



**ERICSA 62ND ANNUAL
TRAINING CONFERENCE & EXPOSITION**

MAY 18-22, 2025

NORFOLK

VIRGINIA

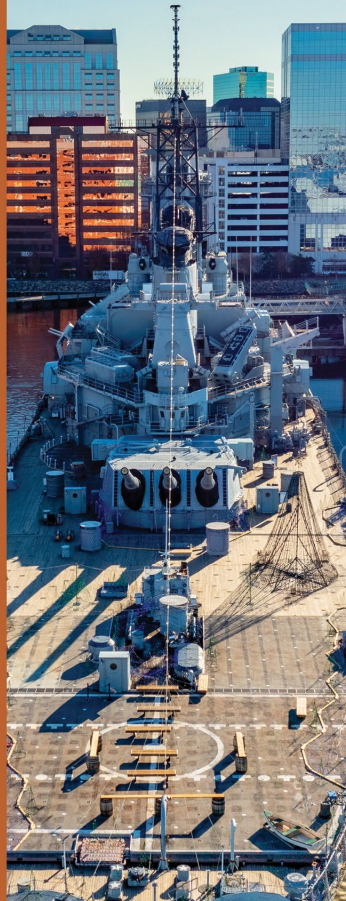
Advanced Tribal Child Support Issues



Moderator: April Lauzon – St. Regis Mohawk
Speakers: Lisa Skenandore – SMI
Vincent Knuth – North Dakota
Bill Woods – Three Affiliated Tribes

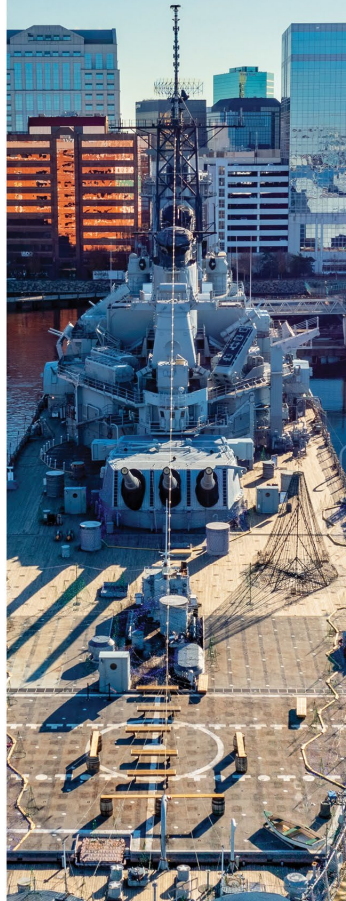


Just when you thought you knew everything about working a case when one or both parties to the case is a tribal member, we prove you wrong! Complex issues that will be discussed in this workshop include jurisdiction to establish/modify/enforce a child support order, effective communication techniques between states and tribal nations, in-kind support, sending a case from a state IV-D office to a tribal IV-D office and vice versa, how to work a case if the tribe in question does not have an official IV-D office, and much more.



Tribal Self-Determination

Defined as the movement by which the Native Americans sought to achieve restoration of tribal community, self-government, cultural renewal, reservation development, educational control and equal or controlling input into federal government decisions concerning policies and programs. The beginning of the federal policy favoring self-determination dates back to the 1930's relating to jurisdiction.



Sovereignty

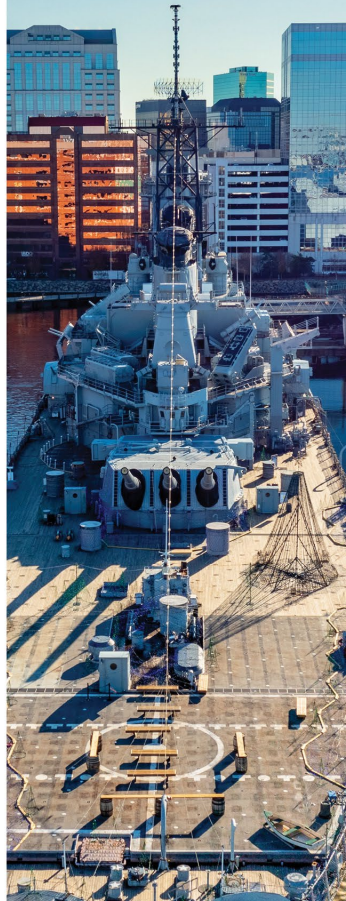
Powers of a Sovereign – Inherent NOT delegated. Tribes' powers are not delegated, they are 'inherent powers of a limited sovereignty which has never been extinguished.' **United States v. Wheeler**, 435 U.S. 313, 322 (1978). Sovereign powers preserved unless Congress' intent to the contrary is clear and unambiguous. • Although no longer possessed of the full attributes of sovereignty, Tribes remain a separate people with the power of regulating their internal and social relations, **Santa Clara Pueblo v. Martinez**, 436 U.S. 49 (1978), over its members and territory, **U.S. v. Mazurie**, 419 U.S. 544 (1975), and to take actions necessary to protect the health, welfare, political integrity and economic security of its people and its territory. **Montana v. U.S.**, 450 U.S. 544 (1981)



