AGENDA

ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM

Friday, February 1, 2008 - 10:00 a.m. - 3:00 p.m.
State Courts Building, Room 119
Phoenix, AZ

I. **Registration** - (Beginning at 9:45 A.M.)

II. **Call to Order** – Hon. Patrick Irvine, Arizona Court of Appeals

III. **Approval of Minutes**

IV. **Ongoing Matters**

A. **Tribal Court Involuntary Commitment Process**
Intertribal Council of Arizona response.
Clerks of Superior Court response.

B. **Revocation of State Probation of Reservation Resident**
ASU SDO College of Law assistance compiling extradition procedures.

C. **Indian Law on Bar Exam**
Status report – copy of draft petition provided for review.

D. **DV Orders Processing Into ACJIS and NCIC**
Explanation of Arizona courts process

VI. **New Matters**

A. **Tribal Sex Offender Registration Requirements**
Registration of state probationers

B. **Exercise of Criminal Jurisdiction in and around Indian country**
Role of US Attorney
Role of Federal Public Defender

LUNCH - Available for $5.00. Payment at registration or on arrival.

VII. **Subcommittee Work**

A. **Service of Process Rule** – (Based on 10/19/07 minutes) Hon. Patrick Irvine, Hon. Delbert Ray, Hon. Ida Wilbur; Mary O'Grady, Pat Jenson; Hon. William O'Neal; Kate Rosier

B **Recognition of Tribal Judgments Rule Amendment** - (Based on 10/19/07 minutes) Hon. William O'Neil, Sue Hall, Hon. Ted Armbruster, Amy Courson or ILS designee

VIII **Adjournment** Reminder of future meetings.

III. Approval of Minutes

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ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM
Gila River Indian Community Tribal Court
721 W. Seed Farm Rd.
Sacaton, Arizona 85247

Minutes of the
October 19, 2007 Meeting

Court Forum Members Present:

Hon. Victor Antone
Gila River Community Court

Hon. Ted Armbruster
Fountain Hills Municipal Court

Hon. William Canby, Jr.
U.S. Court of Appeals, Ninth Circuit

Hon. Victor J. Clyde
Chinle Justice Court

Amy Courson
State Bar of Arizona

Ms. Pat Henson
Public Member

Diane Humetewa
U.S. Attorney's Office

Hon. Patrick Irvine
Arizona Court of Appeals, Division One

Mary O'Grady
Arizona Office of the Attorney General

Hon. William O'Neil
Superior Court, Pinal County

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

Kathlene Rosier
Public Member

Hon. Claudette White
Quechan Tribal Court

Hon. Ida Wilber
Ak-Chin Indian Community Court

Administrative Office of the Courts (AOC) Staff Present:
Lisa Bruner
David Withey

Participants/Visitors Present:
Patty Ferguson Bohnee
Helen Burtis
Jamie Heller
Judge Kay Lewis
Edd Welsh
Reagan Armstrong

II. Call to Order

Judge Irvine called the meeting to order at 10:21a.m. Judge Irvine welcomed the attendees and invited everyone to introduce themselves.

III. Approval of Minutes

Judge Irvine called for the approval of minutes as the first order of business. David Withey noted to change Mary O'Grady's title to Solicitor General. Diane Humetewa stated she was

present at the meeting. Judge Irvine motioned to approve the minutes with changes. Motion was seconded. Minutes were approved.

IV. Ongoing Matters

A. Service of Process Rule

Judge Irvine suggested creating a subcommittee to look at this rule and to report back at the next meeting. David Withey reviewed the outline of the Red Rover article which can be provided to the subcommittee members. He described the second handout as an overview of the service of process requirements and practices for various Indian nations and tribes in Arizona. The information is incomplete but useful, as it relates to other issues such as orders of protection. David Withey noted that this document needs to be expanded with those jurisdictions not listed. Judge Irvine suggested that the subcommittee could do that and also could find and share information on standard information adopted uniformly by all tribes. Judge Irvine asked for volunteers for the subcommittee and noted that he and David Withey would assist. Judge Ray and Judge Wilber volunteered. Mary O'Grady will volunteer a person from the child support enforcement area of the Attorney General's Office. Judge Irvine noted that he will conduct a conference call within the next month.

Judge O'Neil initiated discussion on how the subcommittee will come up with the rule. Judge Ray indicated that there is enough in the tribal codes and the key is reciprocity. Judge Irvine clarified that the proposal has been to codify case law into a state rule to direct practitioners. Is a rule a good idea is the ultimate question.

David Withey suggested to the subcommittee members to supplement the chart as much as possible. Kathlene Rosier said she would provide assistance in compiling the information for the subcommittee.

B. Tribal Court Involuntary Commitment Process

David Withey led this discussion. This effort began with a protocol for Coconino County that was focused on how a tribal court order can be used efficiently to place a resident of the Navajo Nation in a hospital who needs in-hospital care. David Withey revised the protocol with assistance of Steve Boos, a private attorney who represents a tribal health care entity on the reservation. The protocol involves use of fax/electronic means to expedite the paper exchange between the tribal court, the proponent of the order and the state court. It includes agreement on how the clerk and probate judge would handle the paper transfer. Judge O'Neil clarified that a probate case is usually assigned to one judge in each county.

David Withey, working with the Intertribal Counsel of Arizona, started with Coconino County and then rewrote the protocol to work in any county in the state and, as suggested by Mr. Boos, to allow any entity to process the tribal court order efficiently using the latest technology, because these cases are urgent when they occur.

One issue that needs to be addressed is the requirement for local evaluation and treatment. This is typically a two step process. First, a person goes for evaluation and treatment locally. If that doesn't work, then there is a commitment to a state hospital. The problem with the reservation is there are no local facilities, so placement is always off the reservation. The issue is how a tribal

court makes the placement. The option for local evaluation and treatment has not been resolved as an absolute requirement. How absolute does the Attorney General's Office consider that requirement for this process and how does the tribe implement it requires additional discussion.

Judge O'Neil recommended to include the clerks in this process and to notify the mental health presiding judge (every county has one) to avoid delay.

A discussion ensued regarding the complexities of state and federal funding of mental health care for the tribal nations. Judge Irvine suggested that the protocol take the payment issue into account.

Judge Armbruster noted that court liaisons were a great resource for mental health issues dealt with by the court. The Maricopa county jail and correctional health services were other good resources.

