

**ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM
MARCH 26, 2002
MEETING MINUTES**

Call to Order

The meeting was called to order at approximately 10:10 A.M. on Tuesday, March 26, 2002 at the State Judicial Education Center located at 541 East Van Buren, Phoenix, Arizona. Attendance at the meeting was as follows:

<u>Members Present</u>	<u>Participants</u>	<u>Members Absent</u>
Hon. Michael C. Nelson	David L. Withey, Staff	Hon. Charles T. Brandel, Jr.
Hon. Leroy S. Bedonie	Katosha Nakai	Hon. William R. Rhodes
Hon. William C. Canby, Jr.		Hon. Cornelia Cruz
Frederic Kay, Esq.		Hon. Gary LaRance
Frederick Steiner, Esq.		Hon. Malcolm Escalante
Hon. Gloria Kindig		Hon. Neil Flores
Kathlene M. Rosier		Hon. Kathleen Gratz
Sue Hall		Hon. Sherry Hutt
Mark Curry		Diane Humetewa
Hon. Marjorie Talayumptewa		James Redpath
Hon. Earl Carroll		

Approval of December 7, 2001 minutes

The minutes were approved without change.

Membership Changes

Judge Nelson acknowledged the appointment of new members, Clerk of Superior Court in Apache County, Sue Hall and Chief Judge of the Yavapai Apache Tribe, Marjorie Talayumptewa. Judge Nelson pointed out that the terms of some members expire June 30 and inquired of the willingness of those members present to continue to serve. Kate Rosier indicated she is willing to continue. David Withey will send a letter to all members whose terms are expiring. Judge Nelson reported that Judge Ehrlich had resigned as a member of the Forum. Mr. Withey will send a letter to the chief judges of the court of appeals requesting the names of court of appeals judges interested in serving on the Forum. Judge Nelson will check with Gary LaRance regarding his willingness to serve as

Vice Chair of the Forum.

Status Reports

Tribal Laws and Courts Work Group

Kate Rosier provided a handout listing the tribal codes available at ASU law library. Staff are determining which are up to date. She alerted members to the availability of links on the ASU library site to tribal laws research materials. The following suggestions were made:

- Add a link to ASU ILP list of tribal judges on state web site - Judge Kindig.
- Contact regional tribal appellate courts regarding availability of published tribal appellate opinions - Check with UCLA and Northwest appellate judges association..
- Identify requirements for attorneys to be admitted to practice in tribal courts - Judge Carroll
- Tribes willing and able to produce their legal documents in electronic form or scan them could provide them in electronic form to ASU to be posted on the ILP web site - Mr. Withey

Forum members proceeded to discuss some causes and effects of the lack of availability of tribal laws. Mr. Curry noticed that the 1985 version of Tohono O'odham Nation code listed as available at ASU is not the most recent version. Judge Carroll noted the problem of federal courts not being able to obtain tribal laws and opinions for full faith and credit recognition. Judge Kindig explained that there is some reluctance to publish tribal laws due to fears that the laws will be used against the tribe. Ms. Rosier noted that this is becoming less of a problem because more judges are law trained and more confident regarding their legal decisions. Mr. Steiner commented that more information about tribal laws and courts is certainly needed to overcome non-Indians' suspicion and mistrust of tribal courts. Mr. Withey informed members of a recent conference at ASU College of Law that emphasized development of tribal courts and government by tribes as a means of enhancing a tribe's sovereignty. Judge Canby explained that African countries have adopted international commercial law in order to do business with outsiders rather than applying traditional law to commercial transactions. Members made the following suggestions:

Mr. Curry - The point of contact to obtain tribal laws and codes is the tribal council

rather than the court. Each tribe has only a few tribal appellate opinions.

Judge Kindig - Regional appellate opinions are looked to by all tribal courts, in part, because the tribes use some of the same appellate judges. These opinions could be compiled and made available.

Mr. Steiner - Tribes could develop and publish laws of particular interest to Non-Indians, such as commercial laws.

Ms. Rosier - Professor Clinton at ASU teaches a law school class that develops tribal codes as student projects. Tribes have requested development of uniform codes but resources are lacking. The class is currently working on a code for limited waiver of governmental immunity.

Service of Process Rule Proposal

Ms. Rosier introduced ASU law student, Katosha Nakai. Ms. Nakai presented to the Forum draft text for amending Arizona service of process civil rules 4.1 and 4.2 to specifically provide procedures for service of process on Indian reservations in Arizona. Ms. Nakai noted that State v. Zaman was a controversial case which resulted in a 3 to 2 decision by the Arizona Supreme Court. The majority concluded that a county sheriff may serve process on a non-Indian on an Indian reservation. In his concurring opinion, Justice Jones suggested that parties use waiver of service and private process servers rather than the county sheriff in order to avoid conflict with tribes.

