

20:26

OK, great, thank you, everyone, for joining us today. This is the second webinar in the three part series that we're hosting today. We have Dorothy author of California Indian Legal Services here to present today's webinar, and it will focus on an overview of tribal courts and provide building information upon our from our first webinar.

21:00

So, we are really looking forward to today's presentation by Dorothy, so, Dorothy, whenever you're ready to begin, I will hand it off to you and get your PowerPoint up, OK.

21:18

Yes.

21:23

I just wanted to show my face and say, welcome. I didn't see there are a lot of people who are in attendance that, know me, but for those who don't, my name again is Dorothy author. And I'm currently the executive director for California Indian Legal Services. I have been working for CIO less or a little? over 30 years and I've been practicing Indian Law for 36, so been around, and have been working in this area obviously for a very long time. I am a member of the Oglala Sioux Tribe, and so I come from South Dakota and I have worked outside California.

22:12

And on, in other parts of Indian country, in New Mexico in Washington. So I've really had an opportunity to sort of see how these jurisdictional questions that we're going to be talking about today are really addressed in other states. I also want everyone to know that I always start this kind of presentation with there are no stupid questions. This stuff is really complicated. And so, if you have a question, please put it in the chat, and lead is going to try and make sure that I know that it's, there's there, I can try and answer it.

22:53

Because if you have a question in the beginning, that doesn't get answered, You might have a hard time following the rest of the presentation. So, with that, why don't we get started with PowerPoint?

23:07

And I'll turn off my camera.

23:12

Thank you.

23:16

I want to just the very beginning tell you that I am going to use the term Indian Country throughout this presentation. And for you on that, on the webinar that are seasoned Indian lawyers, I'm sure you're familiar with this term.

23:33

But, for those of you who are not when I talk about Indian Country, this is actually a Federal definition in the penal code.

23:45

And it includes Indian reservations.

23:51

It also includes Indian allotments, which are individual Trust Lands, and it also includes dependent Indian communities. There are not a lot of those left in the United States, but they're essentially central areas, or federal lands where native communities live in the federal government, and tribal government provide most of the services.

24:19

So, when I say Indian country, I just want you to know, understand that it does include different types of Indian areas other than just Indian reservations, OK, next slide.

24:39

Oh, I want to start today with just giving some sort of, I guess, sort of historical, as well as basic, very basic understanding of, of how jurisdiction works in Indian country.

25:00

And I started with this heading, federal government, protecting Indians from non Indians because that's really how it all started.

25:09

As early as 18 17.

25:12

The federal government at the time, had a policy of of really feeling A kind of a trust obligation I guess, to protect Indians from, from not only crime, but also being taken advantage, being taken advantage of. And in the early years, the real policy was, was this idea of having to protect Native American tribes. And so, real that they passed, what we know is the Indian Country Crimes Act.

25:48

It's really better known isn't General Crimes Act.

25:52

And what it basically did is it gave the Federal Government exclusive jurisdiction over 13 Deline Crimes that if committed by a non indian against Indian in Indian Country they would be prosecuted in federal court.

26:11

Alright. So, again, keeping in mind that the the sort of the policy of the day was we need to protect Indians from being from non indians committing crimes.

26:27

Part of that law also provided that in certain situations the federal government can also prosecute Indians if then committing crimes against non Indian And that one and the crime didn't involve one of these 13 that are on the General Crimes Act lists.

26:50

Now, this was only if the tribe itself has not prosecuted the EMP, all right.

26:57

And so part of what I want you to start kind of watching for is how non Indians are really dealt with.

27:06

And in this area of criminal jurisdiction, now we have the Federal Government having exclusive jurisdiction if a crimes committed by a non Indian in any country.

27:18

Now we have is the victim is non Indian, but the defendant is Indian.

27:25

They tried to prosecute that individual Indian.

27:30

But if they don't, and it's not on the list of the 13 crimes, the federal government can.

27:38

But when it's crime is that is being commanded by an Indian against another Indian, that when exclusively to a tribe.

27:48

So, the idea is that if it is both parties or Native American, tribe is going to deal with that crime.

27:58

But if there is an Indian, or a non indian involved, either committing the crime, or maybe being the victim of the crime, the federal government does have a role, they will step in.

28:11

And then, finally, the role of the state as early as 18 17, basically had no jurisdiction in Indian Country, unless both parties were non indian.

28:25

So, I know this sounds confusing. And, you know, just, like I said, feel free to ask your question if you do.

28:34

But I think what I want is to try and do here, is sort of sets the stage for how, even, in the early beginnings of jurisdiction in Indian country, how non indians were dealt with.

28:52

And the federal government played a big role, and in really dealing with any crime involving non indians, either as a defendant, or as the victim.

29:07

So, next slide.

29:12

So, everything was fine.

29:16

Up until about 1985.

29:20

And what happened was they found that there was a hole, a gap in the General Crimes Act for the Federal Government Prosecuting Indians who are committing crimes against other Indians.

29:40

Now, remember in the last slide, we were talking about the General Crimes Act.

29:45

Those Indian non Indian crimes were exclusively left to the tri.

29:52

And how this kind of came about was a very famous paper case, ex parte Crow Dog.

30:00

And this involved a tribal member killing another tribal member.

30:07

And the tribal member who committed the murder was actually dealt with by the tribe under the tribes of customs and traditions.

30:18

And he was ordered to provide the victim's family a number of horses and, you know, to take care of the victim's family.

30:30

And the Federal Government was, of course, somewhat disturbed by this. And so they decided they would step in and prosecute in federal court.

30:43

Crow dog for murder.

30:46

Well, the Supreme Court said, Well, you don't have any jurisdiction.

30:52

Crow dog is not, is, is he is not a non Indian when she would have exclusive jurisdiction of her.

30:59

Obviously, under the General Crimes Act, and, um, the tribe, the victim was a non indian, which would have granted you some amount, a jurisdiction.