David Withey addressed the need for internet information where anyone could go to get the rule, statute, forms, and protocol. The Forum needs to continue working with the Intertribal Council on how to do this and how to get the word out on what resources are available.

C. Recognition of Tribal Judgments

David Withey led the discussion on whether there is a need for a procedure where the clerk of the superior court is to issue a certification document when a tribal court judgment is filed and there is no objection and response from anyone. Under current rules, notice is required to go to the subject of the order in this situation. Before the tribal judgment is enforceable, the clerk does a certification that no response is received. Under the Foreign Judgments Act, there is no such process and the clerks are questioning why this certification process is needed since it is not required for a regular foreign judgment. Section 12-1704.C. of the Arizona Enforcement of Foreign Judgments Act contains the provision for proof of mailing/certification that is under discussion. Under this provision, there is a 20-day waiting period; there is no need for the clerk to provide a certification and the judgment is enforceable like any other order. Rule 5B of the Rules of Procedure for the Recognition of Tribal Court Civil Judgments departs from the way foreign judgments are handled.

There was discussion on whether tribal judgments should be treated differently and that this creates a problem for the clerks as they are not familiar with the process. Pat Henson suggested to keep the process simple. Judge O'Neil volunteered to take the steps to get the rule amended. Judge Irvine explained that the rationale for the rule was to formalize and codify the case law.

The issue that domestic violence court orders are not being enforced in state and county courts nationally is one that Diane Humetewa hears routinely from tribal judges. Ms. Humetewa noted that there might be a category of practitioners that still have questions about the enforcement of tribal court orders. David Withey clarified that orders given full faith and credit under federal law are not covered by this rule (e.g., orders of protection, child support, child welfare act orders).

Judge O'Neil explained the key is that a non-tribal order may or may not be enforceable on a nation's soil, but an Indian nation's orders are fully enforceable in the state of Arizona. Project Passport was then discussed by Judge O'Neil. Project Passport was an effort to get everyone, including Indian nations, to have the front page of orders of protection to be substantially similar and completely unique. Every state has adopted Project Passport and over half of the Indian nations have adopted it, but there has not been as much progress in Arizona. Chief Justice McGregor is aggressive in efforts to have orders of protection enforced. Judge Armbruster noted the front page references that the order is enforceable on any jurisdiction, including tribal jurisdictions. Judge O'Neil confirmed that the order is enforceable across the nation.

Judge O'Neil suggested placing a reference to the tribal judgments rule in the civil rules and Judge Irvine concurred, further suggesting moving them in their entirety into the rules of civil procedure. Judge Irvine will assist Judge O'Neil in this effort and called for individuals to assist in looking at the rule. He asked Amy Courson to think of someone in the Indian Law section who could assist. Judge Irvine would like the subcommittee to put something together by the next meeting.

D. Revocation of State Probation of Reservation Resident

David Withey is working on compiling the extradition procedures and requested copies from the tribal judges. Judge Wilber provided her procedures. Kate Rosier will assist in compiling the information. Judge Irvine clarified that this would be true for almost any information such as rules, statutes, and ordinances, as ASU is the reasonable and logical place to store this information. Ms. Rosier confirmed that they are always looking for updates.

Judge O'Neil returned to the tribal judgment rule issue and wanted to know if there was any objection to eliminating the clerk certification from it. Judge Irvine wanted to do a rule petition by the January 2008 filing deadline and suggested circulating a draft by the next Court Forum meeting. Judge Canby noted that there was no need for the certification provision and he had trouble seeing why it is required by the rule.

E. Indian Law on Bar Exam

Amy Courson, the current Chair of the Indian Law Section of the Arizona State Bar and new member of the Court Forum, provided an update. The approach is not to be too specific, but to make people aware it's out there. They raised the issue by writing a letter to the Committee on Examinations. The committee's response was that Indian law is too specialized and should not be included. A second response was requested by 9/15/07 and nothing came back from the committee. The work group is now ready to have a meeting on 11/1/07 (consisting of University of Arizona and Arizona State University professors and practitioners) to determine the best way to proceed. A poll conducted at the Bar Conference this past summer to determine who supported this idea indicated a lot of support for this. The desire is to work cooperatively rather than politically at the outset.

The purpose of adding an Indian law section to the bar exam was discussed. Judge O'Neil asked if an individual passed the bar, could they practice on Indian nations. Amy explained that there are two types of practitioners: 1) licensed practitioners and 2) tribal advocates who don't have a Juris Doctorate or college degree, but have received training and are eligible to practice before a

tribal court. The idea of placing an Indian law question on the exam was questioned since one can't practice on a nation by passing the state bar exam. A certification program was suggested. Amy explained that practitioners will encounter Indian law issues at some point and they want to make them aware that there is another type of government. The concern is about practice outside of the reservation boundaries.

Judge O'Neil commented that it is a good idea to do this nationally, but absent that, there is a disadvantage to those who go to law school out of state. Kate Rosier discussed the research on this and noted that Indian law is taught at almost one half of all law schools. Ms. Rosier clarified that it is not mandatory.

David Withey cited service of process as an example. If someone does not know how to serve on an Indian reservation, then how does one practice. Patty Ferguson Bohnee discussed malpractice as another issue. This is seen by not filing in the right court and with out-of-state individuals who come to practice in Arizona.

Judge Wilber commented that Indian law on the bar exam is significant and she supports it. Judge Wilber suggested that there should be a question on ICWA as it is a federal law and it applies in state court to protect tribal rights. Judge White supports Judge Wilber on ICWA and further noted that many state judges are not familiar with this law. Judge White continued that it is also important to be familiar with common issues that affect residents and families. It's a disadvantage for citizens and bar licensed practitioners if they are not familiar with tribal jurisdiction and laws.

Alan Hawkins suggested looking at traditional court cases that involve Indian law.

Judge Irvine decided to take the agenda out of order since Judge O'Neil had to leave after lunch. Judge O'Neil will address the role of the state superior court in state criminal jurisdiction.

Criminal Jurisdiction – Role of State Superior Court

Judge O'Neil discussed that there are always issues with someone on probation, such as an individual moving back onto an Indian nation. There are issues about supervision and warrants. There have been no cases that were really jurisdictionally problematic other than a case involving an issue on where a weapon was fired. Gila River has a pretty good dialogue with the superior court and other courts. There has not been a non-Indian on non-Indian crime on the reservation. The tribal police department does not cite people into superior court.