General Rule

- Tribes possess exclusive civil regulatory and adjudicatory jurisdiction over their own members and within their own territories.
- Examples:
 - Internal Political Affairs (elections)
 - Membership/Citizenship
 - Domestic Affairs (family matters)

“Sovereignty begins at home.” - Hon. Cheryl Demmert Fairbanks (Tlingit-Tsimpshian)



Legislation

- **Full Faith and Credit:** While tribes are recognized as sovereign, they are not states for the purposes of the full faith and credit requirements of article IV of the U.S. Constitution.

However:

- **Federal Full Faith and Credit for Child Support Orders Act (FFCCSOA)** requires a state to recognize and enforce another state's child support order. "State" is defined as "a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and **Indian country** *(as defined in Section 1151 of Title 18 of the U.S. Code)*."
- **Uniform Interstate Family Support Act (UIFSA).** The act limits the jurisdiction that can properly establish and modify child support orders and addresses the enforcement of child support obligations within the United States and is implemented to determine the jurisdiction and power of the courts in the different states. The Act also provides various direct interstate enforcement mechanisms. (Federal Income Withholding Orders - IWO)
- **Tribes are not subject to (UIFSA) – No direct issuance of IWO**



Differences Among Tribes

- Although every Tribe does not have a IV-D program, there are 574 federally recognized Tribes.
- Each Tribe has a different culture, custom, and tradition, although some may be similar or related.
- Often tribal codes, laws, constitutions, and customs reflect the values and principles that guide tribal life necessitating laws, and policies and procedures will be different from Tribe to Tribe.



Working with non-IV-D Tribes



- Seek ways to support Tribal-State cooperation efforts that further Tribes' inherent and abiding duty as governments, to protect the well-being of their children and provide for their support.
- <https://biamaps.geoplatform.gov/Tribal-Leaders-Directory/>
- <https://acf.gov/css/training-technical-assistance/tribal-child-support-agency-contacts>



LEARNING TO SPEAK AND COMMUNICATE TRIBALLY

- Sovereignty
- Self-determination
- Peacemaker Courts
- Elders Panels
- IIM Accounts
- Touhy Requests
- Disbursements
- Trust v Fee Lands
- Enrolled Members
 - A. Eligibility
 - B. Blood Quantum
 - C. Lineal Descendants
- BIA Encumbrance Orders
- IHS – Indian Health Services
- Allotments
- In Kind Contributions
- Tribal Customs and Traditions



TRIBAL CUSTOMS

DIVERSIONARY COURT STRUCTURES

- Alternative or diversionary courts provide alternatives to adversarial court systems.
- Examples of diversionary courts include:
 - Peacemaker Courts;
 - Restorative Justice courts;
 - Circle courts

FEDERAL REQUIREMENTS

- Child Support Guidelines must be established, with specific reference to application of the same, within child support court orders. Tribes are allowed to accept non-cash payments of goods and services, and Tribes may consider Tribal customs or practices to determine parental obligations.

