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2022

**Jazzin' It Up
for Children
and Families**

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& EXPOSITION**

Tribal Courts vs State Courts - a Comparison

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Tribal Courts and State Courts have some differences when it comes to child support proceedings, but there are some similarities as well. This workshop will compare and contrast these two jurisdictional tribunals. Topics to be covered include paternity establishment, support establishment, modifications, contempt proceedings, unique enforcement tools, and much more. Best practices for dealing with these courts will be disseminated.



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Concurrent Jurisdiction

- The issue of concurrent jurisdiction between state and tribal courts is governed by statutes and case law.
- Congress enacted PL 280 in 1953 that extended to 6 states (including Wisconsin) state jurisdiction over many crime and some civil matters when the cause of action arose in Indian country.
- While extending state jurisdiction in specified areas, it did not diminish any inherent tribal court jurisdiction.
- Federal courts have specifically found that tribal courts have concurrent jurisdiction over domestic relations actions as long as they are willing to assume jurisdiction.
- Full Faith and Credit for Child Support Orders mandates full faith and credit for child support orders between tribal or state courts.



Tribal and State Court Procedures

- Like States, most Tribes allow for consent agreements, which allow for judicial economy.
- Hearings and court procedures may be similar between Tribes and States, depending on tribal principles and values.
- Due Process is required in State and Tribal Court, although under different laws.
- Attorneys who are licensed by a State generally can appear in Tribal Courts. Some Tribal Courts allow lay advocates. In a Tribe's Traditional Court, attorneys may not be allowed. Some Tribal Courts require Bar admission.
- Administrative tribunals are used by some Tribes.



Paternity Similarities Between Tribes and States

- Voluntary acknowledgment must be provided by both, however there are no regulations prescribing the process for Tribes.
- Both must establish a reasonable possibility of the requisite sexual conduct between the parties. Conversely, in denying paternity both must allege there is no reasonable possibility of sexual contact between the parties.
- Neither are required to establish paternity in cases involving incest or rape.



Paternity Establishment Distinctions between Tribes and States

- States are required to provide for genetic (DNA) testing if paternity is contested.
- Tribes may be exempted from such testing if the testing is prohibited under tribal law.
 - We're starting to see some tribes require genetic testing in all paternity actions.
 - Often this is due to membership requirements of the tribe.



Jurisdiction Over Paternity Establishment

- **Factors to Consider:**
 - Tribal Membership
 - Residence of the parties
 - Where conception is likely to have occurred
 - Whether the State is a Public Law 280 jurisdiction



Requirements for Support Order Establishment

- The Federal Regulations for Tribes and States provide for similar provisions.
- However, Tribes may accept “non-cash” payments to satisfy support obligations.
- Caveat: “Non-cash” payments shall not satisfy assigned support obligations.



Jurisdiction to Establish Support Orders

- Factors to consider are the same as the factors to establish paternity.
- An additional consideration may be whether public assistance is
- provided by the State or Tribe.
 - Tribes are not required to set or enforce medical support.
 - Indian Health Service is defined as medical support.
 - Example: The Oneida Nation does set medical support although recognizes Indian Health Service.



Enforcement of Support Orders - Remedies

- State Enforcement Remedies
 - Income Withholding
 - Judgments
 - Liens and Levies
 - Federal Income Tax Refund Offset
 - State Income Tax Refund Offset
 - Financial Institution Data Match (FIDM)
 - License Revocation
 - Credit Bureau Reporting
 - Posting of Bonds



Enforcement Remedies Continued...

- Tribal Enforcement Remedies
 - Income Withholding
 - Tribal specific hunting and fishing licenses
 - Recreational Casino Use Restrictions
 - Per Capita Garnishment
 - Monies from gaming revenue, land or oil right proceeds, etc.
 - This varies from tribe to tribe and each tribe has discretion on whether or not these monies can be garnished for child support.
 - Some tribes only allow for child support arrears while others only allow for current support.
- Administrative Enforcement through the State
 - If the tribe is using a state system



Modification of Orders

- Both Tribes and States must address modification of support orders.
- States are required to review cases for modification every 3 years. Requests for review can be made at the request of either party, due to existence of public assistance or the State's own procedure.
- Tribes, for the most part, are left to determine their own review/modification procedures, but such procedures are required in their program plan.
 - Example: Red Cliff Band of Lake Superior Chippewa has a 24-month review period.



Intergovernmental Enforcement

- Uniform Interstate Family Support Act, 42 U.S.C. Section 666(f) is required by every State BUT Tribes are not required to adopt UIFSA.
- Full Faith and Credit for Child Support Orders Act, 28 U.S.C. Section 1738B(b) applies to ALL Tribes and States.



Enforcement of Orders on Tribal Reservations

- Each tribal nation can have different requirements to register a order in their court.
- It's always best to give the clerk of court a telephone call and inquire as to what they require for registration of a foreign order or assistance with an inter-jurisdictional case.
 - Many tribal agencies do use Transmittal #1 and subsequent documents.
- It's also important to note that there are only 60 comprehensive tribes operating child support while there are over 550 federally recognized tribes.
- Even those without federal funding may have a law in place regarding family matters including child support.



Best Practices

- Be prepared.
- Know the Court Rules.
- Know the appropriate law.
- Do not argue another jurisdiction's law if there is case law on point. (In other words, don't argue state law in tribal court or tribal law in state court). Remember, these are real people's lives.



Consultation - Cornerstone for Successful Collaboration

Establish a shared vision

Develop personal relationships

Create processes for averting and resolving disputes



Thank you

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