Diane Humetewa noted that, in Maricopa County, there has been an increase in the number of Arizona post certified tribal officers citing non-Indians into Maricopa County Superior Court and that there is bound to be an increase in other courts as well.

Judge Irvine thanked Judge O'Neil for his attendance.

F. Arizona DV Database Access

David Withey clarified that tribal police can access the Arizona DV Database. An order issued by a state court can be accessed by the tribal police through this database. This database contains

orders that have been served and are in effect, so law enforcement can rely on the order to arrest an individual who is violating the order. The issue is we do not have a database for entering tribal orders. Diane Humetewa indicated that the NCIC is not set up for tribes to submit orders.

The process of how tribal orders of protection are recorded and enforced was discussed. A tribal police officer contacts the court to determine if a valid order is in place. Judge Wilber explained that the tribal officer serves the order once it is issued. There is a record of the orders with the tribal police and the Clerk of the Court also keeps a log of orders. Mr. Withey indicated that in the state, the sheriff is the holder of records. Judge O'Neil explained the process as follows: the clerk enters the data; the data is sent to the sheriff electronically; the original order of protection stays with Clerk's Office; and a paper copy is sent to the sheriff. An officer can access the order electronically, usually via a laptop.

One proposal is, for any automated tribal court system, to input tribal orders into the state database. But there still needs to be a local law enforcement agency that can be contacted to verify the order, which would be the tribal police. The tribal police would be the holder of tribal court orders.

Judge O'Neil noted that the old computer language is a problem with the system. Mr. Withey explained that the IT Department can load any standard data format into the system.

Judge Irvine noted that David is the source of information for this subject and requested the tribal judges to find out what is happening at their respective courts by the next meeting. Items to research are the efforts to coordinate the system and whether any issues have been encountered. Information will be shared at the next meeting on what is happening at the tribal courts.

Judge O'Neil stated that if anyone is interested in serving on the committee on the Impact of Domestic Violence in the Courts to contact him as soon as possible. There are judge and non-judge positions available on the committee. Judge Irvine commented that is a great opportunity to find out about the nuts and bolts of the system. Mr. Withey clarified that tribal law enforcement would need access to ACJIS to get to the database.

Lunch

The meeting adjourned for lunch at 12:06pm. Judge Clyde began lunch with a Navajo journey song, *Dzil biyiin.*

VI. New Matters

The meeting reconvened at 1:12pm by Judge Irvine. Pat Henson made a motion to thank the Gila Indian Community Tribal Court, on behalf of everyone, for the excellent food. The motion was seconded and unanimously approved.

A. Tribal Court Tour and Programs

The tour of the Gila Indian Community Tribal Court was conducted by Judge Antone, Chief Judge, and Irene Patino, Assistant Court Administrator, **after** Agenda Item VI.B. Criminal Jurisdiction In and Around Indian Country.

B. Exercise of Criminal Jurisdiction In and Around Indian Country

Role of Gila River Indian Community Justice System

Manuel (Max) Aguiar, Chief Prosecutor, and Carlton (Charlie) Giff handed out a Jurisdiction Chart and discussed how the tribal court and prosecutor's office works. Judge Irvine asked about the number of prosecutors in the office and the types of prosecutions they do. Mr. Aguiar indicated they handle misdemeanor cases ranging from marijuana possession cases to assaults. He also stated there is a high incidence of violent crimes and domestic violence. They have nine prosecutors and will be getting a domestic violence prosecutor in January 2008. There is a high emphasis on domestic violence, both prosecution and education.

Mr. Aguiar explained that the line between prosecution by the tribe and prosecution by the federal government is major crimes. They are a misdemeanor jurisdiction. They can pursue any crime with a penalty of less than 365 days or $5,000. The majority of cases are serious assault, car theft, battery, gang issues and domestic violence.

Judge Armbruster inquired about a victims services program, separate from the domestic violence prosecution. Mr. Giff discussed the proposed victims rights ordinance.

Mr. Giff explained that at the time a felony is investigated by criminal investigators, a report is provided simultaneously to the tribal prosecutor's office and the U.S. Attorney's Office. The tribal prosecutor's office may have already filed or filed lesser charges. In very rare cases, the tribal prosecutor's office has had to file criminal homicide charges. Mr. Giff noted that present code is being looked at for additional ordinances for gang traffic which involves not only drugs but immigrant smuggling.

David Withey inquired about problems with non-Indians committing crimes on the reservation. Mr. Giff indicated they have a few and discussed the option of exclusion. The issue of how a non-Indian violation of an exclusion order would be prosecuted (i.e., on the state side or as a federal charge) was discussed. Mr. Aguiar explained that their officers are deputized at the tribal, state and federal levels. They can make the determination in which venue the charge will be brought.

Mary O'Grady inquired about methamphetamine (meth)-related crime. Mr. Aguiar said they have been fortunate, but it does show up. Mr. Giff indicated that they are seeing the majority of meth-related cases through probation violations. The problem is getting the second drug test done.

Mr. Aguiar noted that another problem is the cost of forensics and that they do not have the technology for it. Pat Henson inquired about assistance from the U.S. Attorney's Office with major crime or if they get FBI forensics involvement. Mr. Aguiar responded that it is usually the other way around. The federal case is developed first, then the tribal court case is developed. Mr. Giff added that for the same offense, the federal court will give credit for time already served at the tribal level.

Diane Humetewa presented two issues. One is that when a tribal prosecution is taken federally on a related, separate charge, the Bureau of Prisons (BOP) requires a person to go back to tribal

jail to serve out the remainder of the sentence before being transferring to the BOP. This avoids prolonging a sentence due to expense and reduces the time served at the federal level. The other issue has been seen in recent oral arguments at the ninth circuit court where questions have arisen about the tribal police and the federal government in collusion to overstep particular processes, either tribally or federally. There is a recent oral argument about three weeks ago where this is the focal point of an appellate court judge. Ms. Humetewa noted that they need to monitor this.

Edd Welsh inquired about 638 contracts and if the prosecutor's office has enough money. Mr. Aguiar responded that they are a tribal government, and like any other government, there's never enough money. Mr. Giff then used the criminal justice facility at the Gila Indian Community as an example where $18 million was approved but the Indian community ended up funding the project themselves.

