the identity of the respondent, relationship of the parties to

the order, expiration date of the order, and weapon information. Extending Project Passport also encourages the exchange of protection order data by promoting the use of established national electronic information exchange models and standards to facilitate an environment in which data can easily be exchanged between various court case management systems, justice system agencies, protection order registries, and the National Crime Information Center Protection Order File.

By 2011, nearly 35 states and tribes in more than a dozen states have adopted the recognizable first page promoted through Project Passport.² Additional states and tribes are exploring its adoption. Project Passport staff and partners have provided technical assistance to individual tribal and state courts interested in implementing the Passport Model Template First Page into their orders of protection.

Cultural Compatibility

Extending Project Passport promotes a recognizable first page for state and tribal domestic violence protection orders that does not derive from any particular jurisdiction or tribal culture. Because the Passport first page is a template, it has standardized features and formatting but can be modified to individual jurisdictions. This flexibility allows tribal orders to retain important elements unique to their individual courts, cultures, and codes. Culturally specific information can be integrated into the form and on subsequent pages of the order. Tribes incorporating a Passport-modeled first page into their orders of protection have not reported that the form diminishes the tribe's cultural uniqueness or sovereignty. Participating jurisdictions have indicated that the form increases the likelihood that a tribal court order will be enforced outside of tribal territory, in essence extending the influence of the underlying tribal culture that informs the tribal justice system and the orders issued by it.

Enhancement of Tribal Authority

Although the federal VAWA mandates mutual recognition and enforcement of state and tribal court domestic violence orders of protection, individual state and tribal jurisdictions are responsible for establishing mechanisms that ensure recognition and enforcement. Extending Project Passport enhances the likelihood that cross-jurisdictional recognition and enforcement will occur, especially for tribal court orders. Unfamiliarity with a tribal court order format can lead to inconsistent enforcement by state and other tribal courts and police who are uncertain about the tribe's justice system or the validity of its orders. The Passport Model Template First

² For a detailed description of New Mexico's adoption process, see http://www.nmcourts.gov/tsconsortium/docs/Initiatives/Project_Passport/Passport_Additional_Background_Materials.pdf

Page can help reduce enforcement concerns without jeopardizing tribal sovereignty. With the Model Template First Page, state and tribal court orders appear similar in format and communicate similar critical information; however the proceedings leading up to the order and the order's unique terms and conditions are controlled by the specific culture and processes of the tribe.

Intergovernmental Cooperation

Extending Project Passport is a multidisciplinary collaborative partnership of national, tribal, and state organizations. The National Center for State Courts and the National American Indian Court Judges Association (NAICJA) represent state and tribal court systems, respectively. In 2005, NAICJA adopted a formal resolution announcing its support for the program and encouraging “all of its members and all Tribal Courts in the United States to adopt the principles of Project Passport and participate in all training and education programs offered by the National Center for State Courts.” The project's regional meetings and tribal–state regional forums have facilitated communication, cooperation, and collaboration between tribal and state courts and law enforcement agencies. Examples include the exchange of state and tribal points of contacts, coordinated publication of tribal and state court codes, coordinated community outreach and provision of victim services, and facilitated access to protection order data and registries. The establishment of tribal–state liaisons, new formal tribal–state forums, joint response protocols, and cross-deputization agreements between jurisdictions has also been explored by tribal and state partners.

Fairness

The common data elements and format designated by Project Passport were developed to confirm facial validity and facilitate proper identification of the individuals (respondents particularly) covered by domestic violence orders of protection. Standardized features help clearly communicate important information, limiting the possibility of erroneous enforcement or lack of enforcement. This information includes the nature of the order, its expiration date, identifying information about the issuing court and the parties to the order,

“What we know from jurisdictions is that Project Passport has benefitted the coordination between states and tribes around issues of domestic violence; it has helped strengthen and expand sovereignty; and it has enhanced recognition of tribal court orders by the state jurisdiction. . . . Project Passport is about endeavoring to build a mechanism which helps strengthen and broaden the safety-net for community members. The work done around this, by its very nature, has helped strengthen communications, strengthen responses, and ultimately strengthen the enforcement of protection orders [through use of the Project Passport template] to help protect lives.”

—Denise O. Dancy,
Research Associate and Project
Passport Director,
National Center for State Courts

“Everyone dials 911 when they're in trouble; it doesn't matter where they are. . . . You want to take away concerns about the validity of an order. You want [law enforcement officers] to focus on protecting the individual.”

— Chief Judge Thomas W. Weissmuller,
Mashantucket Pequot Tribal Court

and whether the order satisfies full faith and credit requirements related to jurisdiction and due process (e.g., notice to respondent and opportunity to be heard).

Keys to Success

Judicial leadership and broad stakeholder support have been crucial for tribal and state courts' adoption of Project Passport. Leaders from state and tribal judiciaries have encouraged and actively facilitated dialogue across systems and various disciplines regarding their different needs and how to address them. Of critical importance, NAICJA lent its support to and has been actively involved in the initiative. Finally, joint training and education for law enforcement and court staff have contributed to the success of extending Project Passport, along with the attendant growth of communication among tribal and state officials. State officials, in particular, have grown in understanding of the differences between tribal and state courts, recognizing that tribal courts do not function similarly to state courts along some dimensions. Tribal and state participants have come to recognize and appreciate that despite distinctions that may exist across jurisdictions and courts, they share the very important goals of protecting the safety of women, children, and families and the law enforcement officers whose duty it is to respond and protect them.

2. State of Arizona and Arizona Tribes

Recognition and Enforcement of Tribal Court Involuntary Commitment Orders

Founded: 1992 (enactment); more frequently used since 2009

Service Area: Arizona

Population: All federally recognized tribes in Arizona

Sources of Funding: Intertribal Council of Arizona, Arizona Office of the Attorney General, Arizona State Hospital, Arizona Department of Health Services/Department of Behavioral Health Services, and Regional Behavioral Health Authorities

Web site:

www.azdhs.gov/bhs/TribalCtInvCommitment.htm

Contact: Lydia Hubbard-Pourier
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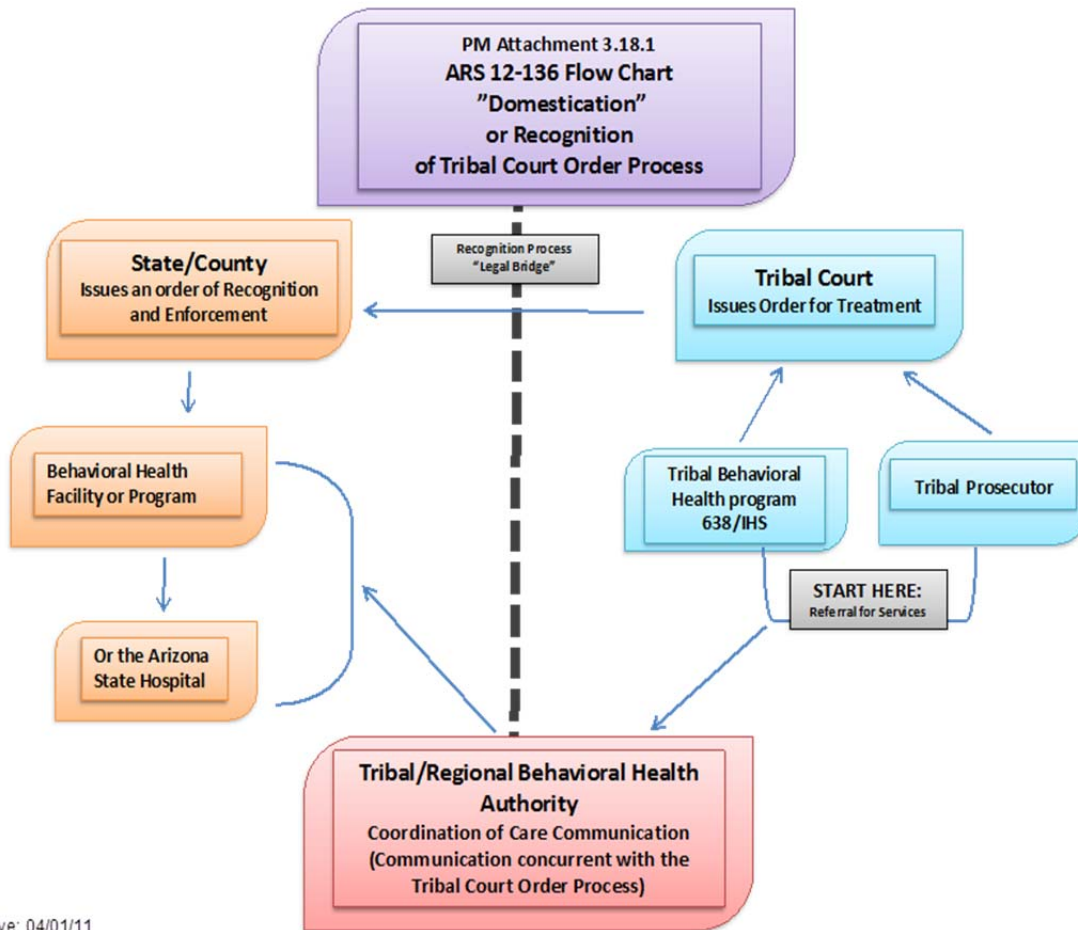
Catherine Plumb, Assistant Attorney General, State of Arizona -2010. Assistant Attorney General for the Arizona State Hospital, member and founder of Involuntary Commitment Work Group.