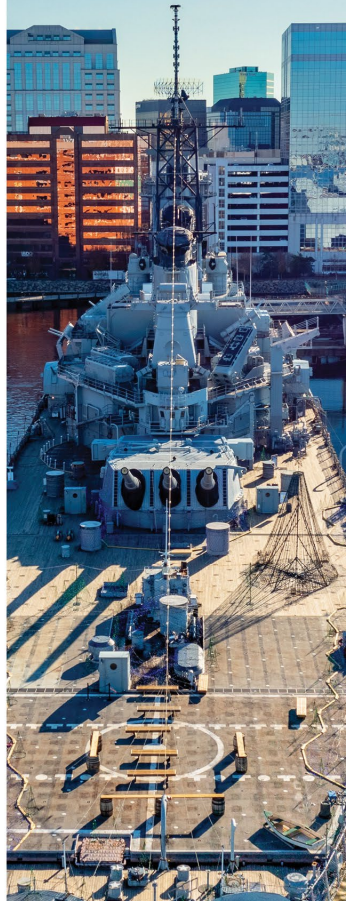


TRIBAL CONSTITUTIONS

- Preamble: “We, the Arickara, Gros Ventres, and Mandan Indians of the Fort Berthold Reservation, in North Dakota, eagerly embrace the opportunities for self-rule, and in order to enjoy the blessings of liberty and justice; to intelligently protect our vested rights under existing treaties and the constitution of the United States...”
- The jurisdiction of the Three Affiliated Tribes shall extend to all persons and all lands, including lands held in fee, within the exterior boundaries of the Fort Berthold Indian Reservation.

TRIBAL CODES

- TRIBAL CODE – PERSONAL JURISDICTION
- “The court shall have civil and criminal jurisdiction over all persons who reside, enter or transact business within the territorial boundaries of the reservation...”
- TRIBAL CODE – TERRITORIAL JURISDICTION
- “The jurisdiction of the courts shall extend to any and all lands within the reservation boundaries....”



CONCURRENT JURISDICTION

- ISSUE OF CONCURRENT JURISDICTION
 - BETWEEN STATE AND TRIBAL COURTS IS
 - GOVERNED BY STATUTES AND CASE LAW
- DISTINGUISH – EXCLUSIVE JURISDICTION
- ISSUES OF PERSONAL JURISDICTION
- ISSUES OF SUBJECT MATTER JURISDICTION
- Example Exclusive: ND Case of McKenzie County v. C.G. – ND Supreme Court held that membership of both parents with the tribe and conception on the reservation – this is a “reservation affair” – Exclusive Tribal



CONCURRENT JURISDICTION – SUBJECT MATTER ANALYSIS

- FACTORS FOR CONSIDERATION – ESTABLISHMENT OF PATERNITY
- WHERE DID CONCEPTION TAKE PLACE?
- IS THE MOTHER A MEMBER OF THE TRIBE?
- DOES THE MOTHER RESIDE ON THE TRIBE'S RESERVATION?
- IS THE ALLEGED FATHER A MEMBER OF THE TRIBE?
- DOES THE ALLEGED FATHER RESIDE ON THE TRIBE'S RESERVATION?



North Dakota Child Support
PATERNITY

February 2016

	Conception Where?	Is CP a member of the tribe?	Does CP reside on the tribe's reservation?	Is NCP a member of the tribe?	Does NCP reside on the tribe's reservation?	Court(s) with jurisdiction
1	On	Y	Y	Y	Y	Tribal
2	On	Y	Y	Y	N	Tribal
3	On	Y	Y	N	Y	Concurrent
4	On	Y	Y	N	N	Concurrent
5	On	Y	N	Y	Y	Tribal
6	On	Y	N	Y	N	Tribal
7	On	Y	N	N	Y	Concurrent
8	On	Y	N	N	N	Concurrent
9	On	N	Y	Y	Y	Tribal
10	On	N	Y	Y	N	Concurrent?*
11	On	N	Y	N	Y	Concurrent
12	On	N	Y	N	N	Concurrent
13	On	N	N	Y	Y	Tribal
14	On	N	N	Y	N	Concurrent?*
15	On	N	N	N	Y	Concurrent
16	On	N	N	N	N	State
17	Off	Y	Y	Y	Y	Tribal
18	Off	Y	Y	Y	N	Concurrent
19	Off	Y	Y	N	Y	Concurrent
20	Off	Y	Y	N	N	State
21	Off	Y	N	Y	Y	Concurrent
22	Off	Y	N	Y	N	Concurrent
23	Off	Y	N	N	Y	Concurrent
24	Off	Y	N	N	N	State
25	Off	N	Y	Y	Y	Concurrent
26	Off	N	Y	Y	N	Concurrent
27	Off	N	Y	N	Y	State
28	Off	N	Y	N	N	State
29	Off	N	N	Y	Y	State
30	Off	N	N	Y	N	State
31	Off	N	N	N	Y	State
32	Off	N	N	N	N	State

* Case law is still not definitive under these facts, but suggests concurrent jurisdiction.