Judge Irvine inquired about the size of the police department. Max stated that they have 68 officers, 30 of which are actually in the community. Mr. Giff noted that they have the largest detention facility in Indian country. They have a 240-bed adult detention facility with twelve beds designated for juveniles transferred to adult court. They also have a 120-bed juvenile detention facility.

Judge Wilber inquired if their prosecutors participate in the APAC training. Mr. Aguiar responded they do not now. Mr. Giff discussed the Arizona Tribal Prosecutor's Association and noted that their next meeting is November 16, 2007. Diane Humetewa explained the goal of the association is to facilitate communication between not just the U.S. Attorneys Office and tribal prosecutors but amongst each other. Through the association, they permit sharing of resources, sample codes and processes.

Mr. Aguiar then discussed the issue of violence against women. Getting witnesses is a problem and they need a mechanism to assist victims. They recently received a federal grant to implement victim services. Pat Henson offered a hot line as a suggestion.

Diane Humetewa handed out the 2006 Indian Country Report by the U.S. Attorney's Office. Ms. Humetewa noted that this publication from now on will go to the tribal judges in addition to the tribal leadership. Ms. Humetewa discussed a ninth circuit case, *US v. Lesman Mitchell* which deals with the major crimes act. The issue in the case is whether or not the opt-in clause of the death penalty was preempted by generally applicable federal crimes. The ninth circuit ruled in *Mitchell* that because it was a generally applicable federal offense, the death penalty did apply. The case is also probative of the level of violent crimes increasing. The Westlaw cite for this case is 2482077 and the opinion was filed on 9/5/07.

Judge Antone discussed criminal prosecution from the tribal court's point of view. There was only one time the court needed assistance from Pinal County. It was a situation where an individual left a jurisdiction to hide in another jurisdiction. Other than that, there have been no other cross-jurisdictional issues. Judge Irvine inquired about the number of judges on the bench and the percentage of time the judges spend on criminal issues as opposed to civil issues and family court issues. Judge Antone responded that it is approximately 80 to 85 percent criminal

and 15 percent civil. There are six court rooms and one court room is for civil issues. Seven of the eight judges deal with the criminal issues. Ninety-five percent of crimes are related to domestic violence. The adult recidivism rate is 75% as of 7/29/07. Judge Antone then discussed the meth problem and that is has not reached the reservation, but that it has the potential to destroy the reservation if they do not get a handle on it.

Role of Pinal County Attorney

Susan Crawford, Bureau Chief of Juvenile Crimes Unit and Bureau Chief of the Domestic Violence Unit with the Pinal County Attorney's Office discussed their role in criminal jurisdiction. They enforce state laws where non-Indian persons are suspects or victims. They handle any crime that occurs on tribal territory committed by a non-Indian against a non-Indian victim. They also handle a lot of local youth or young adults who run onto the tribal area to escape the local law enforcement officers or offenders who think they can finish the crime on the reservation because they won't be prosecuted.

The county prosecutor's office handles everything from misdemeanors to felonies. They want to ensure that state juvenile probation officers are working with tribal probation officers, and that there is open communication between governments.

David Withey inquired about issues with revocation of probation. Ms. Crawford responded that they can't enforce a probation search without tribal authority. They can do a probation search in cooperation with tribal authorities and the tribal authorities work closely with their probation department.

Judge Irvine inquired about any resource issues, such as who pays for what services. Ms. Crawford responded that they had not had any. Tribal members get better services for their juveniles and in some cases, adult services as well than the county can provide for other county residents.

Pat Henson asked about their method for service of process of non-Indians on Indian reservations. Ms. Crawford explained that a new policy came out about six weeks ago. The process is they go to local tribal law enforcement officer and serve it locally together. For court orders, they go to the court.

Role of State JP and Municipal Courts

Judge Armbruster discussed the role of the municipal courts. Judge Armburster met with Ft. McDowell municipal court colleagues last week. The biggest challenge is coordinating shared defendants on probation issues dealing with program participation. They have made big strides in coordinating efforts including meeting with program providers at Ft. McDowell and meeting with tribal probation officers. Since they do not have a probation department, the cooperative effort by Ft. McDowell is a great resource.

One issue is to avoid complicating the process. The court has licensed program providers through the Department of Health Services. Ft. McDowell has some program providers licensed through the Department of Health Services but counselors are licensed through the State of

Arizona. They are trying to forego the unnecessary extra monitoring step through the license agency to make it less complicated and expensive.

Judge Armbruster discussed the teen court in Fountain Hills, which is in its fourth year. They have a partnership with Maricopa County Probation and Juvenile Court. Generally, they have minor offense, first offenders. They partner with the county to train lawyers who advocate for the state and they also partner with the high school. They recently spoke to Ft. McDowell representatives, who hopefully will participate in the teen court as well.

Judge Clyde discussed justice court jurisdiction in the Chinle Justice Court. Most officers who file in his court are from the Arizona Department of Public Safety, Navajo Nation law enforcement, the sheriff offices from Apache and Navajo counties, and the Motor Vehicle Department. The Navajo Nation does not have a specific code for trucking offenses, so they are filed in justice court. They have jurisdiction only of non- Indian dependents and non-Indian victims. Judge Clyde discussed the peace making courts which are analogous to alternative dispute resolution.

Judge Antone conducted a tour of the court.

C. Open Forum
Not conducted.

D. Future Meetings
Not discussed.

VII. Adjournment

The meeting adjourned at 2:55pm at the conclusion of the court tour.

IV. Ongoing Matters

A. Tribal Court Involuntary Commitment Process

Protocol for the Processing and Enforcement of Tribal Court Involuntary Commitment Orders in the Superior Court of Arizona

Problem Statement: Persons determined by tribal courts in Arizona to be in need of involuntarily commitment require immediate custodial care. The only secure facilities available on Arizona reservations are jails, which have very limited bed space and treatment services. Local secure mental health treatment facilities located outside of Indian country may lack understanding of tribal court jurisdiction and are sometimes reluctant to comply with tribal court involuntary commitment orders.