Program Description

In 1992, the State of Arizona enacted Arizona Revised Statutes (A.R.S.) § 12-136, providing that any involuntary commitment order of an Arizona tribal court that is filed in state court will be recognized and enforced by the courts of the state as if it had been entered by another state court. The state recognition process is not a rehearing of the facts or findings of the tribal court. All that is required for enforcement is that the tribal court order includes certain findings and information, as set forth in Arizona's Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders, which is available at www.azcourts.gov/portals/93/handouts/tribal_court_involuntary_order.pdf (forms included).

A.R.S. § 12-136 requires giving notice to the state's attorney general of the filing of the tribal commitment order and gives the attorney general five days to appear responding to the state court domestication proceeding. Enforcement of a tribal order for involuntary commitment to

treatment includes admission to the Arizona State Hospital for those Indians residing on reservations. Any patient committed to a state mental health treatment facility under this law is made subject to the jurisdiction of the state. The tribal court that issued the original commitment order is given 10 days' notice of the discharge of the patient, and any necessary outpatient follow-up and transportation of the patient back to the tribe's territory must be arranged through an intergovernmental agreement between the tribe and the state's Department of Health Services. The process that occurs is presented in the following flowchart:



Arizona enacted this law because tribal governments are sovereign and have sole jurisdiction over tribal members on reservations in non-PL 280 states. As a consequence, state involuntary commitment proceedings could not be brought against tribal members.³ Although tribal courts do have jurisdiction to enter civil commitment orders for on-reservation tribal members, tribes typically lack the facilities needed for such commitments and cannot directly order individuals into state facilities. There are 22 federally recognized tribes in Arizona, and approximately

³ See *White v. Califano*, 437 F. Supp. 543 (D.S.D. 1977).

175,000 Indians reside on those tribal reservations. Five of these tribes operate tribal regional behavioral health authorities under intergovernmental agreements with the State of Arizona.

For many years, this Arizona statute remained largely unused. In February 2008, a representative from the Intertribal Council of Arizona (ITCA), a multitribal organization, alerted the director of the Arizona Department of Health Services and local leaders of the Indian Health Service to the critical need for training and informational outreach to the tribes and state-sponsored Regional Behavioral Health Authorities concerning the process of court-ordered treatment for on-reservation Indians. As a consequence, state officials representing legal, mental health, and Medicaid agencies were assigned to work with the ITCA staff to form an Involuntary Commitment Work Group. At the urging of this work group, the Arizona Department of Health Services and ITCA convened a tribal forum to illustrate a very negative picture of American Indians awaiting needed admission to the Arizona State Hospital. Frequently, these individuals languished in tribal jails for months on end, receiving no behavioral health services at all. At a second forum several months later, tribal and state representatives looked carefully at tribal involuntary commitment laws and procedures as well as at the policies and practices of the state's Regional Behavioral Health Authorities.

Based on these sessions, the work group set in motion a series of training sessions. During October and November 2009, the Arizona Department of Health Services, ITCA, and tribal and state-chartered behavioral health authorities conducted nine of these sessions focusing on A.R.S. § 12-136, Indian tribal courts, involuntary commitment orders, and recognition. The training, which was provided to state and tribal behavioral health providers, recognized tribal sovereignty and its effect on the involuntary commitment process of American Indians residing on tribal lands. Ongoing training continues on an ad hoc basis, conducted by a cadre of especially knowledgeable individuals within state and tribal agencies.

In response to the relatively high turnover of individuals involved in implementing the law, the work group also proposed development of a "Tribal Court Procedures for Involuntary Commitment—Information Center" web page on Arizona's Department of Health Services/Division of Behavior Health Services web site. This comprehensive site includes information about laws and regulations, state and tribal contacts, training resources, and links to other materials, including agreements between tribes and state-sponsored Regional Behavioral Health Authorities. Visit the web page at www.azdhs.gov/bhs/TribalCtInvCommitment.htm.

Cultural Compatibility

It is the responsibility of each tribe to put the law into place in a way that is consistent with tribal law and culture and with state law that needs to be followed in order for the tribal involuntary commitment order to be honored when it goes to the state court. State law limits commitment to the state hospital to people who meet specific qualifications. For instance, court rules require tribal orders to contain certain findings, and those findings are required by state law in order for the state hospital to hold someone involuntarily for treatment.

Nonetheless, tribes in Arizona are able to structure their own tribal court proceedings so that involuntary commitment is ordered only after a careful process that includes culturally specific evaluations and consideration of culturally appropriate forms of treatment short of placement in a state inpatient facility. For example, the provider manual of the Gila River Tribe states, “Tribal court ordered treatment for American Indian tribal members in Arizona is initiated by tribal behavioral health staff, the tribal prosecutor or other person authorized under tribal laws. In accordance with tribal codes, tribal members who may be a danger to themselves or others and in need of treatment due to a mental health disorder are evaluated and recommendations are provided to the tribal judge for a determination of whether court ordered treatment is necessary. Tribal court orders specify the type of treatment needed.”

As tribal staff initiates the tribal court-ordered process, communication and clinical coordination are required between tribal and state-sponsored Regional Behavioral Health Authorities to ensure continuity of care and avoid delays in admission to an appropriate facility for treatment upon state/county court recognition of the tribal court order.

Enhancement of Tribal Authority

State recognition of tribal court civil commitment orders expands the authority and reach of tribal judiciaries, making it possible for tribal court directives to be carried out beyond reservation boundaries and to compel the provision of state mental health services. The tribe initiates the proceedings and makes the relevant determinations regarding treatment. So long as the tribal court order includes findings respecting tribal jurisdiction, due process for the affected patient, mental health diagnosis, and the least restrictive treatment alternative, the tribal court order will be accepted by the state court and will be enforced. There is no requirement of reciprocity on the part of the tribe.

Intergovernmental Cooperation

Effective implementation of A.R.S. § 12-136 emerged from a joint initiative of a state agency (the Arizona Department of Health Services) and an intertribal organization (ITCA). They formed a joint work group that recommended further cooperative endeavors, including training sessions and an informational web site. As federal judge William C. Canby Jr. has related, “In Arizona, tribal judges who were members of the State–Federal–Tribal Forum pointed out that, although state resources were theoretically available for mentally ill Indians, the State Hospital would not accept civil commitments ordered by tribal judges. At first some state judges in the Forum agreed to accept tribal court orders as a matter of full faith and credit, and issue state court commitment orders based on the tribal orders. This informal arrangement solved the problem in the short run. The Forum then suggested State legislation to remedy the problem. With tripartite backing, the legislation easily passed and the State Hospital now accepts tribal court commitment orders directly, as a matter of state law.”

Arizona state court recognition and enforcement of tribal court orders for involuntary civil commitment has produced other cooperative activities involving mental health care providers and the courts. This coordination is necessary to avoid delays in admission to an appropriate facility for treatment, to ensure continuity of care of tribal members for the duration of treatment, and when members are transitioned to services on the reservation. In Arizona, state-sponsored Regional Behavioral Health Authorities have entered into agreements with tribes to address behavioral health needs and improve the coordination of care for tribal members.

Fairness

Tribal codes and court processes provide the starting point for this tribal–state court practice. Before state courts will recognize and enforce a tribal court order, there must be a finding by the tribal court that “the proposed patient received notice of the civil commitment proceeding and the allegations regarding the patient’s mental condition and had the opportunity to be heard with the assistance of a person recognized by the tribal court as competent to represent the proposed patient.” The state’s attorney general is also given five days from the date of filing the tribal court order to enter the state court proceeding and challenge the basis for the

“A.R.S. 12-136 is designed to be a legal bridge which is used for State Courts to recognize Tribal Court orders. . . . I believe that this has improved the relationship between Tribal and State Courts, that there is now a better understanding of tribal sovereignty over tribal lands, a better understanding of behavioral health programs within the state, the providers, and even the tribal behavioral health programs, on how the two systems need to work together, and what services are available to tribes.”

—**Lydia Hubbard-Pourier**, Tribal Contract Administrator, Arizona Department of Health Services

commitment. So there are many protections for the patient who would be subject to involuntary commitment.

Keys to Success

The establishment of a multiagency, intergovernmental work group meant that stakeholders from both sides were able to express their concerns, and initiatives enjoyed support from state and tribal governments from the outset. The involvement and administrative support of a multitribal organization, ITCA, made it possible for the work to proceed successfully and for all Arizona tribes to participate and feel represented. The Arizona State-Federal-Tribal Court Forum has monitored the initiative, identifying areas that require attention from state and tribal court systems and governments. This forum has been developing a curriculum to educate tribal and state court judges on how to interpret and implement A.R.S. § 12-136. Finally, the Arizona Division of Behavioral Health Services has, for the first time, incorporated reference to A.R.S. § 12-136 and its attendant requirements in its provider manual.

