

## **PREFACE**

For more than 150 years non-Indian residents of the State of Idaho have lived adjacent to the six Indian Tribes of Idaho - Kootenai, Coeur d'Alene, Nez Perce, Shoshone, Bannock, and Paiute. In 1994, the Supreme Court of the State of Idaho determined that it was time we became neighbors, understanding and respecting each other's customs, lifestyles and laws.

The Idaho Supreme Court appointed members of the Idaho Judiciary to be members of a State/Tribal Court Forum, and asked each of the six Tribes to appoint members to this forum. The Tribes responded with alacrity. Judge Ronald Schilling, of the Second Judicial District of the State of Idaho, and Judge Fred W. Gabourie, Chief Judge of the Kootenai Tribe, were chosen as co-chairs of this Forum.

The State/Tribal Court Forum met, addressed the problems attendant to living, on the part of the State Judiciary, next to Indian Country and the Tribes dealing with a conflict in jurisdictional claims of state and federal governments. With a great deal of effort, the members of the State/Tribal Court Forum set out to create a Benchbook dealing with the laws and customs of the various Tribes, as well as identifying those lawyers admitted to practice before each of the Tribes, which would be helpful to the Judges of the Idaho Judiciary and the Indian Tribes.

This Benchbook is the result of this significant effort on the part of the members of the State/Tribal Court Forum. I believe that all judges and practitioners in the State of Idaho will find it useful. Special thanks are given to Judges Schilling and Gabourie, and Mr. Douglas Nash, Esq., a member of the Idaho State Bar and the Nez Perce Tribe. The Idaho Supreme Court would appreciate your comments and suggestions on the use of this Benchbook and means of improving it.

Dated this 30<sup>th</sup> day of January, 1997.

CHAS. F. McDEVITT, Chief  
Justice Idaho Supreme Court

## **I. MISSION STATEMENT OF TRIBAL COURT BENCHBOOK**

### **SUBCOMMITTEE**

To create a tribal court benchbook that provides a quick reference guide to Idaho's tribal courts for state and tribal judges, attorneys, and the public.

## **II. STATEMENT OF PURPOSE**

As Tribal Courts gain viability as forums for resolving civil and criminal disputes, issues of jurisdiction and the relationship between state, federal, and tribal courts become increasingly important. One purpose of this Benchbook is to provide judges, lawyers, and litigants with a short description of tribal judicial organization and tribal judicial relationships with other jurisdictions, including citations to additional authorities on these and related topics.

The second goal is informational. The Benchbook provides names, addresses, and information relating to each of the sovereign tribes existing in the State of Idaho.

## **III. THE HISTORY AND DESCRIPTION OF TRIBAL JUDICIAL POWER**

Indian tribes are recognized as having governmental structures that predate American history. Each tribe had its own form of government structured to meet the needs of the tribal community. Those governments have no resemblance to the governmental structures that exist today, including existing tribal governments. Aboriginal tribal governments had no written laws, governmental buildings, or courtrooms. However, each aboriginal tribal government had a means by which civil disputes were resolved, care was provided to the needy, unlawful acts were defined and punished, domestic relations were governed, and other governmental functions and

services were provided. Indian tribes, in exercising governmental powers over people and territory, exercised inherent sovereign powers. The power to be a government was not granted to them by any other source. It was inherent in their actions as governmental entities. Many countries recognized the inherent sovereignty of Indian tribes by entering into treaties with them, documents that, by definition, are between two sovereigns.

The powers and actions of aboriginal tribes as governments began to change with the development of the United States. The need for more land and the evolution of the United States into a military power far superior to that of any individual tribe combined to spell the end of aboriginal tribal governments. The removal of tribes from their homelands or to reservations, outright wars against tribes, and the assertion of federal powers over tribes weakened or totally overwhelmed aboriginal tribal governmental systems.

In 1883 the Bureau of Indian Affairs (BIA) began establishing police departments and courts of Indian offenses on some reservations. W. HAGAN, INDIAN POLICE AND JUDGES (1966). These courts were instrumentalities of the Department of the Interior and enforced a Code of Indian Offenses developed by the Department of the Interior. This system had the effect of further disrupting and displacing aboriginal forms of tribal government and enhanced BIA control over tribes.

It was not until the Indian Reorganization Act of 1934, 25 U.S.C. §§ 461-479, that federal policy encouraged self-determination by Indian tribes in many areas, including the establishment of judicial systems. Under this act, tribes were authorized to replace courts of Indian offenses and the Code of Indian Offenses with their own courts and laws.

Most tribes eventually did establish their own court systems and adopted their own laws. Because traditional forms of dispute resolution had been displaced for so long, tribes established judicial systems patterned generally after state and federal systems. Tribal courts today typically exercise jurisdiction over a broad range of subjects, both criminal and civil. Other References:

Joseph A. Myers & Elbridge Coochise, *Development of Tribal Courts: Past, Present, and Future*, 79 JUDICATURE 147, 148 (1995).

#### **IV. TRIBAL, STATE AND FEDERAL JURISDICTION**

When a crime is committed on an Indian reservation or, more appropriately, within Indian country, tribal, state or federal jurisdiction may exist separately or in some combination depending primarily upon the identity of the victim and the defendant as Indian or non-Indian.

##### **A. Criminal Jurisdiction**

The laws of Indian criminal jurisdiction apply within Indian country as that term is defined in 18 U.S.C. § 1151.

##### **1. Federal Criminal Jurisdiction**

The federal government has jurisdiction over any person who commits a violation of federal criminal law within Indian Country except for offenses committed by one Indian against the person or property of another Indian, any offense committed by an Indian who is punished by the local law of the tribe, or in any case where exclusive jurisdiction is reserved to the tribe by treaty. 18 U.S.C. § 1152. Federal jurisdiction has also been extended over those crimes specified in 18 U.S.C. § 1153 when an Indian in

Indian Country commits them. Federal statutes defining federal jurisdiction do not withdraw jurisdiction from Indian tribes. Hence, jurisdiction over certain crimes may be concurrent between the United States and the tribes.

Beyond the general structure of federal criminal jurisdiction described above, it should be noted that some offenses that are defined as federal crimes by statute are federal offenses regardless of where they are committed.<sup>1</sup>

## 2. State Criminal Jurisdiction

As a general rule, a state has no criminal jurisdiction over an Indian who commits a crime in Indian Country absent an express grant of jurisdiction by Congress. *State v. Major*, 111 Idaho 410, 416, 725 P.2d 115, 121 (1986). Despite the apparently broad scope of 18 U.S.C. § 1152, the federal government often does not prosecute minor offenses committed by non-Indians against the person or property of an Indian within Indian country and state authorities often prosecute those offenses.

In some states, state criminal jurisdiction has been extended into Indian Country pursuant to Public Law 280<sup>2</sup> (P.L. 280). The only area of criminal jurisdiction assumed by Idaho pursuant to P.L. 280 was the motor vehicle and traffic offenses that are defined as crimes.<sup>3</sup> I.C. § 67-5101. Idaho law also provides for the assumption of

<sup>1</sup> These include crimes such as counterfeiting, 18 U.S.C. Chapter 25; espionage, 18 U.S.C. Chapter 37, and assaulting a federal officer, 18 U.S.C. § 115, for example.

<sup>2</sup> Pub. L. No. 83-280, 65 Stat. 588 (1953) (as amended and codified in 25 U.S.C. §§ 1321, 1322 (1968))

<sup>3</sup> *See State v. George*, 127 Idaho 693, 695-98, 905 P.2d 626, 628-31 (1995) (holding traffic infractions fall within the criminal/prohibitory category of laws pursuant to Public Law 280 and I.C. § 67-5101G); *State v. Warden*, 127 Idaho 763, 764-66, 906 P.2d 133, 134-36 (1995) (holding that the State of Idaho had jurisdiction over Indian for driving under the influence of alcohol on public roads within Indian

additional jurisdiction with the consent of the affected tribe's governing body. I.C. § 67-5102. The Nez Perce Tribe is the only Tribe that has ever taken action to expand state criminal jurisdiction.<sup>4</sup> Idaho law also expressly defines areas exempted from state jurisdiction. I.C. § 67-5103.

A state does have criminal jurisdiction over crimes committed by a non-Indian against the person or property of a non-Indian within Indian Country. *United States v. McBratney*, 104 U.S. 621 (1881); *Draper v. United States*, 164 U.S. 240 (1896).

Additionally, notwithstanding the limitations on state criminal jurisdiction over crimes committed within Indian Country, a state possesses criminal jurisdiction over Indians who violate state laws outside of reservation boundaries. *State v. Mathews*, 133 Idaho 300, 986 P.2d 323 (1999).

Because P.L. 280 granted jurisdiction to the state and did not limit or restrict tribal jurisdiction, tribal jurisdiction continues to exist concurrently with the jurisdiction assumed by the state.

reservation); *State v. McCormack*, 117 Idaho 1009, 1013, 793 P.2d 682, 686 (1990) (holding that the State of Idaho had jurisdiction over Indians on Indian reservation under implied consent statute I.C. § 18-8002); *State v. Michael*, 111 Idaho 930, 729 P.2d 405 (1986) (holding that the State of Idaho had jurisdiction over Indian charged with driving under the influence on Indian reservation pursuant to I.C. § 67-5101G).

<sup>4</sup> Resolution NP 65-126 grants to the State of Idaho jurisdiction over the following offenses: drunkenness, disturbing the peace, contributing to the delinquency of a minor, procuring intoxicants for a minor, assault, battery, kidnapping, embezzlement, fraud, forgery, receiving stolen property, extortion, indecency, obscenity, vagrancy, trespassing, malicious injuries to property, public nuisance, cruelty to animals, and carrying concealed and dangerous weapons. This resolution was repealed subsequent to the Ninth Circuit Court of Appeals' decision in *County of Lewis v. Nez Perce Tribe*, 163 F.3d 509 (9th Cir. 1998).

### 3. Tribal Criminal Jurisdiction

Tribes have general criminal jurisdiction over Indians who commit crimes within Indian Country. The Indian Civil Rights Act has limited the sentencing authority of tribes. 25 U.S.C. § 1302(7). Inherent tribal criminal jurisdiction does not extend over non-Indians. *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978). In *Duro v. Reina*, 495 U.S. 676 (1990), the Supreme Court held that a tribe did not have inherent criminal jurisdiction over Indians who were not members of that tribe. Congress legislatively overruled *Duro*. 25 U.S.C. § 1301(2).

It should also be noted that while tribal criminal jurisdiction is generally discussed in the context of on-reservation activities, tribal jurisdiction has been held to extend to the exercise of treaty reserved, off-reservation rights as well. *Settler v. Lameer*, 507 F.2d 231 (9th Cir. 1974).

The three charts that follow illustrate general criminal jurisdiction in Indian country in three different contexts. These illustrations do not include those specific federal offenses that remain federal crimes regardless of where they occur such as those identified in footnote 1, *supra*.

Chart A depicts general criminal jurisdiction as it would exist in Indian country.

Chart B depicts general criminal jurisdiction as it would exist in Indian country where the state has assumed general criminal jurisdiction pursuant to P.L. 280.

Chart C depicts the structure of general criminal jurisdiction as it exists on reservations in Idaho. The one exception is the additional jurisdiction that exists over certain crimes on the Nez Perce Reservation as discussed above.

Other references:

Comment, *Modern Problems of Criminal Jurisdiction in Indian Country*, 17

AM. INDIAN L. REV. 175 (1992).

**CHART A GENERAL CRIMINAL JURISDICTION IN INDIAN COUNTRY**

<b>Defendant Victim</b>	<b>Federal</b>	<b>State</b>	<b>Tribal</b>
Indian - Indian	16 Offenses, Major Crimes Act, 18 U.S.C. § 1153	None	General
Indian - Non-Indian	16 Offenses, Major Crimes Act, 18 U.S.C. § 1153	None	General
Non-Indian - Non-Indian	None	General – <i>McBratney/ Draper</i>	None <i>Oliphant</i>
Non-Indian -Indian	General-General Crimes Act, 18 U.S.C. § 1152	None	None <i>Oliphant</i>
Indian -Victimless	None	None	General
Non-Indian Victimless	None	General	None <i>Oliphant</i>

**CHART B GENERAL CRIMINAL JURISDICTION IN INDIAN COUNTRY  
UNDER PUBLIC LAW 280**

<b>Defendant –Victim</b>	<b>Federal</b>	<b>State</b>	<b>Tribal</b>
<b>Indian – Indian</b>	<b>None</b>	<b>General</b>	<b>General</b>
		<b>Concurrent</b>	
<b>Indian – Non-Indian</b>	<b>None</b>	<b>General</b>	<b>General</b>
		<b>Concurrent</b>	
<b>Non-Indian – Non-Indian</b>	<b>None</b>	<b>General</b>	<b>None - <i>Oliphant</i></b>
<b>Non-Indian – Indian</b>	<b>None</b>	<b>General</b>	<b>None - <i>Oliphant</i></b>
<b>Indian – Victimless</b>	<b>None</b>	<b>General</b>	<b>General</b>
		<b>Concurrent</b>	
<b>Non-Indian - Victimless</b>	<b>None</b>	<b>General</b>	<b>None - <i>Oliphant</i></b>

**CHART C CRIMINAL JURISDICTION - IDAHO RESERVATIONS**

<b>Defendant -Victim</b>	<b>Federal</b>	<b>State</b>	<b>Tribal</b>
Indian - Indian	16 Offenses, Major Crimes Act, 18 U.S.C. § 1153	None	General
Indian - Non-Indian	16 Offenses, Major Crimes Act, 18 U.S.C. § 1153	None	General
Non-Indian - Non-Indian	None	General	None <i>Oliphant</i>
Non-Indian -Indian	General - General Crimes Act, 18 U.S.C. § 1152	None	None <i>Oliphant</i>
Indian -Victimless	None	I.C. § 67 5101 (Traffic)	General
Non-Indian Victimless	None	General	None <i>Oliphant</i>

## **B. Civil Jurisdiction**

The allocation of civil jurisdiction among tribes, states and the federal government is not as precisely defined as is criminal jurisdiction. There are at least two reasons why this is true. First, there are no federal statutes defining or allocating civil jurisdiction in Indian country as there is with criminal jurisdiction. Second, much of the litigation regarding civil jurisdiction is recent while issues of criminal jurisdiction in Indian country have been before various courts for well over a century.