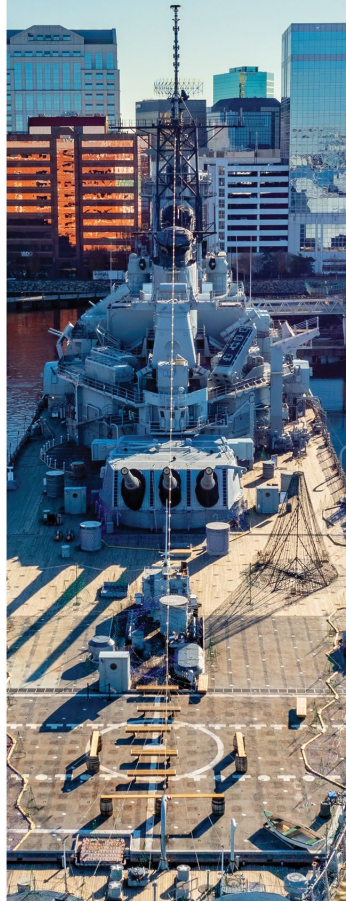
PUBLIC LAW 280

PUBLIC LAW 280 STATES

- With its passage in 1953 Congress enacted Public Law 83-280 (67 Stat. 588) to grant certain states criminal jurisdiction over American Indians on reservations and to allow civil litigation that had come under tribal or federal court jurisdiction to be handled by state courts.
- Includes Alaska (except the Metlakatla Indian Community on the Annette Island Reserve, which maintains criminal jurisdiction),
- California,
- Minnesota (except the Red Lake Reservation),
- Nebraska,
- Oregon (except the Warm Springs Reservation), and
- Wisconsin (except the Menominee Tribe).

PROPER INTERPRETATION PL280

- So, in terms of civil jurisdiction, the effect of PL 280 was merely to grant Indians access to state court forums to resolve disputes. It did not give the state jurisdiction to impose civil/regulatory laws on the tribes or tribal territory.
- PL 280 did not “divest” (take away) tribes of their criminal and civil jurisdiction. Tribes can establish their own courts, have their tribal law enforcement and pass tribal laws enforceable on their reservations;



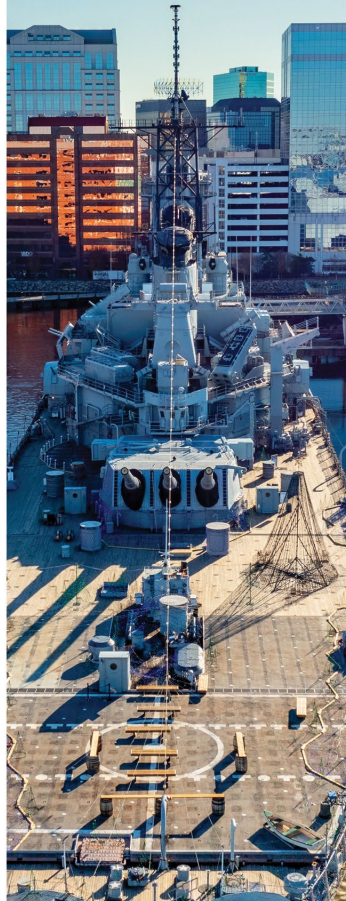
TRIBAL VS. STATE REQUIREMENTS

FULL FAITH AND CREDIT

- Tribes are recognized as sovereign, they are not states, for the purposes of the full faith and credit requirements of article IV of the U.S. Constitution. There is general consensus (but no Supreme Court authority on point) that tribes are not encompassed by the federal full faith and credit statute.
- 14 Federal Requirements – Number 13 - Procedures for intergovernmental case processing as specified under § 309.120;

UIFSA VS FFFCCSOA

- ACTION TRANSMITTAL
- OCSE-AT-02-03
- DATE: May 28, 2002
- TO: STATE AGENCIES ADMINISTERING CHILD SUPPORT ENFORCEMENT PLANS UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT, TRIBES AND TRIBAL ORGANIZATIONS, AND OTHER INTERESTED INDIVIDUALS
- SUBJECT: Clarifying the Applicability of the Full Faith and Credit for Child Support Orders Act (FFCCSOA) to States and Tribes.
- PURPOSE: The purpose of this action transmittal is to inform states and tribes of provisions of the Full Faith and Credit for Child Support Orders Act (FFCCSOA) and their application to both jurisdictions.
- While tribes are not obliged to enact UIFSA as a condition of receipt of Federal funding of their child support enforcement programs operated under title IV-D of the Social Security Act, states are obligated to do so.