3. Leech Lake Band of Ojibwe Tribal Court and Minnesota's Ninth Judicial District Court for Cass and Itasca Counties

Joint Powers Agreement

Founded: 2006 (Cass County); 2008 (Itasca County)

Service area: Leech Lake Reservation and Cass and Itasca Counties, Minnesota

Population: Approximately 9,000 Leech Lake tribal members and non-Indians in both counties

Source of funding: Minnesota State Court Administrator's Office and the Bureau of Justice Assistance, U.S. Department of Justice, Tribal Courts Assistance Program

Web site:

www.justice.gov/tribal/docs/fvtjs/session4/session4_presentations/Sustaining_Wellness_Courts.pdf

Additional Information: Korey Wahwassuck, *The New Face of Justice: Joint Tribal–state Jurisdiction*. 47 Washburn L.J. 733 (2008).

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State and tribal judges together acknowledge the addition of the Leech Lake flag to the county courtroom.

Source: <http://ccllwellnesscourt.wordpress.com/>.

Program Description

The Leech Lake Band of Ojibwe Indians is located in the State of Minnesota, one of the “mandatory” PL 280 states—meaning that in 1953, the federal government gave up most of its Indian Country criminal jurisdiction in that state, and the state received authority to enforce its criminal laws on reservations. As a consequence of PL 280, tribes in that state were denied federal funding to develop their own tribal courts, although tribal court civil and traffic dockets began to grow during the 1980s. Because state jurisdiction was introduced without tribal consent or any federal funds to support it, tribal members have often viewed state criminal

justice as culturally inappropriate and inadequately responsive to community safety needs. The result had been mistrust between tribal and state systems. Simultaneously, Leech Lake, like many American Indian communities, was facing dire conditions due to the increasing prevalence of drug and alcohol offenses. Because of PL 280, tribal members were processed in state court, which turned into a revolving door, with offenders cycling in and out of the system. There was a general frustration among tribal members, not only because tribal members were coming back through the system, but because there was a feeling that the state courts were not addressing tribal needs.

In an effort to address these conditions, the Leech Lake Tribal Court entered into two Joint Powers Agreements with two of the four counties that overlap the reservation. In these unprecedented agreements, one in 2006 and the other in 2008, the tribal and county courts pledged to "jointly exercise the powers and authorities conferred upon us as judges of our respective jurisdictions." The agreement with Cass County produced a joint Wellness Court aimed at DWI cases, and the agreement with Itasca County produced a joint Wellness Court that combines drug and DWI cases. Following the Wellness Court model that focuses on rehabilitation rather than punishment, these courts allow qualifying individuals sentenced in the state court system to opt in to the program as an alternative to serving their sentences. In the two courts, judges from both jurisdictions preside together. In Cass County, there is even a videoconferencing system that allows tribal and county courtrooms to be used simultaneously, with the defendant/client choosing the preferred location.

Both of these joint courts incorporate a multidisciplinary, multijurisdictional team that draws up an individualized treatment plan and meets regularly to discuss and monitor each case. Clients report their progress directly to the pair of tribal and county judges. Significantly, both courts employ evidence-based practices that are proven to reduce recidivism, including data-based decision making, identification of offender risk and appropriately targeted treatment interventions, and balancing positive reinforcement with swift imposition of appropriate sanctions for violating conditions. Results have been striking, including a significant reduction in recidivism, coupled with reunification of families, an end to abusive relationships, and securing of employment and valid drivers' licenses. In 2010, the Joint Leech Lake/Cass and Itasca County Wellness Courts were awarded honors by the Honoring Nations program at Harvard University's John F. Kennedy School of Government (<http://hpaied.org/images/resources/publibrary/joint%20tribal-state%20jurisdiction.pdf>).

Cultural Compatibility

The joint nature of the two Wellness Courts means that criminal proceedings that once would have taken place exclusively within the state court system can now benefit from culturally appropriate tribal resources and involvement. For example, although the state may have access to drug-testing technology, Leech Lake can call on spiritual healers to help participants make cultural connections and work through historical trauma. Additionally, tribal understandings of restorative justice can find their way into the criminal justice process. At the broadest level, the entire concept of authority can be reconceived to comport more closely with tribal conceptions that stress collaboration rather than control or domination.

As Judge Korey Wahwassuck has observed, the day-to-day communications built into the operation of the courts has also enhanced judges' and staff members' awareness and sensitivity to cultural values and cultural differences. She notes, "These cultural values are important to understand because they are part of the makeup of each individual and his or her approach to society."

Furthermore, Ojibwe ceremonies have been used to enhance the cultural legitimacy of the joint Wellness Courts. For example, on the occasion of the signing of the agreement between Leech Lake and Itasca County, a young Nishnabek boy made his way down the line of tribal and state court judges at the county courthouse, smudging each one of the judges with cleansing smoke to clear away any negative thoughts and feelings. The judges proceeded to the courtroom as a youth drum group from the Leech Lake Band of Ojibwe's Bug-O-Nay-Ge-Shig School sang an honor song.

Enhancement of Tribal Authority

The nation-to-nation nature of the Joint Powers Agreements hearkens back to the treaty-making era, when native nations were dealt with on a basis of mutual consent. At a more practical level, the Leech Lake Band of Ojibwe had played no part in the criminal justice system affecting its people before these agreements were made. Racial tensions were high, and the tribe and state competed for sovereignty, often through litigation. With the new partnerships in place, the Leech Lake Tribal Court participates in sentencing and can shape and supervise appropriate treatment options. Energy that would have been spent on jurisdictional competition can be used to achieve tribal goals, such as family reunification and safer roads.

At a more symbolic level, the Joint Powers Agreements have enhanced the stature and legitimacy of the tribe among outside authorities and citizens. In Cass and Itasca Counties, for example, the Leech Lake flag now flies alongside flags of the state and federal governments. Moreover, this enhanced respect for the tribal court has led to other cooperative initiatives

that can extend the reach of tribal authority, including development of a multijurisdictional delinquency court and joint hearings on custody cases not covered by the Indian Child Welfare Act (ICWA).

Significantly, the joint tribal–state court arrangement expanded in 2010 to encompass juvenile and family cases. Under this arrangement, review hearings are held in tribal court, with supervision services provided by the Cass County Probation Department under a cross-jurisdictional appointment order. Both systems remain involved, and the reach of tribal authority is extended.

Intergovernmental Cooperation

The benefits of intergovernmental cooperation are plainly manifest in the two Wellness Courts created by Leech Lake and the two Minnesota counties. Sharing of resources has made it possible for the justice system to produce positive results in an era of shrinking budgets. Staff positions can be shared, and the judges from each system can cover for each other should scheduling conflicts arise. As Judge Wahwassuck of Leech Lake points out, “The judges have worked so well together that they have become very confident in each other and are comfortable having the other judge handle the proceedings in their absence. This is true even if it means that the tribal court judge takes the bench alone in state court, or that the state court judge takes the bench alone in tribal court.”

Keys to Success

The Joint Powers Agreements emerged from a mutual realization that the tribe and the counties shared common problems and goals. The problems were high levels of alcohol-related crashes on county highways and high levels of drug and alcohol addiction associated with criminal activity and family dysfunction. The common goals included decreasing the number of arrests for DWI, fewer fatalities, and decreased recidivism rates. Once those common goals were identified, it became easier to overcome centuries of mistrust and even animosity.

“Joint tribal–state jurisdiction in northern Minnesota has built a bridge, not only between systems, but between cultures. Ultimately, it will be up to those who come after us to ensure that the way remains open.”

—**Judge Korey Wahwassuck**
(Leech Lake), Judge John P. Smith
(Cass County),
and Judge John R. Hawkinson
(Itasca County)

“The execution of the Joint Powers Agreements between the Tribal Court and State District Courts within the Ninth Judicial District are an important example of how broader inter-governmental relations can begin to come full circle back to that of coequal sovereigns; it is fitting therefore that just as the Wellness Courts promote and foster healing for individuals within our communities, the mutual respect and efforts at cross-jurisdictional understanding and collaboration giving rise to the Wellness Courts, as embodied in the Joint Powers Agreements, promote and foster healing within the circle of Nations.”

—**Leo Brisbois** (White Earth Ojibwe),
the first Minnesota State Bar
Association President of American
Indian heritage and descent

Open communication and the development of mutual respect were essential to the success of the partnerships. Participants from tribal and county courts learned how to disagree and still reach a desirable result. Jon A. Maturi, Chief Judge of the Ninth Judicial District, has credited the success of the collaborative efforts to “a mutual understanding of our respective sovereignty, but, more importantly, [to] our mutual understanding of what we hold in common and our joint desire to better serve the residents of [the] County, Leech Lake and the Ninth Judicial District.”

4. Michigan State Bar and Michigan Tribes

Michigan Bar Journal's Annual Directory

Founded: 1993

Service area: State of Michigan and native nations located in that state

Population: All lawyers admitted to the Michigan State Bar and 12 federally recognized tribes in Michigan

Source of funding: Michigan State Bar

Resource: Honorary Michael F. Cavanaugh, "Michigan's Story: State and Tribal Courts Try to Do the Right Thing," 76 *University of Detroit Mercy Law Review* 709 (1999),

<http://turtletalk.files.wordpress.com/2007/12/cavanaugh-michigans-story.pdf>

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Chief Judge Michael Petoskey of the Pokagon Band of Potawatomi presents a turtle drum to Michigan Supreme Court Justice Michael F. Cavanaugh during a site visit to the Pokagon Band of Potawatomi Tribal Court by representatives from CASEY Family Programs, National Council of Juvenile and Family Court Judges & Michigan Court Improvement Program.

