

## ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM REPORT

Friday, October 14, 2005  
Arizona State University College of Law  
Tempe, AZ

### Members Present

Hon. Donna Grimsley (by phone)  
Hon. Earl Carroll  
Hon. Louise Grant for  
Hon. Leroy Bedonie (by phone)  
Hon. William Canby  
Sonia Overholser for  
Mary O'Grady  
Hon. Patrick Irvine  
Hon. Jesse Filkins  
Hon. Ted Armbruster  
Hon. Victor Clyde  
Hon. Delbert Ray, Sr.

### Participants

David Withey, Staff  
Professor Robert Clinton  
Mary Wynne  
Edd Welsh  
Hon. Ida Wilber  
Hon. Tammy Walker  
David Oliver  
Darayne Achin  
Anne Marie Downs  
Alison Ewing

### **Call To Order and Welcome**

Judge Irvine called the meeting to order and invited members and participants to introduce themselves. Judge Irvine welcomed the Forum to the Arizona State University College of Law.

### **State Bar Examination Indian Law Question/Issues**

Mr. Withey spoke regarding the status of incorporating an Indian Law essay question in the Arizona Bar exam. Supreme Court Committee on Examinations staff has advised that the Committee wants to remain "focused" on the core subjects. Mr. Withey explained that the Forum can continue to support the Indian Law Section in pursuing this issue in the future. The Arizona State Bar Board of Governors did approve a resolution in support of in some manner incorporating Indian law subject matter into the exam. The target date for this is the July 2008 exam.

Chief Judge Ida Wilber recommended that an ICWA issue be included on the State Bar exam.

Mr. Withey explained that other states, such as New Mexico, have added Indian law issues to their state bar exam. New Mexico gave one year notice in advance of placing

the Indian law issue on the exam and worked with Bar review companies to develop instruction that would prepare the examinees. New Mexico decided to use two types of questions specifically related to Indian Law. One type is questions where Indian law impacts the resolution of issues in other areas of law. The second type is questions that address Indian law issues as the core question. Our examinations committee is more likely to favor the former rather than the later. Mr. Withey explained the Examinations Committee is concerned about examinees from other states not having exposure to Indian law in law school. The committee does not want to force people to have to take Bar review classes in order to learn the analytical framework required to answer an Indian law question.

Professor Robert Clinton, stated there are 110 professors teaching Indian law across the country and class offerings regarding Indian law continues to grow. The Forum members agreed there are some issues that could easily be tested on the Arizona Bar exam.

Mr. Withey stated that an amendment to the Rules of the Supreme Court will be needed in order to require an Indian Law question on the Bar Exam. Prior to the Supreme Court adopting such a proposed amendment there will be an opportunity for comment by the Forum. Presumably, the Court will provide notice of new Indian law subject matter to applicants well in advance of the exam on which it will appear as did the New Mexico Supreme Court. Another option to increase awareness of Indian Law would be to adopt an Indian Law mandatory CLE requirement.

### **Recognition of Tribal Court Civil Judgments**

Mr. Withey reported that the ASU Indian Law Clinic had recently undertaken enforcement of a tribal court order in state court using the rules proposed by the Court Forum and adopted by the court several years ago. Initially clerk of court staff was unfamiliar with the rules. Clinic staff present stated that the problems encountered were handled very professionally and the clerk ultimately provided the correct certification of the tribal court order. Some of the participants urged that the Forum petition the court to attach a certification form to the rules to make it easier to use. Mr. Withey suggested that the Court Forum consider this issue and decide whether to recommend adoption of a certification form. Judge Irvine indicated that this should be referred to a Forum committee to develop a proposal in cooperation with the ASU Indian Law Clinic.

