

ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM MEETING MINUTES

I. **Call to Order**

The meeting was called to order at approximately 10:10 A.M. on Friday, December 7, 2001 at the State Judicial Education Center located at 541 East Van Buren, Phoenix, Arizona. Attendance at the meeting was as follows:

Members Present

Hon. Michael C. Nelson
Hon. William C. Canby, Jr.
Hon. Gary LaRance
Hon. Malcolm Escalante
Hon. Kathleen Gratz
James Redpath
Kathlene M. Rosier
Mark Curry
Hon. Earl Carroll
Hon. Gloria Kindig
Diane Humetewa
Hon. Neil Flores
Hon. Sherry Hutt
Frederick Steiner, Jr.

Participants

David L. Withey
Russell Dillow

Members Absent

Hon. Leroy S. Bedonie
Frederick Kay
Hon. Susan Ehrlich
Hon. Cornelia Cruz
Hon. William R. Rhodes

II. **Approval of January 19, 2001 meeting report**

The report was approved with one amendment. The spelling of the name of participant, Charlene Jackson-Louis was corrected.

III. Status Reports

A. Intergovernmental Cooperation Work Group

1. Benchbook topic draft on state traffic rights of way on Indian reservations. Mr. Redpath suggested that based upon the A-1 Contractor case Indian traffic offenders should be cited into tribal court and non-Indian offenders cited into state court. Forum members observed that all civil traffic offenses may be subject to citation into tribal court. On the other hand, if a roadway is legally a state right of way perhaps jurisdiction for all offenses lies in state court. The practice of cross deputation of law enforcement officers was discussed.
2. Benchbook topic draft on service of process on Indian reservations. Judge Kindig requested a checklist that would allow judges to readily verify that service of process is complete. Members discussed Nevada v. Hicks implications. Judges Canby and Kindig suggested that we read Hicks narrowly based upon its facts to apply to criminal law enforcement involving off reservation crimes rather than extending to service of process in civil cases. The extradition requirement of A.R.S. §13-3869 (A) was noted. Members were advised that Arizona officials, including Attorney General Janet Napolitano, have urged cooperation between state and tribal law enforcement authorities despite the recognition of state jurisdiction in Hicks. Ms. Humetewa noted the public safety interest in cooperation. Judge Hutt and Mr. Withey suggested that the benchbook go beyond a discussion of legal jurisdiction to recommend cooperation and best practices. Mr. Withey noted that this approach is consistent with Justice Jones' concurring opinion in State v. Zaman. Members discussed the fact that service of process in federal cases runs nationwide, including Indian reservations, and that the federal officials cooperate with tribal police.
3. Benchbook topic draft on non-Indian offenses committed on Indian reservations. Ms. Humetewa provided a handout concerning criminal jurisdiction in Indian country for review. Members noted that this was a very good summary of the law. Judge Kindig requested that the chart showing the various jurisdictional permutations be moved to the beginning of the materials. Judges Nelson and Kindig suggested that the information be reordered and edited to emphasize state jurisdiction. Consideration should be given to the target audience of the benchbook (just state judges or state and federal judges) in determining whether federal crimes for which there is nationwide jurisdiction should be included.

4. Benchbook topic draft on transfer process for ICWA, domestic violence and child support. Mr. Curry agreed to work on this section with David Osterfeld who was unable to attend the meeting. Judge Nelson suggested a discussion of the nuts and bolts of child support enforcement including the problem of forum shopping. Judges Kindig and LaRance suggested a checklist on ICWA requirements. Mr. Curry advised that the state rules of juvenile procedure and a Pima County benchbook have good coverage of ICWA that can be included in the benchbook. Diane Humetewa suggested a checklist on full faith and credit enforcement of child support and domestic violence orders.
5. Benchbook topic draft on extradition from reservations. It was noted that discussion of the Hicks would be included in this section of the benchbook. As noted earlier, discussion of Arizona's extradition statute should also be included.

Members discussed the need to include the benchbook on Wendell and for tribal judges to get access to Wendell.

- B. **QUADRO legislative proposal.** Mr. Withey reported that no action has been taken concerning the Forum's proposed QUADRO legislation. He advised that Representative Hayworth's office will assist with the legislation during the next congressional session and that letters should be sent by e-mail to Representative Hayworth, who is on the Ways and Means Committee and Senator Kyle who is on the Finance Committee to enlist their assistance.

IV. New Business

- A. Is a service of process court rule needed in light of Nevada v. Hicks and Zaman? After discussion, the Forum decided to invite ASU law student Katasha Nakai to propose an amendment to Arizona Rules of Civil Procedure, Rule 4.2 that provides for service of process on Indian reservations and present it to the Forum at its next meeting. Ms. Nakai is preparing a law review note on this subject.
- B. Criminal jurisdiction over non-Indians. Mr. Withey informed the Forum of the Tribal Sovereignty Protection Initiative undertaken by Indian leaders on the national level. He also advised members that he sent Navajo Nation Chief Justice Yazzie copies of materials developed through the Forum in 1995 that included draft legislation concerning tribal misdemeanor jurisdiction over non-Indians.
- C. Full faith and credit for domestic violence orders. Mr. Withey informed the Forum that AOC staff person Catherine Drezak was unable to attend. He initiated a conference call with Sue

Hall, Apache County Clerk, who explained how her office handles protective orders from other jurisdictions. The Forum discussed the need for a uniform approach.