Program Description

Every year, the *Michigan Bar Journal*, a publication of the Michigan State Bar, produces a directory issue, thick with information about lawyers, courts, and the legal system in that state. Yet until the early 1990s, that directory issue completely ignored the growing number of tribal courts located in Michigan. As a consequence, practitioners in the state were unaware of the 12 federally recognized tribes in the state—the third sovereign—in their midst and the range of inter-jurisdictional issues that could involve Michigan's tribal courts.

The state courts' inattention to tribal courts ended in 1992, when Michigan joined an initiative, sponsored by the State Justice Institute, to convene meetings or forums of tribal and state court judges on a statewide basis. In Michigan, seven state and tribal judges met and produced

a number of recommendations. Through the work of the Indian Tribal Court/State Trial Court Forum in Michigan, it became apparent to state court officials that nontribal lawyers, perhaps even more than judges, needed to be educated about the nature and functions of tribal courts. As the report of the forum noted, “Large numbers of non-Indians visit Michigan’s Indian reservations for gaming, pow wows and other activities. There are some non-Indians living on reservations in Michigan. A growing number of non-Indians have business dealings with Indian tribes. Indian children and parents throughout the state may be subject to tribal court jurisdiction in proceedings that fall under ICWA. For all of these reasons, an increasing number of attorneys are involved in tribal court cases. Most attorneys have no ready source of information on tribal courts, so can easily be flustered when a client falls under tribal court jurisdiction.”

To remedy that situation and to provide Michigan lawyers with some of the basic information needed to work with tribal authorities, the Michigan State Bar was approached to ensure that the annual directory issue of the *Michigan Bar Journal* would include detailed information about tribal governments and their justice systems. The directory issue, which is sent to more than 40,000 lawyers licensed in the state, contains a wealth of information about each tribe located in Michigan:

- * The nature and organization of the tribe’s government;
- * Tribal constitutions and other governing documents;
- * The structure of the tribe’s court system;
- * The territorial jurisdiction of the tribe;
- * Caseloads during the previous year;
- * Requirements for admission to practice before the tribal court;
- * The tribal court’s facilities;
- * Current personnel;
- * The extent to which the tribe has entered into intergovernmental agreements; and
- * The sources of tribal law and procedure.

In addition, the *Michigan Bar Journal* periodically dedicates one of its monthly issues to Indian law and tribal law. Since 1986, the *Michigan Bar Journal* has published four issues that were specifically dedicated to exploring Indian law topics. Overall, the *Michigan Bar Journal* has published 25 articles on Indian law issues during the past 25 years, on topics ranging from ICWA to criminal jurisdiction, economic development, and tribal–state relations.

Enhancement of Tribal Authority



Pokagon Band of Potawatomi Tribal Court

The directory was designed to recognize the equal dignity of tribal courts, and it heightened the visibility, understanding, and legitimacy of tribal courts among outside practitioners. Tribal sovereignty has been underscored with information about tribal laws and governmental organization. As the understanding of tribal courts increased, other cooperative initiatives with the state courts ensued. Most notably, in 1996, the

Michigan Supreme Court adopted Michigan Court Rule 2.615, Enforcement of Tribal Judgments, which authorizes recognition of tribal court orders and judgments on the basis of comity.

Tensions can arise between tribes and nontribal citizens when practitioners fail to alert their clients to the sovereign nature of native nations and their courts. Lawyers' awareness of legal considerations such as tribal sovereign immunity can help prevent conflicts. The directory increases the likelihood that Michigan's practitioners will be able to counsel their clients about tribal jurisdiction and the implications for commercial and personal matters, thereby reducing surprises and improving possibilities for respectful interactions.

Intergovernmental Cooperation

The Michigan Indian Judicial Association has worked with the Michigan State Bar to provide updates for the directory. Including tribal courts in the directory has made it possible for judges and state court officials to identify their counterparts in tribal court systems. This knowledge, in turn, has facilitated new initiatives that enable the two court systems to work together. In addition to joint training sessions for judges, run by the Michigan Judicial Institute, tribal court representatives have been invited to participate in strategic planning activities by the Michigan state court system.

"[The directory offers] a wealth of information, and provides a ready primer for anyone who is going to be involved at any level with the tribal court."

—Justice Michael F. Cavanagh,
Michigan Supreme Court

Keys to Success

The support of leaders of the Michigan judiciary, through the Indian Tribal Court/State Trial Court Forum, was indispensable to the development of the section on tribal courts in the annual directory. After its meetings and report, the forum started looking for ways to ensure continuing contacts and interaction, and the directory was an important way to achieve that goal. The *Michigan Bar Journal* first surveyed readers to determine what kinds of information they wanted to see included in the directory. In addition, the State Bar of Michigan has an Indian Law Section and an American Indian Law Committee, both of which worked with the *Michigan Bar Journal* to ensure that the directory was sufficiently comprehensive and informative.

“If you’re going to have a directory of courts, a compendium of all things legal, then the tribal courts had to be included. . . . The Directory also made it possible for outsiders to understand the people responsible—judges, administrators, clerks, probation officers—the personnel who ran the tribal court systems so that coordination could occur.”

—**Frederick Baker Jr.**,

Former Chair, Publication and Website
Advisory Committee, Michigan State Bar

“The Michigan Bar Journal has contributed to the visibility and respect for tribal courts among members of the state bar by providing detailed information about tribal courts in its annual directory issue.”

— **Associate Appellate Justice Wenona Singel**,

Little Traverse Bay Bands of Odawa Indians
and Assistant Professor of Law, Michigan
State University

5. Idaho State/Tribal Court Forum and Idaho State Judiciary

Idaho Tribal Court Benchbook



Source: <http://www.isc.idaho.gov/tribal-state/tribalcourt>

Founded: 1997

Service area: State of Idaho and native nations located in that state

Population: State and tribal court practitioners and judges in Idaho and five federally recognized tribes in Idaho

Source of funding: Idaho State Judiciary

Web site: http://www.isc.idaho.gov/tribal/TribalCourtBenchBook_2005.pdf

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Program Description

The *Idaho Tribal Court Benchbook* was created by the Idaho State/Tribal Court Forum in order to provide judges, lawyers, and litigants with information and a short description of tribal judicial organizations and tribal judicial relationships with other jurisdictions, including citations to additional authorities on these and other related topics. The Idaho State/Tribal Court Forum was first convened in 1994, when the chief justice of the Idaho Supreme Court designated members of the state judiciary to serve and invited the federally recognized tribes in Idaho to send their own representatives. In an effort to alleviate jurisdictional conflicts and enhance mutual respect, the forum recommended development of a tribal court benchbook. As the preface to the publication indicates, the members of the forum set out to create “a benchbook dealing with the laws and customs of the various Tribes, as well as identifying those lawyers

admitted to practice before each of the Tribes, which would be helpful to the Judges of the Idaho Judiciary and the Indian Tribes.”

The benchbook describes each tribe’s judicial organization and supplies names, addresses, and information relating to each of the sovereign tribes existing in the State of Idaho. It also lays out basic principles of federal Indian law that support tribal governmental powers, including judicial powers, and explains the legal framework of tribal, state, and federal jurisdiction, both civil and criminal. The benchbook then proceeds to describe the extent to which tribal and state courts are obliged to recognize and enforce one another’s judgments and identifies other important interactions between tribal and state courts, including choice of law questions and the possibility of overlapping proceedings in the two court systems. Where matters remain legally uncertain, the benchbook notes that fact. It also provides Idaho legal authorities on specific topics such as search warrants and the status of traffic infractions.

The benchbook is updated periodically, the latest update having occurred in 2005. A web site was also created that provides easily accessible and more up-to-date information on the tribal courts in Idaho, as well as descriptions of the tribal governments, histories, and web sites of the five federally recognized tribes in Idaho (<http://www.isc.idaho.gov/tribal-state/tribalcourt>).

Enhancement of Tribal Authority

The *Idaho Tribal Court Benchbook* and its associated web site have raised the profile of tribal courts in Idaho, underscoring their jurisdiction and powers as an expression of tribal sovereignty. These resources provide Idaho judges with information about the sources and scope of tribal authority readily available and are primed to detect issues of cross-jurisdictional recognition of judgments and the need to coordinate overlapping legal systems. When issues of tribal jurisdiction arise in state court, the state court judges are better informed about tribal courts and the roles they serve in tribal communities, which may lead to more respectful decisions.

“Now we have a source that can be relied upon about who the tribal judges are, who the prosecutors are, where to find the tribal law and order codes, and similar matters. The Benchbook is also a very useful place to start for information about jurisdictional issues.”

—**Judge Gaylen Box**,
Magistrate Judge,
State of Idaho

Intergovernmental Cooperation

The *Idaho Tribal Court Benchbook* is a product of tribal and state court cooperation, as it grew out of the Idaho State/Tribal Court Forum, a joint effort by state and tribal court systems. The benchbook also promotes intergovernmental cooperation by identifying the personnel in tribal courts who should be contacted to serve as partners for joint initiatives with state judges and judicial staff. Finally, the benchbook affirms the need for cooperation between tribal and state

courts by highlighting the jurisdictional uncertainties that abound in Indian Country. It also identifies opportunities for cooperation between tribal and state court systems through such practices as recognizing one another's orders and judgments and choosing tribal law to resolve disputes heard in state court.

