

Practicing Law In Tribal Courts: What Every Practitioner Should Know

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Introduction

Of the 564 federally recognized tribes in the United States, as many as 350 now have tribal court systems. Kansas is home to four federally recognized tribal nations. These are the Prairie Band Potawatomi Nation, the Kickapoo Nation of Kansas, the Sac and Fox Nation of Missouri in Kansas, and the Iowa Tribe of Kansas and Nebraska. Each has its own tribal judicial system.

Although modern tribal court systems began to emerge in 1934 following the passage of the Indian Reorganization Act, tribal nations have always had internal mechanisms for resolving disputes and keeping the peace in their communities. Unfortunately, those traditional methods for resolving disputes were much diminished following more than a century of dispossession of tribal lands through forced removal, as well as federal policies of forced assimilation. Nevertheless, tribal justice systems have experienced a renaissance over the last several years and, as a result, an increasing number of attorneys find themselves practicing in those courts. Just like practitioners in other areas of the country, Kansas attorneys are also finding an increased need to be competent to practice in tribal court settings.

Preparing for Practice in Tribal Courts

There are a number of types of tribal courts. These include trial courts, appellate courts, inter-tribal court systems, and courts of limited jurisdiction, such as wellness courts. Most tribal courts hear both civil and misdemeanor criminal cases. Practice in tribal courts involves two levels of preparation. The first level of preparation requires understanding that, as sovereign nations, each tribe has its own tribal government, its own court system, and its own tribal laws. It is important for practitioners to bear in mind that practicing in tribal courts means practicing in a culturally distinct community. Therefore, the practitioner should become familiar with the history of the particular court system where he or she intends to practice. It is essential to understand the form of tribal government that the tribe has adopted; for instance, whether that tribal government elected to adopt a tribal constitution and whether the tribe adopted a separation of powers model. It is also important to know whether tribal treaties or compacts exist that might influence or affect a particular legal issue. In addition, particular attention must be paid to the status of the tribal land base. A tribe's authority to exercise jurisdiction is determined by federal law and whether the "dispute arose within the territorial jurisdiction of the tribe." Tribal territorial jurisdiction depends, in large part, on whether the action took place in Indian country. Just as in any other court setting, it is also important to determine whether the tribe has personal jurisdiction over the parties.

The second level of preparedness involves general preparation not unlike preparing to practice in an unfamiliar state or

municipal court. For instance, the practitioner should become familiar with the applicable tribal law or code and the rules of procedure for that court. Tribal law and order codes are often available online. If not, tribal court administrators can often help practitioners find the most updated version of their tribal codes. Additionally, most tribes have established rules for admission to practice in their courts. The admission to practice rules vary but most require that the lawyer be actively admitted to practice in the bar of any state and require a formal application for admittance. This sometimes requires paying a fee to the court. Some tribal courts also have their own rules for professional conduct or have adopted the ABA Model Rules of Professional Conduct. The practitioner should learn which applies in advance of making a first appearance.

Conclusion

The experience of practicing in tribal courts is not, in most cases, all that different from practice in a state or municipal court setting. However, lawyering in a distinct cultural community requires that the practitioner take time to understand, not only rules and procedure of the court, but also the culture of that community. The attorney who chooses to practice in a tribal court setting can enrich his or her practice experience and begin to develop a level of cultural competency. Tribes and tribal people benefit by having access to experienced attorneys who are willing to represent their interests in their court systems.

About the Author

Aliza Organick, Associate Professor of Law, teaches in the clinical program at Washburn University School of Law. She also teaches courses on Law of Indigenous Peoples, Tribal Court Practice, and Comparative Law: Understanding Method and Theory. Before joining the faculty at Washburn, she was a Visiting Professor at the University of New Mexico School of Law where she taught in the Southwest Indian Law Clinic serving Native American clients in New Mexico and Arizona. She is admitted to practice in New Mexico, Kansas, the Federal District Court for the District of New Mexico, as well as the Prairie Band Potawatomi District Court, Kickapoo Nation of Kansas Tribal Court, and the Iowa Tribal Court of Kansas and Nebraska.

