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RECOGNITION AND ENFORCEMENT  
OF TRIBAL COURT ORDERS  
IN STATE COURTS

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Indian tribes have occupied the territory that now comprises the United States since time immemorial. And since time immemorial the tribes have had internal mechanisms for resolving disputes and imposing sanctions for transgressions within their communities.

With the advent of the United States two concepts took root: First, Article 1, Section 8 of the United States Constitution vested Congress with the authority to engage in relations with the tribes. Tribes were firmly established as unique political entities within the Constitutional system. Second, Article IV, Section 1 of the United States Constitution required that "full faith and credit shall be given in each State to the public Acts, Records, and judicial Proceedings, of every other state." Prior to ratification of the Constitution creditors chased debtors from one foreign colony to another in an often unsuccessful effort to enforce a money judgment. A more overarching concern seems to have been to balance between solidifying the union of states and individual state authority.

Whatever the vision of the future shape and size of the country the Founding Fathers or those drafting and ratifying the Constitution may have been, the tribes were not thought of as part of the country. Today the 566 federally recognized Indian tribes exist within the exterior borders of the United States. Their place within our Constitutional system has been long established in law and policy. Their sovereign authority to make their own laws and be governed by such laws is undisputed.

How tribes and states view one another and how they conduct their relations are varied and evolving. These brief materials are intended to introduce the reader to in-depth and thoughtful commentary on the balance between tribes as a part of a unified constitutional system and tribes as unique, individual sovereigns and more particularly application by state courts of the concepts of comity and full faith and credit to tribal court orders .

The genesis of many of today's tribal courts and a tension that has made full integration of those courts into the national judicial fabric problematic is described by B.J. Jones, Director of the Tribal Judicial Institute at the University of North Dakota School of Law:

Although Native people had methods of resolving disputes prior to the introduction of Anglo law to the North American continent, formal court institutions are a rather recent development in Indian Country. The development of tribal courts can be traced to a case occurring in the 1880's on what is now the Rosebud Indian reservation in South Dakota when a Lakota named Crow Dog allegedly killed another Lakota, Spotted Tail. At the time of the killing, there was no formal Lakota court system, but instead the Lakota, utilizing traditional methods of resolving disputes,

required Crow Dog to provide restitution to Spotted Tail's family by providing necessary provisions to the family. The federal territorial courts, concerned that the Lakota way had resulted in Crow Dog going unpunished, stepped in and prosecuted Crow Dog for murder. The United States Supreme Court held that the federal territorial court could not prosecute Crow Dog for murder because the Lakota had been reserved the right to hand out its own justice in the treaty between the Lakota Sioux and the United States. See *Ex parte Crow Dog*, 109 U.S. 556 (1883).

The United States government felt that this case showed a lack of law enforcement and justice in Indian Country and quickly acted to bring Indian people who committed serious crimes under federal authority. The United States Department of Interior, the federal agency directing Indian affairs, also acted to set up court systems on Indian reservations called "Courts of Indian Offenses", which could handle less serious criminal actions as well as resolving disputes among tribal members. Non-Indians could not be brought in to these courts without their express consent. Many of the judges in these court systems were the local BIA superintendents whose objectives were to absorb Native people into the non-Indian world and to suppress any activities that interfered with this integration goal. A majority of these courts and Codes under which they operated did not reflect Native values and customs, but instead were efforts to change those values into the values the dominant society found important.

B.J. Jones, *Role of Indian Tribal Courts in the Justice System*, at 3 (Mar. 2000) (footnotes omitted), available at <http://www.nrc4tribes.org/files/Role%20of%20Indian%20Tribal%20Courts-BJ%20Jones.pdf>.

With passage of the Indian Reorganization Act in 1934 and promulgation of enabling regulations, tribes began the process of setting up their own court systems and enacting their own written laws. See 48 Stat. 984, 3 Fed. Reg. 952-959 (1938). There is still uncertainty, confusion, misinformation, and cultural bias that influences the perception of tribal courts, the laws and procedures that apply in those forums, and the fairness, particularly for non-Indians, of those forums.