### **ASU Indian Legal Programs and Law Clinic**

Mary Wynne, the Director of the Indian Legal Clinic, introduced herself and spoke regarding the Indian Legal Programs. She described the program as a privately funded program housed at ASU that offers services nationwide. The program consists of 4 to 5 students each semester selected by a lottery system. The students in the program serve as lead attorneys on actual state, tribal and federal cases and special projects which involve Indian law issues. They also serve as judicial clerks for Tribal Court judges. Each day a designated student serves as attorney of the day to answer the phone and conduct intake. Once the cases are assigned, the students prepare the cases and meet with the director on

a regular basis in order to review their cases. The students also handle court appearances with the supervision of a licensed attorney. The program is run on a sliding-scale fee schedule. Indigent clients are not charged except for the court fees.

The clinic is currently providing services at Ak-Chin and the Fort McDowell tribal courts. Chief Judge Ida Wilber, from Ak-Chin, commented that she was very impressed with the professionalism and knowledge of the law students sent to her court. She stated that they are very well prepared and the quality of representation is great. Judge Wilber added that the word is out in the community.

The clinic must limit the number of cases taken based upon the availability of clinic students and funds. Additional funds are needed in order to involve more students and expand the clinic's case load.

### **ASU College of Law Indian Legal Programs (ILP),**

Ann Marie Downs, Director of ILP Graduate Programs introduced and passed out materials on the ASU College of Law's new LLM Program, Tribal Policy, Law and Government. In addition, information was provided regarding the Federal Indian Trust Responsibility & Transactions on Indian Lands CLE Conference scheduled for December 1 & 2, 2005 sponsored by and held at the ASU College of Law.

### **Ross-Blakely Law Library**

Alison Ewing from the Ross-Blakely Law Library introduced and presented a slideshow regarding the ASU Ross-Blakely Law Library. One feature described was the Indian Law Collection dedicated to Forum member, the Honorable William Canby. The collection consists of Arizona tribal law and government documents. Any of these documents may be borrowed without charge by state, tribal and federal judges. In addition, the library now has free access to Lexis Nexis and Westlaw. Many documents can be made available to the judges by e-mailed or fax at no cost.

The library now has an Indian Law Bibliography online. This is a compiled list of all treatises, government documents, legal periodicals, and microfiche related to Indian law that the library currently holds. This bibliography provides a "snapshot" of what is available. The law library contact person, Alison Ewing, can be reached at **(480) 965-4863**. The law library website address is: [www.law.asu.edu/library](http://www.law.asu.edu/library).

The online catalog link is:

<http://www.law.asu.edu/files/Library/ResearchGuides/IndLawBib.doc>.

Indian law materials can be searched on line by taking the following steps:

1. Start at the Law library home page
2. Under the heading "Research Databases and Websites" select "browse by subject"
3. Scroll down and under "Browse by Category" find "Native American Law"
4. Select "submit" to bring up three pages of sub-categories.

Curtis Heeter, Staff Attorney for Navajo Nation District Court in Chinle offered to provide the library a document summarizing Navajo Nation Supreme Court case law concerning Navajo traditional. Mr. Withey requested this document so it can be posted on the Court Forum website as well.

### **Service of Process Rule**

Judge Irvine discussed his new draft of specific rule provisions concerning service of process in state civil litigation on Indian reservations. He explained that this draft amends existing rules to expressly provide for long arm service of Arizona process by certified mail on Arizona Indian reservations as is provided for service of Arizona process in other states. These amendments are intended to track Arizona case law. Therefore, they do not mandate use of tribally authorized process servers.

Mr. Withey and Judge Irvine explained the purpose of this rule provision is to include in the rules a clear alternative to personal service on Indian reservations. The proposed rule will expressly state that service by certified mail is a valid method to serve state process in Indian country. It will allow parties to state civil litigation to avoid the uncertainty involved in personal service on an Indian reservation under Arizona case law, which recognizes different requirements depending upon whether the subject of the process is an Indian or non-Indian.

It was suggested that “comments” to the rule could give more information about the case law concerning personal service. A Forum member suggested that the best practice for personal service would be to use a process server authorized by the tribe, if any, since such service would be valid regardless of whether the subject of the service is Indian or non-Indian.