31:15

This is really Indian on Indian Crime, which is exclusively left to the tribes.

31:22

So Congress got busy, and they went in and they passed the Major Crimes Act, and this law fills the gap by establishing federal jurisdiction over Indians committing crimes against other Indians. For some of the same crimes that were listed on the General Crimes Act best, I will let you know that murder is at the top of that list.

31:51

So now we have two federal criminal laws dealing with crime in Indian Country, where the federal government has exclusive jurisdiction to prosecute non indians committing serious felonies against Indians.

32:12

And we now have the Major Crimes Act that allows them to have concurrent jurisdiction over crimes committed, serious crimes committed by Indians against other Indians.

32:27

All right, I'm sure you all have that, right, OK, let's go on.

32:36

So, as I was saying, the policy of, you know, the Federal government, finding that there needs to be this protection of Native Americans in Indian country over time that policy shifted.

32:54

And part of that was a result of a new policy development in the Federal Government, where they started to want to basically terminate tribes and tribal governments and essentially dismantle Indian Country and assimilate Native Americans into mainstream taxpaying citizens.

33:31

So, what the Federal government did is that they enact it a law in 19 53, where they said, you know, we want to kind of get out of the, the, the Indian criminal jurisdiction stuff.

33:50

It was costly. They weren't very good at it.

33:55

And so, what they did is they passed public Law 280 in 19 53, which essentially pulls the Major Crimes Act and the General Crimes Act out of Indian country in five states.

34:10

California's water excuse me, for one minute.

34:24

Yeah.

34:25

Um, I've listed out the other states there. Alaska did get added a little later about 19 58.

34:36

And so, um Public Law 280 effectively gave the jurist criminal jurisdiction the Federal government had under the Major Crimes Act and in General, Crimes Act and gave it to States these, these five states.

35:00

Now, the states were to exercise this, this new jurisdiction concurrently with the tribes, and in Indian Country.

35:12

So there was no exclusive caveats of a state, exclusive jurisdiction.

35:21

It basically said to the State of California, You now have concurrent jurisdiction with the tribe to enforce your criminal laws in Indian country.

35:37

Sorry.

35:38

I have a cat who I have no idea why she's decided to come in be quiet.

35:44

Um, All right, so, unlike, you know, we were talking about the General Crimes Act, where the federal government had this exclusive jurisdiction over the, um, case where we were dealing with a non Indian, That was not necessarily the case in 19 63, because then the, the jurisdiction has to current.

36:16

However, in addition to the criminal jurisdiction, the state was the states were also given limited civil jurisdiction that also transfer to these five space, which is, again, exercise concurrently with the trucks, and, and I'm today, I'm not going to focus much on the current.

36:48

Personally, you know, they're going to be talking primarily about domestic violence and, and so that, that's really dealt with and in the state system in more of a criminal context.

37:07

Next slide.

37:10

Um, so, with public law to 80 now, what I really want to stress is, is that it did not remove criminal jurisdiction from tribes.

37:28

Tribes today still have criminal jurisdiction over their Indian country.

37:35

It merely gave the state concurrent criminal jurisdiction in Indian Country meeting. Like, I said, that the state criminal laws can be enforced in Indian Country.

37:51

Now, remember before I was saying that, you know, the role that the States have had traditionally in Indian Country when it comes to criminal jurisdiction to jurisdiction is non-existent, unless both parties were non indian.

38:09

So P L two AD was a radical change in the jurisdictional scheme that was, was, you know, not seen in in other Indian country.

38:27

So, now, in these five states, the states are, in fact, now playing a role in enforcing state criminal laws instead of federal criminal laws.

38:42

Um, so, although the tribes have this, this retained criminal jurisdiction, I didn't need to let you know that historically and on today, that the Federal Government, because of Public Law 280, provides no annual base funding.

39:05

two tribes in California for, for supporting tribal courts, tribal law enforcement, no detention facility, access or funding.

39:16

So, even though tribes have this jurisdiction, it's very difficult for them to exercise it because there's no federal funding to support it.

39:28

Now, there are a few few tribes that, that are exercising criminal jurisdiction that enlarge part.

39:37

Most tribes in California do not exercise any form of criminal jurisdiction due to lack of resources And support from the federal government now has listed down at the bottom there, Straddle tribes, Sean, Fort Mojave Print, or Colorado River Indian Tribes.

39:59

These are what we call straddles states because part of their reservation is in California, the other part is in Arizona.

40:09

Arizona is not a public law to a State.

40:13

All right?

40:14

So, that first slide, or second slide, when I'm talking about, you know, the federal government has, you know, this exclusive jurisdiction and tribes have this exclusive jurisdiction over all of those rules apply in Arizona.

40:30

So tribes really do have to have courts and exercise their original jurisdiction because there is no State criminal jurisdiction.

40:40

So in, in these straddle tribes, what you find is because part of their reservation is in a non PL to a state, they do have fairly robust tribal criminal courts with prosecutors and public defenders and detention facilities in California, where you're not a strad, one of these straddle tribes, you don't find that.

41:12

So next slide.

41:17

So in addition to this jurist share jurisdiction under public law to 80, remember that, the Federal Government under that General Crimes Act had exclusive jurisdiction over non indians, OK.

41:42

And when public law to 80 came into effect, they remove below the General Crimes Act in California and this for other states that prohibition just kind of follow along.

42:00

So it was possible for a tribe to prosecute a non indian for committing a crime against an Indian.

42:10

It's my knowledge that probably wasn't done or that I'm aware of, but nonetheless, it could be possible.

42:20

Now, in 19 78, there was a tribe dead try that out.

42:29

They actually arrested charged and detained two non indians for violating tribal criminal law.

42:41

The cases olive on verses ..., the case goes up to the Supreme Court.