Previously, issues of civil jurisdiction in Indian Country could be best analyzed when civil adjudicatory and civil regulatory jurisdiction are separated. While several courts agreed, *see, National Farmers Union Insurance Co. v. Crow Tribe*, 736 F. 2d, 1320 (9<sup>th</sup> Cir. 1984) *rev'd on other grounds*, 471 U.S. 845 (1985), the Supreme Court has held that with regard to tribal jurisdiction there is no distinction between the two when examining tribal jurisdiction over nonmembers.

As to nonmembers, we hold, a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction. Absent congressional direction enlarging tribal-court jurisdiction, we adhere to that understanding.

*Strate v. A-1 Contractors*, 520 U.S. 438, 453 (1997).

Nevertheless, it appears that the distinction is still valid in examining the extent of federal and state civil jurisdiction in Indian Country.

### **1. Federal Civil Jurisdiction**

#### **a. Adjudicatory Jurisdiction**

Federal courts, being courts of limited jurisdiction, have their adjudicatory jurisdiction defined by federal law. Thus, to the extent a case arises within Indian Country that fits

the requirements of federal question jurisdiction defined in 28 U.S.C. § 1331, diversity of citizenship jurisdiction as defined in 28 U.S.C. § 1332 or other similar jurisdictional statutes contained in 28 U.S.C., Chapter 85 (§ 1331, *et seq.*), adjudicatory jurisdiction would exist. For purposes of uniquely Indian cases, two jurisdictional statutes might be noted. 28 U.S.C. § 1353 provides for original jurisdiction over any civil action involving the right of any Indian person to any allotment of land under any act of Congress or treaty. Also, district courts have original jurisdiction over any civil action brought by any federally recognized tribe where the matter in controversy arises under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1362.

#### b. Regulatory Jurisdiction

Because Congress has plenary power over Indian affairs, *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903), there is little doubt that Congress can regulate persons, property, and activities within Indian country. This power has been exercised in a broad array of statutes. For example, Congress has enacted statutes that regulate gaming, 25 U.S.C. §§ 2701-2721, descent, and distribution of property, 25 U.S.C. §§ 371-380 and the exercise of governmental powers by Indian tribes, 25 U.S.C. § 1302.

Congressional intent determines whether general federal regulatory statutes, such as those pertaining to taxes, environment, labor relations, and civil rights apply to Indians or tribes. Generally, if a tribe's retained sovereignty is not infringed upon and no treaty or reserved rights are impacted, Indians and their property are normally subject to the same federal laws as others. *See, Federal Power Comm'n v. Tuscorarora Indian Nation*, 362 U.S. 99, 116-117 (1960). If the application of a general federal statute would have the effect of abrogating treaty reserved rights, the statute will apply

only if there is clear evidence that Congress actually considered the conflict between its intended action on the one hand and Indian treaty rights on the other, and chose to resolve that conflict by abrogating the treaty. *United States v. Dion*, 476 U.S. 734, 739-40 (1986). *See also, United States v. Billie*, 667 F. Supp. 1485 (S.D. Fla. 1987).

## 2. State Civil Jurisdiction

### a. Adjudicatory Jurisdiction

A state court does not have jurisdiction to adjudicate a dispute arising on a reservation if the exercise of that jurisdiction would “undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of reservation Indians to make their own laws and be ruled by them.” *Williams v. Lee*, 358 U.S. 217 (1959). *See also, Fisher v. District Court*, 424 U.S. 382 (1976).

### b. Regulatory Jurisdiction

There exist “two independent, but related, barriers to the assertion of state regulatory authority over tribal reservations and members”: preemption by operation of federal law and impermissible infringement “on the right of reservation Indians to make their own laws and be ruled by them.” *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980). In *Bracker*, the Supreme Court further determined that “[T]he two barriers are independent because either, standing alone, can be a sufficient basis for holding state law inapplicable to activity undertaken on the reservation or by tribal members.” *Id.* at 143. The interference test requires a determination of whether the application of state law to an on-reservation situation would “infringe on the right of reservation Indians to make their own laws and be ruled by them.” *Williams v. Lee*, 358 U.S. 217, 220 (1959). *See also, Dunn v. Nez Perce County*, Case No. CV 95-00423,

District Court for Nez Perce County.

The evolution of the pre-emption test represents a move away from the concept that the inherent sovereignty of Indian tribes served as a bar to state jurisdiction. Instead, the courts have “employed a pre-emption analysis that is informed by historical notions of tribal sovereignty, rather than determined by them.” *Rice v. Rehner*, 463 U.S. 713, 718 (1983). In *Rice v. Rehner*, the Court stated:

Although ‘the right of tribal self-government is ultimately dependent on and subject to the broad power of Congress,’ we still employ the tradition of Indian sovereignty as a ‘backdrop against which the applicable treaties and federal statutes must be read’ in our pre-emption analysis. We do not necessarily require that Congress explicitly pre-empt assertion of state authority insofar as Indians on reservations are concerned, but we have recognized that ‘any applicable regulatory interest of the State must be given weight’ and “‘automatic exemptions as a matter of constitutional law’ are unusual.”

Id. at 719. (Citations omitted). See also, *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering*, 476 U.S. 877 (1986).

### 3. Tribal Civil Jurisdiction

That tribal jurisdiction extends broadly over Indian people within a tribe’s reservation seems to be well established. Issues arise, however, with regard to the extent of tribal civil jurisdiction over nonIndians. The basis for the Supreme Court’s holding in *Strate v. A-1 Contractors, supra*, that there is no distinction between tribal civil regulatory and civil adjudicatory jurisdiction as to nonmembers is unclear especially in light of the fact that the same distinction continues to exist with regard to state and federal governments. That holding has tended to obscure, rather than clarify, jurisdictional issues. Nevertheless, the fact that a non-Indian is a party to a civil case

before a tribal court does not automatically preclude tribal court jurisdiction as it would in a criminal case. *National Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 855 (1985), *Cardin v. De La Cruz*, 671 F.2d 363, 366 (9th Cir. 1982).

The analysis of the tribal jurisdiction over nonmembers must begin with *Montana v. United States*, 450 U.S. 544 (1980). In that decision, the Court set out what has come to be the basic premise for any such analysis:

[T]o be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealings, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

*Montana v. United States* at 565-66 (1980). (Citations omitted).

This statement has been interpreted as establishing a general rule that, “absent a different congressional direction, Indian Tribes lack civil authority over the conduct of nonmembers on non-Indian land within a reservation, subject to two exceptions.” *Strate v. A-1 Contractors*, 520 U.S. 438, 446 (1997).

Cases involving the extent of a tribe's regulatory jurisdiction have arisen in a number of different contexts both before *Montana* (*United States v. Mazurie*, 419 U.S. 544 (1975), liquor laws; *Cardin v. De La Cruz*, 671 F.2d 363 (9th Cir. 1982), health regulations;) and after (*Babbitt Ford, Inc. v. Navajo Indian Tribe*, 710 F.2d 587 (9th Cir. 1983), regulation of repossessions; *FMC Corp. v. Shoshone-Bannock Tribes*, 905 F.2d 1311 (9th Cir. 1990), employment regulations; *Brendale v. Confederated Tribes and*

*Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989), zoning; *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074 (9th Cir. 1990), bingo regulations; *Duncan Energy Co. v. Three Affiliated Tribes*, 27 F.3d 1294 (8th Cir. 1994), taxation and employment regulations)

No clear definition of tribal civil jurisdiction can be derived from these cases. The determination of what constitutes “commercial dealings, contracts, leases or other arrangements” and what “conduct threatens or has some direct effect on the political integrity, the economic security or the health and welfare of the tribe” will require continued and constant litigation.

The Ninth Circuit declined to include intergovernmental agreements within the “consensual relationships” exception in *Montana. County of Lewis v. Nez Perce Tribe*, 163 F. 3<sup>rd</sup> 509, 516 (9th Cir. 1998). Mining leases and contracts between a tribe and non-Indian business were cited as examples of the type of “consensual relationships” that conferred jurisdiction on a tribe. *Id.* (citing *FMC v. Shoshone-Bannock Tribes*, 905 F2d 1311, 1315 (9th Cir. 1990)). In *Strate v. A-1 Contractors*, the Court held that there was no tribal jurisdiction over litigation between a company that had a subcontract to do work on a reservation and a non-Indian person who was injured in an on-reservation accident with a vehicle and employee of that company because the individual was not a party to the subcontract and the tribe was a “stranger to the accident.” 520 U.S. at 457.

A tribe’s interest in protecting its members from death and injury resulting from traffic accidents is not within the *Montana* exception for activities by non-Indians that threatens or has some direct effect on the “health and welfare” of the tribe. The Ninth Circuit has stated that the contention begs rather than answers the question and that it

would swallow the rule because virtually every act that concerns the reservation could be argued to have some political, economic or health or welfare ramification to the tribe.

*Wilson v. Marchington*, 127 F.3d 805, 815 (9th Cir. 1997). *See also*, *Burlington Northern Railroad Co. v. Red Wolf*, \_\_\_ F.3d \_\_\_ (9th Cir. 1999).

While the rule established in *Montana* speaks of tribal jurisdiction over non-Indians on non-Indian owned fee lands within a reservation, the Supreme Court has taken the questionable step of “aligning” tribal trust lands with non-Indian owned fee land to deny tribal jurisdiction over an on reservation accident involving two non-Indians.

*Strate*, 520 U.S. at 456. The accident occurred on a portion of public highway maintained by the state under a federally granted right-of-way over tribal trust lands.

This “alignment” was also applied to a right of way for a railroad in *Burlington Northern Railroad Co. v. Red Wolf*, to defeat tribal jurisdiction over claims arising from an on reservation train/car accident which resulted in the deaths of two tribal members.

The determination of the extent of tribal civil jurisdiction over nonmembers will continue to evolve in case law as a variety of factual scenarios are weighed against the *Montana* test.

Other references:

Hansen, *Survey of Civil Jurisdiction in Indian Country 1990*, 16 AM. INDIAN L. REV. 319 (1991).

#### 4. Indian Child Welfare Act

The Indian Child Welfare Act (ICWA) of 1978, 25 U.S.C. §§ 1901-1963, is a law that is extremely important to Indian tribes in their effort to keep Indian children within the tribal community. It is critical that any person, attorney, or court involved in the

involuntary placement of an Indian child be aware of this Act's provisions and requirements. The act is complex, there have been several recent attempts to amend it, and it is expected there will be similar attempts in future years.

One of the best general summaries of this law is found in *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989), the only ICWA heard by the United States Supreme Court to date. The following are excerpts from that opinion:

At the heart of the ICWA are its provisions concerning jurisdiction over Indian child custody proceedings. Section 1911 lays out a dual jurisdictional scheme. Section 1911(a) establishes exclusive jurisdiction in the tribal courts for proceedings concerning an Indian child “who resides or is domiciled within the reservation of such tribe,” as well as for wards of tribal courts regardless of domicile. Section 1911(b), on the other hand, creates concurrent but presumptively tribal jurisdiction in the case of children not domiciled on the reservation: on petition of either parent or the tribe, state-court proceedings for foster care placement or termination of parental rights are to be transferred to the tribal court, except in cases of “good cause,” objection by either parent, or declination of jurisdiction by the tribal court.

Various other provisions of ICWA Title I set procedural and substantive standards for those child custody proceedings that do take place in state court. The procedural safeguards include requirements concerning notice and appointment of counsel; parental and tribal rights of intervention and petition for invalidation of illegal proceedings; procedures governing voluntary consent to termination of parental rights; and a full faith and credit obligation in respect to tribal court decisions. *See* §§ 1901-1914. The most important substantive requirement imposed on state courts is that of § 1915(a), which, absent “good cause” to the contrary, mandates that adoptive placements be made preferentially with (1) members of the child's extended family, (2) other members of the same tribe, or (3) other Indian families.

The ICWA thus, in the words of the House Report accompanying it, “seeks to protect the rights of the Indian child as an Indian and the rights of the Indian community

and tribe in retaining its children in its society.” It does so by establishing “a Federal policy that, where possible, an Indian child should remain in the Indian community,” and by making sure that Indian child welfare determinations are not based on “a white, middle-class standard which, in many cases, forecloses placement with [an] Indian family.”

*Id.* at 36-37 (citations omitted).

The Idaho Supreme Court has interpreted and applied the ICWA, holding that it was applicable in a proceeding to terminate parental rights and that there was good cause for not transferring the case to a tribal court. *In the Matter of Baby Boy Doe*, 123 Idaho 464, 849 P.2d 925 (1993), *cert. denied*, 510 U.S. 860 (1993), *and appeal after remand*, 127 Idaho 452, 902 P.2d 477 (1995).