Keys to Success

Strong relationships and greater mutual understanding built through the Idaho State/Tribal Court Forum gave rise to the *Idaho Tribal Court Benchbook*. As the preface to the benchbook states, "For more than 150 years non-Indian residents of the State of Idaho have lived adjacent to the five Indian Tribes of Idaho—Kootenai, Coeur d'Alene, Nez Perce, Shoshone-Bannock, and Shoshone-Paiute. In 1994, the Supreme Court of the State of Idaho determined that it was time we became neighbors, understanding and respecting each other's customs, lifestyles and laws." That leadership and commitment were indispensable to the successful implementation of the benchbook. A visionary chief justice of the Idaho Supreme Court gave relatively free rein to the forum to devise strategies for improved relations, and the benchbook was one of its first priorities.

"While state courts in their structures, staffing, and rules were pretty well known, tribal court structures, judges, staffing, and rules were pretty much unknown. The fact that a growing number of cases was being heard by tribal courts made it important to get out information for practitioners and state court judges alike."

—**Director Douglas Nash**,
Institute for Indian Estate
Planning and Probate, Seattle
University Law School and
Former Chief Counsel, Nez
Perce Tribe

6. Arizona Supreme Court and Arizona Tribal Courts

Rule Providing State Recognition of Tribal Court Judgments

Founded: 2000

Service area: State of Arizona and Indian Country throughout the United States

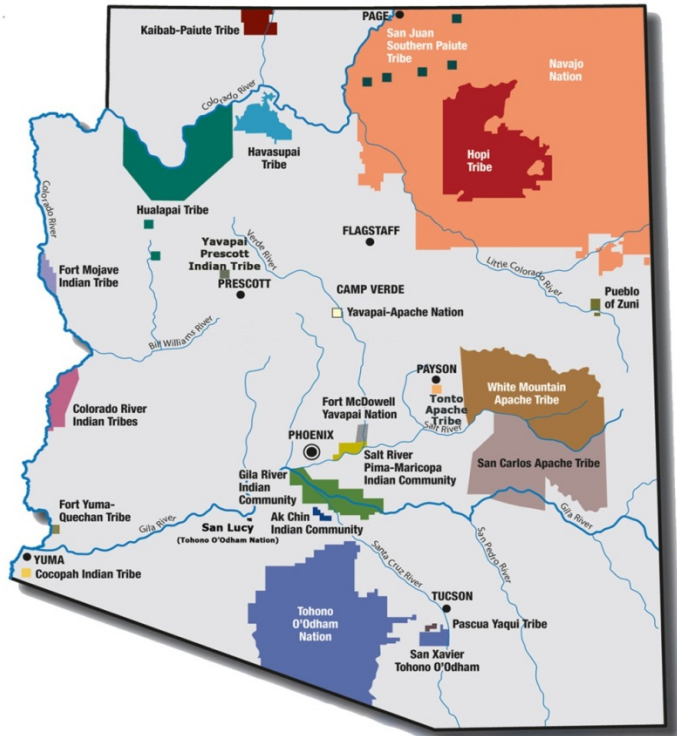
Population: Judges of Arizona courts and litigants before tribal courts

Source of funding: Arizona Judicial Branch

Web site:

www.azcourts.gov/portals/93/handouts/rules_recognitn_tribaljudgetments.pdf

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Source: http://itcaonline.com/?page_id=16

Program Description

Sometimes a civil plaintiff who wins a case before a tribal court needs to enforce the judgment outside the reservation through a state court. For example, the winning plaintiff may need to collect on a money judgment, and the losing defendant may have all of her or his assets in an off-reservation bank. If the situation involved two states, the U.S. Constitution and federal statutes would require that “full faith and credit” be given to the original judgment, and the second state would have to enforce the judgment of the first state as if it were its own. When the original judgment is from a tribal court, however, federal requirements of full faith and credit are not so readily applied.

The Arizona Supreme Court responded to this situation by adopting a rule of court, titled Rules of Procedure for the Recognition of Tribal Court Civil Judgments, which supports enforcement of tribal court judgments if certain conditions are met. A copy of the rules can be found on the web site of the Arizona Judicial Branch

(www.azcourts.gov/portals/93/handouts/rules_recognitn_tribaljudgetments.pdf). Under these

rules, although the enforcement of tribal court judgments is not as automatic as full faith and credit, enforcement is required in the absence of an objection. If there is an objection, the conditions attached to enforcement are similar to those provided for judgments of courts of foreign countries. Considerations following an objection to enforcement are divided into two categories: mandatory and discretionary. The mandatory considerations are that the tribal court lacked jurisdiction (either personal or subject matter) and the defendant was not afforded due process. The discretionary considerations are whether the tribal judgment was obtained by fraud, whether the tribal judgment conflicts with another final judgment that is entitled to recognition, and whether the tribal judgment is inconsistent with the parties' contractual choice of forum. Arizona's rules are unusually clear and detailed about the procedures to be followed in seeking enforcement of a tribal court judgment, making them especially helpful to litigants and judges.

Enhancement of Tribal Authority

Several other states, such as Michigan, North Dakota, and Minnesota, have rules of court authorizing enforcement of tribal court judgments and establishing a presumption that the tribal court judgment should be enforced. The Arizona rules stand out, however, because they are especially respectful of tribal sovereignty. They set a respectful tone from the beginning by stating that "determinations regarding recognition and enforcement of a tribal judgment . . . shall have no effect upon the independent authority of that tribal judgment." Failure to enforce does not diminish the validity of the original tribal court order. The rules also state that "nothing in these rules shall be deemed or construed to expand or limit the jurisdiction either of the State of Arizona or any Indian tribe." As Dean Kevin Washburn of the University of New Mexico School of Law has observed, these statements are useful in educating judges and individuals who are unfamiliar with the authority and role of tribal courts. In addition, he states, "in elucidating the Arizona Supreme Court's own understanding as to the authority of tribal courts, the statements set a tone of respect for the courts of the 'Third Sovereign.'"

The Arizona rules stand out in other ways as well. Unlike the North Dakota rules, they apply to tribes throughout the United States, not just to tribes in the single state. Unlike the Michigan rules, they apply regardless of any reciprocity offered by the tribe whose judgment is presented for enforcement. Arizona will enforce a tribal court judgment from any tribe in any state, regardless of whether that tribe's courts are willing to enforce Arizona judgments. The absence of a reciprocity requirement means that tribes are not pressured to enforce state judgments with which they may disagree.

Fairness

Under the Arizona rules, a tribal court judgment will not be enforced if there is an objection and the objecting party proves that due process was not provided before the tribal court or that the tribal court lacked jurisdiction. It is up to the state court, which is being asked to recognize and enforce the tribal court judgment, to determine whether due process was afforded to the losing party in tribal court. Thus a fairness requirement is built into the rules.

“The Arizona Supreme Court Rules of Procedure for the Recognition of Tribal Court Judgments . . . reflect tremendous respect for tribal courts and provide clear guidance to lower state court judges as to how to handle tribal court judgments.”

—Dean Kevin Washburn,
University of New Mexico
School of Law

Intergovernmental Cooperation

The Arizona rules emerged from a cooperative endeavor of tribal and state court judges, the Arizona Court Forum, which was created in 1989 and continues to this day as the Arizona State, Tribal, and Federal Court Forum. A 1991 report of the forum pays tribute to the former Chief Justice Frank X. Gordon, stating that “he has, among other things, opened the State Court Judges’ Annual Conference and training to tribal court judges; he has established good working relationships with many tribal court judges; he has visited tribal courts; and he has actively and consistently supported the efforts of this Forum.”

The rules also lend support to cooperation between state and tribal courts. For example, Rule 7 provides that when issues arise as to the validity of a tribal court judgment, the district court “shall . . . attempt to resolve any issues raised . . . by contacting the trial court judge who issued the judgment.” Dean Washburn notes that this rule “actually encourage[s] inter-sovereign judicial cooperation.”

“These rules provide tribal court litigants with confidence that, if necessary, they can enforce any order or judgment they obtain from the tribal court in Arizona courts and a reliable and consistent means of obtaining that enforcement and recognition. . . . Although several states have adopted rules governing the recognition and enforcement of tribal court judgments, the approach of Arizona is among the best rules that have thus far been developed and is a model for other states to emulate. The Arizona rules are excellent for demonstrating respect for tribal courts and tribal sovereignty and fostering positive relationships between the state and Indian tribes.”

—Brad S. Jolly,
Indian law practitioner,
Minneapolis, Minnesota

Keys to Success

The Arizona rules were adopted following a 10-year period of study and negotiation begun under the auspices of the Arizona Court Forum. Because the forum was a project of the Conference of Chief Justices of State Courts, the rules proposal benefited from tremendous support at the level of the Arizona Supreme Court. Yet even though the proposal involved relations between tribal and state courts, the federal courts played a role in the successful adoption of the rules. By the time the proposal emerged, federal judges had been invited to

join the forum; and it was a federal Ninth Circuit decision about recognition of tribal court judgments in federal court that served as a model for the Arizona rules. Finally, the longevity, stature, and visibility of tribal courts in Arizona may have contributed to the successful adoption of the rules.