However, both state and tribal courts are confronted with a very mobile population and an ever growing complex of business, economic and personal relationships that involve tribes, tribal enterprises and Indians and non-Indians who reside or are employed in tribal communities. Properly exercising their jurisdiction tribal and state courts ought not to have fear their time and resources will be wasted because their judgments will not be recognized and enforced by the courts of the other sovereign. Likewise parties ought

not to have to face the prospect of relitigating matters because one sovereign refuses to recognize and enforce the judgment of the other.

There are a limited number of federal statutes that specifically require state courts to grant full faith and credit to the judgments of tribal courts - most notably the Indian Child Welfare Act (see 25 U.S.C. 1911(d)), and the Violence Against Women Act (see 18 U.S.C. 2265(a)). States today have varying approaches to recognition and enforcement of tribal court orders. Some state appellate courts have found the language of the federal full faith and credit act, 28 U.S.C. 1738, to be broad enough to include tribes. See, e.g., Sheppard v. Sheppard, 655 P.2d 895, 901 (Idaho 1982); Jim v. CIT Fin. Servs. Corp., 533 P.2d 751, 752 (N.M. 1975); In re Adoption of Buehl, 555 P.2d 1334, 1342 (Wash. 1976). Other states have found the Full Faith and Credit Act does not include tribes. See, e.g., Brown v. Babbitt Ford, Inc., 571 P.2d 689, 694 (Ariz. Ct. App. 1977); Red Fox v. Hettich, 494 N.W.2d 638, 647 (S.D. 1993).

Some states have established by court rule a mechanism for recognition and enforcement of tribal court orders. The following examples apply the process to tribal court orders irrespective of where the tribe is located:

### **Arizona Rules of Procedure for the Recognition of Tribal Court Judgments:**

#### **RULE 1. APPLICABILITY**

These rules shall govern the procedures for recognition and enforcement by the superior courts of the State of Arizona of tribal court civil judgments of any federally recognized Indian tribe. Determinations regarding recognition and enforcement of a tribal judgment pursuant to these rules shall have no effect upon the independent authority of that tribal judgment. To the extent that they are not inconsistent with these rules, the Arizona Rules of Civil Procedure shall apply.

These rules do not apply to tribal judgments for which federal law requires that states grant full faith and credit recognition or for which state law mandates different treatment.

Nothing in these rules shall be deemed or construed to expand or limit the jurisdiction either of the State of Arizona or any Indian tribe.

#### **RULE 2. DEFINITIONS**

As used throughout these rules:

(a) "Tribal court" means any court or other tribunal of any federally recognized Indian nation, tribe, pueblo, band, or Alaska Native village, duly established under tribal or federal law, including courts of Indian Offenses organized pursuant to Title 25, Part 11 of the Code of Federal Regulations.

(b)“Tribal judgment” means any final written judgment, decree or order of a tribal court duly authenticated in accordance with the laws and procedures of the tribe or tribal court.

### RULE 3. FILING PROCEDURES

(a) Documents to be Filed.

A copy of any tribal judgment may be filed in the office of the clerk of the superior court in any county of this state.

(b) Notice of Filing.

The person filing the tribal judgment shall make and file with the clerk of the superior court an affidavit setting forth the name and last known address of the party seeking enforcement and the responding party. Promptly upon the filing of the tribal judgment and the affidavit, the enforcing party shall serve upon the responding party a notice of filing of the tribal judgment, together with a copy of the judgment, in accordance with Rule 4.1, Arizona Rules of Civil Procedure, or shall mail by certified mail, return receipt requested, the notice of filing and a copy of the judgment to the responding party at the last known address. If the responding party is the State of Arizona, or any of its officers, employees, departments, agencies, boards, or commissions, the notice of filing shall be mailed to the Attorney General’s Office.

The enforcing party shall file proof of service or mailing with the clerk. The notice of filing shall include the name and address of the enforcing party and the enforcing party’s attorney, if any, and shall include the text of Rules 4 and 5(a) and (b).