Other references:

Adams, *The Indian Child Welfare Act of 1978: Protecting Tribal Interests in a Land of Individual Rights*, 19 AM. INDIAN L. REV. 301 (1994).

Comment, *The Indian Child Welfare Act and Equal Protection Limitations on the Federal Power over Indian Affairs*, 17 AM. INDIAN L. REV. 129 (1992).

## 5. Full Faith and Credit between Tribal and State Courts

### a. Recognition of Tribal Court Judgments by State Courts

The issue of whether judgments entered by tribal courts in Idaho will be recognized by state courts has been resolved by a decision of the Idaho Supreme Court. “Tribal court decrees, while not precisely equivalent to decrees of the courts of sister states, are nevertheless entitled to full faith and credit.” *Sheppard v. Sheppard*, 104 Idaho 1, 7, 655 P.2d 895, 901 (1982).

Tribal court decrees have been held to be entitled to full faith and credit in other states, *see, In re Buehl*, 555 P.2d 1334 (Wash. 1976); *Barrett v. Barrett*, 878 P.2d 1051 (Okla. 1994), and federal courts have come to the same conclusion. *Cornells v. Shannon*,

63 F. 305 (Indian Terr. 1894); *Native Village of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548 (9th Cir. 1991).

Courts in other states have held that tribal decrees are entitled to comity but not full faith and credit.<sup>5</sup> *Bowen v. Doyle*, 880 F. Supp. 99, 125 (W.D.N.Y. 1995); *Whippert v. Blackfeet Tribe*, 654 P.2d 512 (Mont. 1982); *In re Lynch's Estate*, 377 P.2d 199 (Ariz. 1962). “While the decisions of tribal courts are not, therefore, entitled to the same ‘full faith and credit’ accorded decrees rendered in sister states, the quasi-sovereign nature of the tribe does suggest that judgments rendered by tribal courts are entitled to the same deference shown decisions of foreign nations as a matter of comity.” *Red Fox v. Red Fox*, 542 P.2d 918 (Or. Ct. App. 1975).

b. Recognition of State Court Judgments by Tribal Courts No conclusive decisions have been found on this subject. Whether a particular tribal court will be obliged to recognize a state court judgment is determined by the law of the particular tribe involved. Consequently, tribal law will have to be researched for any applicable laws. *See, e.g.*, Nez Perce Rules of Civil Procedure, Rule 56, *Recognition and Enforcement of Foreign Judgments*, at Nez Perce Tribal Code, p. 120.

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*See Brown v. Babbitt Ford, Inc*, 571 P.2d 689 (Ariz. Ct. App. 1977), in which it was held that legislative enactments of the Navajo Tribal Council would be recognized as valid under principles of comity provided that they were not contrary to public policy of Arizona. *Compare, Jim v. CIT Fin. Serv. Corp.*, 533 P.2d 751 (N.M. 1975).

The Idaho Supreme Court, in *Sheppard v. Sheppard*, expressed hope that the Shoshone-Bannock Tribal Court would reconsider an earlier decision and give full faith and credit to the decree of an Idaho state court based upon 28 U.S.C. § 1738 and analysis by commentators on the subject. 104 Idaho 1, 8 n.2, 655 P.2d 895, 902 n.8 (1982). In doing so, the Court emphasized that it had given full faith and credit to tribal court decrees--an important consideration for tribal courts in Idaho considering the issue.

It has come to the attention of this Court that, in an action related to this case, the Shoshone-Bannock appellate court, in reversing the tribal trial court, held that it was not required to give full faith and credit to the decrees of Idaho state courts. In part this decision was based on the belief that state courts did not accord tribal courts full faith and credit. As we have shown, some state courts, including this one, do. Secondly, the tribal court failed to acknowledge 28 U.S.C. § 1738, which requires “*every court within the United States*” to give full faith and credit to decrees of state courts (emphasis added). Along with this opinion extends the hope of a good working relationship between state and tribal courts, and we hope, therefore, that the Shoshone-Bannock courts will reconsider the application of full faith and credit in their proceedings. Indeed, the commentators unanimously agree that tribal courts must afford other states full faith and credit.

*Id.* (emphasis in original) (citations omitted).

#### Other References:

Deloria and Laurence, *Negotiating Tribal-State Full Faith and Credit Agreements: The Topology of the Negotiation and the Merits of the Question*, 28 GA L. REV. 365 (1994).

*Recognizing and Enforcing State and Tribal Judgments: A Roundtable Discussion of Law, Policy, and Practice*, 18 AMERICAN INDIAN L. REV. 239 (1993).

Ragsdale, *Problems in the Application of Full Faith and Credit for Indian Tribes*, 7 N.M. L. REV. 133 (1977).

Comment, *Conflicts Between State and Tribal Law: The Application of Full Faith and Credit Legislation to Indian Tribes*, 1981 ARIZ. ST. L.J. 801 (1981).

## 6. Interactions between Tribal and State Courts

### a. Finding the boundaries between state and tribal court jurisdiction

There are no court rules and little judicial guidance that address when tribal procedures must be followed in “State” causes of action and when state procedures must be followed in “Tribal” causes of action. The points of conflict and overlap between the court systems leave an inherent risk of inconsistent results in the differing court systems, as well as the procedural confusion about where and how to seek remedies. There are no comprehensive answers about when such conflicts exist and what procedures to follow in case of conflict. It is necessary for state court judges to be sensitive to the areas where conflict and overlap may exist.

### b. Court procedures where state court/tribal court interaction will occur

If a case or proceeding in state court is within the broad reach of tribal jurisdiction,<sup>6</sup> or if it involves tribal members as litigants or interested parties, or if the subject matter arises within reservation boundaries, then an analysis of potential jurisdictional and procedural conflicts should be made.

First, is there already a proceeding pending in a tribal court concerning the same parties or subject matter?

<sup>6</sup> It should be noted that tribes have separate definitions of their own jurisdiction. Tribal code provisions regarding jurisdiction for each of the tribes in Idaho are contained in section 9, *infra*.

Second, does a tribal court possibly have jurisdiction over these parties or the subject matter of the litigation? If the tribal court may have jurisdiction, will it be concurrent with state courts or will tribal court have exclusive jurisdiction?

A procedural problem arises if the state court concludes that the case could or ought to be in tribal court. Idaho has no formal procedure for transferring cases from state to tribal courts. Such a procedure exists in the state of Washington. *See* SUPERIOR CT. CIV. R. 82.5. In some Idaho courts, cases are being transferred to tribal courts from state courts. This is being done informally, without rule or procedure.

Third, if the state court judge decides to retain the case or proceeding, additional issues will arise.

Will the state court need to follow tribal court procedures to validly execute search or arrest warrants, extradite defendants, serve and enforce subpoenas? In civil matters, will the state court need to follow tribal court procedures to serve process, enforce Domestic Violence Restraining Orders, Orders to Show Cause, and similar process or orders?

Is there tribal law that may govern some or all of issues before the state court? There is no formal process for certifying an issue to the tribal courts for decision or guidance.

Finally, will enforcement of the orders or judgments of the court require compliance with tribal court procedures?

The problems associated with affording full faith and credit to judgment and decrees of tribal and state courts has been discussed in Section 7.

It is no longer assumed that the tribal court need necessarily be involved if the enforcement of a state court judgment would reach persons or property within the jurisdiction of the Tribal Court. *See, e.g., Nevada v. Hicks*, 121 S. Ct. 2304 (2001); *State v. Mathews*, 133 Idaho 300, 986 P.2d 323 (1999).

Many of the questions raised above are not answerable with a comfortable degree of certainty. At the same time, there is some Idaho authority developing that is beginning to delineate the borderline between state and tribal jurisdiction.

### **C. Idaho Authorities**

#### **1. Required Reading**

Judge Lansing, writing in *State v. Smith*, 127 Idaho 771, 906 P.2d 141 (Ct. App. 1995), opined that “the history and development of law regarding the scope of state jurisdiction within Indian country is thoroughly treated in *State v. Major*, 111 Idaho 410, 725 P.2d 115 (1986); *Sheppard v. Sheppard*, 104 Idaho 1, 655 P.2d 895 (1982); and *Boyer v. Shoshone-Bannock Indian Tribes*, 92 Idaho 257, 441 P.2d 167 (1968).” These cases are certainly the beginning point of analysis.

#### **2. Particular Procedures**

##### **a. Search warrants**

Although consideration should be given to checking the law of a tribe before any attempt is made to serve and execute a state search warrant on that tribe’s reservation, the Idaho Supreme Court has recently held that the state courts have jurisdiction to issue warrants for searches within Indian Country without tribal approval where the alleged crime was committed by a tribal member outside of Indian Country but within state court jurisdiction. *See State v. Mathews*, 133 Idaho 300, 986 P.2d 323 (1989).

b. *In Rem* proceedings

The early case of *Langford v. Monteith*, 102 U.S. 145, 12 Otto 145 (1880) held that the state courts of Idaho had *in rem* jurisdiction over an eviction proceeding between non-Indians concerning land within reservation boundaries owned in fee by one of the parties.

It is equally clear that the state law and state courts have little or no jurisdiction over land held in trust by the United States. *See* 25 C.F.R. 1.4 (state and local regulation of the use of Indian property). *See also Santa Rosa Band of Indians v. Kings County*, 532 F. 2d 655(9<sup>th</sup> Cir. 1975).

A Wyoming case, *Boller v. Key Bank of Wyoming* 829 P.2d 260 (Wy. 1992) went further and upheld state court jurisdiction to foreclose on property owned in fee by an enrolled member of the tribe, even though the property lay within the external boundaries of the reservation. For a contrary result, *see Chino v. Chino*, 561 P.2d 476 (N.M. 1979).

Idaho has particular constitutional and statutory language that may apply in cases involving land owned in fee by an individual Indian.

The constitution of the State of Idaho acknowledges and disclaims any jurisdiction over reservation lands.

And the people of the State of Idaho do agree and declare that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limited owned or held by any Indians or Indian tribes; and until the title thereto shall have been extinguished by the United States, the same shall be subject to the disposition of the United States, and said Indian Lands shall remain under the absolute jurisdiction and control of the congress of the

United States; that the lands belonging to the citizens of the United States, residing without the said state of Idaho, shall never be taxed at a higher rate than the lands belonging to the residents thereof.

IDAHO CONST. ART. XXI, § 19.

Article 21, § 19 appears to refer not only to land held by the tribe or property held in trust but land owned in fee by any Indian as well. State regulation over land within the reservation but owned in fee by an Indian was at issue in *Dunn v. Nez Perce County*, Case No. CV 95-00423, District Court for Nez Perce County. In *Dunn*, it was held that Nez Perce County lacked jurisdiction to regulate the business and land use by a Nez Perce Indian on her fee land located within the Nez Perce Reservation. *But see Pease v. Yellowstone County*, 96 F.3d 1169 (9th Cir. 1996) (allowing the state to tax reservation property owned in fee by an Indian). The Idaho constitutional provision did not prevent the state from accepting jurisdiction in matters with the consent of the tribe pursuant to P.L. 280. Thus, in 1963, Idaho passed Idaho Code § 67-5101, which accepts jurisdiction for limited and specified matters such as mental illness, public assistance, motor vehicles, road maintenance, etc. However, this was not a transfer of unlimited jurisdiction. Both tribal law and Idaho law recognize this fact, and specifically recognize that the state has no jurisdiction over Indian property rights.

67-1503. Matters excepted from state jurisdiction.

Nothing in this act shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to

adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or shall deprive any Indian or any Indian tribe, band, or community or any right, privilege, or immunity afforded under federal treaty, agreement, statute or executive order with respect to Indian land grants, hunting, trapping or fishing or the control, licensing, or regulation thereof.

IDAHO CODE § 67-5103 (emphasis added).

c. Traffic infractions

The case of *State v. George*, 127 Idaho 693, 905 P.2d 626 (1996), determined that Idaho's conversion of traffic offenses into “infractions” did not divest the state courts of jurisdiction over tribal members charged with traffic offenses while driving within the reservation boundaries. *But see Colville v. Washington*, 938 F.2d 146 (9th Cir. 1991), holding that Washington’s “civil infraction” statute did divest the state of jurisdiction. Other cases dealing with traffic offenses include *State v. Warden*, 127 Idaho 763, 906 P.2d 133 (1995); *State v. Smith*, 127 Idaho 771, 906 P.2d 141 (1995); *State v. Slickpool*, 126 Idaho 212, 880 P.2d 242 (1994).

d. Jurisdiction over tribal corporations

In *Robles v. Shoshone-Bannock Tribes*, 125 Idaho 852, 876 P.2d 134 (1994), the plaintiff brought suit for back wages against a tribal corporation. The Idaho Supreme Court held that if plaintiff was employed by a tribal corporation, the plaintiff would have to prove that the tribe had consented to state court jurisdiction in order for state courts to exercise jurisdiction.

e. Taxation

A tribe has the ordinary powers of taxation over persons and property within its limits. *Morris v. Hitchcock*, 194 U.S. 384 (1904). The power of a tribe to exclude non-

members includes the power to tax business activities conducted on the reservation, even if the power was not exercised when the tribe initially granted a non-Indian a right of entry on to the reservation. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982). A tribe, however, has no authority to tax a non-member until the non-member enters tribal lands or conducts business with the tribe. *Id.* Recently, the United States Supreme Court held that a tribe may not collect taxes from non-tribal members conducting business on fee land located on a reservation which is owned by a non-Indian. *See Atkinson Trading Co. v. Shirley*, 121 S. Ct. 1825 (2001).