Arizona has established a mechanism for the filing and enforcement of tribal court involuntary commitment orders in A.R.S. 12-136 and through the Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders. Involuntary commitments under tribal law will only be ordered in those cases where it is shown that the person who is the subject of the order is a threat to the health or safety of himself or others. Therefore, any delay in filing and enforcing the tribal court order is an obstacle to timely treatment in these emergent cases. The process for filing and enforcing tribal court involuntary commitment orders in the Arizona courts involves three points at which processing time is involved (A) filing the tribal court order and other required paperwork in superior court, which may be time consuming due to the need to travel significant distances to the superior court from reservation locations; (B) the five (5) day response period required by Rule 3 of the state rules; and (C) the time necessary for the certification required by Rule 5(a) or the enforcement order required by Rule 5(b).

This protocol is designed to streamline and decrease the time required to file and enforce tribal court involuntary commitment orders.

A. Decreasing the time it takes to file tribal court involuntary commitment order.

The proponent of the tribal court commitment order will:

1. File the tribal court order and supporting documents, including the telephone numbers of the parties, if available, by sending a facsimile transmission to the Superior Court of the State of Arizona, in a county in which the reservation is located to the attention of the Clerk of the Superior Court.

2. Submit the original tribal court documents by express delivery (United States Postal Service Express Mail, FedEx, or a similar form of express service designed to obtain next day delivery) to the Clerk of Court.

3. If the tribal court order indicates specifically that the patient is in need of admittance to the Arizona State Hospital, send a copy of the tribal court order by facsimile transmission to the Admissions/Legal Department, Arizona State Hospital. The fax number is (602) 220-6198. This step is not required if the commitment order is to a facility other that the Arizona State Hospital.

The Clerk of the Superior Court will:

1. Immediately upon receipt file stamp and file the tribal court order.

2. Immediately return a copy of the filed and stamped tribal court order by facsimile transmission to the proponent of the tribal court commitment order.

B. Decreasing the wait for the 5-day response period.

1. The judge of the tribal court should determine whether response to superior court enforcement of the tribal court involuntary commitment order is waived by the subject of the commitment order and incorporate this waiver in the tribal court findings and order.

2. The proponent of the tribal court commitment order will first make an effort to contact the Attorney General's office directly by telephone to inform the Attorney General's representative of the entry of the tribal court order, the facts supporting the entry of the order, and the need for expedited response by the Attorney General.

3. The proponent of the tribal court commitment order will send a copy of the tribal court order and supporting documents and an unsigned waiver of the 5-day response period (see attachment) to the Attorney General's Office by facsimile transmission to:

   Attorney General's Office
   Education and Health Section
   Attention: Assistant Attorney General representing Arizona State Hospital or

   Division of Behavioral Health Services
   Catherine Plumb or Robert Sorce
   FAX # 602-364-0700

   Indicate on the fax form "URGENT: Response Requested Within 24 Hours of Receipt." The cover sheet will contain the name of the individual and contact information where the state's waiver should be sent by facsimile and certified U.S. Mail.

3. As soon as practicable, but by no later than 24 hours after receipt of the tribal court commitment order, the Assistant Attorney General will review the tribal court order and either complete a waiver of the five-day response period or file a response.

4. Provided the tribal court order contains the required information, the Assistant Attorney General will sign the waiver document and return the same by facsimile and mail to the fax number and address designated in the original facsimile.

C. Expediting the enforcement decision by the Superior Court.

1. The Clerk of the Superior Court will provide the tribal court order and supporting documents to the judge for review on the next workday following filing of the tribal court commitment order.

2. The proponent of the tribal court commitment order will schedule review of the tribal court order by the assigned judge of the Superior Court for a particular date and time by calling the Clerk of the Superior Court to identify the judge to whom the matter is assigned and by calling that judge's judicial assistant to facilitate consideration on the same day the matter is received in the judge's chambers if the judge is available, if all paperwork is in order, and if the matter is not contested or at the earliest opportunity.

3. The Superior Court judge will schedule a telephonic hearing involving the tribal judge and parties as needed to clarify any issues with the paperwork presented.

Recognition and Enforcement of Tribal Court Involuntary Commitment Orders in the Arizona Superior Courts

APPLICABLE STATUTE AND RULES:

A.R.S. §12-136. Indian tribal courts; involuntary commitment orders; recognition

A. Notwithstanding any law to the contrary, an involuntary commitment order of an Arizona tribal court filed with the clerk of the superior court shall be recognized and is enforceable by any court of record in this state, subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of the court. The Arizona Supreme Court may adopt rules regarding recognition of tribal court involuntary commitment orders. The state, through the attorney general, shall be given notice of the filing at the time the commitment order is filed and shall have five days from receipt of the written notice of the filing of the order to appear as a party and respond. A patient committed to a state mental health treatment facility under this section shall be subject to the jurisdiction of the state.

B. Decisions regarding discharge or release of a patient committed pursuant to subsection A shall be made by the facility providing involuntary treatment. Ten days prior to discharge or release, the state mental health treatment facility shall notify the tribal court which issued the involuntary commitment order of the facility's intention to discharge or release a patient. Any necessary outpatient follow-up and transportation of the patient to the jurisdiction of the tribal court, within the time set forth in the notice, shall be provided by the proponent of the tribal court commitment order.

Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders

Rule 1. Applicability

These rules govern the procedure for recognition and enforcement by the superior court of an involuntary commitment order of the court of any federally recognized Indian tribe within the State of Arizona, as authorized by ARS. §12-136. Determinations regarding recognition of the tribal court commitment order pursuant to these rules have no effect upon the independent authority of the tribal court order. Whenever reference is made to the proposed patient in these rules, it means the person who is the subject of the tribal court commitment order.

Rule 2. Filing Procedure and Fees

(a) Documents to be filed. A copy of the tribal court order, authenticated in accordance with the procedures of the tribal court, may be filed in the office of the clerk of the superior court in a county in which the tribal court has jurisdiction within 30 days of its entry in the tribal court. The order shall be accompanied by a signed and notarized statement from the appropriate tribal court officer stating that no subsequent orders vacating, modifying or reversing the order filed have been entered by the tribal court and that the order has not been stayed pending appeal. The clerk shall treat the tribal court order in the same manner as an order of involuntary commitment issued by the superior court of this state.

(b) Notice of Filing. The person filing the order shall promptly serve a notice of filing substantially similar to Form I of these rules and a copy of the tribal court commitment order on the proposed patient or the patient's guardian or representative and the Attorney General of the State of Arizona. Proof of service shall be filed with the clerk of the superior court.

