

ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM
State Courts Building
Phoenix, Arizona

Minutes of the
April 24, 2009 Meeting

Court Forum Members Present:

Hon. Patrick Irvine
Arizona Court of Appeals, Division One

Hon. Ted Armbruster
Fountain Hills Municipal Court

Hon. William Canby
U.S. Courts of Appeals, Ninth Circuit

Hon. Earl Carroll
U.S. District Court

Hon. Victor J. Clyde
Chinle Justice Court

Amy Courson
State Bar, Indian Law Section

Vincent Kirby
U.S. Attorney's Office

Mary O'Grady
Arizona Office of the Attorney General

Hon. Delbert Ray
Salt River Pima-Maricopa Indian Com. Crt.

Kathlene M. Rosier
Public Member

Administrative Office of the Courts (AOC) Staff Present:

David Withey

Brenda Lee Dominguez

Participants/Visitors Present:

Marce Clyde
Rose Quilt

Jan Morris
Edd Welsh

II. Call to Order and Greeting

Hon. Patrick Irvine called the meeting to order at 10:12 a.m. Hon. Patrick Irvine welcomed the attendees and invited everyone to introduce themselves.

III. Approval of Minutes

Hon. Victor Clyde made a motion to approve the minutes for October 24, 2008 and January 23, 2009. Hon. Ted Armbruster second the motion, which was unanimously approved.

IV. New Matters

A. Planning Education Session for State Judicial Conference

Hon. Patrick Irvine and David Withey are planning a session on Indian Law at the Arizona Judicial Conference on June 19, 2009, at the Camelback Inn. The topic will be “What Every Arizona Judge Needs to Know About Indian Law.” David Withey enlisted the advice of meeting attendees regarding the content of draft scenarios concerning criminal and civil jurisdiction and regarding which court or courts would have jurisdiction over the events described in the scenarios. The scenarios and some issues identified at the meeting are attached.

B. Court Budget Issues – Open Forum

Hon. Patrick Irvine stated the Appeals Court have been sending documents out by email in order to save postage. Hon. Victor Clyde reported that tribal courts have hiring and travel freezes, possible lay-off of clerks in the future, and are currently looking at the possibility of a four-day workweek. Hon. Ted Armbruster reported that the Municipal Court has held brainstorming sessions with other courts to see how they are handling budget cuts. Mary O’Grady reported that the Attorney General’s Office has had lay-offs, furloughs, and have a hiring freeze.

V. Ongoing Matters

A. Indian Law Question on the State Bar Exam Rule Petition

Amy Courson provided information on the motivation behind and status of the proposal to include fundamental Indian Law issues on the Bar exam. She also encouraged submission of comments supporting this change by the comment deadline date of May 20, 2009. The Court will consider this petition at its August 31, 2009 rules agenda.

B. Enforcement of Orders of Protection

David Withey reviewed the enforcement of Orders of Protection techniques for state and tribal judges, which were discussed at the last meeting, particularly by Judge O’Neil and Judge Sloan. Mr. Withey referred to the “Creative Civil Remedies Against Non-Indians Offenders in Indian Country” report produced by the Southwest Center for Law and Policy in 2008 which was provided as a handout. Particularly, he noted the use of contempt of court procedures, civil fines, and peace bonds to secure compliance with a tribal court order.

C. Other

Hon. Jan Morris volunteered to have the next meeting at the Gila Indian reservation. Hon. Patrick Irvine requested that the dates be set for both this year and next year’s meetings by staff.

VI. Adjournment

The meeting adjourned at 2:08 p.m.