Indian tribes and individuals are generally exempt from state taxation within their own territory unless Congress has authorized such taxation and has clearly manifested its intent to do so. *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759 (1985). Absent a federal statute permitting it, there is no authority for state taxation of reservation land or Indian income from activities carried on within the boundaries of the reservation.

*Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973). An Indian enterprise may exempt from state taxation even if it is incorporated under state law. *Eastern Navajo Indus., Inc. v. Bureau of Revenue*, 552 P.2d 805 (N.M. Ct. App. 1976). Recently, the Idaho Supreme Court held that the Hayden-Cartwright Act does not provide Congressional authorization for a state to impose a fuel tax on the sale of fuel to Indians on an Indian reservation within a state. *See Goodman Oil Co. v. Idaho State Tax Comm'n*, \_\_\_ Idaho \_\_\_, 28 P.3d 996 (2001).

## **D. Conclusion**

Clear boundaries between state and tribal court jurisdiction remain to be determined and procedures to accomplish coordination between state and tribal courts remain to be established. The challenge to state court judges and practicing attorneys will be to learn to be more aware and sensitive to the possibility of tribal court jurisdiction. If some or all of the litigants are tribal members, if the subject property or persons involved are located within the reservation boundaries, or if the issues involved are of particular concern to the tribe, such as in Indian Child Welfare Act cases, then both court and counsel will need to inquire whether the tribal court should or could be involved.

## **E. Indian Tribes and Tribal Courts in Idaho**

### **1. Coeur d'Alene**

- 1) COUER D ALENE - Tribal Court Information:
  - a) Name of Tribal Court: Coeur d'Alene Tribal Court.
  - b) Tribal Court Levels: Tribal Court. Tribal Supreme Court (2 judges).
  - c) Qualification Requirements for Judges:
    - i) Chief & Special Judges: Graduate of an accredited law school and admitted to practice in one of the United States district courts; between 25 and 69 years of age; no felony convictions; must have clear understanding of tribal code and customs.
    - ii) General Judge: enrolled member of recognized tribe; between 25 and 69 years of age; no felony conviction; must have clear understanding of tribal code and customs; appointed by Tribal Council on an as-needed basis.
    - iii) Judge Pro Tempore: As designated by the Chief Judge or Tribal Council.
  - d) Names and Titles of Judges: (\* attorney judge)  
Acting Chief Judge                      Mary Pearson

Acting General Judge Cynthia Jordan

e) Court Clerk's Office:

i) Clerk of the Court: Francine Pierre - Chief Court Clerk

Court Address: Couer d Alene Tribal Justice Center

29 RR 22 Plummer, ID 83851

Court telephone: (208) 686-1777

Court Telefax: (208) 686-1289

Susan Garry - Deputy Court Clerk

ii) Court Manager: Lulu Hutchinson

f) Tribal Prosecutor

(1) Qualification Requirements for Prosecutor: (designated by Tribal Council).

Prosecutor's Name: Patrick Kiernan

Prosecutor's Address: RR P.O. Box 11CDA, Plummer, ID 83851

Prosecutor's Telephone: (208) 686-5120

Prosecutor's Telefax: (208) 686-5069

g) Tribal Defender

(1) Qualification Requirements for Defender:

Defender's Name: Dee Teren

Defender's Address: RR P.O. Box 11CDA, Plummer, ID 83851

Defender's Telephone: (208) 686-5504

Defender's Telefax: (208) 686-5706

h) Requirements to Practice Before Tribal Court and Application Process:

i) Provision for Spokesperson (non-attorney)

ii) Attorney must be licensed to practice before any supreme court; signed affidavit that

tribal code has been read; promise to abide by court rules; \$25.00 fee.

Attorneys and Advocates Admitted to Practice

<p>Name: Brian H. Collins  Address: N. 80 Tribal Center Road, Shelton,  WA 98584  Firm: Skokomish Indian Tribe  Phone: (360) 877-5213 Ext:</p>	<p>Name: Dan Jay Rude  Address: 110 Wallace Avenue, Coeur d'Alene,  ID 83816-1453  Firm: Rude, Jackson &amp; Daugharty  Phone: (208) 667-1943 Ext:</p>
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<p>Fax: (360) 427-1627  E-Mail Address: bcollins@skokomish.org  Website Address:  ISB Membership Number: 3698  Admittance Date: 3/31/1988  Current Status: Out of State Active</p>	<p>Fax: (208) 666-0550  E-Mail Address:  Website Address:  ISB Membership Number: 2559  Admittance Date: 4/25/1980  Current Status: Active</p>
<p>Name: Fred William Gabourie Jr.  Address: N. 810 Spokane Street  Post Falls, ID 83854  Firm:  Phone: (208) 773-1602 Ext:  Fax: (208) 773-8907  E-Mail Address:  Website Address:  ISB Membership Number: 1930  Admittance Date: 9/24/1976  Current Status: Active</p>	<p>Name: Fred William Gabourie Sr.  Address: PO Box 10, Worley, ID 83876  Firm:  Phone: (208) 691-0116 Ext:  Fax: (509) 922-0814  E-Mail Address: whitedeer@sprynet.com  Website Address:  ISB Membership Number: 3120  Admittance Date: 9/28/1984  Current Status: Active</p>
<p>Name: Raymond C. Givens  Address: PO Box 400, Coeur d'Alene, ID 83816  Firm: Givens Law Firm  Phone: (208) 676-1310 Ext:  Fax: (208) 676-1296  E-Mail Address: raygivens@givenslaw.com  Website Address: www.givenslaw.com  ISB Membership Number: 1695  Admittance Date: 10/1/1974  Current Status: Active</p>	<p>Name: Shannon Dale Work  Address: PO Box 969, Coeur d'Alene, ID 83816  Firm: Funke &amp; Work  Phone: (208) 667-5486 Ext:  Fax: (208) 667-4695  E-Mail Address: shannonwork@indian-law.org  Website Address:  ISB Membership Number: 3794  Admittance Date: 3/31/1988  Current Status: Active</p>
<p>Name: Michael Laurence Haman  Address: PO Box 1758, Coeur d'Alene, ID 83816  Firm: Quane Smith, LLP  Phone: (208) 664-9281 Ext:  Fax: (208) 664-5380  E-Mail Address:  Website Address:  ISB Membership Number: 4784  Admittance Date: 4/21/1994  Current Status: Active</p>	<p>Name: Patricia Ellen O'Brien Weeks  Address: PO Box 896, Lewiston, ID 83501  Firm: Nez Perce County  Phone: (208) 799-3020 Ext:  Fax: (208) 799-3070  E-Mail Address: weeks@camasnet.com  Website Address:  ISB Membership Number: 4537  Admittance Date: 4/22/1993  Current Status: Active</p>
<p>Name: Scott White Reed  Address: PO Box A, Coeur d'Alene, ID 83814  Firm:  Phone: (208) 664-2161 Ext:  Fax: (208) 765-5117  E-Mail Address:  Website Address:  ISB Membership Number: 818</p>	<p>Name: Tara Linette Allgood  Address: 1075 S. Boulder Rd., Ste. 305,  Louisville, CO 80027  Firm: Fredericks, Pelcyger &amp; Hester, LLC  Phone: (303) 673-9600 Ext:  Fax: (303) 673-9155  E-Mail Address: tallgood@fphw.com  Website Address:</p>

Admittance Date: 5/15/1956 Current Status: Active	ISB Membership Number: 5386 Admittance Date: 9/25/1997 Current Status: Out of State Active
Name: Kelly Robert Stravens Address: , , Firm: Phone: Ext: Fax: E-Mail Address: Website Address: ISB Membership Number: 5099 Admittance Date: 9/29/1994 Current Status: Inactive	Name: Robert James Caldwell Address: 422 W. Riverside, Ste. 1100, Spokane, WA 99201 Firm: Witherspoon, Kelley, Davenport & Toole, PS Phone: (509) 624-5265 Ext: Fax: (509) 458-2728 E-Mail Address: rjc@wkdtlaw.com Website Address: www.wkdtlaw.com ISB Membership Number: 4722 Admittance Date: 4/22/1993 Current Status: Active
Alex Gambrel (Smith Hemingway) 1519 W. Broadway Spokane, WA 99201 (509) 328-5550	Holli Pursley  Plummer, ID
David Ward  Spokane, WA	Ted Schott (Nordstrom Nees) 323 S. Pines Rd. Spokane, WA 99206 (509) 924-9800
Bobby Condon  Spokane, WA	

2) Tribal Code

- a) Official Designation of Tribal Code: Coeur d'Alene Tribal Code
- b) Source of Copies of Code: Chief Court Clerk
- c) Cost for Copy of Code: \$250.00

3) Rules of Criminal Procedure: Chapter 3, Tribal Code

4) Rules of Civil Procedure: Chapter 4, Tribal Code

5) Code Provisions Defining Court Jurisdiction:

1-3.01 Jurisdiction

The Tribal Court shall have jurisdiction over all matters occurring within the exterior boundaries of, or affecting the Coeur d'Alene Indian Reservation. Any enrolled Indian, but not

Coeur d'Alene, and any non-Indian who voluntarily comes onto or lives within the exterior boundaries of the Coeur d'Alene Indian Reservation hereby accepts and consents to the jurisdiction of the Court as provided in this Code. The Tribal Court shall have all means necessary to allow the exercise of its jurisdiction.

#### 1-5.01 Concurrent Jurisdiction

The Tribal Court shall have exclusive jurisdiction over any of the matters enumerated in this Code, provided, however, that with respect to any of the matters enumerated in this Code over which the United States or the State of Idaho may have jurisdiction, the jurisdiction of the Tribal Court shall be concurrent and not exclusive. Further, should the Coeur d'Alene Tribe not desire to exercise its exclusive jurisdiction, and if the United States or the state of Idaho properly exercise jurisdiction over any matter, the jurisdiction so exercised by the United States or the state of Idaho shall be concurrent and not exclusive.

## 2. Kootenai

### 1 KOOTENAI Tribal Court Information:

- a) Name of Tribal Court: Tribal Court of the Kootenai Tribe of Idaho.
- b) Tribal Court levels: Tribal Court. Appellate Court (Appeals heard by one judge who did not hear the original case).
- c) Qualification requirements for Judges: All judges: must be over 25 years of age; no felony or moral turpitude convictions; satisfactory showing of knowledge and understanding of tribal, federal, and state law applicable to reservation and tribal members; preference to an enrolled member of a recognized tribe.
- d) Names and Titles of Tribal Judges:
  - Sr., Chief Judge: Fred W. Gabourie, Attorney Judge
  - Associate Judge: Position Open
- e) Court Clerk's Office: Chief Court Clerk: Leona Gabourie,
  - Court Address: P.O. Box 1269, Bonners Ferry, ID 83805
  - Court Telephone: (208) 267- 3158
  - Court Telefax: (208) 267-2960
- f) Tribal Prosecutor: Qualification requirements for Prosecutor:
  - Must be member of Kootenai Tribe; minimum 21 years of age; oath that he/she is familiar with tribal laws and customs; never convicted of felony; pay \$25.00 fee. Appointed by Council as needed.
  - James P. Hannon; Tribal Prosecutor
  - P.O. Box 1269, Bonners Ferry, ID 83805
  - Telephone: (208) 267-3518 – (208) 676-8776
  - Prosecutor's Telefax: (208) 676-1276

g) Tribal Defender: Qualification requirements for Defender:

Defender may be attorney admitted and active member in good standing of any bar of any federal court and pay \$25.00 fee; or, meet the requirements listed under tribal prosecutor.

Attorneys and Advocates Admitted to Practice:

<p>Name: Cynthia Ann Jordan          Address: 921 W. Broadway, Ste. 201, Spokane, WA 99201          Firm: Jordan Law Office          Phone: (509) 325-8274 Ext:          Fax: (509) 328-8362          E-Mail Address: litigate52@aol.com          Website Address:          ISB Membership Number: 5039          Admittance Date: 9/29/1994          Current Status: Affiliate</p>	<p>Name: James P. Hannon          Address: PO Box 3190, Coeur d'Alene, ID 83816          Firm:          Phone: (208) 676-8776 Ext:          Fax: (208) 676-1276          E-Mail Address: jimhannon@imbris.com          Website Address:          ISB Membership Number: 3482          Admittance Date: 9/28/1995          Current Status: Active</p>
<p>Name: Daniel Paul Featherston          Address: 113 South Second Avenue, Sandpoint, ID 83864          Firm: Featherston Law Firm, Chtd.          Phone: (208) 263-6866 Ext:          Fax: (208) 263-0400          E-Mail          Address: angie@featherstonlaw.com          Website          Address: www.featherstonlaw.com          ISB Membership Number: 1324          Admittance Date: 10/19/1970          Current Status: Active</p>	<p>Name: Bryce W. Powell          Address: PO Box 1005, Sandpoint, ID 83864          Firm: Powell &amp; Reed, PC          Phone: (208) 263-3529 Ext:          Fax: (208) 263-4438          E-Mail          Address: brycepowell@sandpointlegal.com          Website Address:          ISB Membership Number: 5671          Admittance Date: 9/25/1997          Current Status: Active</p>
<p>Name: Todd Mathew Reed          Address: PO Box 1005, Sandpoint, ID 83864          Firm: Powell &amp; Reed, PC          Phone: (208) 265-8126 Ext:          Fax: (208) 263-4438          E-Mail Address:          Website Address:          ISB Membership Number: 4788</p>	<p>Name: Fred William Gabourie Jr.          Address: N. 810 Spokane Street, Post Falls, ID 83854          Firm:          Phone: (208) 773-1602 Ext:          Fax: (208) 773-8907          E-Mail Address:          Website Address:          ISB Membership Number: 1930</p>

Admittance Date: 9/23/1993 Current Status: Active	Admittance Date: 9/24/1976 Current Status: Active
Leroy Wilder 225 S.W. Montgomery St. #10 Portland, Oregon 92701 (503) 242-0705	R. Rawleigh Fusilier 12220 5 <sup>th</sup> St. Yucaipa CA 92399 (909) 790-0625

1. Tribal Code
2. Official Designation of Code: Kootenai Tribe of Idaho, Law and Order Code
3. Source of Copies of Code: Kootenai Tribal Court. Cost for Copies of Code: Call.
4. Rules of Criminal Procedure, Chapter 3, Tribal Code
5. Rules of Civil Procedure: Chapter 6, Tribal Code
6. Code Provisions Defining Court Jurisdiction:

#### 2-2 Jurisdiction

2-2.01 The Tribal Court shall have exclusive jurisdiction over all judicial matters occurring on the Reservation involving Indians and non-Indians to the full extent allowed by federal law.

