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CLE
Seminars

An Introduction to Practice in Indian Country



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OSB Professional Liability Fund,
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Wednesday, August 23, 2023
Noon–1 p.m.

1 General CLE credit (ID 101967)

AN INTRODUCTION TO PRACTICE IN INDIAN COUNTRY

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TABLE OF CONTENTS

Schedule	v
Faculty	v
Presentation Slides: An Introduction to Practice in Tribal Courts	1
Sovereignty and Tribal Court Jurisdiction	9
I. Case Law	9
II. Statutes	9

SCHEDULE

Noon An Introduction to Practice in Indian Country

- ◆ Jurisdiction of tribal courts
- ◆ Common cases heard in tribal courts
- ◆ Distinctions between tribal courts and Oregon state or federal courts

1:00 Adjourn

FACULTY

Martha Klein Izenon, *Legal Aid Services of Oregon, Pendleton*. Ms. Izenon is the Regional Director of Legal Aid Services of Oregon's Pendleton Regional Office. She began her legal career as a staff attorney with LASO's Native American Program, where she practiced in a wide array of tribal court systems and federal administrative forums, including the Bureau of Indian Affairs' Probate Hearings Division. She is admitted to practice in five tribal courts. Ms. Izenon is a member and past chair of the Oregon State Bar Indian Law Section and a member of the Northwest Indian Bar Association Governing Council and the Oregon Minority Lawyers Association.

The Honorable Ronald Yockim, *Attorney at Law, Roseburg*. Chief Judge Yockim has been the tribal court judge for the Cow Creek Band of Umpqua Tribe of Indians for over 25 years. He is a member of the National American Indian Court Judges Association and has served on its Board of Directors Steering Committee. He is also an active participant in the Oregon Tribal, State and Federal Court Forum. Judge Yockim is a graduate of the National Judicial College, and he is admitted to practice in Oregon, in the Cow Creek Tribal Courts, and before the U.S. Supreme Court.

An Introduction to Practice in Tribal Courts

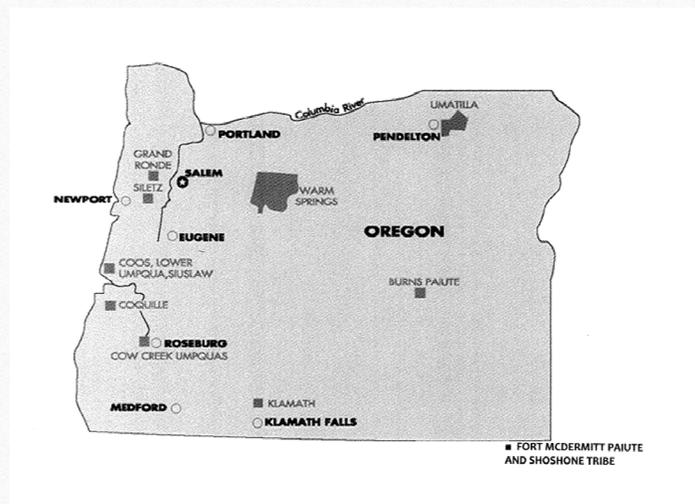
Martha Klein Izenson

- Tribes are *sovereign governments*, with inherent self-governing powers
 - Limited by Congress' plenary power
- Each tribe is unique, with its own (or sometimes shared) history, culture, languages, governments, and laws – and (for many) tribal courts.
 - <https://www.tribal-institute.org/lists/justice.htm>

- Each tribal court is also unique, with its own distinctive legal circumstance and a diversity of court cultures.
- Each tribal court will have a different tribal codes and/or customary laws and traditions independent one from the other.
 - No “one” tribal law

OREGON TRIBES

There are nine federally recognized Indian tribes in Oregon
(Also, Ft. McDermitt Paiute-Shoshone Tribe on the Oregon-Nevada border).



Nine Federally Recognized Tribes in Oregon

- Burns Paiute Tribe
- Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians
- Confederated Tribes of Grand Ronde
- Confederated Tribes of Siletz Indians
- Confederated Tribes of the Umatilla Indian Reservation
- Coquille Indian Tribe
- Cow Creek Band of Umpqua Tribe of Indians
- Confederated Tribes of Warm Springs
- Klamath Tribes

WHERE ARE THE RULES? WHAT IS THE LAW?

- TRIBAL CONSTITUTIONS and TRIBAL CODES / ORDINANCES
 - May be available online such as through <https://www.narf.org/nill/index.html>
 - May not be readily accessible and/or available only through contact with Tribal Court
 - Always, always, always look to code ...even if you think you know
- TRIBE'S RULES OF COURT / TRIBAL COURT BAR ADMISSIONS
- CUSTOMARY LAW / LAWS OF CUSTOM AND TRADITIONS

WHERE ARE THE RULES? WHAT IS THE LAW?