FULL FAITH AND CREDIT OF FOREIGN CHILD SUPPORT ORDERS

- Sample Provision: TAT Chapter 5-25-01.
- The TAT DCSE and District Court shall recognize child support orders issued by other tribes and states, in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B.
- The TAT DCSE shall extend the full range of services available under its IV-D plan to respond to all requests from, and cooperate with, other tribal and state IV-D agencies.



INCOMING CASES – Foreign Jurisdictions

T-1 and T-3 Transmittals

- Step #1 TAT receives an Intergovernmental T-1 form with supporting documentation.
- Step #2 The case specialist files out the T-2 to mail back to the outgoing case worker or office.
- Step #3 – All relevant information goes into our computer case management system (CIS). The file is given to the Financial Specialist to create a financial ledger for the case
- Step #4 – The file is given to the Financial Specialist to create a financial ledger for the case
- Step #5 – The file is delivered to the staff Attorney for legal review, preparation of legal pleadings.
- Step #6 – Deliver the original documents to the Clerk of Tribal Court, assigning a civil filing number..
- Step #7 – Copies of the legal documents, are given to the TAT process server.
- Step #8 – After service, matter placed on Court calendar.
- Step #9 - Establishment – at the court hearing, an Order to establish child support is signed by the Judge.
- Step #10 – All payments received from NCP are directed to the outgoing jurisdiction by paper check. TAT maintains a ledger to document all payments.
- T-3 – Limited Enforcement – generally seeking portion of Peoples Funds disbursements.

Foreign Registration – Income Withholding

- Step #1 State or Tribal Jurisdiction submits certified copies of the Child Support Order or Judgment.
- Step #2 Staff Attorney brings Motion to Court to register the Foreign Order for Enforcement.
- Step #3 Tribal Judge signs the Order for Registration
- Step #4 Clerk of Court signs a Notice of Registration.
- Step #5 Copies of the Order and Notice are mailed to the Obligor.
- Step #6 TAT Child Support prepares a Federal Income Withholding Order and delivers the same to the Tribe or Tribal entity employing the obligor
- Step #7 Funds received from the IWO – are mailed to the requesting Jurisdiction.



IN-KIND PAYMENTS per CFR 309.105

- Indicate whether non-cash payments will be permitted to satisfy support obligations, and if so;
- (i) Require that Tribal support orders allowing non-cash payments also state the specific dollar amount of the support obligation; and
- (ii) Describe the type(s) of non-cash support that will be permitted to satisfy the underlying specific dollar amount of the support order; and
- (iii) Provide that non-cash payments will not be permitted to satisfy assigned support obligations;

Typically the In-Kind collections from the NCP are divided into two groups:

- goods
- services

Goods:

- Share of commodities – lumber, fish, or rice
- Purchase a used mv for teenager to drive

Services:

- Provide skilled labor – plumbing, auto mechanics,
- Pay for daycare services; or rely on ncp's family to provide the same



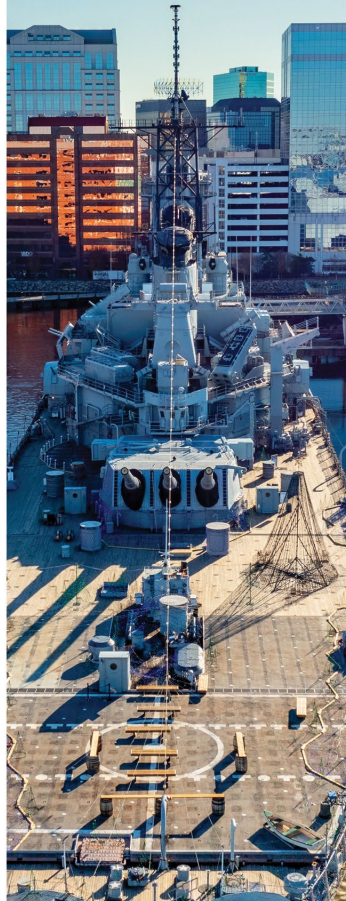
Additional Tribal – State Enforcement Efforts

FEDERAL TAX REFUND OFFSET

- The Federal Office of Child Support Enforcement (OCSE) provides a single submission procedure, known as the Federal Collection and Enforcement Program (also referred to as the FEDERAL OFFSET PROGRAM), for submitting cases to the OCSE Debtor Master File for each of the following five remedies: 1) federal income tax refund offset; 2) federal administrative offset (including vendor/miscellaneous payments and federal retirement payments); 3) denial of U.S. passports; 4) Multistate Financial Institution Data Match (MSFIDM); and, 5) federal insurance match. STATES (NOT TRIBES) are required to submit all cases that meet the criteria for federal income tax refund offset to OCSE for collection through the OCSE debtor file.