2-2.02 The Tribal Court shall have exclusive jurisdiction over offenses committed by members in the exercise of off-reservation rights within the Tribe's aboriginal territory.

2-2.03 The Tribal Court shall have concurrent jurisdiction over matters subject to its jurisdiction where jurisdiction has been granted to State or Federal courts under federal law.

2-2.04 Any other tribal court or Court of Indian Offenses established pursuant to this chapter shall have its jurisdiction defined at the time of establishment.

#### 6-1 Jurisdiction

6-1.01 The Tribal Court shall have jurisdiction of all civil suits where the defendant is a member of the Kootenai Tribe, a person who voluntarily comes on or lives within the jurisdiction of the Court or a person, business, corporation, association or any other entity that does business with the Kootenai Tribe of Idaho or its members and the cause of action arose within the jurisdiction of the Tribal Court, or the parties consent to Tribal Court jurisdiction.

6-1.02 The Tribal Court shall have jurisdiction to hear disputes between participants in the Tribe's gaming activities and gaming management or the Tribe's Gaming Commission that are referred to it by the Commission. It also shall have jurisdiction to hear appeals from decisions of the Gaming Commission but such jurisdiction shall be limited to determining whether the Commission provided due process in its proceedings and the relief to be granted is limited to remanding such cases to the Gaming Commission for a new hearing.

6-1.03 In addition to jurisdiction to hear any other action under this Chapter the Court shall have jurisdiction to hear any action brought by the Council of the Kootenai Tribe of Idaho to collect any outstanding accounts, monies, or debts owed to it or the Tribe from any Kootenai tribal member or any other person, corporation, partnership, or business entity under a lawful promise to pay made to the Tribe or Council on Kootenai tribal lands.

### **3. Nez Perce**

- 1) NEZ PERCE Tribal Court Information:
  - a) Name of Tribal Court: Nez Perce Tribal Court
  - b) Tribal Court levels:

c) Qualification Requirements for Judges:

- i) Chief Judge: At least 25 years of age; graduate of accredited law school; member of the bar of any state; and has at least three years experience as a judge.
- ii) Associate Judge: At least 25 years of age; graduate of an accredited law school and a member of the bar of any state. Prior experience as a judge or in litigation is preferred.
- iii) Judge Pro Tempore: must meet minimum standards of Associate Judge; usually a judge from another tribe.

d) Names and Titles of Judges: (\*attorney judge)

Chief Judge: Eva White \*

Earl McGeoghegan - Judge Pro Tempore\*

e) Court Clerk's Office:

- i) Clerk of the Court: Name of Clerk?

Court address: P.O. Box 305, Lapwai, ID 83540

Court Telephone: (208) 843-7338 Ext. 6

Court Telefax: (208) 843-7337

Betty Corbett – Court Clerk

Kim Bryant – Juvenile Clerk

Sarah Sedgwick – Criminal Clerk

Thelma Oberly – Civil Clerk

- f) Tribal Prosecutor: Qualification Requirements for Prosecutor: Attorney admitted to practice before the court; appointed by NPTEC.

Bill Richardson, Tribal Prosecutor

Address: P.O. Box 365, Lapwai, ID 83540

Telephone: (208) 843-7361

Telefax: (208) 843-7337

g) Tribal Defender: Qualification requirements for Defender: Must be admitted to practice before the court.

h) Defender's Name:

(1) Name: Ken Everett Nagy

Address: PO Drawer E, Lewiston, ID 83501

Firm: Keeton & Tait

Phone: (208) 743-6231 Ext:

Fax: (208) 746-0962

E-Mail Address: knagy@lewiston.com

Website Address: www.ktlaw.org

ISB Membership Number: 6176

Admittance Date: 9/28/2000

Current Status: Active

(2) University of Idaho, School of Law, Clinical Program

(a) Defender's Address: University of Idaho, School of Law,  
Clinical Program, Moscow, ID 83843

(b) Defender's Telephone: (208) 885-6541

(c) Defender's Telefax: (208) 885-7609

2) Admission to Practice and Application Process: Licensed to practice in any state or District of Columbia; signature promise to abide by Tribal Code and court rules; no criminal convictions; \$50.00 fee.

Attorneys and Advocates Admitted to Practice:

Name: Anthony Christopher Anegon Address: PO Drawer 698, Lewiston, ID 83501 Firm: Aherin, Rice & Anegon	Name: Marcy J. Spilker Address: PO Drawer B, Lewiston, ID 83501 Firm: Department of Health & Welfare Phone: (208) 799-4410 Ext:
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<p>Phone: (208) 746-3646 Ext:  Fax: (208) 746-3650  E-Mail Address: araoffice@valley-internet.net  Website Address: aralawoffice.com  ISB Membership Number: 2917  Admittance Date: 9/24/1982  Current Status: Active</p>	<p>Fax: (208) 799-3350  E-Mail Address:  Website Address:  ISB Membership Number: 3568  Admittance Date: 9/26/1986  Current Status: Active</p>
<p>Name: Theodore O. Creason  Address: PO Drawer 835, Lewiston, ID 83501  Firm: Creason, Moore &amp; Dokken, PLLC  Phone: (208) 743-1516 Ext:  Fax: (208) 746-2231  E-Mail Address: tcreason@cmd-law.com  Website Address:  ISB Membership Number: 1563  Admittance Date: 11/1/1973  Current Status: Active</p>	<p>Name: Marc Andrew Lyons  Address: PO Box 1336, Coeur d'Alene, ID 83816-1336  Firm: Ramsden &amp; Lyons  Phone: (208) 664-5818 Ext:  Fax: (208) 664-5884  E-Mail Address: firm@ramsdenlyons.com  Website Address: www.ramsdenlyons.com  ISB Membership Number: 3145  Admittance Date: 9/30/1983  Current Status: Active</p>
<p>Name: Jerald Vickers Smith  Address: 508 Eighth Street, Lewiston, ID 83501  Firm: Smith &amp; Cannon  Phone: (208) 743-9428 Ext:  Fax: (208) 746-8421  E-Mail Address:  Website Address:  ISB Membership Number: 583  Admittance Date: 6/2/1950  Current Status: Active</p>	<p>Name: Edwin Lee Litteneker  Address: PO Box 321, Lewiston, ID 83501  Firm: Edwin L. Litteneker  Phone: (208) 746-0344 Ext:  Fax: (208) 798-8387  E-Mail Address: ellatlaw@lewiston.com  Website Address:  ISB Membership Number: 2297  Admittance Date: 4/27/1979  Current Status: Active</p>
<p>Name: David Eric Dokken  Address: PO Drawer 835, Lewiston, ID 83501  Firm: Creason, Moore &amp; Dokken, PLLC  Phone: (208) 743-1516 Ext:  Fax: (208) 746-2231  E-Mail Address: ddokken@cmd-law.com  Website Address:  ISB Membership Number: 2950  Admittance Date: 9/24/1982  Current Status: Active</p>	<p>Name: John Reid Tait  Address: PO Box E, Lewiston, ID 83501  Firm: Keeton &amp; Tait  Phone: (208) 743-6231 Ext:  Fax: (208) 746-0962  E-Mail Address: lewlawus@lewiston.com  Website Address: www.ktlaw.org  ISB Membership Number: 1611  Admittance Date: 10/1/1974  Current Status: Active</p>
<p>Name: Charles Eugene Kovis  Address: PO Box 9292, Moscow, ID 83843  Firm: Charles E. Kovis Law Office</p>	<p>Name: Neil Presley Cox Jr.  Address: 924 5th St, Clarkston, WA 99403-2636  Firm: Law Office Of Neil P. Cox</p>

<p>Phone: (208) 882-3939 Ext:  Fax: (208) 882-5379  E-Mail  Address: charleskovis@turbonet.com  Website Address:  ISB Membership Number: 4700  Admittance Date: 4/22/1993  Current Status: Active</p>	<p>Phone: (509) 758-6092 Ext:  Fax: (509) 758-9820  E-Mail Address:  Website Address: firstatty2call@aol.com  ISB Membership Number: 5166  Admittance Date: 4/20/1995  Current Status: Out of State Active</p>
<p>Name: Thomas Willig Callery  Address: PO Box 854, Lewiston, ID 83501  Firm: Jones, Brower &amp; Callery, PLLC  Phone: (208) 746-0453 Ext:  Fax: (208) 746-9553  E-Mail Address: tcallery@lewiston.com  Website Address:  ISB Membership Number: 2292  Admittance Date: 9/22/1978  Current Status: Active</p>	<p>Name: Ned A. Cannon  Address: 508 Eighth Street, Lewiston, ID 83501  Firm: Smith &amp; Cannon  Phone: (208) 743-9428 Ext:  Fax: (208) 746-8421  E-Mail Address:  Website Address:  ISB Membership Number: 2331  Admittance Date:</p>
<p>Name: Michael Edwin Cherasia  Address: 411 S. Main Street, Ste. 6,  Moscow, ID 83843  Firm:  Phone: (208) 883-4410 Ext:  Fax: (208) 883-1595  E-Mail Address: cherasia@moscow.com  Website Address:  ISB Membership Number: 6413  Admittance Date: 9/25/2003  Current Status: Active</p>	<p>Name: Patrick Daniel Costello  Address: PO Box 442322, Moscow, ID 83844-2322  Firm: University of Idaho College of Law  Phone: (208) 885-7077 Ext:  Fax: (208) 885-4628  E-Mail Address: costello@uidaho.edu  Website  Address: www.law.uidaho.edu/clinics/general.asp  ISB Membership Number: 2491  Admittance Date: 9/21/1979  Current Status: Active</p>
<p>Name: Everett B. Coulter Jr.  Address: 818 W. Riverside Avenue, Ste.  250, Spokane, WA 99201  Firm: Evans, Craven &amp; Lackie, PS  Phone: (509) 455-5200 Ext:  Fax: (509) 455-3632  E-Mail Address: ecoulter@mindspring.com  Website Address:  ISB Membership Number: 3768  Admittance Date: 3/31/1988  Current Status: Out of State Active</p>	<p>Name: Jennifer Nannette Bivens Douglass  Address: PO Box 973, Lewiston, ID 83501  Firm: Idaho Legal Aid Services Inc.  Phone: (208) 743-1556 Ext: 104  Fax: (208) 743-3261  E-Mail  Address: jenniferdouglass@idaholegalaid.org  Website Address: www.idaholegalaid.org  ISB Membership Number: 6596  Admittance Date: 9/26/2002  Current Status: Out of State Active</p>
<p>Name: Summer Ann Emmert  Address: PO Box 238, Lewiston, ID 83501  Firm: Law Office of Loren J. Eddy  Phone: (208) 746-6051 Ext:</p>	<p>Name: Tod D. Geidl  Address: PO Drawer 835, Lewiston, ID 83501  Firm: Creason, Moore &amp; Dokken, PLLC</p>

<p>Fax: (208) 746-5958  E-Mail Address:  Website Address:  ISB Membership Number: 6199  Admittance Date: 4/26/2001  Current Status: Active</p>	<p>Phone: (208) 743-1516 Ext:  Fax: (208) 746-2231  E-Mail Address: tgeidl@cmd-law.com  Website Address:  ISB Membership Number: 5785  Admittance Date: 9/24/1998  Current Status: Active</p>
<p>Name: Tim Gresback  Address: PO Box 9696, Moscow, ID 83843  Firm:  Phone: (208) 882-2222 Ext:  Fax: (208) 892-3535  E-Mail Address: greslaw@turbonet.com  Website Address: www.gresbacklaw.com  ISB Membership Number: 3708  Admittance Date: 9/24/1987  Current Status: Active</p>	<p>Name: James Wesley Grow Jr.  Address: 1301 G Street, Lewiston, ID 83501  Firm: Law Office of James W. Grow, Jr., PLLC  Phone: (208) 746-5508 Ext:  Fax: (208) 746-9466  E-Mail Address: growlaw@msn.com  Website Address:  ISB Membership Number: 3709  Admittance Date: 9/24/1987  Current Status: Active</p>
<p>Name: Jonathan David Hally  Address: PO Box 285, Lewiston, ID 83501  Firm: Clark &amp; Feeney  Phone: (208) 743-9516 Ext:  Fax: (208) 746-9160  E-Mail  Address: jhally@clarkandfeeney.com  Website  Address: www.clarkandfeeney.com  ISB Membership Number: 4979  Admittance Date: 9/29/1994  Current Status: Out of State Active</p>	<p>Name: John Crawford Judge  Address: PO Box 9344, Moscow, ID 83843  Firm: Landeck, Westberg, Judge &amp; Graham, PA  Phone: (208) 883-1505 Ext:  Fax: (208) 883-4593  E-Mail Address: attorneys@moscow.com  Website Address:  ISB Membership Number: 3288  Admittance Date: 9/28/1984  Current Status: Active</p>
<p>Name: Manderson L. Miles Jr.  Address: PO Box 717, Lewiston, ID 83501  Firm: Knowlton &amp; Miles, PLLC  Phone: (208) 746-0103 Ext:  Fax: (208) 746-0118  E-Mail Address: kmkpllc@cableone.net  Website Address:  ISB Membership Number: 1422  Admittance Date: 3/21/1973  Current Status: Active</p>	<p>Name: Manderson L. Miles Jr.  Address: PO Box 717, Lewiston, ID 83501  Firm: Knowlton &amp; Miles, PLLC  Phone: (208) 746-0103 Ext:  Fax: (208) 746-0118  E-Mail Address: kmkpllc@cableone.net  Website Address:  ISB Membership Number: 1422  Admittance Date: 3/21/1973  Current Status: Active</p>
<p>Name: Mark Stephen Mooror  Address: PO Box 9004, Moscow, ID 83843  Firm:</p>	<p>Name: Ken Everett Nagy  Address: PO Drawer E, Lewiston, ID 83501  Firm: Keeton &amp; Tait</p>