42:47

And the Supreme Court, Whole said, you know what?

42:53

Tribes do not have jurisdiction, either statutorily, or inherently, to try and punish a non indian for a crime committed in Indian Country.

43:10

Though, in addition now to the General Crimes Act, which gives exclusive jurisdiction to to the federal government to try non indians who commit crimes against Indians, the the laws will land now, is even MCL to 80 states that is not governed by the General Crimes Act, you cannot, as a tribe, try and prosecute a non indian.

43:41

This has been the rule since 19 78.

43:47

And, I don't know how many of you participated in in the first webinar, but one of the things that you, if you did, you learned is that in 86% of the reported cases of rape and sexual assault in Indian Country against native women, um, the Perpetrator's a non indian.

44:16

So, here, we have a high percentage, um, sexual assault and rape cases in Indian Country being committed by perpetrators.

44:34

That's a tribe has no jurisdiction, no criminal jurisdiction to try and punish.

44:44

So, you may ask, well, who who is an Tries and punishes these non indians Welly non PL to 80 stays in the federal government.

44:56

All right, in large part, under Special Violence Against Women Act statutes that were passed.

45:06

And then they can also bring in state law.

45:11

Under the Assimilated Crimes Act that says Section 13, they're just filling gaps where there may not be federal law, but in California, which is a public law to a state, because tribes are exercising criminal jurisdiction.

45:31

The stade is the primary, if not only, jurisdiction prosecuting for rape and sexual assault cases in California Indian Country.

45:48

Next slide.

45:51

Ah, but I do need to share that on the olive font decision. Created, like I said, it has always created a lot, a lot of difficulty for tribes to combat domestic violence and rape and sexual assault in their Indian country.



46:19

And my experience has been just to fight crime and prevent crime in general, um, because of the prohibition against no jurisdiction to try and punish non indians, but especially in the case of domestic violence, rape and sexual assault.

46:41

So, to address this, Congress actually passed the special domestic violence criminal jurisdiction provisions of the reauthorization of VAWA.

46:57

And what this does is it allows tribes for the first time since 19 78 to actually criminally prosecute a non Indian who has committed domestic violence, dating violence, or violations of a protection order in Indian country.

47:22

For us, who's practiced in this area for decades, this was absolutely remarkable, because, like I have, I have mentioned several times, when it comes to non indians and how they are dealt with by tribes in Indian country.

47:44

It is always pretty much been hands off for the tribe, no matter if they are, that you know that the defendant in a criminal case or if they're a victim in the in the criminal case or is both there.

48:02

The defendant Alexander, They have always always been, some, would be excluded from Annie tribal jurisdiction.

48:20

Because the, I think, misbelief data, the tribes was somehow not, know, provide them the D equal.

48:34

Justice that the non Indians may somehow suffered at the hands of of a tribal court. But I think that, you know, this misunderstanding of tribes and tribal courts.

48:50

Tribal law enforcement has certainly evolved over the years, and I think that with this special domestic violence criminal jurisdiction, it clearly signals that Congress is ready to take a look at this again.

49:07

And, and we know who practice in this area are hoping that maybe this is the beginning of Congress, taking a hard look at some other types of violent crime by non indians in Indian Country that that may also be appropriate for tribal courts to go ahead and and be the primary court, who is going to prosecute these individuals. Since defense, again, do not do a real good job and non PL to 80 states.

49:50

Here in California, I think that my experience has been that, at least in San Diego, that's, you know, the state is pretty responsive in an amino combating domestic violence and sexual assault, involving native women.

50:12

Um, there are currently, last time I checked 27 tribes that has gone forward with this new enhanced jurisdiction over non Indians.

50:29

Now, those are not California tribes, but in California, they're, there have been tribes that have expressed a strong interest in in maybe exploring this jurisdiction.

50:45

There has been grants available for tribes that a few tribes in California have been recipients of to really develop a court system to exercise this, this criminal jurisdiction.

51:04

And I believe it's the Yurok tribe is pretty far along in the process of having establish the uh no criminal jurisdiction in their court. And I'm going to talk a little bit about what it takes to do that.

51:25

Next question.

51:26

I mean, next slide.

51:33

Um, again, I think there's really kind of reinforces my view of how non indians are always dealt with in Indian country, which is very, very delicately.

51:51

In order for our tribal court to exercise, there's this criminal jurisdiction over non indians.

51:58

Congress was very clear that the court or the tribe would have to demonstrate and have in place certain protections.

52:12

Alright, um, the jurisdictional definition to really personal jurisdiction over that non indian is very well defined and in, you know, it's essentially the old, you know, you know, Volkswagen case of, you know, personal contact with Indian Country.

52:37

It needs to be for, the tribe, can exercise their criminal jurisdiction, and these are well established, the level of contact that is on Indian has with the Indian country. With a deep network, right? To have it.

52:52

Doctor assistance Counsel. They get free appointed counsel. If, if they are low income and can't afford an attorney.

53:04

And I will point out, it says, Free appointed licensed Attorneys, That was very controversial when when initially this, these kinds of requirements were being placed on, on tribal courts in.

53:23

That can be very difficult if you are a tribe in a remote area finding licensed lawyers to come in to represent defendants.

53:35

The judge has to be law trained and licensed. That doesn't necessarily mean that they have to be a, an attorney.

53:47

I will use the example I always do, if there was a judge with an Oregon Tribes that had been their judge for, you know, 20 years. He was not an attorney, and not gone to law school, but he did go to a tribal program, training program for tribal court judges, and a certified and licensed him as having completed this extensive training program.

54:20

And that was sufficient to meet this requirement. All of the tribes laws, rules of evidence and procedures must be publicly available.

54:33

The proceedings must be recorded, and finally, Well, there are some of the requirements, but the most important is that, if, if the non indian, in fact, is sentence, to any amount of time in jail or prison, they have an immediate right to Federal habeas.

