

INDIAN LAW SECTION OF THE STATE BAR OF ARIZONA

**RESOLUTION**

**Federal Indian Jurisdiction on the Arizona State Bar Examination**

**Adopted and Approved by the  
Executive Council of the Indian Law Section of the Arizona State Bar  
on April 18, 2005**

**WHEREAS**, we, the members of the Indian Law Section of the Arizona State Bar Association, in support of our purpose to advance the understanding, study, adoption, application, interpretation, and improvement of Arizona state and tribal laws, rules, and regulations that pertain to Indians, Indian tribes or Indian Country, and to their administration and enforcement, to understand and improve the relationships of these bodies of law and judicial and administrative systems, and to encourage and support mutual respect for, and understanding of, the cultures, values, customs, and heritages which underlie them, hereby submit this Resolution; and

**WHEREAS**, the recent growth in tribal economic development and the resulting increase in interaction of Arizona's twenty-two (22) federally recognized Indian tribes with non-Indian entities and individuals, both on and off of the reservation, has given rise to an array of business transactions, regulatory issues and litigation matters between tribal and non-tribal parties in this state; and

**WHEREAS**, the citizens of Arizona and their attorneys do not generally understand the sovereign legal rights of Arizona Indian tribes; nor do they understand precisely how tribal self-governance and self-determination, and the laws and ways of Arizona Indian tribes, affect and intersect Anglo-American legal and jurisdictional principles; and

**WHEREAS**, the integrity and competence of the legal profession in this state would be enhanced if attorneys licensed by the Arizona State Bar Association generally understood significant federal jurisdictional Indian principles, particularly the common law doctrines of tribal sovereignty, tribal sovereign immunity, tribal subject matter jurisdiction (both criminal and civil), and the federal Indian Child Welfare Act; and

**NOW THEREFORE BE IT RESOLVED**, that we do hereby support and urge that the Arizona State Bar Association Board of Governors and the Arizona Supreme Court and its Committee on Bar Examinations work together with the Indian Law Section to include federal Indian jurisdictional subject matter on the Arizona State bar examination, beginning with the Summer 2008 examination and continuing thereafter, such that every bar-licensed attorney will receive knowledge reasonably necessary for the representation and protection of all who are subject to Arizona State law.

## Raising the Issue of Whether or Not Indian Law Should Be Tested on the Arizona Bar Examination

### BACKGROUND

- New Mexico added Indian Law to the state bar exam in 2002. Washington followed suit in 2004.
- Now discussion is taking place, particularly among Executive Council members of the Indian Law Section of the Arizona State Bar, to encourage the State of Arizona to pass measures similar to New Mexico and Washington and include Indian jurisdiction subject matter on the Arizona Bar Examination.
- The Executive Council of the Indian Law Section has informally passed a Resolution supporting the inclusion of Indian jurisdictional subject matter on the Arizona State Bar Examination. On May 20, 2005, the State Bar Board of Governors will likely formally pass the Resolution, which will allow the Indian Law Section to go "public" with an official and formal Resolution.

### ARGUMENT SUPPORTING INCLUSION OF INDIAN LAW ON THE BAR EXAM

- Persons seeking admission to practice law in the State of Arizona are required to have a basic understanding of all areas of law regardless of whether or not that person 1) took classes in a particular area of law; or 2) had any intention of practicing a particular area of law.
- Inclusion of Indian law on the bar exam will not require practitioners to become experts in Indian law, but instead will alert them to issues on which they should seek the advice of experienced Indian law attorneys.
- Considering the number of tribes in the State of Arizona it is very foreseeable that attorneys practicing in Arizona, regardless of field of practice, will encounter situations where they must work with Indian tribes.
- Ignorance of Indian law, especially jurisdictional issues, leaves many attorneys confused on how to resolve legal issues.
- As tribal economic development expands and tribes become a stronger presence in the business community, legal interactions between tribes and non-Indian companies will increase.
- Indian law intersects almost every other area of law, including taxation, criminal law, family law, contracting, leasing, environmental law, and constitutional law, to name just a few.
- Currently two other states, Washington and New Mexico, have included Indian law on their respective state bar examinations. Twenty-six federally recognized Indian tribes are located within the State of Washington. Twenty-three federally recognized Indian tribes are located within the State of New Mexico.
- Other states, including Idaho, Oregon, and Oklahoma, are also reportedly engaging in discussions about including Indian law on their bar exams.

- Anecdotal information suggests that pro bono attorneys may sometimes feel uncomfortable accepting cases involving these jurisdictional issues. Inclusion of Indian law on the bar exam will improve Arizona practitioners' ability to serve the state's indigent population.

If you have any questions or comments on the effort to make Indian law a “fair game” subject for the Arizona State Bar Examination please contact either Amy Courson at 520.383.8566 or Jonodev Chaudhuri at 602.382.6336.