

# TRIBAL COURT DEVELOPMENT AND JUDICIAL ETHICS

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# COURT DEVELOPMENT KEY CONSIDERATIONS

- Problem Solving
  - Identify Community Needs
  - Consider how the court will help resolve these needs?
- Access to Justice
  - Written Codes, Rules Forms
  - Consider, who is going to use your court and for what?
- Community Resources
  - Funding, Facilities, Human Resources
  - Consider the minimum annual budget for operating a court to meet your community needs?

# COURT STRUCTURE AND LEADERSHIP

- How will the court be structured?
- Under the Tribal Governing Body?
- Separate Branch?
- Is the Judge the Leader?
- Is the Court Administrator the Leader?
- Who has what role?
  - Budget
  - New Rules & Forms
  - New Codes

# INNOVATIONS IN CA TRIBAL COURTS

- Inter-Tribal Courts – The Inter-tribal Court of Southern California Example
- Joint Jurisdiction Courts – The Shingle Springs Band of Miwok Indians Example

# TRIBAL COURT JUDGES

Key Considerations

# JUDGE SELECTION CRITERIA

- Law Trained?
- Bar Admission?
- Tribal Member?
- Criminal Background?
- Age?
- Residence?
- Anything else?

# THE JUDICIAL LANDSCAPE IN TRIBAL CA

## GENERALLY, TWO MODELS

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- Part-time Judges
- Traveling to the Court
- Non-Tribal Members
- Lawyers and Non-lawyers

- Full-time Judges
- Local to the Community
- Tribal Members
- Lawyers and Non-Lawyers
  
- Can be any combination of these

# JUDICIAL ETHICS

What are the standards?



# NATIONAL AMERICAN INDIAN COURT JUDGES ASSN JUDICIAL CONDUCT AND CODE OF ETHICS

- The Tribal Court Judge is the number one representative of the court. The court's integrity and fairness defines a communities' faith and health in utilizing a tribal court.
- Tribal court judges should not practice law in their own courts, or, in any court subject to the appellate process in which he or she serves.
- A judge should encourage a separation between the judicial branch and other branches of tribal government.
- A judge should not participate in legislative or executive decision making except where it is permitted by the tribe.
- Special care needs to be taken when a judge sits on a tribal council. The appearance or possibility of conflict of interest needs to be avoided.

# NAICJA JUDICIAL CONDUCT AND CODE OF ETHICS (2)

- A judge should not participate in cases involving immediate family members, in cases involving someone with whom the judge has a strong personal relationship, or in cases where the judge has a significant, direct, financial, political, or other personal interest.
- A judge should discuss cases and court business only in the presence of all parties.
- A judge has a responsibility to uphold confidentiality and should never discuss a case with outside parties or use confidential information acquired in the course of their official duties to further their personal interests.
- A judge should be aware that their conduct has a direct bearing on public attitude toward their court and as such, should conduct themselves appropriately.

# WHAT AUTHORITY CONTROLS

- Is there a written guide for Judges at the tribal court?
- Who writes it?
- Who enforces it?

# CONFLICTS OF INTEREST

Politics, Family & Other Employment

# POLITICAL ACTIVITIES

- Can Judges participate in political activities?
- Fundraising for a candidate?
- Endorsing a candidate or position on an issue?
- Lobbying?
- Commenting on legislation?

# RELATIONS

- Can Judges hear cases involving their family?
- Friends?
- Business Partners?
- What is the standard?

# OUTSIDE EMPLOYMENT

- Part-time Judge for multiple Tribes
- Judge and attorney to different tribes
  - What about for the same tribe?
- What governs this?
  - Your employment contract?
  - Rules of Court?
  - Ordinances?

## HYPOTHETICAL #1

- You are an attorney at a boutique Indian Law Firm in CA.
- Your firm represents many Tribes and Tribal people on a variety of issues including code development, litigation and representation of tribal agencies like Police Departments and Housing Authorities.
- A local Tribe has offered you a position as their Chief Judge of their Tribal Court.
- What are the considerations concerning your acceptance?
- Are these considerations the same if you are not admitted to practice law in CA?



# DISCUSSIONS & CONVERSATIONS

Who, what, when, where & why

# WHO IS THE JUDGE MEETING WITH

- Tribal Leadership
- Court Personnel
- Tribal Partners
- Other Partners (Other Tribe, County & State)
- Legal Counsel
  - For Parties
  - For the Tribe
- Parties

# WHAT IS THE TOPIC

- An ongoing case
- Court Policies & Procedures
- Politics
  - A recent leadership decision
  - Upcoming elections
- Is it a matter that is or may end up in Tribal Court?

## WHEN & WHERE IS THIS CONVERSATION

- In Court on the record
- At work, on the clock, but off the record
- Running an errand, off the clock
- At a group function [maybe even on someone else's clock?]
  - A conference
  - A cultural event

# WHY IS THIS CONVERSATION HAPPENING

- Is a party relaying/reporting information about the case?
- Is it to set or improve policy?
- Is it to report to a group about the Court?
  - Report to Tribal Council
  - Elders Council
  - Town Hall

## HYPOTHETICAL #2

- You are a lawyer licensed to practice law in the state of California.
- You have represented tribes for years in various matters of tribal concern.
- Along the way you have accumulated many colleagues, a few have become confidants and trusted friends.
- You are now a Tribal Court Judge, congratulations.
- One of your most trusted colleagues calls you to vent about a case in a different Tribal court.
- The discussion is in hypothetical terms, no names, not even of the tribe.
- Your friend then asks what you would do if it was your case?

# ACCEPTING GIFTS

Monetary, Cultural, Ceremonial

# GIFTS

- Can Judges accept gifts?
- It will depend on your community's standards
- Monetary Value – Ex: Starbucks Gift Card
- Cultural – Ex: Traditional Necklace
- Ceremonial Value – A plaque or a framed certificate



## HYPOTHETICAL #3

- You are a Tribal Court Judge. Again, congratulations.
- Traditionally the Tribe you work for has allowed ceremonial gifts of appreciation.
- Recently, you helped resolve a long lasting dispute amongst community members.
- Some of the community members have purchased you and your family tickets to a local amusement park.
- There is no explicit rule against taking monetary gifts, nor is there one explicitly permitting it.
- Can (and should) you take the tickets and go ride some roller-coasters with the kids?

# JUDICIAL CONDUCT REVIEW

Considering conduct beyond appeals of decisions

# JUDICIAL REVIEW

- Regular Performance Reviews
  - Re-elected, or appointed at regular intervals?
  - Is there anyone who reviews the Judges Performance?
- Complaints
  - Is there a way to complain about a judges conduct where you serve?
  - Who reviews the complaint?
    - Judicial Committee?
    - Tribal Council?
  - Who establishes the procedure?