Rule 3. Responses

Any responses to the enforcement of the tribal court order shall be filed within 5 days of receipt of the notice of filing the order. If a response is filed within this time period, the enforcement proceeding under this rule shall have the same priority as a civil commitment proceeding originating in the superior court. The superior court may, in its discretion, set a time period for replies and/or set the matter for hearing.

Rule 4. Appointment of Counsel

If a response is filed, the court may, in its discretion or at the request of the proposed patient, appoint counsel to represent the proposed patient at any enforcement proceedings.

Rule 5. Enforcement of Tribal Court Commitment Order

(a) Certification by the Clerk of Court. If no responses are timely filed, the next court day after the expiration of the time period to respond the clerk shall, on a form substantially similar to Form II of these rules, issue a certification that no responses were timely filed, and the tribal court order shall be enforceable in the same manner as if issued by the superior court.

(b) Standard of Review Following Response. The superior court shall not assess the validity of the tribal court order, but shall only assess its consistency with A.R.S. §12-136 and these rules. A tribal court commitment order which contains all of the findings indicated in these rules shall be enforced subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of the superior court. The superior court judge shall attempt to resolve any issues raised regarding a tribal court order by contacting the tribal court judge who issued the order. If enforcement of an order is denied due to incomplete findings or unresolved issues regarding those findings, the superior court judge shall specifically state the reasons for the denial.

(c) Findings Required in the Tribal Court Order. The tribal court order shall be enforceable if it contains the following findings:

1. The legal and factual basis of the tribal court jurisdiction over the civil commitment proceedings and over the proposed patient.

2. The proposed patient received notice of the civil commitment proceeding and the allegations regarding the patient's mental condition and had the opportunity to be heard with the assistance of a person recognized by the tribal court as competent to represent the proposed patient.

3. Based upon the diagnosis by a licensed physician, the proposed patient suffers from a mental disorder as defined by Arizona law which renders the proposed

patient a danger to self, a danger to others, persistently or acutely disabled and/or gravely disabled.

4. The treatment ordered is the least restrictive treatment which meets the needs of the proposed patient, and the proposed patient is unable or unwilling voluntarily to receive this treatment.

(d) Other Information Required in the Tribal Court Order. To aid in enforcement and sending required notices, the tribal court order shall include the following information:

1. The title, address and county of the tribal court entering the order of involuntary commitment.

2. The date the tribal court order was entered.

3. The name, address and location of the proposed patient.

4. The names and addresses of any attorneys, guardians or other persons with legal standing to represent the proposed patient and a brief statement of their authority and relationship.

5. The tribal official authorized to receive service under these rules and the address at which service may be made.

(e) Commitment Period. The period of commitment shall not be enforceable for a longer period of time or in a manner different than permitted by Arizona law and shall commence on the date the tribal court order was entered.

Rule 6. Rehearing and Review

(a) Rehearing. In the event enforcement of a tribal court order is denied, any affected person may move for a rehearing within 20 days after the denial. Any supplemental or revised tribal court orders shall be attached to the motion. A copy of such motion shall be served upon all parties to the original proceeding. A response to the motion may be filed within 5 days of receipt of notice of the motion for rehearing.

(b) Review and Administration Following Commitment All proceedings following the commitment of the proposed patient shall be governed by Arizona law. Any documents filed with the court regarding the proposed patient shall be served upon the tribal official designated for receipt of service in the tribal court order.

Form I. Notice of Filing

IN TUE SUPERIOR COURT OF THE STATE OF ARIZONA

_____ COUNTY

In re: Involuntary Commitment of (Patients Name)	)No.	
	)	
	)	NOTICE OF FILING
	)	OF TRIBAL COURT
	)	INVOLUNTARY
	)	COMMITMENT ORDER

YOU ARE HEREBY NOTIFIED that the Involuntary Commitment Order issued by the _____ Tribal Court on _____, 20_____ ,under which (patients name) has been ordered to undergo treatment, was filed with the Clerk of the Court for _____ County on _____ 20_____, Cause No. _____.

YOU ARE FURTHER NOTIFIED that you have five (5) days from receipt of this notice to respond in writing to the Clerk of the Court for _____ County. If no response is filed within this time period pursuant to A.R.S. §12-136 and Rule 3, Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders, the Order of Involuntary Commitment issued by the Tribal Court shall be recognized and shall be enforceable in the same manner as if issued by the Superior Court.

A copy of the tribal court order is attached hereto.

_____
Name

_____
Address

Instructions: When the notice is complete it must be filed with the clerk of the court and served on the Attorney General for the State of Arizona and the patient. It shall be served in the manner set forth in Rule 4.1. Ariz.R.Civ.P.

Form II. Certification

IN TUE SUPERIOR COURT OF THE STATE OF ARIZONA

_____ COUNTY

In re: Involuntary Commitment of (Patients Name)	)No.
	)
	) CERTIFICATION RE:
	) ENFORCEMENT OF
	) TRIBAL COURT
	) INVOLUNTARY
	) COMMITMENT ORDER

Pursuant to A.R.S. §12-136 and the Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders, I hereby certify that the statements contained herein are an accurate representation of the contents of the record of the above captioned matter.

An Order of Involuntary Commitment was issued by the _____ Tribal Court on _____ 20____, under which (patient's name) was ordered to undergo treatment. The Order was filed herein on _____, 20_____.

_____ The record reflects that the Notice of Filing was personally served on (patients name) on _____, 20_____, and at least 5 court days have since elapsed.

OR

____ The record reflects that the Notice of Filing was sent by certified mail to (patient's name) on _____, 20_____. It was received on and at least 5 court days have elapsed since its receipt.

AND

_____ The record reflects that the Notice of Filing was personally served on the Attorney General for the State of Arizona on _____, 20_____, and at least 5 court days have since elapsed.

OR

_____ The record reflects that the Notice of Filing was sent by certified mail to the Attorney General for the State of Arizona on _____, 20____. It was received on _____ 20____, and at least 5 days have elapsed since its receipt.

No responses have been filed.

Given under my hand and the Seal of the Court on this date, _____, 20_____.