7. Ninth Judicial District of Wisconsin and Five Signatory Tribes

*Tribal/State Protocol for the Judicial Allocation of Jurisdiction
(AKA Teague Protocol)*

Founded: 2005

Service area: Ninth Judicial District of Wisconsin and five signatory tribes

Population: Tribal and state judges and litigants in their courts

Source of funding: Participating state and tribal court systems

Web site:

www.wicourts.gov/courts/committees/tribal.htm

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Lac du Flambeau former Chief Judge Ernest St. Germaine holds a stone with burning tobacco as Forest County Potawatomi Chief Judge Eugene White Fish draws smoke toward himself during a ceremony for the signing of the Teague Protocol. Stockbridge-Munsee Judge David Raasch stands with head bowed after receiving the smoke. Photo by Tony Anderson. Source: <http://wislawjournal.com/2005/08/03/state-tribal-courts-sign-jurisdictional-agreement/>

Program Description

Wisconsin's Teague Protocol was established for situations in which tribal and state courts have jurisdiction over the same civil dispute, such as a contract or personal injury claim, or a family law matter. Although these situations arise most often in states that have jurisdiction over reservation matters under PL 280, such as Wisconsin, they can arise in non-PL 280 jurisdictions as well. In some of these shared jurisdiction cases, each side may have a claim but one side may file in tribal court and the other in state court. When both of these cases are pending as part of the same dispute, there is a question as to what the two judicial systems should do. If there is no coordination, the pendency of the two lawsuits will lead to a "race to the courthouse" because the first lawsuit to end can claim priority.

This dilemma occurred in a dispute between Jerry Teague and the Bad River Band of Chippewa. Teague brought an action in state court claiming that the Bad River Band had breached his

employment contracts. While that case was pending, the band brought suit in tribal court claiming that the contracts were invalid. The jurisdictional issues were so complex that the case reached the Wisconsin Supreme Court on three separate occasions. Repeatedly, that court urged the state and tribal judges to hold a conference in order to decide which system should handle the litigation. The court indicated that comity (respect and deference to other court systems) should be a guiding principle and even suggested considerations for the courts to take into account in conducting their conference. In 2005, the five tribes and the Ninth Judicial District signed what has come to be known as the Teague Protocol, which incorporates the considerations articulated by the Wisconsin Supreme Court and protects against the kind of protracted conflict that occurred in the Teague case. A similar protocol was established between Wisconsin's Tenth Judicial District and four Chippewa tribes in 2001.

Under the Teague Protocol, state court and tribal court judges temporarily stop actions that are filed in both courts and hold a joint hearing or conference to determine which court should handle the case. Thirteen different factors are to be taken into account in deciding which court should take jurisdiction, including whether the case involves a matter of state or tribal law, how far the case has proceeded in each court, how much time and money the courts have invested in the case, and any cultural issues for the tribe. If the two judges cannot reach an agreement, the agreement allows for a third judge to help resolve the matter. This third judge is selected from a standing pool of tribal and state court judges. A random selection is made if the two judges presiding on the cases cannot agree on a choice. The Teague Protocol is available at www.tribal-institute.org/download/TeagueProtocol.pdf.

Cultural Compatibility

The Teague Protocol includes considerations that show respect for the tribal cultures as they are expressed through tribal law and courts. Specifically, in deciding which court should handle the litigation, the conference between the judges of the two courts is directed to take into account whether the issues in the case require application and interpretation of a tribe's law or state law and whether "the case involves traditional or cultural matters of the tribe." Thus, if tribal cultural issues arise in the litigation, the Teague Protocol makes it far more likely that those issues will be resolved by a tribal court that will be far more knowledgeable about them.

Enhancement of Tribal Authority

The Teague Protocol is a consensual arrangement, built on the assumption that dealings between the state and the tribes reflect a government-to-government relationship. Tribal court judges are on an equal footing with state court judges at each step along the way. Moreover, the operation of the protocol creates opportunities for the extension of tribal authority.

Without the protocol, it would be possible for cases to proceed simultaneously in state and tribal court; if the state litigation reached judgment first, the subsequent tribal court judgment might not be recognized in state court. The protocol prevents such an outcome by directing the proceedings to a single court. Moreover, if the issues in the case implicate tribal sovereignty through the subject of the litigation or the identities or immunities of the parties, or the case involves application of tribal law or cultural matters of the tribe, the tribal court is quite likely to be the forum that is selected. For example, if a tribe or tribal official is party to the lawsuit and in a position to invoke sovereign or official immunity, that factor would weigh heavily in favor of choosing the tribal court under the protocol. Thus respect for tribal sovereignty, lawmaking, and culture are built into the terms of the protocol. Just to emphasize that point, the last section of the Teague Protocol states, “Nothing in this Protocol is intended to alter, diminish, or expand the jurisdiction of State or Tribal Courts, the sovereignty of States or Tribes, or the rights or obligations of parties under State, Tribal, or Federal law.”

Significantly, the protocol has prompted other measures that have enhanced tribal authority. The Wisconsin State–Tribal Justice Forum, first organized during the 1990s, was reinstated in 2005 and charged with promoting and sustaining communication, education, and cooperation among tribal and state court systems. During its meetings, the forum learned of several types of litigation, such as child support cases involving tribal members, in which tribal and state courts were transferring cases in a discretionary manner as justice requires. These situations were not covered by the Teague Protocol, as there was no requirement of a related action already pending in tribal court at the time of transfer. Desiring to formalize this process so that it could be understood and invoked more widely, the forum petitioned the Wisconsin Supreme Court to promulgate a rule on discretionary transfer of civil cases from state to tribal court whenever both courts have jurisdiction. According to the proposal, if the tribal court declines to accept the transfer, the case will remain in state court. The proposal had been reviewed not only by state judicial and legislative agencies, but also by the Wisconsin Tribal Judges Association—a sign of robust intergovernmental cooperation. In 2008, the Wisconsin Supreme Court approved the rule, § 801.54, further enhancing tribal authority.

Fairness

The Teague Protocol incorporates considerations of fairness to the litigants throughout. For example, in determining whether the state court or the tribal court should proceed with the litigation, the protocol states that judges should consider how much time and money the parties have expended in each court and “the relative burdens on the parties, including cost, access to and admissibility of evidence and matters of process, practice, and procedure, including whether the action will be decided most expeditiously in tribal or state court.” Out of concern for fairness to the parties, the choice of court must take into account how difficult it

would be to carry out the litigation in that system, given elements of timing, cost, and logistics. Finally, at each step along the way, parties are given an opportunity to challenge the jurisdiction of the state and tribal courts to ensure that each forum has been properly invoked.

Intergovernmental Cooperation

The Teague Protocol is a triumph of intergovernmental cooperation, with its development as a bilateral agreement and its provisions for joint action by state and tribal court judges. Rather than fight over jurisdiction and which system would deliver the controlling judgment, the state judicial district and the tribal courts have agreed to identify applicable considerations for allocating jurisdiction and then set up a fair process for resolving differences of opinion between the tribal and state court judges regarding how to apply those considerations. Although the Teague Protocol is not used often, its availability has contributed to a spirit of cooperation between tribal and state judiciaries. To date, working relationships between tribal and state judges have become so successful that there has never been an instance in which a third judge had to be selected to overcome an impasse between the views of the tribal and state court judges under the protocol.

Keys to Success

A series of conferences and gatherings that brought together state and tribal court judges led to strong interpersonal relationships among those judges. Through a long, relatively informal process of listing issues on paper charts, they became well acquainted with one another and realized that they had many of the same questions and often dealt with many of the same people. Eventually, jurisdictional competition was set aside.

“Comity is all about respect for the two sovereigns. It’s the development of an idea in the spirit of cooperation. And the recognition that each sovereignty has its own laws and those laws are approved by its people. Comity only works if you accept the differences that each sovereign has and their various legal processes. Comity is supposed to respect and allow for these differences. Foremost, it needs to have due regard for the rights of the citizens of each sovereign.”

**—Former Chief Judge
Edward Brunner,**

Wisconsin’s Tenth Judicial District

“It wasn’t easy. On the state side, they were dealing with one sovereign—the State of Wisconsin. On the tribal end of it, we were dealing with five separate sovereigns, which included five separate tribal councils. We are very proud that it’s here [the protocol]—that we have a mechanism to discuss these things.”

—Judge David Raasch,

Stockbridge-Munsee Tribal Court

8. Yurok Tribal Court and Counties of Del Norte and Humboldt, California

Coordinated Adult and Juvenile Probation

Founded: 2009

Service area: Counties of Del Norte and Humboldt, California

Population: Members of the Yurok Tribe residing in those counties

Source of funding: Tribal and county governments, grant from Coordinated Tribal Assistance Solicitation, and support from the Courts

Web sites: www.yuroktribe.org/tribalcourt/wellness_court,
www.yuroktribe.org/documents/wellnessgrant.pdf

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Chief Judge Abby Abinanti, Yurok Tribal Court.
Source: <http://www.yuroktribalcourt.com/>

Program Description

The Yurok Tribal Court, established in 1996, has rapidly developed into one of the most active tribal courts in California. Like other California tribes subject to state jurisdiction under PL 280, the Yurok Tribe has not benefited from Department of the Interior funding for tribal court development. For that reason and others, it has not yet asserted general adult criminal jurisdiction. Nonetheless, as part of a broader cultural revitalization movement, the tribe has been exercising forms of concurrent jurisdiction and seeking ways to assume more responsibility for its people through cooperative arrangements with local counties and creative use of other federal funding opportunities.