HOW IT WORKS WITH TAT & ND

- Three Affiliated Tribes identifies obligors meeting the threshold for federal enforcement remedies.
- Notices the obligors of the enforcement action, through the Annual Notice of Collections.
- Submits a file of obligors to be submitted for federal remedies to North Dakota Child Support.
- North Dakota Child Support – Submits on behalf of the Tribe
- Receives offset collections for Tribal cases.
- If funds are located, we receive funds, and pay the fees charged by IRS.



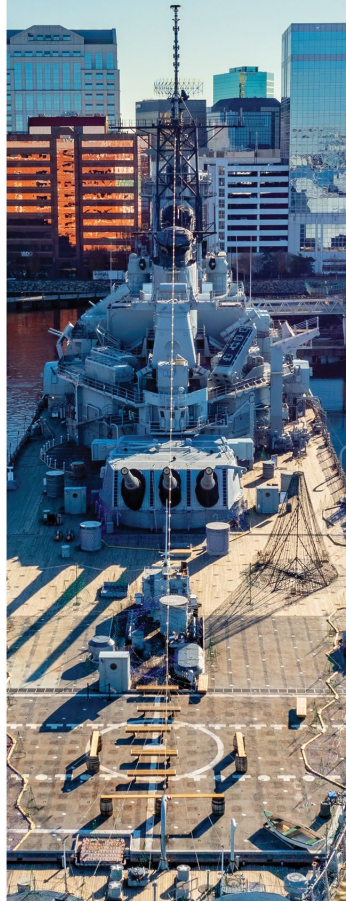
BIA IIM ENCUMBERANCE PROCESS

BIA IIM ACCOUNTS

- Many IIM accounts receive income from the use or sale of a trust asset, such as agricultural or grazing leases, coal production, timber harvesting, and oil and gas leases.
-
- Funds can also come from per capita payments, and from income earned on deposited funds. Some accounts receive proceeds from an estate account following a probate.

Title 25 – Indians; Chapter 1 – Part 115

- The Defendant has an Individual Indian Monies Account as maintained by the Bureau of Indian Affairs,
- Defendant is fully aware of his/her monthly child support obligation from a Court of competent jurisdiction as defined in 25 C.F.R. Section 115.002.
- The Court has jurisdiction of the parties and subject matter of this action.
- Pursuant to 25 C.F.R. 115.601 (b) (1) the Court has authority to restrict Defendant's Individual Indian Monies (IIM) account.
- Defendant may execute an assignment as allowed pursuant to 25 C.F.R. 115.605 (a) (9) to authorize immediate payment.
- Said encumbrance be effective and enforceable on the date of the Order.
- The BIA shall restrict all payments into the Defendant's IIM account in accordance with the terms of this Order.



Collaboration

- Ongoing collaboration with your local Tribe
 - ✦ Continue to build relationships and understanding between State, Local and Tribal agency through collaborative efforts (conference calls, communications, cross cultural exchanges)
 - ✦ Finalize a guide for best practices (case management, case transfer) through discussions with stakeholders