54:59

And so, as you can see, that the Congress was, was making very sure that non indians are going to be treated with no soul due process. And equal protection rights. And so, before a tribal court wants to exercise this, this jurisdiction over non indians, they do have to have these require, you know?

55:34

What do I want to say? Rights benefits, whatever available to the non Indian defendant.

55:41

Next slide.

55:43

Dorothy, we just had a question come in directly to me, wondering if he can answer it now, or if you want to wait.

55:53

Oh, no, go ahead.

55:55

So, there was a question about tribes having jurisdiction only over domestic violence crimes, or do they have the same over sexual assault crimes because it was OK?

56:14

But they, did, they do not, OK, if you go back to, if you go back to the slide before this one.

56:28

Those are the only three crimes that this special domestic violence, criminal jurisdiction provision cover.

56:39

Now, I do know that not long after this new provision was added to power, that there was a strong push to add additional crimes, Sexual assault, being one of them, as well as adding crimes involving children.

57:06

And, and, like I said, I remain optimistic now that Congress has kind of open this door, that we may see Congress adding additional types of crimes that tribal courts could exercise jurisdiction over when committed by a non Indian. But right now, two J, these are the only three that are covered.

57:43

Um, so, we've kind of been talking a lot about, you know, that the Tribal Court's jurisdiction, kind of, the, the limitations on that, with the whole all of font rule, Congress, sort of. Opening the door a little bit, like a sad for tribal jurisdiction over non indians. It's very narrow areas.

58:13

I just want to, point out, and maybe because I work in this area of law enforcement, is that although, um, although all a font, you know, basically, provides that there can be no trying or punishing of a non Indian.

58:38

The courts have been after all a font in 78 has Has basically said that doesn't mean untried can't do anything.

58:50

About a non indian on the reservation committing crimes.

58:54

It's not, you know, a matter as hands off, they can't, do, you know, can't touch these people.

59:02

And so I do want to leave you with, with, you know, sort of the, the role that tribal law enforcement can play and does play in Indian Country in combating non indian crime. In.

59:23

And my experience in working with tribal courts in California is that, that usually, the ones that that, you know, are pretty robust are active courts.

59:38

They tribal also has tribal law enforcement, which only makes sense, because, you know, for those judges that may be on the call.

59:54

Or tribal attorneys, you know that, you know, it's very limiting for a tribal court to issue an order, But not have any ability to enforce it.

1:00:08

So, a lot of tribes do have tribal law enforcement, as, you know, complementary to their tribal courts, Um, so, So what? What tribal law enforcement can do, independent of the court, Schnapp, OK?

1:00:28

You know, because tribal courts are, hands off, except for, you know, the expanded jurisdiction they have in domestic, in the area of domestic violence, The Supreme Court, has has, basically, said that law enforcement does have the inherent authority to actually, stop and restrain conduct a limited and as investigation Ninja teen, any person alright, the Supreme Court, you know, emphasizes that any person Indian, non indian, and non non member Indian, um, cannot just, you know, come onto a reservation and commit crime and, and not be held responsible for that.

1:01:27

And so, the Supreme Court has found tribal law enforcement as a matter of tribal, inherent authority, to, you know, protect their communities.

1:01:38

They do have the ability to start up these people, Right, and, and to basically hold them for us, state or federal officer to take custody, because even though the Tribal court can't try and punish these people outside of domestic violence, there are other jurisdictions that can, and if it's a non Indian is on the reservation, and the tribal law enforcement, you know, have probable cause. Or a reasonable suspicion that this person has or is committing a state crime. They're not, they're not just turn their head and ignore it.

1:02:27

They can stop that person and they can hold them for, you know, the jurisdiction that can try and push him to come and take custody of them and bad.

1:02:43

That principle was established in a very famous general case from the 19 nineties but has just been reinforced by this current Supreme Court just this year in US V Coolly case.

1:03:03

And so, I just, you know, like they said, want to bring that to be able to attention that and keeping it short and in the context of domestic violence. It's is tribal law enforcement are patrolling the reservation. They encounter a domestic violence situation and one of the parties is a non Indian.

1:03:31

They certainly can intervene in that case and you know, actually restrain the perpetrators, the non-union restrain them and detain them until the sheriff can come and take custody.

1:03:47

So, this is just another kind of tool that tribes can have available to them, is if they are tribal, you know, a tribal law enforcement department.

1:04:02

Next.

1:04:06

Um, and I, I do think it's worth including that. in addition to two tribal law enforcement officers, they also have the ability to become commission, special law enforcement officers through the Bureau of Indian Affairs.

1:04:28

And this, again, in the context of domestic violence. The special law enforcement, commissioned officers, slick officers, are now, once they have these commision federal officers.

1:04:50

And they can enforce federal law, um, on the reservation so they can technically enforce the federal law laws on the reservation.

1:05:10

In California, in addition to that, as a federal officers, under certain state laws are the one I've just cited there.

1:05:22

They can exercise arrester story sure for crime that they like to sit up probable cause to believe this has been commanded or is being commanded. So, this is another added tool, another advantage of not only having tribal law enforcement but also taking that tribal law enforcement to a higher level with with getting them commissioned as federal officers.

1:05:58

Next slide.

1:06:02

Um, so, really, kind of the state of, of domestic violence, how it's treated in Indian Country, within the context of tribal courts, is primarily through civil remedies.

1:06:23

Um, and you know, it's through, they can be a variety of different type of civil ordinances.

1:06:33

And as you can see, I footnote that, because all the font was dealing with criminal jurisdiction, not civil jurisdiction over non indians, OK, it can't try, and you can't punish but it didn't say anything about imposing a civil fine.

1:06:57

So, um, tribes, know, I have worked with, I, if I, you know, I am drafted domestic violence ordinances and a lot of that, all of the ordinances I have worked on or developed for tribes have provision for the issuance of emergency.