Mr. Withey stated that a final draft of the proposed rule changes would be circulated for comment to members and interested groups. The Forum will then take into account the comments and decide what to file in a rule petition with the Supreme Court.

### **Tribal Court Involuntary Commitment to Arizona State Hospital (ASH)**

Mr. Withey explained that efforts are underway particularly between the Superior Court in Coconino County and the Navajo Nation to make the involuntary commitment rules as effective and efficient as possible so mentally ill tribal members can receive the treatment they need as quickly as possible. There are no mental health treatment facilities on reservations so tribal members must be sent to regional acute care facilities or, if necessary, to the Arizona State Hospital. Some of the attendees shared stories regarding individuals who were sent for treatment from a reservation and then released on the streets without notice to tribal officials. All agreed that continuing work is needed to facilitate the process to secure treatment for mentally ill individuals through the tribal and state court systems.

**Walking on Common Ground: Pathway to Equal Justice Conference, Green Bay Wisconsin July 27-29, 2005**

Edd Welsh, who attended a conference in Green Bay, Wisconsin on July 27-29, 2005 titled Walking on Common Grounds; Pathways to Equal Justice, brought some pictures and spoke about what occurred at the conference. The conference was organized by the Fox Valley Technical Institute and was described as a gathering for Tribal, Federal, and State Court Relations. Mr. Welsh said that there is a very good relationship between the Supreme Court of Wisconsin and the Indian tribes of Wisconsin. Some interesting topics such as the Indian Child Welfare Act were discussed. Mr. Welsh and others who attended the conference all agreed the Wisconsin Supreme Court's Chief Justice Abrahamson, was very impressive and involved with tribal issues. Mr. Welsh explained that the Oneida tribe of Wisconsin has been developing very smoothly and gaming is a huge source of their income. The tribes have started to become more of a partner with the court systems.

Judge Victor Clyde, who also attended the conference, provided Mr. Withey a copy of an informative CD that Fox Valley Technical Institute prepared as a hand-out for the conference. Mr. Withey will obtain permission to copy this CD, if possible, and make it available to any member or participant who wants a copy.

### **Uniform Tribal Commercial Code**

Judge Irvine spoke regarding the Uniform Tribal Commercial Code. He reported that Tim Berg, a private attorney, chaired a subcommittee on a model uniform commercial code for tribes. Judge Irvine stated that he would get a copy of this to Mr. Withey.

Mr. Withey stated The ASU Indian Legal Programs has also been involved in developing codes, but he has not heard that they have developed uniform codes. He stated further that uniform codes are a good idea since it is easier to apply and enforce rules between jurisdictions that are the same and familiar to the lawyers and judges working with them.

Judge Irvine indicated the proposed uniform code is likely to be percolating in the legal community for some time. Efforts have been made to draft it to fit unique circumstances of the tribal courts.

### **Probation Supervision Summit**

Forum members and participants agreed that the arming of state probation officers poses new potential safety issues in addition to existing issues regarding supervision of state probationers on Indian reservations. The Forum needs to study all of the problems associated with supervision of state probationers on reservations. How can we promote cooperation locally between state probation departments in each county and each tribe in the county? This is an issue of statewide concern regarding citizen and probation officer safety.

One option is for each county probation department to contact the tribes in the county to work out how they will cooperate concerning supervision and arrest of state probationers

who live on an Indian reservation. Other suggestions were to have state probation supervision formally recognized by an order of the tribal court or to have the tribal probation officers supervise state probationers.

There is a law enforcement summit which takes place every year in July in Flagstaff. Possibly a probation supervision summit could take place at the same time or immediately after that summit. This would include probation officers, judges, law enforcement, etc. from tribal, state, and federal jurisdictions. The issue of how to handle supervision on an Indian reservation could be discussed there. The Court Forum can play a useful role in planning such an event.

**Next Meeting Date for the Court Forum** – Members and participants present tentatively agreed to meet some time in February, 2006 at the Judicial Education Center in downtown Phoenix.

**Adjournment** – Judge Irvine adjourned the meeting at approximately 2:30pm.