

ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM
Fort McDowell Tribal Court
10755 N. Fort McDowell Road, Fort McDowell, AZ 85264

Minutes of the
October 23, 2009 Meeting

Court Forum Members Present:

Hon. Patrick Irvine
Arizona Court of Appeals, Division One

Hon. Ted Armbruster
Fountain Hills Municipal Court

Diandra Day Benally
State Bar, Indian Law Section

Hon. Earl Carroll
U.S. District Court

Hon. Delfred Leslie
Hopi Tribal Court

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

Kathlene M. Rosier (via phone)
Public Member

Tanja Shipman for Mary O'Grady
Arizona Office of the Attorney General

Hon. Herb Yazzie, Chief Justice
Navajo Nation Supreme Court

Administrative Office of the Courts (AOC) Staff Present:

David Withey

Brenda Lee Dominguez

Participants/Visitors Present:

Kierstin Anderson
Jeff Harmon
Jan Morris
Rose Quilt
Allyson Thomas

N. Flores
Paul Julien
Hon. Kerry Passey
Anthony Stewart

I. Call to Order and Greeting

Judge Irvine called the meeting to order at 10:10 a.m. Judge Irvine welcomed the attendees and invited everyone to introduce themselves. Two new members were welcomed on Forum - Justice Yazzie, Navajo Nation Supreme Court, and Diandra Day Benally, State Bar, Indian Law Section.

II. Approval of Minutes

Judge Armbruster made a motion to approve the minutes for April 24, 2009. Diandra Benally second the motion, which was unanimously approved.

III. Ongoing Matters

A. Coverage of Indian Law Issues on State Bar Exam – Status

Diandra Benally, reported that this matter is on hold, while an on-going study is being performed to see if the state of Arizona is going to a uniform bar exam. The State Bar is checking into whether there is interest in Indian law studies for CLE credit.

Paul Julien reported that as of January 1, 2010, an attorney in good standing for the last 5 to 7 years could be admitted by motion into Arizona. There are requirements such as the reciprocity by the other state, and a mandatory one-day class for the attorneys to attend – Indian law may be part of this class. Arizona is pioneering the mandatory class, and this model is being closely watched by other states. David recommended having a manual available for the class. Kathlene Rosier volunteered to supply material from past Indian law courses. Chief Justice Berch is on a Chief Justice Committee addressing this matter. There is a deadline of December 16, 2009 to have materials together for her review.

Justice Yazzie, questioned whether the Navajo Nation Bar could enter into this program? Paul Julien stated he would check into this matter and report to the Forum. There may be a reciprocity issue.

B. Involuntary Commitment Status Report

Alida Montiel, a Member of the Yaqui Tribe, spoke on behalf of the Intertribal Council of Arizona, Inc. (“ITCA”). She reported that in 2008 the Involuntary Commitment Work Group was established by the Arizona Department of Health Services/Division of Behavioral Health Services (“ADHS/DBHA”). The workgroup focused on addressing the involuntary commitment process in terms of needed coordination between tribes, Regional Behavior Health Authorities (“RBHA”) and the Arizona State Hospital. Major changes have occurred with the work of the workgroup, such as – the Arizona Attorney General representing AzSH agreed to process tribal court commitment orders with 24 hours of receipt, all RBHAs now have tribal liaisons to coordinate services for the Native American population within their geographic service area, the AzSH has a case worker assigned to work with tribal behavioral health departments on the admission, case management and discharge processes, and tribes and RBHAs are developing letters of agreement covering issues of concern including providing RBHA services on reservations such as crisis intervention.

David Withey explained the background of the “Protocol for the Processing and Enforcement of Tribal Court Involuntary Commitment Orders in the Superior Court of Arizona” which was provided as a handout. He noted the need to verify the

functionality of the protocol in Coconino County consider changes in the rules and protocol in light of the work of the ITCA work group.

LUNCH – 12:10 P.M. – Thank you to the Fort McDowell Tribal Council, which provided lunch. Thank you to Judge Passey for hosting the meeting.

IV. Fort McDowell Court Tour

Judge Passey provided a tour of the Fort McDowell Court facilities.

V. Fort McDowell Court Programs

A. Wellness Court Program

Judge Passey described the twelve step “Wellness Court Program”, which is a counterpart of the State run drug court. Judge Passey reported that there is a high success rate by the participants in the program.

B. Probation Supervision of Tribal Members Cooperation

Judge Passey reported that cooperation between state and tribal probation departments provides a balanced approach to probation that focuses on holding probationers accountable, keeping communities safe, and providing treatment and rehabilitation services to offenders.

VI. New Matters

A. AZ Order of Protection Statutory Changes

David Withey provided information regarding the recent change to A.R.S. § 13-3601(A), which expands the types of relationships included in the definition of domestic violence. The statute now states that a person in a current or previous romantic or sexual relationship with an alleged abuser can request an Order of Protection against that person. Previously, a persons in such a relationship could obtain an Injunction Against Harassment, but not the higher level of protection afforded by an Order of Protection. Justice Yazzie stated that the Navajo Nation has not had this distinction. Judge Leslie, Hopi Tribal Court, explained that their court has extended the definition of family to clan. This broader definition has been beneficial to applying the law.

David Withey suggested a pilot project to investigate the process of transmitting tribal court orders to be incorporated into the state judicial department’s Order of Protection database. Judge Kerry Passey volunteered to be part of the pilot project. Others interested in working on this project were asked to contact David directly.

B. New Mexico Symposium Report

Judge Grimsley, Judge Clyde, and Jan Morris attended the symposium. Jan Morris, Court Administrator for the Gila River Tribal Court, provided an overview.

C. Open Forum for Members to Raise Issues of Concern, etc.

- Judge Irvin, Judge Armbruster, and David Withey were presenters at the June Judicial Conference. The subject matter was “What Every Arizona Judge Needs to Know about Indian Law.” The program received positive reviews. Unfortunately, due to budget constraints the Judicial Conference will not be held in 2010.
- Paul Julien provided information on the upcoming January “New Judge Orientation”, for general and limited jurisdiction judges, which is mandatory for all new judges. Judge Carroll inquired if the material was available on tape/CD. Paul Julien stated this is not made available at this time on tape/CD, but he would check into the matter and report to the Forum.

D. 2010 Meetings

February 5, is the first meeting for 2010. The meeting will be held at the State Courts Building. An email will be sent to the members regarding the proposed dates for the remaining two meetings. We are considering May 28 or June 4 for the second meeting. Memorial Day falls on the Monday following the May 28 proposed date; the majority of the members at the meeting on October 23 preferred June 4 for this reason. We are considering September 24 or October 1 for the third meeting. There are no holidays close to either of these dates.

VII. Adjournment

The meeting adjourned at 2:39 p.m.