1:07:27

Protection orders, T AROs, and longer term protection orders.

1:07:34

Some of them also build in a special section of that code to address actually issuing a citation to the perpetrator before committing domestic violence in which they can be, you know, given a civil find.

1:07:58

And then, I also work with tribal ordinances who has built domestic violence into there, usually, is called like a Peace and Security, or Nancy kind of reads like a criminal code, but it is does not provide for any criminal punishment because it is a Civil Code.

1:08:26

But within those codes, we have tribes that have folded in offenses for domestic violence.

1:08:38

No doubt, exclusion, orders, are or ordinances is another Tribal law, where I have seen that an individual can be non indian, can be excluded from the reservation for committing domestic violence on the reservation.

1:09:03

And also, there are some family law codes, Tribal law, law, family codes that may incorporate divorce, proceedings, custody, and things of that sort, where domestic violence is an element, um, you know, determining Custody and Division of Property and things like that.

1:09:29

So, for those of you who are, are, are thinking of wanting to know, maybe, volunteer pro bono, working in Tribal court, we're going to talk a little bit more about that. These are some of the domestic violence related tribal ordinances that you, you may come into contact with.

1:09:58

Next slide.

1:10:00

Dorothy, we had another question come in and sort of the scenario. OK, so, what happens if a non Indian and a Tribal member who are in a domestic violence relationship?

1:10:14

have a mutual DVRs filed against each other, one in the State Court and one and then Tribal Court, and the DVA orders are not identical, for example, about who should have custody of a child.

1:10:31

No, Well, that is a pitfall.

1:10:37

I'm sorry, I don't mean to be flippant about bad. It is a problem and it's actually a problem for law enforcement tribal courts because they're the ones that aren't gonna get the call about, you know, fighting over the kids.

1:10:57

No.

1:10:57

As as a jurisdictional matter because it is concurrent jurisdiction, My rule is always who got to the courthouse first.

1:11:09

So I guess CNN competing order situation like that, I guess I would say that it would probably be the party that he had secured the the risk or the protection order on the matter of custody. In the first instance.

1:11:26

now that being said, generally, maybe it's just because of the, the caliber Tribal Courts I work with and they're, they're outstanding judges. They usually, you're not gonna find a competing order. I mean, and it's going to be brought to the attention of a tribal court.

1:11:50

And so I would see that this would be a situation where no one of the party, for example, if, let's say, the, the, I'm just gonna say, hypothetically as a woman is in tribal court, you know, now trying to get a protection order. And the non Indian comes in and says, well, hey, I know, I have a protection order.

1:12:16

You know, the tribal court is going to, obviously, not, I would, think, issue an order that's in direct conflict.

1:12:25

Um, and the reverse of that is that if the woman had a tribal court protection order that addressed custody, that tribal court, hopefully, would have submitted that to their local superior Court for full faith and credit so that it would be recorded, you know, letting not only, you know, law enforcement, whatever noses or is this tribal protective order that get credit.

1:12:56

But the course no, that there is this order so that they don't issue a, you know, sort of a competing, a competing order that's gonna result in obviously, mass confusion.

1:13:15

And I mean, I've seen, a little bit of, of a situation where this happened is that there was both the state protection order, as well as a tribal order. Involving the same couple on one of the parties was on Indian.

1:13:41

And as far as I can tell, the protection orders from both state and tribal court, or consistent, except that the tribe or the state court had made some modification on the visitation of of one of the parties. And erupted.

1:14:03

When that, non, even when the party who had the modified order showed up on the reservation, saying, hey, I, you know, the judge modified this, I get, you know, I get visitation. And, you know, the other party use like noise. I don't know anything about that, and I don't have the order, in just a crazy, literally. And so, these incidents can come up. I guess the best thing is, just make sure, if you're a tribal court judge, or a state court judge listening to this, is that you, know, you always may want to ask when someone is, is coming in for a protection order, you know, in state court asking, if there's Dad. I think that's even on a state court judicial forum. We know self help forums asking, Is there any outstanding protection order or ... in any other jurisdiction.

1:15:04

I know that's a long rambling answer, but I hope I did give, give.

1:15:12

Give some helpful information.

1:15:18

So, going back to the Tribal Court Civil Protection orders.

1:15:26

Again, having having worked with tribal ordinances and, you know, Andrew and having drafted them, usually at least the ones I work with. We take the definition that the that is common, you know, commonly found under state law for for divide, defining domestic violence, and stalking, and date, violence, etcetera. And, and also, in, in developing these ordinances, there is obviously some very detailed procedural rules on on how the party can go about obtaining their protection order.

1:16:12

And, you know, giving notice, again, not tracking exactly state law, but, at the same time, you know, kinda using state laws and guidance for tribal law in this area.

1:16:30



I do know that dad, the Judicial Council, long ago, allowed tribes to actually be able to manipulate the Judicial Council DV Forms. Which I have taken advantage of before and actually took all of those state DD forms and transform them into a tribal court forms That are that can be used by by one of our local tribes. Know you have to be careful there because there are citations within those better to state law and you don't want that.

1:17:13

You gotta be very meticulous and making sure that those forms are tailored to the tribes domestic violence ordinance. But there are advantages in using the, the, the, the Judicial Council forms. one is, they look like the Judicial Council States.

1:17:38

And so when you're going into state court to get full faith and credit from a tribal court, domestic violence protection order that the State court judges, maybe you're gonna feel alone, they're going to recognize the formatting, and, and so it may not seem so foreign to them. And the same holds true with, with law enforcement off the reservation.

1:18:06

If they're presented with a tribal court protection order, that kind of looks like the state protection order, that, you know, they may not have, you know, as many, as much difficulty in, in accepting it, and recognizing it.