- D. Court forum web pages. Mr. Withey stated that he would develop an Arizona Court Forum web page to be included on the Arizona Supreme Court site. He asked for suggestions for information and materials that should be included on this page.

V. Status Reports (continued)

A. Tribal Laws and Courts Work Group

1. Repository Subcommittee. Ms. Rosier reported that ASU College of Law is willing to house a compilation of tribal laws but that it is up to the tribes to make their laws available. Judge LaRance informed the Forum that Hopi court decisions are currently published electronically on “Versus Law” and that the Hopi tribe has obtained a grant to put up a web site that will also include these judicial opinions. Judge Grimes advised that Ak-Chin recently obtained a grant to codify their ordinances. Mr. Withey commented that tribes can proceed directly from codification to web publication thus maintaining control over their legal materials, keeping them current and making them widely available. Links can then be made with other web sites to make tribal laws materials readily available.
2. Current internet resources - National Indian Court Judges Association, Native American Rights Fund, University of Oklahoma Law Center, Tribal Law and Policy Institute - report on Arizona materials available by David Withey. Mr. Withey reported that only a couple of Arizona tribes have constitutions, codes, ordinances or opinions currently available on any of the internet sites that provide access to tribal laws. Printouts of lists of the materials available were provided as handouts. Therefore, any steps the Court Forum can take would not duplicate but would augment existing resources through the use of links to these web sites.

B. Education Work Group

1. Incorporate tribal law and jurisdiction materials into Arizona new judge orientation materials. The subcommittee has obtained the new judge orientation materials for review to determine where materials on Indian law and tribal courts should be incorporated.

2. Invite state judges to ASU/ICJA education programs. Ms. Rosier stated she will include state judges on the mailing list for ASU conferences concerning Indian law issues.
3. ASU professors to develop enforcement of tribal judgments handbook for state and tribal judges. Ms. Rosier stated that consultation with the professors is still needed on this matter.
4. Internet connection available to tribal judges with list of internet resources available. Ms. Rosier advised that the a page is now available for judges with links to other web sites at www.law.asu.edu/Programs/Indian.

Judicial Conference

Ms. Rosier also informed the Forum that the Education Work Group decided that she should contact Administrative Office of the Courts (AOC) staff about incorporating Indian law subject matter where applicable into state judicial conference programs. She determined that the planning process for the conference will get under way in January. Judge Hutt recommended that tribal judges be included on the conference planning committee. David Withey and Kate Rosier will contact AOC staffer Diane Sweeney about this.

David Withey advised that the University of Arizona Law School will offer a program to Arizona judges on indigenous peoples rights to be held at the University of Arizona on March 22, 2002 rather than at the Arizona Judicial Conference. The Forum decided that a separate program on tribal courts should still be offered at the judicial conference. Suggested program topics included Nevada v. Hicks, a program on native language court interpreting and a program on how tribal courts work including peacemaker courts. Forum members agreed on a tribal courts program that includes demonstrations, court interpretation and peacemaker court. The education work group will plan this session for the state judicial conference, June 12-14, 2002.

VI. Next Meetings of Forum and Work Groups

- A. Court Forum
Tuesday, March 26, 2002 at the Judicial Education Center.
- B. Tribal Laws and Courts Work Group
February 13, 2002 at lunch time at a location to be announced.
- C. Intergovernmental Cooperation Work Group

Friday, February 1, 2002 at 10 A.M. at the Ak-Chin Tribal Council chambers.

D. Education Work Group

Friday, January 11, 2002 at noon at the ASU College of Law Library conference room.

An updated list of work group members follows:

Tribal Laws & Courts

Hon. Sherry Hutt, Chair
Frederick K. Steiner, Jr.
Hon. Leroy S. Bedonie
Kathleen Rosier
Marie Manson
Hon. William R. Rhodes

Intergovernmental Cooperation

Hon. Susan Ehrlich, Chair
Diane Humetewa
David M. Osterfeld
Frederic Kay
Hon. Neil Flores, Sr.
Hon. Gary LaRance
Hon. M.E. Talayumptewa
Hon. Kathleen E. Gratz
James R. Redpath, Esq.
Malcolm Escalante
Mark Curry

Education

Kathleen Rosier, Chair
Hon. Gloria Kindig
Hon. Cornelia Cruz
Hon. William C. Canby, Jr.
Hon. Earl Carroll

VII. Call to the Public

No public comment was offered.

VIII. Adjourn

The meeting was adjourned at about 3:30 p.m.