

## OUTLINE

### RED ROVER, RED ROVER: A CALL FOR COMITY IN LINKING TRIBAL AND STATE LONG-ARM PROVISIONS FOR SERVICE OF PROCESS IN INDIAN COUNTRY

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- I. RED ROVER, RED ROVER, HOW DO STATES COME OVER: REVIEWING PERSONAL AND SUBJECT MATTER JURISDICTION
  - A. Are Reservations and Trust Lands in State or Out-of-State?
  - B. Power Over The Person-Personal Jurisdiction
    1. The State is Not the Sovereign over Reserved Indian Lands
    2. Differing Sources of Federal Due Process Change the Analysis
      - a. Service of Process
      - b. Long-arm Provisions Generally
  - C. Power over the Subject Matter
    1. Courts Continually Deny States Civil Authority in Tribal Territory
    2. Court Affirms Tribal Civil Jurisdiction Through the Exhaustion Doctrine
      - a. State Encroachment into Territory Allowed but Limited
      - b. Express Grant Requirements Do Not Erase Territorial Boundaries from Reserved Rights
        - Hypothetical #1: Dismissal For Improper Service Of Process
        - Hypothetical #2: Default And Waiver
  - D. Tribal Long-arm Statutes
    1. Tribal Encroachment into State's Territory Uncertain
    2. Continuing Conflict Between Federal and Tribal Court Perspectives
- II. RED ROVER, RED ROVER, THE STATE COMES PLOWING OVER: THE MODERN CASES' CONFLICTING DIRECTIVES IN ARIZONA
  - Hypothetical A
  - Hypothetical B
  - A. State v. Zaman-Arizona's Aggressive Step Toward Erasing Territorial Boundaries
    1. The Implications of Zaman and the Denial of Due Process
  - B. Let the Games Begin! Nevada v. Hicks Further Perplexes the Puzzle
    1. Alleged Off-Reservation Crimes May Lead to Alleged On-Reservation Torts
    2. Tribal Attempts to Serve Outside Their Territory
      - a. Lower Federal Courts Find Sufficient Service and Purposeful Availment
      - b. Lacking Symmetry in Tribal/State Notice
    3. Creative Tribal Codes Can Bar State Intrusion and Anchor a Tribal Interest to Regulatory Authority

- C. The Supreme Court Sidesteps Service to Shield the State by Collapsing Subject Matter and Personal Jurisdiction Analysis and Criminal and Civil Policy Rationales
  - 1. Despite All Scalia's Dicta, Court Rules on Narrow Grounds of State Immunity
  - 2. Allowing State Officials to Run Rough Shod over Tribal Lands with Immunity Does Not Legitimize Their Conduct
- D. Service in Indian Country After Nevada v. Hicks

### III. RED ROVER, RED ROVER, LET US SIT DOWN AND TALK IT OVER: SOLVING THE PROBLEM IN ARIZONA

- A. Arizona's Recent Rules of Procedure for the Recognition of Tribal Court Judgments Further Compel Long-arm Service
- B. Tribes Will Benefit
  - 1. No Plan Is Perfect-The Tribal Downside
- C. States Will Benefit

### IV. CONCLUSION

#### APPENDIX

Draft Text For Amending Arizona's Service Of Process Rules 4.1 and 4.2