What Every Arizona Judge Needs to Know About Indian Law Scenarios

Criminal Jurisdiction

Bonnie, an Indian, and Clyde, a non-Indian who resides with Bonnie in Indian country, rob the tribal casino. In the course of the robbery gunfire by Clyde hits BJ, a non-Indian black jack dealer. Bonnie jumps behind the wheel of their 1967 Camaro and she and Clyde speed onto the state highway that runs through the reservation. Don, a DPS officer, stops Bonnie for speeding and issues a ticket. On returning to his car he hears the robbery call and turns on his flashing lights before Bonnie pulls away. She kicks the Camaro in reverse and slams into Don's front end. Don radios for help. Tom, an AZPOST certified tribal police officer picks up the call, spots the Camaro, and gives chase on and off the highway and reservation roads. The Camaro spins out on a sharp curve on a reservation dirt road. Tom places Bonnie and Clyde under arrest. In a search of the Camaro he finds marijuana and what appears to be crack cocaine.

Which courts would have jurisdiction over the charges that might be filed?

Civil Jurisdiction

Newlyweds Po and John have finally reached the reservation on the last leg of their move from the city to her parents' house with all of their belongings on a U-Haul trailer they are pulling behind their new pickup truck purchased from A-1 Used Cars immediately before the trip on an extended payment plan. Suddenly, a Camaro being chased by a patrol car appears from around a blind curve over the line requiring John to swerve right. He swerves back to the left but when he tries to straighten out he realizes he has lost all steering control. The pickup and trailer proceed across the highway in front of a commercial truck and into a culvert where 2-year-old Evan dies on impact. The commercial truck proceeds some 100 yards off the highway and into a residence where Evelyn a tribal member is killed while sleeping.

Po, John, and their four-year-old daughter Dawn move in with Po's parents. With the steering broken and no money to fix it they stop payments on the pickup truck. They soon separate and John returns to the city. John travels to the reservation to see Po and Dawn. John files for dissolution in state court in the city and requests custody of Dawn. Po files for dissolution in tribal court also seeking custody of Dawn. Each is awarded dissolution of marriage and custody of Dawn by default. John is ordered by the tribal court to pay child support. After John is denied custody by the tribal court he begins abusing drugs and alcohol and becomes abusive toward Po when he visits. Po obtains an order of protection from the tribal court. When John's wages are garnished he becomes enraged. He kills Po in her sleep and takes Dawn with him. John is arrested for the murder of Po and Dawn is taken into foster care by the state child protective services. Po's sole asset is her retirement account with the state of Arizona for which she did not designate a beneficiary. Po's parents probate her estate in tribal court.

Which courts would have jurisdiction over civil actions that might be filed?

What Every Arizona Judge Needs to Know About Indian Law Scenarios

Issues Identified by Court Forum Members

Criminal Jurisdiction – Scenario #1

Bonnie:

- 1) Robbery – major federal crime
 - Federal Court - theft of tribal property
 - Tribal
- 2) Possession Drugs
 - Tribal
 - Federal
- 3) Firearms
 - Federal
- 4) Speeding/reckless/hit/run
 - Tribal – most likely
 - State
 - Civil or Criminal Traffic
- 5) Assault on Don
 - Federal or Tribal

Clyde:

- 1) Assault on BJ
 - State
- 2) Robbery
 - Federal
- 3) Accomplice to Bonnie's crimes
- 4) Drugs
 - State – Superior or
 - Justice Court if misdemeanor
- 5) Tribal Officer stop and search issues – ICA v. constitutional rights
 - Acting for Tribe vs. State

What Every Arizona Judge Needs to Know About Indian Law Scenarios

Issues Identified by Court Forum Members (continued)

Civil Jurisdiction

Scenario #2, First Paragraph

Dissolution and custody

- In both State – Superior and Tribal
- Tribal court considers connection and code provisions
- Work out jurisdiction between judges
 - Uniform Act
- Custody of Child – Tribal, relationship, eligibility

Against Tribe and Federal – patrol car chase

Against truck company by tribal member

- State or Tribal court?
- Who is defendant?

Against P&J by A-1

- Collection
- Garnishment
- Execution

Scenario #2, Second Paragraph

Child support – service of process

Order of protection

- Enforceable under Federal
- Enforce off reservation
- Charge interfering with judicial proceeding
- Civil contempt

ICWA – Foster Care Review alter Superior

Probate – Interior – trust land