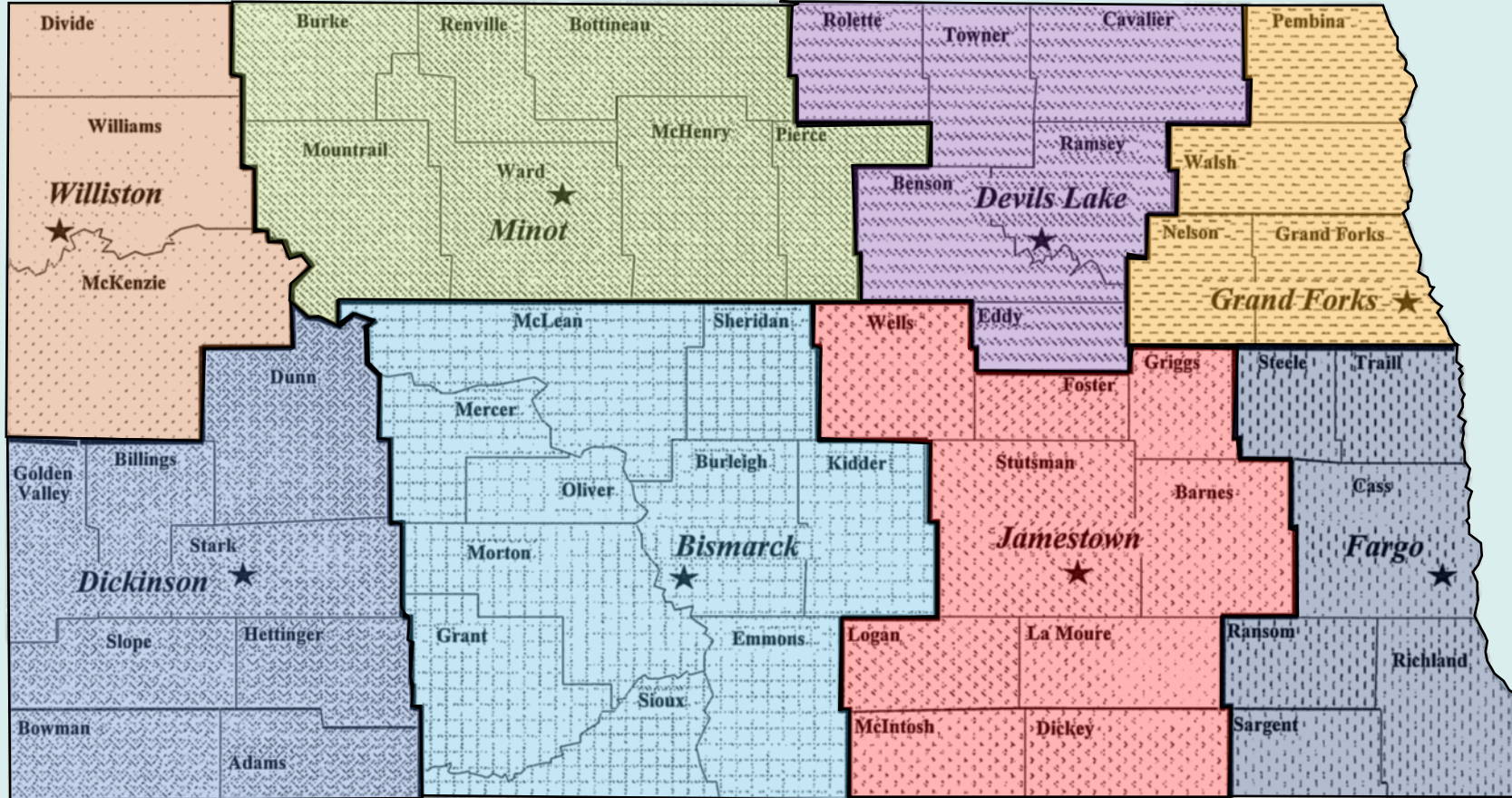


Introduction – About Me

- I was born in and grew up in Schoharie County, NY.
- Graduated from SUNY Albany in 2013, with a B.A. in History.
- Graduated from Albany Law in 2017.
- Started work for the Devils Lake Regional Child Support Unit in October 2019.
- Became lead attorney for that office in October 2020.