1:18:29

I put here that tribal court protection orders are, and then in parentheses should be enforceable both on and off the reservation, and that is a whole nother PowerPoint presentation. That will be the next, And final one in this, this three part series, on, the next one is on actually full faith and credit and tribal protection for yourself. I'm gonna just put a pin in that. And if you want to learn more about that, by all means, catch the next power or webinar, that will be addressing that in much greater detail.

1:19:16

Also, tribal.

1:19:18

So a tribal protection order is enforceable off reservation. and I want to emphasize that it doesn't need to have gone through the stay full faith and credit recognition process. Whatever is required, it is enforceable it, regardless of it, having been like, I said, recognized that, it's a matter of state and federal law, in reality. Does that happen not in my experience?

1:19:55

So, generally, when tribal courts are issuing their protection orders, they do send them to the superior court for full faith and credit, and then, on to the share, or, you know, are, you know, putting these orders into the system.

1:20:19

But these orders are also enforceable by the federal government, and I gave you the, the site there, right? And if a person has traveled on the reservation with the intent to mention that domestic violence, or has communities or provision of a protection order, that is enforceable as a federal crime.

1:20:47

And again, that's going to be in touch on in this next PowerPoint. But I just want to, you know, flip back a little bit.

1:20:56

Remember, when I was talking about having tribal law enforcement officers who are also federal commissioned officers, they could actually enforce these penal code sections against any person, Indian, non Indian, wherever, who's traveling onto the reservation with the intent to commit domestic violence, or in violation of a protection order.

1:21:31

Sounds good, but in reality, I have talked to several assistant US.

1:21:37

Attorneys and pointed this out to them and there consistent responses I has generally been hey, we don't do DV.

1:21:49

We refer those cases to the to the local prosecutor, but but in theory, these are federal laws said you apply in Indian Country and could be prosecuted by the US Attorney's Office.

1:22:09

Next slide.

1:22:13

Um, now, I just, um, sort of the rest of the webinar is, is just sort of talking about practicing in tribal court.

1:22:24

And my understanding is, this webinar series is kind of grew out of Work Powers Act, I'm using air quotes here.

1:22:35

Which is a program designed to get private trees primarily in the federal system to, to offer their pro bono services, to representing domestic violence victims, survivors, In it in federal court, which, like I just said, seldom if ever happens, but, but also helping in, in a tribal court say.

1:23:08

And so I know that there's been a lot of discussion on bringing private pro Bono attorneys into Tribal courts to help represent a victim who is seeking a restraining order or or a protection order. So, part of this series is to, if you're on the webinar, and you are considering this.

1:23:38

You know, going into tribal court, trying to give you a little sense of what tribal courts are like, they're all unique in their own ways.

1:23:49

So, I'm just gonna sort of finish this, but just just some basic basic information that I can give you about tribal courts and some of it. I will say, I had to learn the hard way. I have a track just a tribal courts and not only in California, but also when I practice on the Navajo reservation and did a fair amount of my legal work when I was in Washington State, was done in tribal court. So, I do have stories to tell, but, anyway. Let me, let me just start by by saying there's about over 30 tribal courts in California. I has been have the privilege of being legal counsel for the California Tribal Court Judges Association.

1:24:46

And so I could be with with that association on a monthly basis, bimonthly, whatever. And and so, it gives me a good understanding of, you know, what tribes have, tribal tribal courts, and, know, who their Dredges are in, and kind of issues that are facing your tribal court.

1:25:12

Some tribes have what I take, kind of, a stand, alone, tribal court, Um, where other court systems are, the one here in Southern California, where I am.

1:25:26

It's a consortium court system, inter-tribal Quarters Southern California.

1:25:32

And it is a consortium of about 12 tribes that use one court, Um, and, and, you know, so they, they kind of, of their resources shared, where there's 1 1 court judge. Well, there's several court judges, but but it sits on as the tribal Court for 12 different independent tribes. So when the tribal court is sitting, for example, as the cyclone tribal court, it has on its ...

1:26:11

hat and is applying to one law, Alright? So you, you may be there are other of these kind of courts as well.

1:26:24

The judge you appear before may or may not be an attorney.

1:26:32

The judge may or not be Native American.

1:26:35

or they may be Native Americans that they may not be the tribes at their city as judge for.

1:26:44

The court room may be very formal in and and have any appearance of being any other kind of courtroom that you login into a Chaise state system, or it may be very informal.

1:26:59

in, you know, I I I have appeared in Inbox where you know, it's it's very nice. You know, like I said, kind of more formal setting with the judge and a robe also appear where we, we're literally sitting around a conference table, and the judge is not in a row, it is a a somewhat more informal proceeding. So it really depends on what type of case it is, and, and, and what kind of courtroom setting that tribes decided.

1:27:34

Um, so, next slide.

1:27:44

Um, the Tribal Law Practice and Procedures, each tribe has their own laws, and their tribal courts are going to have their own procedures, know, these laws, OK, and a lot of tribes now post all of their laws and procedures on their on their tribal website, But if you can, can't find them, or they don't have them posted, call the court clerk.

1:28:15

Court clerks in tribal court are as important as a tribal court clerk in the state system. So, make them your best friend. And, like I said, they if you're going to be practicing in that court, they can certainly get you the laws that you're going to be fumbling.

1:28:36

I do want to highlight that some tribes have, they followed with their customs and tradition, which is unwritten, um, and and this can be really challenging. I don't know, in the area of domestic violence of any tribes that that really rely on custom and tradition. I could be mistaken. But I'm just flagging it. I did a Case Story Tribe down here in San Diego County. The tribe has really no written laws at all, and we are doing a very, very nasty, some case, it was not a sexual assault.

1:29:18

But we spent two days determining what the Tribes' custom and tradition was in order to determine how this case was going to proceed.

1:29:31

So, just just letting you know that that's kind of out there. If, if you do find that the Court does look at custom and tradition, maybe, you, the key to that is working with your client on working with their family, maybe others in the community. That's what I did in the case that I had.