Clerk of the Superior Court
By:

_____

TERRY GODDARD
Attorney General
Firm bar no. 14000

_____ (SB#_____)
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926
Telephone: (602) 542-8321
Attorneys for Division of Behavioral Health Services

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF_____

In re: Involuntary Commitment of (Patient's Name)) No.
)
) ATTORNEY GENERAL' S
) WAIVER OF FIVE-DAY NOTICE

In lieu of the notice set forth in A.R.S. §12-136(A) and to prevent unnecessary delay in this matter, a copy of the tribal court order in this matter has been transmitted by facsimile to the Attorney General's Office in advance of this proceeding and reviewed by that office as to form. The Attorney General, through the Assistant Attorney General designated below, having reviewed the tribal court order as to form and compliance Rule 5(c) and (d) of the Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders hereby waives any additional notice of filing pursuant to Rule 2(b) of the Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders and stipulates that tribal court order shall be enforceable by this Court in the same manner as if originally issued by the superior court. This waiver applies solely to the five day notice provision and does not constitute a waiver of any subsequent right as set forth in Rule 5 of the Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders to participate in procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of the superior court.

DATED this _____ day of_____, 20_____.

TERRY GODDARD
Attorney General

_____
Assistant Attorney General
Attorney for Division of Behavioral Health Services

IV. Ongoing Matters

B. Revocation of State Probation of Reservation Resident

IV. Ongoing Matters
C. Indian Law on Bar Exam

Amy Courson, Chairperson
Indian Law Section of the
State Bar of Arizona
4400 E. Broadway, Suite #700
(520) 795.8727
AZ 022399

IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of	**Supreme Court No. R-_____**
A PETITION TO AMEND RULE 35(b) OF THE RULES OF THE SUPREME COURT OF THE STATE OF ARIZONA	**PETITION TO AMEND RULE 35(b)**

Pursuant to Arizona Supreme Court Rule 28, the Petitioner, Amy Courson, Chairperson of the Indian Law Section of the State Bar of Arizona, respectfully petitions the Court to amend Rule 35(b) of the Rules of the Supreme Court pertaining to the subject areas which may be tested on the Arizona bar examination.

I. Background and Need for the Proposed New Rule

Because an attorney's understanding of the basic precepts of Indian law can have a significant impact on the rights and remedies available to that attorney's clients, it is essential to amend Rule 35(b) to include Indian law as a potential subject for the Arizona bar examination. Including Indian law as a test subject need not be done in a way that implies or requires that applicants have a comprehensive knowledge of all aspects of Indian law. Instead, the amendment proposed in this Petition only requires that applicants be able to spot issues which require consideration of Indian law implications as part of a proper legal analysis.

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Since statehood, Arizona tribes have been influential players in the economic, political, and legal developments that have shaped Arizona. More recently, Arizona tribes have exercised their inherent sovereignty, often in partnership with the business sector, to engage in real estate development, banking and finance, telecommunications, wholesale and retail trade, and tourism. These activities occur both on-reservation and, increasingly, off-reservation and implicate an array of legal issues, especially concerning matters of jurisdiction, that call for competent legal counsel.

Consider these facts: there are twenty-two federally recognized tribes located within Arizona, which occupy nearly 22 million acres of land. Indian lands comprise over one quarter of the land within the State, and Arizona has the greatest percentage of Indian lands of all states in the country. Indian lands have been developed by some of *Fortune 500's* most powerful companies, including Wal-Mart, AT&T, Home Depot, Bank of America, and John Deere. The partnerships between Arizona tribes and such national corporations are generating billions of dollars in income and tax revenue, as well as significant employment opportunities. These transactions necessarily give rise to questions of jurisdiction regarding the relationship between tribes and non-tribal businesses, employees, and customers. Even the development of non-Indian owned land near reservations or waterways may raise Indian law issues. Today, Indian lands are often integral components of local and state planning efforts (such as transportation, water rights, energy development, etc).

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Legal issues which require an understanding of Indian law are not confined solely to transactions to which an Indian tribe is a party. To the contrary, an awareness of Indian law is a critical component of a wide array of practice areas, especially

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considering that Indian law is implicated in a variety of everyday interactions for the general population in Arizona who may not be aware of how such implications affect their rights.

As an example, under the State of Arizona – Tribal Gaming Compact, authorized by voter initiative in 2002, each Indian tribe that conducts gaming is required to establish procedures for the handling of tort claims involving patrons at gaming facilities. Often the patrons making such claims are non-Indian, and the attorneys who represent them are not regular practitioners of Indian law. As such, these attorneys often mistakenly assume that State tort laws apply to the claim and, therefore, regularly fail to identify the Indian law implications of such claims. As a result these attorneys often run afoul of such basic legal requirements as tribal notice rules, statutes of limitation, and general jurisdictional considerations to the detriment of their clients.

Other examples of areas where attorneys regularly fail to adequately identify the impact that Indian law may have on their client's interests are: litigation involving the adoption of an Indian child, the probate of real property on tribal lands, or an auto accident on the reservation, and criminal activity at a gaming facility. Each of these examples represents a practice area that an Arizona attorney should reasonably expect to encounter at some point in their practice, and which requires that attorney to be able to spot the Indian law issue in order to competently represent their client and provide adequate legal counsel accordingly.

The odds are that the general practitioner or public lawyer in Arizona, at some point over the course of their practice, will become involved in a case requiring the ability to identify issues raised by Indian law. This intersection of Indian law

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considerations vis-à-vis the general practice of law in this State is the crux of this petition to have Indian law included as a possible test subject on the Arizona bar examination.

In the best interest of Arizona citizens, every lawyer licensed by the Arizona Supreme Court must be able to spot Indian legal issues in the general practice of law in order to possess basic competency. It is therefore crucial that each bar applicant be as comfortable in his or her understanding of Indian law implications on basic matters of jurisdiction as they are already required to be for the other two separate and distinct jurisdictional powers within the State of Arizona. Further, the potential to harm clients and the unnecessary burden on State, Tribal and Federal courts attributable to the inability of practitioners and even judges to recognize Indian law jurisdictional issues far outweighs the natural disinclination to include an additional subject matter area into the bar exam.

To underscore this point, at least three other states – Washington, New Mexico and South Dakota – now include aspects of Indian law as potential areas for examination on their bar exams. These changes came as a direct result of the increased appreciation by those bars that lawyer competence in states with significant populations of Indian people and Indian tribal governments requires, at a minimum, that lawyers possess that most basic of lawyerly skills; being able to identify situations where tribal jurisdiction and sovereignty are implicated.