### RULE 4. RESPONSES

Any objection to the enforcement of a tribal judgment shall be filed within twenty (20) days of service or of receipt of the mailing of the notice of filing the judgment, or within twenty-five (25) days of the date of mailing, whichever last occurs.

If an objection is filed within this time period, the superior court may, in its discretion, set a time period for replies and/or set the matter for hearing.

### RULE 5. RECOGNITION OF TRIBAL JUDGMENTS

(a) Enforcement of Tribal Judgment.

A tribal judgment, unless objected to in accordance with Rule 4, shall be recognized and enforced by the courts of this state to the same extent and shall have the same effect as any judgment, order, or decree of a court of this state.

(b) Certification by Clerk of Court.

If no objections are timely filed, the clerk shall issue a certification that no objections were timely filed, and the tribal judgment shall be enforceable in the same manner as if issued by the superior court.

(c) Mandatory Considerations Following Objection.

A tribal judgment shall not be recognized and enforced if the objecting party demonstrates to the court at least one of the following:

1. The tribal court did not have personal or subject matter jurisdiction.
2. The defendant was not afforded due process.

(d) Discretionary Considerations Following Objection.

The superior court may, in its discretion, recognize and enforce or decline to recognize and enforce a tribal judgment on equitable grounds, including:

1. The tribal judgment was obtained by extrinsic fraud.
2. The tribal judgment conflicts with another final judgment that is entitled to recognition.

**Washington Civil Rule 82.5**

TRIBAL COURT JURISDICTION

(a) Indian Tribal Court; Exclusive Jurisdiction. Where an action is brought in the superior court of any county of this state, and where, under the Laws of the United States, exclusive jurisdiction over the matter in controversy has been granted or reserved to an Indian tribal court of a federally recognized Indian tribe, the superior court shall, upon motion of a party or upon its own motion, dismiss such action pursuant to CR 12(b)(1), unless transfer is required under federal law.

(b) Indian Tribal Court; Concurrent Jurisdiction. Where an action is brought in the superior court of any county of this state, and where, under the Laws of the United States, concurrent jurisdiction over the matter in controversy has been granted or reserved to an Indian tribal court of a federally recognized Indian tribe, the superior court may, if the interests of justice require, cause such action to be transferred to the appropriate Indian tribal court. In making such determination, the superior court shall consider, among other things, the nature of the action, the interests and identities of the parties, the convenience of the parties and witnesses, whether state or tribal law will apply to the matter in controversy, and the remedy available in such Indian tribal court.

(c) Enforcement of Indian Tribal Court Orders, Judgments or Decrees. The superior courts of the State of Washington shall recognize, implement and enforce the orders, judgments and decrees of Indian tribal courts in matters in which either the exclusive or concurrent jurisdiction has been granted or reserved to an Indian tribal court of a federally recognized tribe under the Laws of the United States, unless the superior court finds the tribal court that rendered the order, judgment or decree (1) lacked jurisdiction over a party or the subject matter, (2) denied due process as provided by the Indian Civil Rights Act of 1968, or (3) does not reciprocally provide for recognition and implementation of orders, judgments and decrees of the superior courts of the State of Washington.

Some state legislatures have by statute created a mechanism for recognition and enforcement of tribal court orders, in these examples, limiting application to tribes located within that state:

**North Carolina General Statutes § 1E-1 Full faith and credit**

(a) The courts of this State shall give full faith and credit to a judgment, decree, or order signed by a judicial officer of the Eastern Band of Cherokee Indians and filed in the Cherokee Tribal Court to the same extent as is given a judgment, decree, or order of another state, subject to the provisions of subsection (b) of this section; provided that the judgments, decrees, and orders of the courts of this State are given full faith and credit by the Tribal Court of the Eastern Band of Cherokee Indians.