1:29:52

Um, there may be other alternative dispute process or process that, that is maybe less adversarial that you might find that your case is referred to.

1:30:07

So, these are just all things, like they said, you know, highlighting for you that you may want to think about is if you do get assigned. Or choose to, you know, act as Pro Bono counsel for inter tribal Court.

1:30:24

Next slide.

1:30:26

Shouldn't come in. The question from an attendee states: If a tribe in California's going to exercise criminal jurisdiction, do their tribal judges need to be attorneys?

1:30:42

No, they don't, I, and that, that was the point, I was, I'm sorry that I was making earlier. They have to be law trained and licensed.

1:30:53

But how that has been interpreted, is that as long as they're trained, and they have some sort of certification somewhere, they they can act as the judge.

1:31:04

I, like I said: I always using Human Chela, and maybe I didn't stress the fact that this gentlemen hadn't been tried, Judge for over 20 years.

1:31:13

He was not a lawyer, he had not gone to law school, but when, but when the law passed that not only vala law, but there had been other changes regarding enhanced sentencing That tribes get in,

for the same rules apply. What he did, is, like I said, he found a tribal training program, which she attended, and was then certify that he had attended that.

1:31:48

So he met the requirements, that he was trained, because, well, first of all, I'd been on the bench for 20 plus years. I think that would qualify for law drain, but but also he had certification or licensing from this training program that would suffice to meet that requirement. And I just have to say that this was really, really controversial. Again, not so much when vowel came because that was after the fact that these same types of requirements are coming about earlier.

1:32:25

Because I, you know, I've practiced and practiced in tribal court where the judge is not a lawyer, they have not gone to law, and that's not uncommon, at least outside of California.

1:32:41

Um, so, you know, this was, this was very controversial because it was like, look, you know.

1:32:50

I know like, I practiced in Navajo, and you know, the whole proceeding was held in Navajo.

1:32:55

That's the language.

1:32:57

And so, you know, each each tribe is going to have their own criteria.

1:33:05

So that was sort of later I guess softened a little bit that they were not talking about having to be licensed. lawyers.

1:33:15

And I know of one tribal court judge in California that is, That is not a lawyer. You do Law school?

1:33:23

So in terms of being law trained, sounds sort of the follow up question, which you just expanded upon, but I'm wondering if it's if, um, that Sorry. Yes, the tribal court can determine the law for themselves correct.

1:33:43

And, I do now, again, like I said, when the the license lawyer appointed for Indigents, that was very controversial because, again, my experience in Navajo is they have tribal court advocates who are Navajo and have they're not lawyers.

1:34:06

They never went to law school, but there is a Navajo bar exam and you have to be, you know, you have to pass in order to get license to practice in court.

1:34:19

And that was found to be licensed Attorney, even though it says attorney. We've been told that as long as the first there is some system that test their knowledge of law, and they are licensed than by that, that tribe, that jurisdiction, that that will suffice.

1:34:42

So and that's a whole nother PowerPoint that I would love to give is about, you know, how some of the litigation wants some of these requirements for any place about violations. Amendment right to effective assistance of counsel if you don't have an advocate, who is licensed Boyer and kind of how those cases have been dealt with in the federal courts.

1:35:16

Um, just talking about admissions, because I get this one a lot well, you know, how do you, how do you get admitted if you got to find out microscopic that corridor checking their codes? In some courts, you just pay a fee.

1:35:32

And you're in sound, like I said, Navajo when I, when I was practicing it was about a day and a half long exam.

1:35:42

So, you know, you'll just have to, to check with the court, if it, to find out, if they have an exam. SOP Require that, you have to be recommended by an existing member, um, and, and, or all the above.

1:35:59

But, don't assume that you can just walk into that court without being admitted, and I have seen tribal court judges throw people out of their court where they didn't bother to even find out whether or not a there were admission requirements.

1:36:16

This is a little tidbit that I didn't do it, but I've seen other lawyers that were in tribal court don't go inciting, quoting or using state law in a tribal court unless their tribal court rules allow state law to be used as guidance where there's no political tribal law.

1:36:45

And then, even then, when you cited, always start with, well, not to trawling, but as guidance.

1:36:52

And I just point this out, because I've seen attorneys, private attorneys coming into tribal court on cases that, you know, the first thing they start doing is starting to talk about try, you know, state civil procedure, and setting discovery, no deadlines. And this, and that. And, you know, I've seen tribal court judges. You know, take these trains, you know, to task, saying, hey, this isn't a state court.

1:37:27

And, so, it just can really set you off on the wrong foot with the Tribal court judge. Just remember, you are not in state court, don't go in there, relying on your state law practice experience. You may have to learn some new rules.

1:37:49

Next.

1:37:52

I wanted to add this CIS. Actually, we have a Domestic Violence Advocates C program in our escondido office. here, and I've worked with the Training, the Advocate.

1:38:08

But I just wanted to point out to you that that I think it's difficult representing any day to the next domestic violence.

1:38:21

And, and, but I think, in particular, was Native American, clients can be a little more challenging.

1:38:31

Most reservations are small. They're closely knit.

1:38:36

A lot of them members are inter-related, and it can be very difficult for a client, or anything can be very reluctant to come forward for for a lot of different reasons.

1:38:54

But, you know, I just, I just hope that you, if you are in tribal court, and you have to measure client then, just be aware that the, you know, this may not be the same community that you may be used to. And it may be hard to get witnesses, or even family members can be resistant to come forward as witnesses. I know I just want to point out, I just wanted to touch on this briefly, but this was really delved into in this first webinar presentation called The Nature of the Problem of Domestic Violence in tribal Communities In California. If you didn't, If you missed it is recorded, So, I encourage you to go back and watch it. It was, it was very well done.