In 2009, the Yurok Tribal Court instituted a Wellness Program, with support from the Bureau of Justice Assistance (part of the U.S. Department of Justice), to supply outpatient and residential treatment to tribal members experiencing substance abuse problems. The focus of the program is on reintegrating such individuals into the culture and life of the Yurok community and on helping them establish a crime- and drug-free lifestyle. To enter the program, individuals must petition the Yurok Tribal Court and submit to its jurisdiction. If clients of the program are on probation or parole through the state court system, case managers and community workers

work with them to meet the terms and conditions of their probation or parole, including meeting requirements for substance abuse testing. The tribe has contracted for residential treatment at a facility in San Francisco, and through its Family Wellness Program provides a wide range of educational, housing, vocational, and counseling services, as well as cultural programs such as Yurok language classes, regalia making, traditional foods, and canoe carving.

Based on the capacity developed through its Wellness Program, the Yurok Tribal Court has approached its two local counties (Del Norte and Humboldt) and proposed taking on responsibility for nonviolent tribal adult offenders and juveniles on probation. Through PL 280, county courts currently handle criminal prosecutions, including pretrial, probation, parole services, and juvenile matters. California's state court system has experienced sharp budget reductions, however, that have severely limited the availability of such services. Moreover, those services were never tailored to the cultural needs of tribal members. With help from a major grant from U.S. Department of Justice, the Yurok Tribal Court is entering into memoranda of understanding (MOU) with the two local counties to officially sanction the co-monitoring of offenders and to establish protocols that will assist in transferring cases and securing state court recognition of tribal court orders.

One MOU with Humboldt County provides for joint supervision of tribal members sentenced to ankle monitoring for curfew compliance and alcohol consumption. The tribal court may recommend or refer a tribal member for placement in the program, which is limited to minimum-security inmates and low-level offenders related to substance or alcohol abuse. According to the MOU, the tribal court establishes a plan and weekly schedule for the participant with the Yurok Wellness Program in order to facilitate the participant's daily activities, including cultural activities and treatment. The tribal court is also responsible for compliance monitoring and reporting of violations to the county court under this cooperative arrangement.

Other MOUs provide for the tribal court to conduct mental health screening, treatment planning, case management, and court monitoring for juvenile offenders and adults in Del Norte and Humboldt counties. The tribal court has hired a clinical coordinator to increase access to mental health services, substance abuse counseling, and other culturally relevant services for tribal youth who have become involved in the state juvenile justice system.

The ultimate goal for the Yurok Tribe is to assume jurisdiction over all these cases, exercising its concurrent authority. In the meantime, the state and tribal systems have agreed to allocate parts of the process to the entity that can be most effective in addressing problems of substance abuse and associated offenses. In the case of juveniles in Del Norte County, for example, an MOU has been negotiated that provides for the two jurisdictions to coordinate the disposition of cases, allowing for a joint determination to be made about which jurisdiction will

handle the primary disposition of a youth's case. Information is to be shared between the two court systems, and a procedure has been established for postponement of cases pending in county court in situations where the tribal court has assumed jurisdiction and the youth completes an accountability agreement and any other conditions ordered by the tribal court. The MOU acknowledges both concurrent jurisdiction and the possibility of the tribal court petitioning for transfer of cases from the county.

Cultural Compatibility

When tribal adults and youth are brought before the state courts, they encounter a system that typically operates according to a different set of cultural values and norms than their home communities. They are not being held accountable to elders and other culture bearers in their communities, and they are not being guided toward healthier, more constructive forms of behavior through tribal cultural practices. With the Yurok Tribal Court, on the other hand, there is a strong emphasis on trying to resolve problems as opposed to apportion guilt or responsibility, and there is considerable use of cultural practices to assist in restoring individuals to a well-functioning state. Tribal members who are referred from state courts for monitoring and supervision by the Yurok Tribal Court gain access to community support, treatment options, and culturally grounded restorative programs. In the case of tribal youth, both court systems have acknowledged that the tribal court will order culturally appropriate education and case plan activities, including a restorative justice component, for all juvenile offenses.

Fairness

Individuals are referred from county courts to the Yurok Tribal Court only after they have consented to participate in the program. Their consent ensures that the benefits and potential sanctions for participating in the Yurok tribal wellness program or ankle monitoring are agreed upon by the participants.

An important fairness consideration that has drawn the attention of the participating counties is equal protection. Are programs made available to tribal members that are not available to other county citizens? Arguably, the fact of concurrent tribal court jurisdiction and higher court decisions upholding distinctions based on tribal membership should allay these concerns. For the ankle-monitoring program, the fact that private ankle-monitoring arrangements are permissible under state law made the equal protection issues less challenging.

Intergovernmental Cooperation

MOUs among the affected agencies at the county and tribal levels have been the vehicles for achieving intergovernmental cooperation between the Yurok Tribal Court and Del Norte and Humboldt counties. These agreements have made it possible for each governmental entity to assume responsibility for those functions it can discharge most effectively and with greatest financial support. Rather than contest one another's jurisdiction, the counties and tribe have agreed to share parts of the criminal justice process and to respect one another's actions within each government's agreed-upon sphere.

Keys to Success

The Yurok Tribal Court went about building its own capacity for monitoring, supervision, and treatment of tribal offenders through its Tribal Wellness Program before bringing its ideas and finances to the local county judges. With the counties' budgets under extreme pressure, offers from the tribal court were enthusiastically received by the local state court system. The counties simply did not have the resources to supply the kind of treatment options that the tribal court could provide. Furthermore, Humboldt and Del Norte Counties are not heavily populated, and the Native American presence is substantial and visible. The tribes in that area are perceived as active and positive contributors to the broader community, through the casinos and through their cultures. As one state court judge observed, "We all have a pride in seeing the Native American community culturally evolve and become stronger as time goes on."

In addition, mutual trust had been built over time through a series of other cooperative endeavors, such as cross-deputization agreements and a child support program established by a grant obtained by the tribe and located in space shared with Humboldt County. It was also helpful that the chief judge of the tribal court had served in the state court system and understood its processes and personnel very well. Furthermore, the California judiciary has been promoting tribal and state court cooperative efforts. In 2010, the chief justice of the California Supreme Court established the California Tribal Court/State Court Coalition, the first

"Especially with the state's 'realignment' sending people from prison to county jail, the ankle monitoring program provides a fabulous opportunity for us to cooperate with the Tribe and to do something that is tremendously beneficial both to the Tribe and the local community. . . . It's an opportunity for folks who would be in jail to engage in more culturally appropriate endeavors and to do their time in an alternative fashion."

— **Superior Court Judge Christopher Wilson,**
Humboldt County

"We're institutions that occupy the same space. We're similar and we can and should share. I think if we can create a successful model, . . . we can actually provide them with a lot of assistance, . . . [such as] collaborative court[s], wellness court[s], and the like."

— **Chief Judge Abby Abinanti,**
Yurok Tribal Court

organization of its kind in the state, to improve working relationships among the court systems and to focus on matters of mutual concern. One of the coalition's priorities has been identifying situations in which tribal and state courts can effectively share, allocate, or transfer jurisdiction across case types, including matters involving probationers and parolees. The California Administrative Office of the Courts has provided training and other support for the development of tribal court collaborative justice projects, such as the ones established at the Yurok Tribal Court.

9. New York Federal-State–Tribal Courts Forum

Listening Conference

Founded: N.Y. Federal-State–Tribal Court Forum was founded in 2004; The Listening Conference was held in 2006.

Service area: New York State

Population: New York State court employees, representatives of New York Indian nations, and federal judges

Source of funding: New York State Judicial Institute; Bureau of Justice Assistance; Syracuse University Center for Indigenous Law, Governance, and Citizenship; and Tribal Judicial Institute

Web sites: www.nyfedstatetribalcourtsforum.org/
www.nyfedstatetribalcourtsforum.org/pdfs/NYSBA.pdf

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Photo Source:

<http://www.nyfedstatetribalcourtsforum.org/listeningConference/index.shtml>

Program Description

The Federal-State–Tribal Court Forum was founded in 2004 through the initiative of Chief Judge Judith S. Kaye of the New York Court of Appeals, who formed a committee in 2002 engaging the tribal nations within the state, as well as federal and state judges, to study the possibility of starting a tribal–state–federal forum in New York State. The forum emerged with three main priorities:

1. To ensure accurate application of ICWA at the federal and state level;
2. To devise a means of achieving full faith and credit for judgments of tribal justice systems and federal and state courts; and

3. To provide judicial education and training, not only about relevant law but also about the cultures and justice systems of nations and tribes indigenous to what is now New York State.