<p>Phone: (208) 882-2539 Ext:  Fax: (208) 882-4490  E-Mail Address: mark@farmermark.com  Website Address:  ISB Membership Number: 3824  Admittance Date: 3/31/1988  Current Status: Active</p>	<p>Phone: (208) 743-6231 Ext:  Fax: (208) 746-0962  E-Mail Address: knagy@lewiston.com  Website Address: www.ktlaw.org  ISB Membership Number: 6176  Admittance Date: 9/28/2000  Current Status: Active</p>
<p>Name: Sunil Ramalingam  Address: PO Box 9109, Moscow, ID 83843  Firm: Sunil Ramalingam, Attorney at Law  Phone: (208) 892-0387 Ext:  Fax: (208) 892-0397  E-Mail  Address: sunilramalingam@hotmail.com  Website Address:  ISB Membership Number: 5698  Admittance Date: 9/25/1997  Current Status: Active</p>	<p>Name: Todd Samuel Richardson  Address: 604 6th Street, Clarkston, WA 99403  Firm: Law Offices of Todd S. Richardson, PLLC  Phone: (509) 758-3397 Ext:  Fax: (509) 758-3399  E-Mail Address: toddrichardson@justice.com  Website Address:  ISB Membership Number: 5831  Admittance Date: 9/24/1998  Current Status: Out of State Active</p>
<p>Name: Denise Linn Rosen  Address: PO Box 9695, Boise, ID 83707-3695  Firm: Trout &amp; Nemece, PLLC  Phone: (208) 376-4461 Ext:  Fax: (208) 376-4481  E-Mail Address: drosen@trout-law.com  Website Address:  ISB Membership Number: 4163  Admittance Date: 4/19/1990  Current Status: Active</p>	<p>Name: William John Schroeder  Address: 717 W. Sprague Avenue, Ste. 1200, Spokane, WA 99201-3505  Firm: Paine, Hamblen, Coffin, Brooke &amp; Miller, LLP  Phone: (509) 455-6000 Ext:  Fax: (509) 838-0007  E-Mail Address: wschroed@painehamblen.com  Website Address: www.painehamblen.com  ISB Membership Number: 6674  Admittance Date: 9/26/2002  Current Status: Out of State Active</p>
<p>Name: April Ann Smith  Address: PO Box 446, Lewiston, ID 83501-0446  Firm: RANDALL, BLAKE &amp; COX, P.A.  Phone: (208) 743-1234 Ext:  Fax: (208)  E-Mail Address: aprils@co.nezperce.id.us  Website Address:  ISB Membership Number: 7009  Admittance Date: 9/30/2004  Current Status: Active</p>	<p>Name: Charles Michael Stroschein  Address: PO Box 285, Lewiston, ID 83501  Firm: Clark &amp; Feeney  Phone: (208) 743-9516 Ext:  Fax: (208) 746-9160  E-Mail Address: cflaw@lewiston.com  Website Address: www.clarkandfeeney.com  ISB Membership Number: 3058  Admittance Date: 9/30/1983  Current Status: Active</p>
<p>Name: Charles Michael Stroschein  Address: PO Box 285, Lewiston, ID 83501</p>	<p>Name: Sean Patrick Walsh  Address: PO Box 973, Lewiston, ID 83501</p>

<p>Firm: Clark &amp; Feeney  Phone: (208) 743-9516 Ext:  Fax: (208) 746-9160  E-Mail Address: cflaw@lewiston.com  Website  Address: www.clarkandfeeney.com  ISB Membership Number: 3058  Admittance Date: 9/30/1983  Current Status: Active</p>	<p>Firm: Idaho Legal Aid Services, Inc.  Phone: (208) 743-1556 Ext:  Fax: (208) 743-3261  E-Mail Address: seanwalsh@idaholegalaid.org  Website Address:  ISB Membership Number: 7235  Admittance Date: 9/29/2005  Current Status: Active</p>
<p>Lori M. Gilmore  414 Main St.  P O Box 1478  Kamiah, ID 83536  (208) 935-4242</p>	<p>University of Idaho  College of Law  Legal Aid Clinic  Moscow, ID 83843-2322  (208)885-6541 or 1-877-200-4455  Fax: (208)885-4628</p>
<p>April A. Atwood  Attorney at Law  Idaho Legal Aid Services  633 Main Street – Suite 100  Lewiston, ID 83501-0973  (208) 743-1556</p>	<p>Jennifer A. Beardsley  Attorney at Law  Idaho Legal Aid Services  633 Main Street – Suite 100  Lewiston, ID 83501-0973  (208) 743-1556</p>
<p>Monica Schurtman  Supervising Attorney  University of Idaho, College of Law  Legal Aid Clinic  Moscow, ID 83843-2322  1-877-200-4455  fax (208) 885-5709</p>	
<p>Karl R. Boettner  Attorney at Law  State of Washington-Division of Child  Support  P O Box 2560  Spokane, WA 99220-2560  (509) 363-5021  1-800-378-6672</p>	<p>Juliana Christine Repp  COLUMBIA LEGAL SERVICES  Attorney at Law  P O Box 1250  Spokane, WA 99210  (509) 893-9479</p>

I. Tribal Code:

- A. Official Designation of Tribal Code: Nez Perce Tribal Code
- B. Source of Copies of Code
- C. <http://www.nezperce.org/~code/index.htm>

D. Nez Perce Tribal Executive Committee

Office of Legal Counsel  
P.O. Box 305  
Lapwai, Idaho 83540  
208-843-7355

E. Cost for Copy of Code: \$35.00, updates \$20.00

II. Code Provisions Defining Court Jurisdiction

§ 1-1-9 Scope and Extent:

The judicial power of the Nez Perce Tribe shall be vested in the tribal judiciary of the Nez Perce Tribe, and shall extend to all cases and controversies in law and equity, arising under the Constitution, By-Laws, laws and regulations of the Nez Perce Tribe, or to which an Indian or Indian owned property is a party.

§ 1-1-10 Territorial Jurisdiction

(a) The territorial jurisdiction of the Nez Perce Tribe shall include all land within the exterior boundaries of the Nez Perce Reservation as defined under Article III of the Nez Perce Tribe's Constitution and By-Laws, and to the greatest extent permissible by law, such other lands as have been or may be added to the reservation, held in trust by the United States for the Nez Perce Tribe or its members or which consist of usual and accustomed fishing locations of the Nez Perce Tribe or open and unclaimed lands.

(b) The jurisdiction of the courts of the Nez Perce Tribe shall extend beyond the Nez Perce Tribe's territorial jurisdiction as set forth above to the extent permissible by law.

§ 1-1-11 Original Jurisdiction:

The Nez Perce Tribal Court shall have original jurisdiction over all:

(a) crimes committed by any Indian within the Nez Perce Reservation;

(b) violations of the Nez Perce Tribe Fish and Game laws committed by a member of the Nez Perce Tribe outside the Nez Perce Reservation at any usual and accustomed fishing place or upon open and unclaimed lands; and

(c) civil actions at law or in equity, involving any person or entity and arising under the Constitution, By-laws, laws and regulations of the Nez Perce Tribe, or to which an Indian or Indian owned property is a party.

#### § 1-1-12 Personal Jurisdiction

(a) The Nez Perce Tribe shall have civil jurisdiction over:

(1) any person residing or present within the reservation or land protected by treaty with the United States government;

(2) any person who transacts, conducts, or performs any business or activity within the reservation by being present on the reservation or by mail, phone, broadcast, cable either in person or by an agent or representative;

(3) any person who owns, uses or possesses any real or personal property situated within the reservation, for any civil cause of action arising from such ownership, use or possession;

(4) any person who commits a tortious act or engages in tortious conduct within the reservation;

(5) persons under the age of eighteen (18) years who are eligible for membership in the tribe;

(6) children and their parent(s), guardian, legal custodians or other persons with responsibility for or control of the child who leave the exterior boundaries of the reservation and over whom the court had jurisdiction at the time they left;

(7) any real or personal property located on the reservation, the determination of ownership thereof or rights therein or to determine the application of such property to the satisfaction of a claim for which the owner of the property may be liable; and

(8) all causes of action, which involve either the tribe, its officers, agents, employees, property or enterprises, a member of the tribe, a member of a federally recognized tribe, or any other matter which effects the interest or rights of the tribe.

(b) The Nez Perce Tribe shall have criminal jurisdiction over:

(1) all crimes committed by any Indian within the boundaries of the Nez Perce Reservation; and

(2) all violations of the Nez Perce Fish and Game Code committed by a member of the Nez Perce Tribe outside the Nez Perce Reservation at any usual and accustomed fishing place or upon open and unclaimed lands.

#### **4. Shoshone-Bannock**

1 SHOSHONE-BANNOCK Tribal Court Information:

- a) Name of Tribal Court: Shoshone-Bannock Tribal Court.
- b) Tribal Court levels:
- c) Qualification Requirements for Judges:

(1) Chief Judge and Associate Judges (2) must be over 25 years of age; enrolled Shoshone-Bannock tribal member; Fort Hall reservation resident for not less than one year prior to appointment; high school education or equivalent; no felony or criminal misdemeanor convictions.

(2) Trial Judges (2): graduate of accredited law school; member Idaho bar; certified to practice in federal court; knowledge of Indian law or member of AIBA or NAICJA; no felony or misdemeanor convictions.

d) Names and Titles of Tribal Judges: (\*attorney judges)

Leo Ariwite - Chief Judge (208) 478-4062

Mary Nacki - Associate Judge (208) 478-4056

Gary Cooper - Appellate Judge

e) Tribal Court Administrator

Tom Katsilometes (208) 278-4065

Administrative Assistant: Leona Jim (208) 278-4065

f) Court Clerk's Office:

i) Clerk of the Court: Adeline Matsaw

Court Address: P.O. Box 306, Fort Hall, ID 83203

Court Telephone: (208) 478-4062

Court Telefax: (208) 478-4077/4071

Name of Clerks

Toni Timbana: Secretary of Court

Verna Dixie: Civil Court Clerk

Thea Teton: Criminal Court Clerk

Chris Osborne: Criminal Court Clerk

Laurie Kniffin: Bonds and Fines Clerk

Clive Tissidimit: Process Server

Clerk's Address: P.O. Box 306, Fort Hall, ID 83203

Clerk's Telephone: (208) 278-4061/4083

- g) Tribal Prosecutor: Qualifications for Tribal Prosecutor: Trained paralegal or knowledge of tribal, federal, and state law applicable to Tribal Court.

Chief Prosecutor: Tim French

Deputy Prosecutor: William Edmo III

Deputy Prosecutor: Corinne Pocatilla

Prosecutor Secretary: Geraldine Redcloud

Prosecutor's Office number: 208-478-4057

Prosecutor's Fax: 208-478-4071

- h) Probation Office:

Adult Probation office:

Bruce Baldwin 221-6097

Juvenile Probation office:

Theresa Appenay

208-604-0176

- i) Tribal Defender:

Defender: Lunita Williams

Juvenile Defender: Be'Arker Perkins

Defender Secretary: Rosalee Johnson

Defender office number: 208-478-4060/4059

- j) Consumer Advocate:

Janalee Johnnie

Consumer advocate office number: 208-478-4054

- k) Requirements to Practice Before Court and Application Process: Must take tribal bar exam to be admitted to practice or have been granted permission to appear pro hac vice. Court administers an annual bar exam.