1:39:45

Next.

1:39:47

Um, this is really important to, most tribal programs, or most tribes have, that I work with, have domestic violence advocates or social workers where they've got a domestic violence program or support center. You find out if your, if your client is, is working with an advocate or a social worker. They can be extremely important to you in in helping you kind of learn, you know, about the community, and who's who they can also act as a go between you and your client.

1:40:37

And it's also important, I think, at least with the attorneys that we have is in our program down down here is that, you know, our advocate, the they do more than just go in and get restraining orders or protection orders or file for divorce. But they really work with, also, all of the local resources, to get a client, what they need, be transportation, or shelter, or accounts, or whatever. And so, keep in mind that there, there is resources out there for your clients to make sure you know what they are, so that you can connect your client to boot.

1:41:21

What they may need beyond your legal help.

1:41:26

Next.

1:41:28

Um, this, um, this I have, I added, because I think it's really important.

1:41:39

And I've, I've seen and I've not been the attorney in court asking for it, but if you're going in representing a victim, and the victim and the perpetrator, the area it's all on reservation.

1:41:56

Let's say, um, you know, you need to find out who that home that they are living in, belongs to you.

1:42:11

And on what kind of land it might be sitting on?

1:42:17

And the reason I point this out is because, um, depending on who who I say own or I should say belong to, it can very well be possible that let's say the perpetrator.

1:42:42

It is actually his tribal home and it is sitting on his lease or Indian allotment or a tribal assignment.

1:42:54

And so these are just some really preliminary things that you need to maybe find out, because if you go in asking for a protection order, where your client, you're asking that, they be able to stay in the house and move the perpetrator out is It turns out that houses, in fact, is.

1:43:17

Tribal House, on, on land that is, is either tribal or he has his allotment, that can create some problems.

1:43:26

And like I said, I've, I've kind of been on the, on, on the back end of this scenario several times, and, and, you know, where people have come to me and said, what do we get should? What should we do about this? And I've actually seen one tribe that I was doing a general council meeting, trying to introduce them to a tribal code that we had drafted and we wanted to tribal membership to adopt, this came up in, and they point blank, asked me. So you're saying a tribal court judge could actually have a tribal member removed from their tribal house on their tribal assignment?

1:44:14

If, if there's an allegation that they committed domestic violence against their wife, their partner, or non indian spouse, and, you know, I had to say yes, and they voted that down right away. So it's just something to be a little sensitive about. My experience, so is how most tribal court judges will deal with this is that the TRL they'll issue.

1:44:44

So the the victim and the children remain in the house and then deal with this ownership issue At the more permanent protection orders page, but it's just something to know, because it may come in and really, like I said, be an issue later. The other thing is find out if your client and the perpetrator is if the victim is working anywhere in tribal government we have this situation where the victim goes. Yeah. And she gets a restraining order. And she just so happens that she works as a tribal administrative office, where the perpetrator has to go every month to pick up his per capita.

1:45:33

And so it just can create real problems. So to you know, find out where, where your client works.

1:45:42



Is it in some location if you have a stay away order, the perpetrator is going to have to come in contact with her just out of practicality because she works, where I've seen this with Indian health clinics where they work there anyway.

1:46:03

Or they both work at the same casino.

1:46:08

So and to that that's been problematic because you have to work around shift changes and and so these are just my practical experiences with with the state re-orders.

1:46:25

Um, um, they're all, like I said, be a final webinar on full faith and credit and the enforcement of orders.

1:46:39

And it's really worth knowing about, you know, what happens after you get that order. And I really stress that you, you can attend that because.

1:46:56

The process of getting the order to getting it to the people who can enforce it, can be a long road. And you might want to find out what you can do as the representative of the beer client, once you've got that order. What you can do to ask expedited, you know, getting screwed on the respondent, oren's tribal law enforcement. Know they assist with that.

1:47:23

Making sure all tribal law enforcement has a copy of that order. Checking to find out. You know, when that order that sent the superior court hasn't been given full faith and credit, as it was sent over to the sheriff's office.

1:47:39

Making sure your client has several copies of it, is they're off reservation and may need to produce it for a county sheriff or a city police officer letting them know that you have this order in place, case she encounters of the, the, the respondent.

1:48:02

Next.

1:48:05

So, just to wrap it up.

1:48:09

I would repair for going into tribal court, essentially, the same way I would prepare, going into a new federal court or if I was appearing in a, an out of state court.

1:48:24

How do I get admitted?

1:48:26

Do I have to pro VJ? Do I have to associate with local council? I mean, those are things that if you were gonna do a case in Nevada, you is certainly asked around how, how can I practice in your core? Same goes for tribal courts.

1:48:43

Know the law and procedure, OK. If you have difficulty finding on call, the court clerk can help you locate and get copies.

1:48:55

Don't just default on your existing practice in state or federal court.

1:49:03

The rules can be different, and so know what they are, work closely with tribal DV or resources that are in on the reservation that that may be working with with your client to make sure that your clients getting all the services that, that he or she needs. And then finally, just give different tribal court.

1:49:27

the same respect and deference, you would give any other any other course that you walk into.

1:49:34

And that's all I have. Thank you so much in my own time.

1:49:38

Oh my gosh, I went five minute sales, sorry. Thank you so much. That's OK. You were fabulous.

1:49:48

I'll just stood and I just want to let people know that I don't have my contact information. But if you just, know, you can call the Escondido CI LS office. If there was a question that we didn't get to where we ran out of time, I'd be more than happy to answer. So, just, you know, go ahead and contact our office here, and ask, and, you know (760) 746-8941. And I'll get your message and I'll get back to you.

1:50:29

Thank you so much Dorothy, and thank you to everyone joining us today. We appreciate your participation, and we hope you can join us for the third webinar, our third part in our webinar series on full faith and credit. And we hope you have a wonderful day. Thank you.