As a means to achieve these goals the forum held its first Listening Conference in 2006, convening state and federal judges and court officials in sessions with tribal judges, chiefs, clan mothers, peacemakers, and other representatives from the justice systems of New York’s Indian nations to exchange information and learn about respective concepts of justice. The Listening Conference, a first step in a dialogue and ongoing educational program, included panel discussions of topics such as child welfare, civil and criminal jurisdiction, and native justice systems and concepts of restorative justice. In addition, participants and panelists discussed potential solutions to the problems presented by different coexisting justice systems.

Cultural Compatibility

Before the New York Listening Conference, the state court committee involved in development of the forum made visits to the Onondaga Longhouse and the Oneida and Tuscarora reservations to meet with clan mothers, elders, and tribal officials. The visual theme of the conference was inspired by the Two Row Wampum (Guswhenta), a symbol of the principles governing relationships between the Iroquois/Haudenosaunee and the European nations at the time of first contact—two vessels traveling side by side, neither forcing its way into the other or trying to steer the other. A member of the Oneida Nation’s Men’s Council addressed the conference with an explanation of the Guswhenta. Tribal ceremonies and dances were incorporated into the proceedings, and tribal culture bearers and spiritual leaders were recognized, heard, and given positions of honor.

A central goal of the forum is to enhance federal and state court judges’ understanding of native cultures and justice systems in order to increase sensitivity to and respect for tribal cultures and tribal courts. The Listening Conference was one of the first steps in developing that understanding and building relationships.

“All in all, the participants in the First New York Listening Conference felt they had created a blueprint for building solid bridges between Native and non-Native justice systems in our state, while respecting their discrete, parallel pathways, as symbolized by the Guswhenta.”

—Justice Marcy L. Kahn,
New York Court Supreme Court,

“This effort is important for state and tribal court systems to begin developing a positive relationship. One of the great things they’ve done is they’ve agreed not to talk about issues that would break down a conversation, like land claims and gaming. I think the key is in keeping the lines of communication open and looking for ways to work with state courts.”

—Chief Judge P. J. Herne,
St. Regis Mohawk Tribal Court

Keys to Success

Well-supported, inclusive planning and systematic follow-up have been keys to the success of the New York conference. The Listening Conference was the culmination of three years of meeting, planning, and trust building, and it was the beginning of an ongoing, open dialogue to address critical issues that arise at the modern intersection of state, federal, and native justice systems in New York.

The state courts' involvement was initiated in 2002 by the Chief Judge Judith S. Kaye of the state's highest court. The planning and success of the Listening Conference jumpstarted and solidified the Federal-State–Tribal Court Forum in New York. In 2007 the forum sponsored two New York regional conferences specifically on ICWA issues. Additionally, a pilot project on full faith and credit developed a protocol between the Oneida Nation and the Fifth Judicial District. The forum continues to meet semiannually to address common interests and concerns.

10. New Mexico Tribal–State Judicial Consortium and Cross Cultural Exchanges

Founded: 1998

Service area: New Mexico

Population: New Mexico state court employees, representatives of New Mexico Indian nations, and federal judges

Source of funding: New Mexico legislature, general fund, and the Bureau of Justice Assistance, U.S. Department of Justice



August 2011 Meeting at Jemez Pueblo. Photo on file with TLPI.

Web sites: www.nmcourts.gov/tsconsortium

www.nmbar.org/AboutSBNM/sections/IndianLaw/ILdocs/consortiumcross-courtculturalexchangs.pdf

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Program Description

The New Mexico Tribal–State Judicial Consortium was established in 1998 by the joint action of the New Mexico Supreme Court and Colorado–New Mexico Indian Court Judges Association. With 14 members—7 representing state courts and 7 representing tribal courts—the consortium’s initial mission was broad: “to address questions of jurisdiction and sovereignty, focusing at first in the areas of domestic violence, domestic relations and custody, child support, child abuse and neglect, and juvenile justice, and perhaps expanding into other areas of law in the future.” Expansion has definitely occurred, with domestic violence, law enforcement, and general jurisdictional issues among the topics that have received attention.

Two of the original goals of the New Mexico Tribal–State Judicial Consortium were “to facilitate communication between State and Tribal judicial systems” and “to improve awareness and develop information . . . about the different judicial and legal systems in place in the State and in the various Tribes and Pueblos.” In order to further those goals, the consortium has conducted a series of Cross-Court Cultural Exchanges, beginning in 2000. These exchanges, which are typically cohosted by a tribal court and a local state court, have been well attended and well received and have offered an introduction for many participants to tribal court processes and related activities. From these exchanges, workshops have been developed that have focused on issues such as child welfare and cross-jurisdictional issues presented by federal sex-offender registration requirements. The exchanges have also discussed Navajo peacemaker jurisdiction, recognition of judgments, and domestic violence matters.

Communication and mutual education have led to concrete policy outcomes. For example, a workshop on law enforcement issues resulted in the development of cross-deputation agreements. The consortium has also sponsored state and tribal consideration of Project Passport, one of the Promising Strategies discussed above (see Promising Strategy #1, “Extending Project Passport” page 41). After several regional meetings throughout the state, at which more than 300 members of the courts and law enforcement became more familiar with the standardized Passport Model Template First Page, 7 tribal courts decided to adopt a page similar to the state’s protection order template for use on their protection orders. The consortium also sponsors scholarships for tribal judges to attend the annual State Judicial Conclave and the Magistrate Judges Conference.

Fairness

An important goal of the New Mexico Tribal–State Judicial Consortium has been to achieve greater fairness in the treatment of native and non-native defendants and victims in state courts. One of the workshop topics has been ensuring native representation on state court juries. In 2006, the consortium cosponsored the annual meeting of the National Consortium on Racial and Ethnic Fairness in the Courts, promoting the goal of fair and impartial treatment in the courts.

Cultural Compatibility

The consortium has worked to strengthen relationships and foster communications between state and tribal courts through the exchange of basic information about each court’s laws, customs, and values. Education occurred first through the Cross-Court Cultural Exchanges and then through the regional meetings. The regional meetings offered fewer speakers and topics, concentrating instead on a single issue and small group discussions. The more focused and

intimate setting allowed judges, court staff, and others to convene and discuss significant issues and challenges within the region, identify common concerns, and begin to craft solutions to fit their varying needs. Education on Project Passport resulted in the state adopting a uniform first page template for protection orders, with some tribal courts joining the effort. The Santa Clara Pueblo indicates that tribal members are better protected by tribal protection orders due to use of the standard first page.

Intergovernmental Cooperation

The New Mexico Tribal–State Judicial Consortium has improved awareness and strengthened relationships among the tribal and state judiciaries, producing positive outcomes such as cooperative agreements and procedures for managing multijurisdictional cases. For example, the Navajo Drug Court collaborated with the Bernalillo County Metropolitan Court to hear from treatment providers and other resources used in drug court programs. Additionally, a workshop on the topic of “cross-deputization of law enforcement officers” included the development of agreements and training of officers representing the state and tribal agencies, allowing officers to be cross-deputized. Annually, the tribal and state judges gather at a statewide Judicial Conclave that addresses issues of mutual concern. The consortium assists tribal judges’ participation in the Judicial Conclave by providing hotel and other expenses. Each year, a Judicial Conclave workshop is held specifically on an issue affecting tribal–state relationships.

Keys to Success

Since 2006, the New Mexico Tribal–State Judicial Consortium has benefited from formal recognition as an active committee by the Supreme Court of New Mexico, with one of the justices serving as a designated liaison to the consortium. It has also gained support as a result of developments in the state that have increased the incidence of cross-jurisdictional matters. For instance, the number of Native Americans residing in New Mexico has grown, as has the mobility of natives and non-natives across jurisdictions and the amount of commercial activity on reservations, through tribal gaming and otherwise. As legal matters arise affecting more than one jurisdiction, state and tribal court judges have had cause to learn more about each other’s laws and procedures.

“The consortium is a good place to meet not only other judges, but many important people who can collaborate with our courts on many issues.”

— **District Judge
William J. J. Platero,**
Navajo Nation

The New Mexico Tribal–State Judicial Consortium has designed the format of its conferences and workshops to make the tribal–state court interactions as productive as possible. Instead of mounting large-scale conferences in which people have few opportunities for extended conversations, personal interaction, or development of relationships, the consortium’s

leadership has conducted meetings on a more regional basis. This more localized approach has afforded tribal and state judges greater opportunities to meet their colleagues and other professionals who are likely to appear in their courtrooms. They also emphasize single-issue and small group discussions, providing a more focused and intimate setting in which participants can identify common concerns and begin to craft solutions responsive to their particular needs.

Providing funding for tribal courts to participate in the consortium has also been a key to success. Some of those funds have come from federal grants, and some from the state supreme court's budget. At one point, when federal funding for tribes was reduced, tribal judges were no longer able to attend the consortium's regular meetings or other trainings or workshops. One of the reasons that the consortium secured status as a Supreme Court Advisory Committee was to enable the court's budget to be allocated for tribal judges' travel to consortium meetings. Holding regional meetings and meetings located on tribal lands has also decreased the costs of participation, which has increased the audience of tribal and state court participants for consortium programs.

**For additional Tribal-State-Federal collaborative promising strategies,
visit the Walking on Common Ground website:**

www.WalkingOnCommonGround.org



“Resources for Promoting and Facilitating Tribal-State-Federal Collaborations”