Attorneys and Advocates Admitted to Practice

<p>Name: Frederick F. Belzer          Address: PO Box 1358, Pocatello, ID 83204          Firm:          Phone: (208) 234-7118 Ext:          Fax: (208) 234-7139          E-Mail Address: belzerlaw@aol.com          Website Address:          ISB Membership Number: 2535          Admittance Date: 4/25/1980          Current Status: Active</p>	<p>Name: Michael Edwin Bostwick          Address: 139 E. South Temple, Ste. 320, Salt Lake City, UT 84111          Firm: Bostwick &amp; Price, PC          Phone: (801) 961-7400 Ext:          Fax: (801) 961-7406          E-Mail Address: mike@bostwickprice.com          Website Address: bostwickprice.com          ISB Membership Number: 4261          Admittance Date: 4/18/1991          Current Status: Active</p>
<p>Name: Hon. Ronald E. Bush          Address: PO Box 4126, Pocatello, ID 83205          Firm: Sixth District Court          Phone: (208) 236-7520 Ext:          Fax: (208) 236-7208          E-Mail Address: reb@co.bannock.id.us          Website Address:          ISB Membership Number: 3066          Admittance Date: 9/30/1983          Current Status: Judge</p>	<p>Name: Gary Theo Dance          Address: PO Box 817, Pocatello, ID 83204-0817          Firm: Moffatt, Thomas, Barrett, Rock &amp; Fields, Chtd.          Phone: (208) 233-2001 Ext:          Fax: (208) 232-0150          E-Mail Address: gtd@moffatt.com          Website Address: www.moffatt.com          ISB Membership Number: 1513          Admittance Date: 11/1/1973          Current Status: Active</p>
<p>Name: Hon. Scott Hillam Hansen          Address: 501 N. Maple, #402, Blackfoot, ID 83221          Firm: Bingham County Magistrate Court          Phone: (208) 782-3121 Ext:          Fax: (208) 782-3167          E-Mail          Address: shansen@co.bingham.id.us          Website Address:          ISB Membership Number: 3551          Admittance Date: 4/16/1987          Current Status: Judge</p>	<p>Name: James Timothy Hungelmann          Address: , ,          Firm:          Phone: Ext:          Fax:          E-Mail Address:          Website Address:          ISB Membership Number: 2338          Admittance Date: 9/22/1978          Current Status: Inactive</p>
<p>Name: James Timothy Hungelmann          Address: , ,          Firm:          Phone: Ext:          Fax:          E-Mail Address:          Website Address:</p>	<p>Name: Stephen Blaser          Address: PO Box 1047, Blackfoot, ID 83221          Firm: Blaser, Sorensen &amp; Oleson, Chtd          Phone: (208) 785-4700 Ext:          Fax: (208) 785-7080          E-Mail Address:          Website Address:</p>

<p>ISB Membership Number: 2338  Admittance Date: 9/22/1978  Current Status: Inactive</p>	<p>ISB Membership Number: 1923  Admittance Date: 9/24/1976  Current Status: Active</p>
<p>Name: Dwight R. Bowen  Address: , ,  Firm:  Phone: Ext:  Fax:  E-Mail Address:  Website Address:  ISB Membership Number: 1243  Admittance Date: 10/10/1969  Current Status: Resigned in Lieu of Discipline</p>	<p>Name: Gary Lee Cooper  Address: PO Box 4229, Pocatello, ID 83205-4229  Firm: Cooper &amp; Larsen  Phone: (208) 235-1145 Ext:  Fax: (208) 235-1182  E-Mail Address: gary@cooper-larsen.com  Website Address:  ISB Membership Number: 1814  Admittance Date: 9/30/1975  Current Status: Active</p>
<p>Name: Andrew Paul Doman  Address: 907 Main Avenue, St. Maries, ID 83861  Firm: Christensen &amp; Doman, PC  Phone: (208) 245-9155 Ext:  Fax: (208) 245-1095  E-Mail Address: apd@christdom.net  Website Address: www.christdom.net  ISB Membership Number: 3879  Admittance Date: 9/22/1988  Current Status: Active</p>	<p>Name: Kent Lee Hawkins  Address: PO Box 991, Pocatello, ID 83204-0991  Firm: Merrill &amp; Merrill, Chtd.  Phone: (208) 232-2286 Ext:  Fax: (208) 232-2499  E-Mail  Address: klh@merrillandmerrill.com  Website Address:  ISB Membership Number: 3791  Admittance Date: 3/31/1988  Current Status: Active</p>
<p>Name: Luvern Charles Johnson III  Address: PO Box 1725, Pocatello, ID 83204  Firm: Johnson Olson Chtd  Phone: (208) 232-7926 Ext:  Fax: (208) 232-9161  E-Mail Address: cjlaw@allidaho.com  Website Address:  ISB Membership Number: 2464  Admittance Date: 9/21/1979  Current Status: Active</p>	<p>Name: Reed W. Larsen  Address: PO Box 4229, Pocatello, ID 83205  Firm: Cooper &amp; Larsen  Phone: (208) 235-1145 Ext:  Fax: (208) 235-1182  E-Mail Address: reed@cooper-larsen.com  Website Address:  ISB Membership Number: 3427  Admittance Date: 9/27/1985  Current Status: Active</p>
<p>Name: Nick Lewis Nielson  Address: PO Box 6159, Pocatello, ID 83205-6159  Firm:  Phone: (208) 232-1735 Ext:  Fax: (208) 232-0048  E-Mail</p>	<p>Name: Valerie Jean Phillips  Address: College of Law, 3120 E. 4th Place, Tulsa, OK 74104  Firm: University of Tulsa  Phone: (918) 631-2401 Ext:  Fax:  E-Mail Address: valerie-</p>

<p>Address: nicknielsonlaw@cableone.net  Website Address:  ISB Membership Number: 3787  Admittance Date: 9/22/1988  Current Status: Active</p>	<p>phillips@utulsa.edu  Website Address:  ISB Membership Number: 4626  Admittance Date: 4/22/1993  Current Status: Affiliate</p>
<p>Name: Stephen Hammon Telford  Address: 1995 Fremont Avenue, MS 1209,  Idaho Falls, ID 83401  Firm: U.S. Department of Energy  Phone: (208) 526-6491 Ext:  Fax: (208) 526-7632  E-Mail Address: apttelford@ida.net  Website Address:  ISB Membership Number: 3372  Admittance Date: 9/27/1985  Current Status: Active</p>	<p>Name: Daniel John Whyte  Address: 50 South Last Chance Gulch,  Helena, MT 59601  Firm: Keller, Reynolds, Drake, Johnson &amp;  Gillispie  Phone: (406) 442-0230 Ext:  Fax:  E-Mail  Address: djwhyte@kellerlawmt.com  Website Address:  ISB Membership Number: 3918  Admittance Date: 9/21/1989  Current Status: Affiliate</p>
<p>Name: Michael Joseph Whyte  Address: 2635 Channing Way, Idaho Falls,  ID 83404  Firm: Thomsen Stephens Law Offices,  PLLC  Phone: (208) 522-1230 Ext:  Fax: (208) 522-1277  E-Mail Address:  Website Address:  ISB Membership Number: 4645  Admittance Date: 4/22/1993  Current Status: Active</p>	<p>Name: Bruce Allen Padget  Address: , ,  Firm:  Phone: Ext:  Fax:  E-Mail Address:  Website Address:  ISB Membership Number: 3729  Admittance Date: 9/24/1987  Current Status: Inactive</p>
<p>Name: John Dickey Ross III  Address: , ,  Firm:  Phone: Ext:  Fax:  E-Mail Address:  Website Address:  ISB Membership Number: 2870  Admittance Date: 4/29/1982  Current Status: Inactive</p>	<p>Name: Steven Anthony Thomsen  Address: PO Box 4747, Pocatello, ID  83205  Firm: Meyers &amp; Thomsen, PLLP  Phone: (208) 233-4121 Ext:  Fax: (208) 233-4174  E-Mail Address: stevethomsen@qwest.net  Website Address:  ISB Membership Number: 2122  Admittance Date: 9/23/1977  Current Status: Active</p>
<p>Name: Mark Andrew EchoHawk  Address: PO Box 6119, Pocatello, ID  83205-6119</p>	<p>Name: Paul C. EchoHawk  Address: PO Box 6119, Pocatello, ID  83205-6119</p>

Firm: EchoHawk Law Offices Phone: (208) 478-1624 Ext: Fax: (208) 478-1670 E-Mail Address: mark@echohawk.com Website Address: www.echohawk.com ISB Membership Number: 5977 Admittance Date: 9/30/1999 Current Status: Active Robert Cutler Pocatello, ID	Firm: EchoHawk Law Offices Phone: (208) 478-1624 Ext: 104 Fax: (208) 478-1670 E-Mail Address: paul@echohawk.com Website Address: www.echohawk.com ISB Membership Number: 5802 Admittance Date: 9/24/1998 Current Status: Active Danford Dann Sr. Pocatello, ID
Robert Gonzales Pocatello, ID	Steve Knapp Pocatello, ID
Clyde M. Hall Fort Hall, ID	Linda B. Petersen McCammon, ID
Julie A. Nagashoah Pocatello, ID	Malissa Poog Pocatello, ID
Rulon Poog Pocatello, ID	Lynn Thompson Fort Hall, ID
Diane K. Yupe Pocatello, ID	William Trahant Fort Hall, ID

## 2 Tribal Code

- i) Official Designation of Tribal Code:
- ii) Source of Copies of Code: Court Administrator
- iii) Cost for Copy of Code: \$130.00.
- iv) Rules of Criminal Procedure: Chapter XX, Tribal Code
- v) Rules of Civil Procedure: Chapter III, Tribal Code
- vi) Code Provisions Defining Court Jurisdiction:

### Section 2: Jurisdiction

The Shoshone Bannock Tribal Court shall have civil and criminal jurisdiction as provided in this Law and Order Code.

The Shoshone Bannock Tribal Court shall have original jurisdiction over:

(a) All crimes enumerated in this Code, which are committed within the territorial jurisdiction of the Shoshone Bannock Tribal Court.

(b) All civil actions arising under this Code or at common law in which the defendant is found within the Fort Hall reservation and is served with process within, or who is found outside the Fort Hall reservation and is validly served with process.

(c) Criminal jurisdiction over all Indians, and civil jurisdiction over all persons who enter the exterior boundaries of the Fort Hall reservation for whatever purpose, said act of entry being construed as consent to such jurisdiction.

(d) The jurisdiction of the Shoshone Bannock Tribal Court shall be concurrent and not exclusive with respect to an offense over which a federal or state court may have lawful jurisdiction.

(e) The territorial jurisdiction of the Shoshone Bannock Tribal Court shall embrace all land and waters within the exterior boundaries of the Fort Hall Indian Reservation, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, and including all waters thereon.

#### Section 2.1 Civil Jurisdiction

The Shoshone Bannock Tribal Court shall have jurisdiction over all civil matters and actions as described in this Law and Order Code, as well as civil jurisdiction over all ordinances that may hereafter be passed by the Fort Hall Business Council and amendments to this Code that may hereafter be adopted; and, any person may file a civil cause of action in the Shoshone Bannock Tribal Court wherein the cause of action arose within the exterior boundaries of the Fort Hall Reservation, and that Court shall have

jurisdiction thereof. The civil jurisdiction of the Court is not limited by the amount or value in controversy, including interest.

#### Section 2.2 Criminal Jurisdiction

The Shoshone Bannock Tribal Court shall have criminal jurisdiction over all offenses enumerated in this Law and Order Code when said offenses are committed by any Indian of any federally recognized tribe while within the exterior boundaries of the Fort Hall Reservation.

With respect to any of the criminal offenses enumerated within this Law and Order Code over which federal courts may have jurisdiction, the jurisdiction of the Shoshone Bannock Tribal Court shall be concurrent and not exclusive. The Shoshone Bannock Tribal Court shall order delivery of any offender upon demand to the proper federal authority for prosecution where said authority has jurisdiction over the offense and offender.

### Chapter III

#### Section 1.2 Jurisdiction in Civil Matters

The Shoshone Bannock Tribal Court shall have jurisdiction of all civil suits wherein the plaintiff is the Shoshone Bannock Tribes or is a member of that tribe, or a member of a federally recognized tribe.

The civil jurisdiction of the court is not limited to the amount of value in controversy, including interest.

## **5. Shoshone-Paiute**

### 1 SHOSHONE-PAIUTE Tribal Court Information:

- a) Name of Tribal Court: Shoshone-Paiute Tribal Court.

- b) Tribal Court levels: Tribal Court; Children's Court; Intertribal Court of Appeals.
- c) Qualification Requirements for Judges:

(1) All Judges must be over 25 years of age; never been convicted of a felony; not a member of the Business Council; must be employee of the tribe or the U.S. government; must be able to read, write, and understand English.

- d) Names and Titles of Tribal Judges:

Chief Judge - Virginia Shaw - [ginge\\_ally35@yahoo.com](mailto:ginge_ally35@yahoo.com)

Associate Judge – Calvin Hatch

- e) Court Clerk's Office

Clerk of the Court - Tex M. Blossom

Clerk's Address: P.O. Box 219, Owyhee, NV 89832

Clerk's Telephone: (775) 757-2741

Clerk's Telefax: (775) 757-2708

- f) Tribal Prosecutor. Qualifications for Tribal Prosecutor: Prosecutor appointed by Shoshone-Paiute Business Council; must be knowledgeable of court proceedings; ability to communicate.

Prosecutor's Name: Phyllis Astarloa

Prosecutor's Address: P.O. Box 219, Owyhee, NV 89832

Prosecutor's Telephone: (702) 757-3753

Prosecutor's Telefax: (702) 757-2708

- g) Tribal Defender Qualification Requirements for Defender: Never been convicted of an unpardoned crime.

Defender's Name: Ruben Harney

Defender's Address: P.O. Box 219, Owyhee, NV 89832

Defender's Telephone: (775) 757-2741

Defender's Telefax: (775) 757-2708

- 2 Requirements to Practice Before Court and Application Process: Must be admitted to practice in Tribal Court and be enrolled as a counselor of the Tribal Court; member in good standing of the bar in any federal or state court.