(b) Judgments, decrees, and orders specified in subsection (a) of this section shall be given full faith and credit subject to the provisions of G.S. 1C-1705, G.S. 1C-1708, G.S. 1C-1804, and G.S. 1C-1805 and shall be considered a foreign judgment for purposes of these statutes. (2001-456, s. 1.)

**Wisconsin Statutes 806.245 - Indian tribal documents: full faith and credit**

(1) The judicial records, orders and judgments of an Indian tribal court in Wisconsin and acts of an Indian tribal legislative body shall have the same full faith and credit in the courts of this state as do the acts, records, orders and judgments of any other governmental entity, if all of the following conditions are met:

(a) The tribe which creates the tribal court and tribal legislative body is organized under 25 USC 461 to 479.

(b) The tribal documents are authenticated under sub. (2).

(c) The tribal court is a court of record.

(d) The tribal court judgment offered in evidence is a valid judgment.

(e) The tribal court certifies that it grants full faith and credit to the judicial records, orders and judgments of the courts of this state and to the acts of other governmental entities in this state.

(1m) The public acts, records, and judicial proceedings of any Indian tribe that are applicable to an Indian child custody proceeding, as defined in s. 48.028 (2) (d), or an Indian juvenile child custody proceeding, as defined in s. 938.028 (2) (b), shall be given full faith and credit by the state as provided in s. 48.028 (3) (f) or 938.028 (3) (f).

(2) To qualify for admission as evidence in the courts of this state:

(a) Copies of acts of a tribal legislative body shall be authenticated by the certificate of the tribal chairperson and tribal secretary.

(b) Copies of records, orders and judgments of a tribal court shall be authenticated by the attestation of the clerk of the court. The seal, if any, of the court shall be affixed to the attestation.

(3) In determining whether a tribal court is a court of record, the circuit court shall determine that:

(a) The court keeps a permanent record of its proceedings.

(b) Either a transcript or an electronic recording of the proceeding at issue in the tribal court is available.

(c) Final judgments of the court are reviewable by a superior court.

(d) The court has authority to enforce its own orders through contempt proceedings.

(4) In determining whether a tribal court judgment is a valid judgment, the circuit court on its own motion, or on the motion of a party, may examine the tribal court record to assure that:

(a) The tribal court had jurisdiction of the subject matter and over the person named in the judgment.

(b) The judgment is final under the laws of the rendering court.

(c) The judgment is on the merits.

(d) The judgment was procured without fraud, duress or coercion.

(e) The judgment was procured in compliance with procedures required by the rendering court.

(f) The proceedings of the tribal court comply with the Indian civil rights act of 1968 under 25 USC 1301 to 1341.

(5) No lien or attachment based on a tribal court judgment may be filed, entered in the judgment and lien docket or recorded in this state against the real or personal property of any person unless the judgment has been given full faith and credit by a circuit court under this section.

(6) A foreign protection order, as defined in s. 806.247 (1) (b), issued by an Indian tribal court in this state shall be accorded full faith and credit under s. 806.247.

It goes without saying judicial officers should be aware of the specific rules and laws applicable to this subject in their jurisdictions. However, because the law is not settled in several states, the reader grappling with how to treat tribal court orders is encouraged to consider the following:

P.S. Deloria & Robert Laurence, *Negotiating Tribal-State Full Faith and Credit Agreement: The Topology of the Negotiation and the Merits of the Question*, 28 GEORGIA L. REV. 365 (1994)

Paul Stenzel, *Full Faith and Credit and Cooperation Between State and Tribal Courts: Catching Up to the Law*, Journal of Court Innovation (2009). Available at [http://www.courtinnovation.org/sites/default/files/documents/Stenzel\\_Full\\_Faith.pdf](http://www.courtinnovation.org/sites/default/files/documents/Stenzel_Full_Faith.pdf)

Craig Smith, *Full Faith and Credit in Cross-Jurisdictional Recognition of Tribal Court Decisions Revisited*, 98 Cal. L. Rev. 1393 (2010). Available at: <http://scholarship.law.berkeley.edu/californialawreview/vol98/iss4/12>