Ms. Nakai noted that Arizona has most Indian lands of any state. She also noted that tribes may have laws that authorize only tribal members to serve process on reservation lands. Ms. Nakai explained that the Arizona Supreme Court has authority to establish different procedural requirements by rule than provided by case law including the Zaman case. She suggested that in order to avoid conflict the state rules should authorize use long arm service of process by mail and provided a draft to Forum members.

Members present commented on the draft. Mr. Steiner commented that service by mail is the least effective means of providing notice so it should not be the only means. Judge Nelson why the tribes are treated like foreign countries rather than like other states thus allowing personal service by a person authorized to serve process on the reservation. Mr. Steiner and Judge Nelson agreed that long arm service should be used only if other means are not available on a reservation. Judge Nelson stated that certified tribal process servers should be able to serve process without agreement between the state and the tribe since an agreements are not needed and difficult to obtain.

Mr. Steiner questioned why the current rules do not work.. Litigants can just use an authorized process server. Judge Nelson indicated that he sees a lot of confusion on this issue that warrants a clarifying rule. Mr. Withey suggested use of state authorized process servers for personal service as provided in current rules where this is not in violation of tribal law.

Judge Nelson suggested that the current section 4.2 (m) time for response be made applicable to service of process on tribal land. If available use a certified tribal process server. Require certification to the state court that personal service was attempted before long arm service was used. Judge Nelson also noted the need to clarify the definition of the territory governed by the rule change since it would prevent state officials from serving process on Indian lands. A bright line distinction is needed. An Amendment to 4.1 (d) to require use of process servers authorized by the tribe would be the least change necessary.

Mr. Curry observed that service of process on a tribe itself is not an issue and does not require a rule change. Judge Nelson agreed that current rule 4.1 (j) already covers how to serve the tribes.

Tribal law provides who accepts service of process for the tribe.

Intergovernmental Cooperation Work Group

Mr. Curry reported that he had looked at the juvenile bench book ICWA provisions and determined that there are some misstatements of law. He will review a recently revised edition of the bench book. Forum members present discussed the need for a new chairman for this work group. It was agreed that Judge Nelson would check with Jim Redpath and Gary LaRance regarding willingness to chair this work group. Judge Nelson observed that some of the subjects reflected on the task list (handout provided) for this work group belong in bench books, others just require memoranda. He suggested that this work group cooperate with the education work group to have changes and new materials incorporated in bench books.

Education Work Group

Ms. Rosier informed the Forum that a list of tribal judges in Arizona is available on the ASU College of Law web site at www.law.asu.edu/programs/indian. Student research assistants will review new judge orientation materials and bench book materials. The Education Work Group will also consider what subject should be addressed in new judge orientation. It was suggested that checklist on matters such as the Indian Child Welfare Act are needed. Mr. Withey suggested that materials developed be placed on Wendell, an internet resource available to Arizona judges.

He also noted that conference and seminar notices aimed at state judges should be

sent at least three months in advance followed by a detailed brochure and registration materials about a month prior to the conference. He offered to provide law schools with a state judges mailing list.

Ms. Rosier informed the Forum that New Mexico included an Indian law question on the state Bar exam. She questioned whether Arizona should do the same. ASU College of Law has incorporated Indian Law subjects into its basic legal writing course and is reviewing other course curriculum.

Staff Work

- *QUADRO legislation.* Mr. Withey reported letters concerning the Quadro legislation have been prepared for Judge Nelson's signature.
- *Forum Web pages.* Mr. Withey reviewed the list of proposed web site contents provided to members as a handout. Judge Nelson suggested that the certification of laws statute and rules and the Forum's criminal jurisdiction proposal be added to the reference list. Links to U.S. government web sites was also suggested.
- *Domestic violence orders.* add tribal orders to state database - do not process as superior court case - add to system as a tribal order - check ability of tribal court to enter orders - clerk of court enters as last resort. Withey will check with AOC ITD staff to determine best direct input option.

New Business

Probation Supervision. Mr. Withey explained that Nevada v. Hicks has prompted some tribes to consider adopting tribal laws governing state officials who come onto a reservation to perform official functions, including state probation officers. A legal question has been posed by a probation department as to whether there are federal or tribal laws concerning carrying firearms on reservations. He asked whether the Forum should promote agreements between probation departments and tribes or a statewide compact approach to supervision of probationers on reservations? Judges Nelson and Kindig agreed that the current local cooperative approach to probation supervision should continue and that any problems that occur should be handled by the local presiding judge. The problem with sending armed probation officers onto reservations and the danger posed by probationers on reservations was acknowledged.

The next meeting Court Forum was tentatively scheduled for June 19, 2002 in Phoenix. Work group meetings are to be scheduled by the chairs.

Adjournment

The meeting was adjourned at about 3:20 P.M.