- TRIBAL CONSTITUTIONS and TRIBAL CODES / ORDINANCES
- TRIBE'S RULES OF COURT / TRIBAL COURT BAR ADMISSIONS
 - Rules of Admission set down in Code / Requirements vary by Tribe
 - Breach of Conduct / Disciplinary Matters – Chief Tribal Court Judge
 - Ethical violations may also be investigated by the Oregon State Bar if admitted in Oregon
 - Admission rules often allow for non-law-trained spokespersons or lay advocates
 - Oregon State Bar does not consider this unauthorized practice of law
- CUSTOMARY LAW / LAWS OF CUSTOM AND TRADITIONS

WHERE ARE THE RULES? WHAT IS THE LAW?

- TRIBAL CONSTITUTIONS and TRIBAL CODES / ORDINANCES
- TRIBE'S RULES OF COURT / TRIBAL COURT BAR ADMISSIONS
- CUSTOMARY LAW / LAWS OF CUSTOM AND TRADITION
 - Almost always unwritten
 - May require consultation or testimony from the original experts: tribal elders
 - Witness (Hearing) or Collaborator (Settlement Conference)?

WHERE ARE THE RULES? WHAT IS THE LAW?

- Where tribal code is silent, code and/or general judicial authority will allow Court to look to:
 - Federal law
 - Tribal law of other tribes
 - State law
- **Motion for Declaratory Judgment may be beneficial to help clarify *which* law
- Important for tribal court jurisprudential development

WHERE ARE THE RULES? WHAT IS THE LAW?

- Where to find case law? Can be challenging...
 - Lexis Nexis, WestLaw, etc.
 - Tribal reporters
 - NARF's Indian Law Reporter Online <https://narf.org/nill/ilr>
 - Research resources:
 - https://narf.org/nill/resources/indian_law.html
 - University of Washington Tutorial: <https://youtu.be/bsj4UfVXvR0>

Cases Often Heard in Tribal Courts

- Civil
 - Housing, Contract, Tort
- Family Law
 - Paternity, Child Support, Guardianship, Custody / Parenting Time
- Juvenile Dependency & Delinquency
- Fish and Game
- Probate
- Criminal
 - Including Special Domestic Violence Criminal Jurisdiction

Other Tribal Forums

- Wellness Courts & Peacemaking Programs
- A community-based process whereby conflict is resolved, and the concerns of all interested parties addressed through talking and often the use of traditional and/or ceremonial practices. Focuses on healing the relationships harmed by the conflict as opposed to purely punitive measures, although sentencing may be involved.
 - Examples:
 - Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians Youth Healing to Wellness Peacegiving Court
 - Klamath Tribes Juvenile Healing to Wellness Court
 - Cow Creek Band of Umpqua Indian Peacemaking Program

Examples of tribal peacemaking laws:
<https://peacemaking.narf.org/models/laws/>

Basic Protocols

- *Be respectful and humble, valuing* cultural differences.
- Talk time to learn *tribal laws and customs*.
- Cultivate an *ability to adapt* to fit the cultural context of the tribal court forum that you are in and the community it serves.

Thank you for attending.

Questions or Thoughts?

Martha Klein Izenon

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SOVEREIGNTY AND TRIBAL COURT JURISDICTION

August 23, 2023

I. Case Law

Arizona v. Navajo Nation, 599 U.S. ____ (2023)
Brendale v. Confederated Tribes and Bands of Yakima Nation, 492 U.S. 408 (1989)
Denespi v. U.S., 596 U.S. (2022)
Duro v. Reina, 495 U.S. 676 (1990)
Ex parte Crow Dog, 109 U.S. 556 (1883)
Haaland v. Brackeen, 599 U.S. ____ (2023)
McGirt v. Oklahoma, 140 S. Ct. 2452 (2020)
Menominee v. U.S., 179 C. Cl. 496 (1967)
Merion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982)
Michigan v. Bay Mills Indian Community, 572 U.S. 782 (2014)
Montana v. United States, 450 U.S. 544 (1981)
National Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845 (1985)
Nevada v. Hicks, 533 U.S. 353 (2001)
Oklahoma v. Castro-Huerta, 142 U.S. 2486 (2022)
Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978)
Plains Commerce Bank v Long Family Land & Cattle, 554 U.S. 316 (2008)
Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978)
Strate v. A-1 Contractors, 450 U.S. 438 (1997)
United States v. Cooley, 593 U.S. ____ (2021)
United States v. Lara, 541 U.S. 193 (2004)
United States v. Long, 324 U.S. 3rd 475 (2003)
United States v. Wheeler, 435 U.S. 313 (1978)
Williams v. Lee, 358 U.S. 217 (1959)
Worcester v. Georgia, 6 Pet. 515 (1832)

II. Statutes

Court of Indian Offenses 25 USC 1911
Curtis Act of 1898,
General Allotment Act,
General Crimes Act of 1854, 18 U.S.C. 1152
Indian Child Welfare Act of 1978, 25 U.S.C 1901 et seq
Indian Civil Rights Act of 1968, as amended Oct. 28, 1991, 25 USC 1301-1304
Indian Reorganization Act of 1934, 48 Stat 984
Major Crimes Act of 1885, 23 Stat. 385
P.L. 280, 18 USC 1162
Violence Against Women Act, 25 U.S.C, 1304