Initiatives similar to the Petition before you are currently under active consideration in Michigan, Oklahoma, Montana, Wisconsin, Idaho, and Oregon. Remarkably, although Arizona has the largest percentage of Indian lands comprising the state, we are facing the prospect of falling behind the bars of other similarly situated

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states by failing to recognize the importance of Indian law as a legal area which must be tested on the bar exam, with the unfortunate result being the potential harm to clients of attorneys in this State.

II. Including Tribal Jurisdiction and Tribal Government Immunity as Examination Subjects Will Not Require Specialized Understanding of a Sophisticated Area of Law

Understandably, the bar exam is designed to test core competencies and specialty subjects are not appropriate examination material. And, while it is true that Indian law can contain many nuances, this Petition proposes to include Indian law as a possible test subject on the bar exam in a manner that will not require bar applicants to have specialized knowledge of Indian law in order to be adequately prepared for the exam. Instead, this Petition seeks to include only the fundamental Indian law issues (tribal jurisdiction and tribal government immunity) that, as examination subject matter, will require only a basic awareness of Indian law.

The ability to identify when tribal jurisdiction might apply is no different than the existing requirement that applicants be able to discern when state law applies and when federal law applies. For example, applicants are already tested on the ability to identify when Arizona and federal civil procedure rules apply; it would not be a great leap to also expect that applicant to be cognizant of the possibility that tribal laws may apply where the action is in tribal court, which is not subject to either state or federal rules of civil procedure. The inclusion of Indian law on the bar exam would therefore not require each applicant to be intimately familiar with what the specific law of a particular tribe, but

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Instead, the basic issues that this Petition seeks to include as examination subject matter (tribal jurisdiction and tribal government immunity) requires only the most basic awareness of Indian law.

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rather that the applicant simply be able to identify when tribal law may be implicated in a situation that is otherwise commonplace in the practice of law in Arizona.

Further, including tribal government immunity would simply seek to have the applicant recognize that Indian tribes are governments, not businesses or entities subject to Arizona law. As such, tribal governments, like any other government, have laws governing when and where the tribe may be subject to suit. By adopting the proposed rule change to include tribal government immunity on the bar examination, applicants will not now be required to know the specifics about when and where a tribe can be sued, but rather that they simply show an understanding that the answers to such questions will not be found in Arizona or federal law but instead will require that they consult with the law of the Tribe against which they are seeking to bring a claim. Once more, this situation is becoming increasingly common for Arizona practitioners, and bar applicants need to be aware of the potential negative consequences that can result from their inability to recognize this basic principle of Indian law.

The Indian Child Welfare Act is a prime example of a specific law that is encountered everyday in State Courts throughout Arizona by practitioners who must be aware of the law and its implications in order to competently represent their clients; ICWA is an act of Congress which specifically requires that Indian tribes be provided an opportunity to intervene as a party in any actions in State Court which impact the parental rights of Indian tribal members, and furthermore that such Tribe's laws will impact any potential placement or adoption of said child. Accordingly, it is important for applicants to know that there are Indian law implications in all adoption and child custody matters involving Indian children. When the Court considers that Arizona has a significant

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Indian population and that Indian children are disproportionately represented in the juvenile court system, the importance of such understanding on the part of practitioners is even more compelling. Although this Petition does not seek to compel applicants to become experts on specific laws, such as ICWA, including Indian law as a possible subject area on the bar examination could be as simple as requiring that an applicant be able to spot an Indian law issue in a commonly arising, but otherwise every-day family law matter.

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III. Proposed Period for Implementation the Amended Rule

One logical concern about including Indian law as a possible subject matter area on the bar exam relates to the fact that Indian law is not a required course in law school and that applicants, especially those from out of state, may not have had an opportunity to become familiar with the subject matter. Bear in mind, however, that the same is true for such other "fair game" subject matter areas as taxation, evidence, and secured transactions. Although these subjects are part of the required law school curriculum, bar applicants have been regularly tested on those areas for decades and have routinely proven their competency without any extraordinary bar preparation efforts. The same result could reasonably be expected once Arizona requires Indian law on the bar exam.

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However, in order to address this concern in a proactive manner, this Petition proposes that the Supreme Court implement the inclusion of Indian law on the bar exam following a three-year notice period. This notice period will provide the incoming class of first-year students, enrolled at the time of the Supreme Court's adoption of the Rule,

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notice of the new requirement. Such a notice period is precisely how the State Bar of Washington resolved this concern.

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Preparation for this change is facilitated by the fact that BAR/BRI (one of the preeminent bar prep course firms in the nation) already offers Indian law materials as part of its prep course for exam takers in those states which require it on the exam. Additionally, the law schools at Arizona State University and the University of Arizona already offer a wide variety of Indian law courses (and have for well over 10 years) which enjoy healthy enrollment by a broad range of law students.

A three-year "notice period", coupled with the already ubiquitous law school Indian law course offerings and prep course materials, will adequately ensure that all future applicants are well-prepared for the possibility of Indian law as a test subject on the bar exams beginning in July of 2011.

RFI

IV. Contents of the Proposed New Rule.

Petitioner proposes that Rule 35 (b) be amended as follows:

> "Essay examination questions at each examination will be upon some, but not necessarily all, of the following subject mater areas: contracts (including the Uniform Commercial Code except Articles 4, 5, 7, and 8); torts; criminal law; constitutional aspects of criminal procedure; corporations, partnerships, and other business organizations; trusts; wills; professional responsibilities; civil procedure; civil procedure (Arizona and federal); constitutional law (Arizona and federal); evidence; real property; ~~and;~~ community property~~.~~**; and jurisdiction (including Arizona, federal, and tribal) and tribal government immunity."**

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V. Proposed Public Comment Period

Petitioner respectfully recommends a public comment period for the proposed Rule amendment to commence immediately upon filing of the Petition, and continuing for a period of at least 60 days from the date of filing.

VI. Effective Date of the Proposed New Rule

Petitioner respectfully requests that the proposed new rule be made effective on and after January 1, 2009, subject to the implementation plan described in Section III above.

RESPECTFULLY SUBMITTED this _____ of January 2008:

By_____

Amy Courson, Chairperson
Indian Law Section of the
State Bar of Arizona
4400 E. Broadway, Suite #700
(520) 795.8727
AZ BAR #022399