Attorneys and Advocates Admitted to Practice

Ruben Harney Owyhee, NV
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- 3 Tribal Code

- (a) Official Designation of Tribal Code:
- (b) Source of Copies of Code: Tribal Court Clerk
- (c) Cost for Copy of Code: \$1.00 per page
- (d) Rules of Criminal Procedure
- (e) Rules of Civil Procedure: Chapter II

Code Provisions Defining Court Jurisdiction

## **F. Bibliography of Indian Law Materials at Supreme Court Law Library**

*American Indian Tribal Courts: The Costs of Separate Justice* (by Samuel J. Brakel) (published by American Bar Foundation, 1978) (KF8224.C6B73)

*American Farmers and the Rise of Agribusiness: Seeds of Struggle/American Indians Dispossessed: Fraud in Land Cessions Forced Upon the Tribes* (by Walter Hart Blumenthal) (published by George S. MacManus Co., 1975) (KF8205.B53)

*American Indian Law Deskbook: Conference of Western Attorneys General* (published by the University Press of Colorado, 1993 & Supplement 1994) (KF8205.A76 1993)

*American Indian Law in a Nutshell* (by William C. Canby, Jr.) (published by West Publishing Co., 1981) (KF8205.Z9C36)

*Announcements and NARF Legal Review* (published by the Native American Rights Fund, 1972-95) (KF8201.A3N16)

*Cases and Materials on Federal Indian Law* (published by West Publishing Co., 1979 & supplement 1983) (KF8204.5.G47)

*Certified Copy of the Original Minutes of the Official Proceedings at the Council in Walla Walla Valley, Which Culminated in the Stevens Treaty of 1855* (published 1855) (KF8202 1855)

*Civil Jurisdiction of Tribal and State Courts: From Conflict to Common Ground* (published 1991) (KF8210.J8C5 1991)

*Decision of the Indian Claims Commissioner Pertaining to Shoshone-Bannock Tribe and Lemhi Tribe of Fort Hall, Idaho. Re: State of Idaho vs. Tinno, No. 10737 1971* (published 1971) (KF8204.I5)

*Disputing the Dead: U.S. Law on Aboriginal Remains and Grave Goods* (by H. Marcus Price III) (published by University of Missouri Press, 1991) (KF8210.A57P75 1991)

*Documents of United States Indian Policy* (published by University of Nebraska Press, 1975) (KF8025.I6U58 1958)

*Executive Orders Relating to Indian Reservations 1855-1922* (published by Government Printing Office, 1922) (KF8201.U55)

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Report No. 1044) (published by U.S. Government Printing Office, 1965) (KF8205.I53)

*Fort Hall Indian Reservation* (by Robert Donlevy, 1968) (KF8203 1934)

*Forum on Sovereignty: Divergent Jurisdictions* (published 1990) (KF8210.J8F67 1990)

*Guide to American Indian Documents in the Congressional Serial Set: 1817-1899* (by Steven L. Johnson) (published by Clearwater Publishing Co., 1977) (KF8201.A1J63)

*Handbook of Federal Indian Law* (1982 ed.) (by Felix S. Cohen) (published by Michie Co., 1982) (KF8205.C6 1982)

*Index to the Decisions of the Indian Claims Commission* (by Clearwater Publishing Company, Inc., 1973) (KF8208.A554 INDEX)

*Indian Affairs Laws and Treaties* (seven volumes) (published by Government Printing Office, 1904-1980) (KF8201.K2)

*Indian Giving Federal Programs for Native Americans* (published by The John Hopkins University Press, 1975) (KF8205.L45)

*Indian Health Trends and Services* (1969 ed.) (published by U.S. Department of Health, Education, and Welfare, 1969) (KF8210.H4.U5)

*Indian Justice: A Research Bibliography* (published by the Council of Planning Librarians, 1976) (KF8201.A1W4)

*Indian Law Digest* (published by University of Montana School of Law, 1972-73) (KF8204.I5 DIG)

*Indian Law Reporter* (published by American Indian Lawyer Training Program, 1994-95) (KF8201.A3I5)

*Indian Self-Determination and the Role of Tribal Courts: A Survey of Tribal Courts Conducted by the American Indian Lawyer Training Program* (published 1976?)

*Indian Tribes as Sovereign Governments: A Source Book on Federal-Tribal History, Law and Policy* (published by the American Indian Lawyer Training Program, Inc., 1988) (KF8205.I55 1988)

*Law and Order of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation* (published 1987) (KF8220.A315.S5 1988)

*Law and the American Indian: Readings, Notes and Cases* (2d ed.) (published by Michie Co., 1983) (KF8205.A7P93 1983)

*Legal Issues in Indian Jurisdiction* (published by the National Association of Attorneys General Committee on the Office of Attorney General, 1976) (KF8210.J8N4 1976)

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(published by the National Archives, Washington, 1975)

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*National Indian Law Library Catalogue: An Index to Indian Legal Materials and Resources* (published by The National Indian Law Library Native American Rights Fund, 1982 and supplement 1984 and supplement 1989) (KF8201.A1 N38)

*“New Horizons” Indian Leaders Conference* (published 1966) (KF8205.Z9.N4)

*Reference Encyclopedia of the American Indian* (3d ed.) (published by Todd Publications, 1978) (KF8203.3.R4 1978)

*Report of the Tribal-State Forum* (published by the South Dakota Unified Judicial System, December, 1992) (located in Administrative Director’s office)

*South Dakota Tribal Court Handbook* (rev. ed.) (by Frank Pommersheim) (published 1992) (located in Administrative Director’s office)

*The Law and Order Code of the Ute Indian Tribe of the Uintah and Ouray Reservation Utah* (located in State Law Librarian’s office)

*Tribal Court-State Court Forums: A How-To-Do-It Guide to Prevent and Resolve Jurisdictional Disputes and Improve Cooperation Between Tribal and State Courts* (published by National Center for State Courts State Justice Institute, 1993) (KF8224.C6 G72 1993)

*Uncle Sam’s Stepchildren: The Reformation of United States Indian Policy, 1865-1887* (by Loring Benson Priest) (published by University of Nebraska Press, 1969) (KF8205.P7)

## **G. Federal Laws Of Importance**

1. Public Law 83-280

2. Criminal: 25 U.S.C. § 1321  
Assumption by state of criminal jurisdiction

3. Consent of United States; force and effect of criminal laws The consent of the United States is hereby given to any state not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such state to assume, with the consent of the Indian tribe occupying the

particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such state to the same extent that such state has jurisdiction over any such offense committed elsewhere within the state, and the criminal laws of such state shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that state.

(b) Alienation, encumbrance, taxation, and use of property; hunting, trapping, or fishing

Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

4. Civil: 25 U.S.C. § 1322

Assumption by state of civil jurisdiction

5. Consent of United States; force and effect of civil laws

The consent of the United States is hereby given to any state not having jurisdiction over civil causes of action between Indians or to which Indians are

parties which arise in the areas of Indian country situated within such state to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such state to the same extent that such state has jurisdiction over other civil causes of action, and those civil laws of such state that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that state.

(b) Alienation, encumbrance, taxation, use, and probate of property

Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Force and effect of tribal ordinances or customs

Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant to this section.

## 6. Indian Civil Rights Act: 25 U.S.C. §§ 1301-1302

### 1301. Definitions

For purposes of this subchapter, the term -

(1) “Indian tribe” means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;

(2) “powers of self-government” means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;

(3) “Indian court” means any Indian tribal court or court of Indian offense; and

(4) “Indian” means any person who would be subject to the jurisdiction of the United States as an Indian under § 1153 of Title 18 if that person were to commit an offense listed in that section in Indian country to which that section applies.

### 1302. Constitutional rights

No Indian tribe in exercising powers of self-government shall:

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be

searched and the person or thing to be seized;

- (3) subject any person for the same offense to be twice put in jeopardy;
- (4) compel any person in any criminal case to be a witness against himself;
- (5) take any private property for a public use without just compensation;
- (6) deny to any person in a criminal proceeding the right to a speedy and

public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or *ex post facto* law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

#### 7. Indian Country Defined: 18 U.S.C. § 1151

Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country”, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United

States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

8. General Crimes Act: 18 U.S.C. § 1152

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to Indian country. This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

9. Major Crimes Act: 18 U.S.C. § 1153

(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under Chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury [as defined in section 1365 of this title], an assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and a felony under section 661 of this title within Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the state in which such offense was committed as are in force at the time of such offense.

10. Intoxicants Dispensed in Indian Country: 18 U.S.C. § 1154

(a) Whoever sells, gives away, disposes of, exchanges, or barter any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or other intoxicating liquor of any kind whatsoever, except for scientific, sacramental, medicinal or mechanical purposes, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian to whom an allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian who is a ward of the Government under charge of any Indian superintendent, or to any Indian, including mixed bloods, over whom the Government, through its departments, exercises, guardianship, and whoever introduces or attempts to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into Indian country, shall, for the first offense, be fined under this title or imprisoned not more than one year, or both; and, for each subsequent offense, be fined under this title or imprisoned not more than five years, or both.

(b) It shall be a sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country that the acts charged were done under authority, in writing, from the Department of the Army or any officer duly authorized thereunto by the Department of the Army, but this subsection shall not bar the prosecution of any officer, soldier, sutler or storekeeper, attaché, or employee of the Army of the United States who barter, donate, or furnishes in any manner whatsoever liquors, beer, or any intoxicating beverage whatsoever to any Indian.

(c) The term "Indian country" as used in this section does not include fee-patented lands in non-Indian communities or rights-of-way through Indian reservations, and this section does not apply to such lands or rights-of-way in the absence of a treaty or statute extending the Indian liquor laws thereto.

11. Intoxicants Dispensed on School Site: 18 U.S.C. § 1155

Whoever, on any tract of land in the former Indian country upon which is located any Indian school maintained by or under the supervision of the United States, manufactures, sells, gives away, or in any manner, or by any means furnishes to anyone, either for himself or another, any vinous, malt, or fermented liquors, or any other intoxicating drinks of any kind whatsoever, except for scientific, sacramental, medicinal or mechanical purposes, whether medicated or not, or who carries, or in any manner has carried, into such area any such liquors or drinks, or who shall be interested in such manufacture, sale, giving away, furnishing to anyone, or carrying into such area any of such liquors or drinks, shall be fined under this title or imprisoned not more than five years, or both.

12. Intoxicants Possessed Unlawfully: 18 U.S.C. § 1156 Whoever, except for scientific, sacramental, medicinal or mechanical purposes, possesses intoxicating liquors in the Indian country or where the introduction is prohibited by treaty or an Act of Congress, shall, for the first offense, be fined not more than \$500 or imprisoned not more than one year, or both; and, for each subsequent offense, be fined under this title or imprisoned not more than five years, or both. The term “Indian country” as used in this section does not include fee-patented lands in non-Indian communities or rights-of-way through Indian reservations, and this section does not apply to such lands or rights-of-way in the absence of a treaty or statute extending the Indian liquor laws thereto.

13. Destroying Boundary and Warning Signs: 18 U.S.C. § 1164

Whoever willfully destroys, defaces, or removes any sign erected by an Indian tribe, or a Government agency (1) to indicate the boundary of an Indian reservation or

of any Indian country as defined in section 1151 of this title or (2) to give notice that hunting, trapping, or fishing is not permitted thereon without lawful authority or permission, shall be fined under this title or imprisoned not more than six months, or both.

14. Hunting, Trapping, or Fishing on Indian Land: 18 U.S.C. § 1165

Whoever, without lawful authority or permission, willfully and knowingly goes upon any land that belongs to any Indian or Indian tribe, band, or group and either are held by the United States in trust or are subject to a restriction against alienation imposed by the United States, or upon any lands of the United States that are reserved for Indian use, for the purpose of hunting, trapping, or fishing thereon, or for the removal of game, peltries, or fish therefrom, shall be fined not more than \$200 or imprisoned not more than ninety days, or both, and all game, fish, and peltries in his possession shall be forfeited.

**H. State Laws of Importance**

1. **I.C. 67-5101**: State jurisdiction for civil and criminal enforcement concerning certain matters arising in Indian country.

The state of Idaho, in accordance with the provisions of 67 Statutes at Large, page 589 (Public Law 280) hereby assumes and accepts jurisdiction for the civil and criminal enforcement of state laws and regulations concerning the following matters and purposes arising in Indian country located within this state, as Indian country is defined by Title 18, United States Code 1151, and obligates and binds this state to the assumption thereof:

- a. Compulsory school attendance
- b. Juvenile delinquency and youth rehabilitation
- c. Dependent, neglected and abused children

d. Insanities and mental illness

e. Public assistance

f. Domestic relations

g. Operation and management of motor vehicles upon highways and roads maintained by the county or state, or political subdivisions thereof.

2. **I.C. 67-5102**: Additional state jurisdiction with consent of tribe governing body

Additional state jurisdiction in criminal and civil causes of action may be extended to particular reservations or Indian country with the consent of the governing body of the tribe occupying the Indian country effected [affected] by the assumption of such additional jurisdiction. This may be achieved by negotiation with the tribe or by unilateral action by the tribe. In every case the extent of such additional jurisdiction shall be determined by a resolution of the tribal governing body and become effective upon the tribe's transmittal of the resolution to the attorney general of the state of Idaho. Such resolution may effectively accept jurisdiction as to any particular field of criminal or civil jurisdiction. All state jurisdiction extended by virtue of this act shall be concurrent (and not exclusive) with jurisdiction in the same matters existing in the tribes or the federal government.

3. **I.C. 67-5103**: Matters excepted from state jurisdiction

Nothing in this act shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any

federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, statute, or executive order with respect to Indian land grants, hunting, trapping, or fishing or the control, licensing, or regulation thereof.

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