North Dakota IV-D Regions

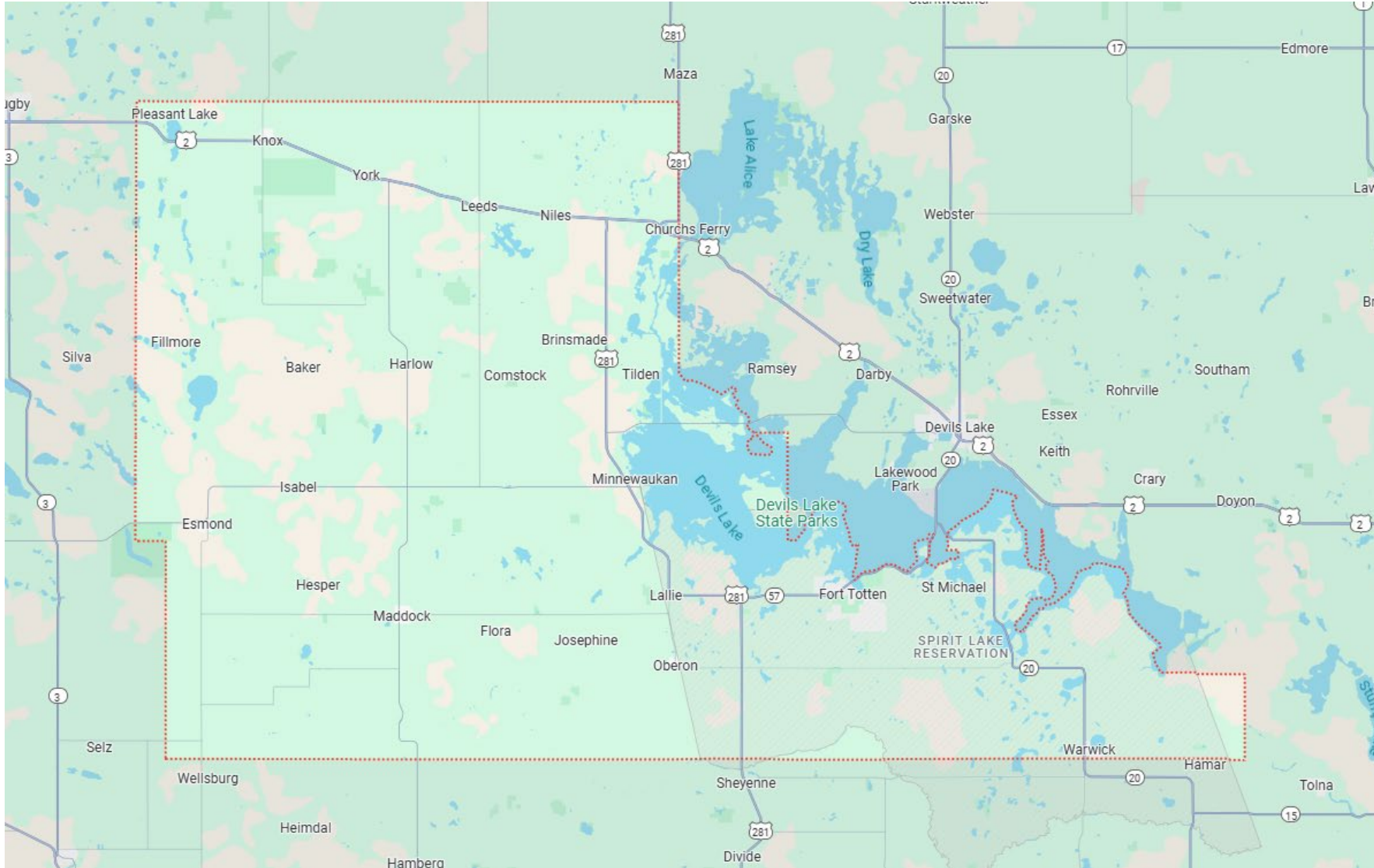


Devils Lake Region

- Our office consists of two attorneys and two legal assistants.
- We cover six counties in North Dakota (Ramsey, Benson, Eddy, Towner, Cavalier, and Rolette).
- In those counties, there are two tribal reservations – the Spirit Lake Reservation and the Turtle Mountain Reservation.
- Neither of those tribes have their own tribal IV-D program – so in partnership with those tribes, our attorneys are licensed in their tribal courts to assist with the establishment and modification of cases on those reservations.

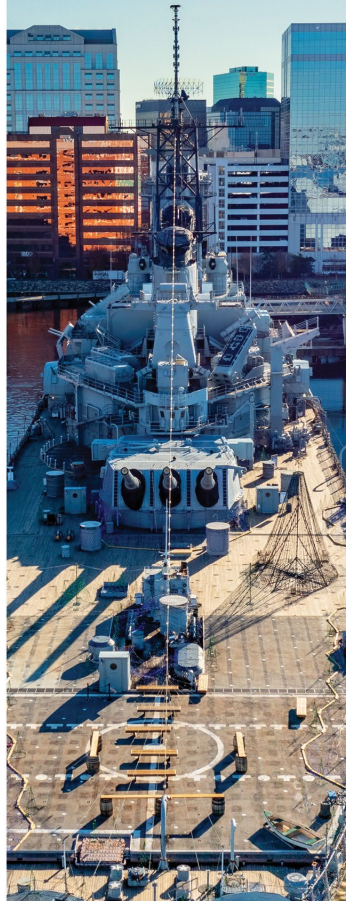


The Spirit Lake Reservation

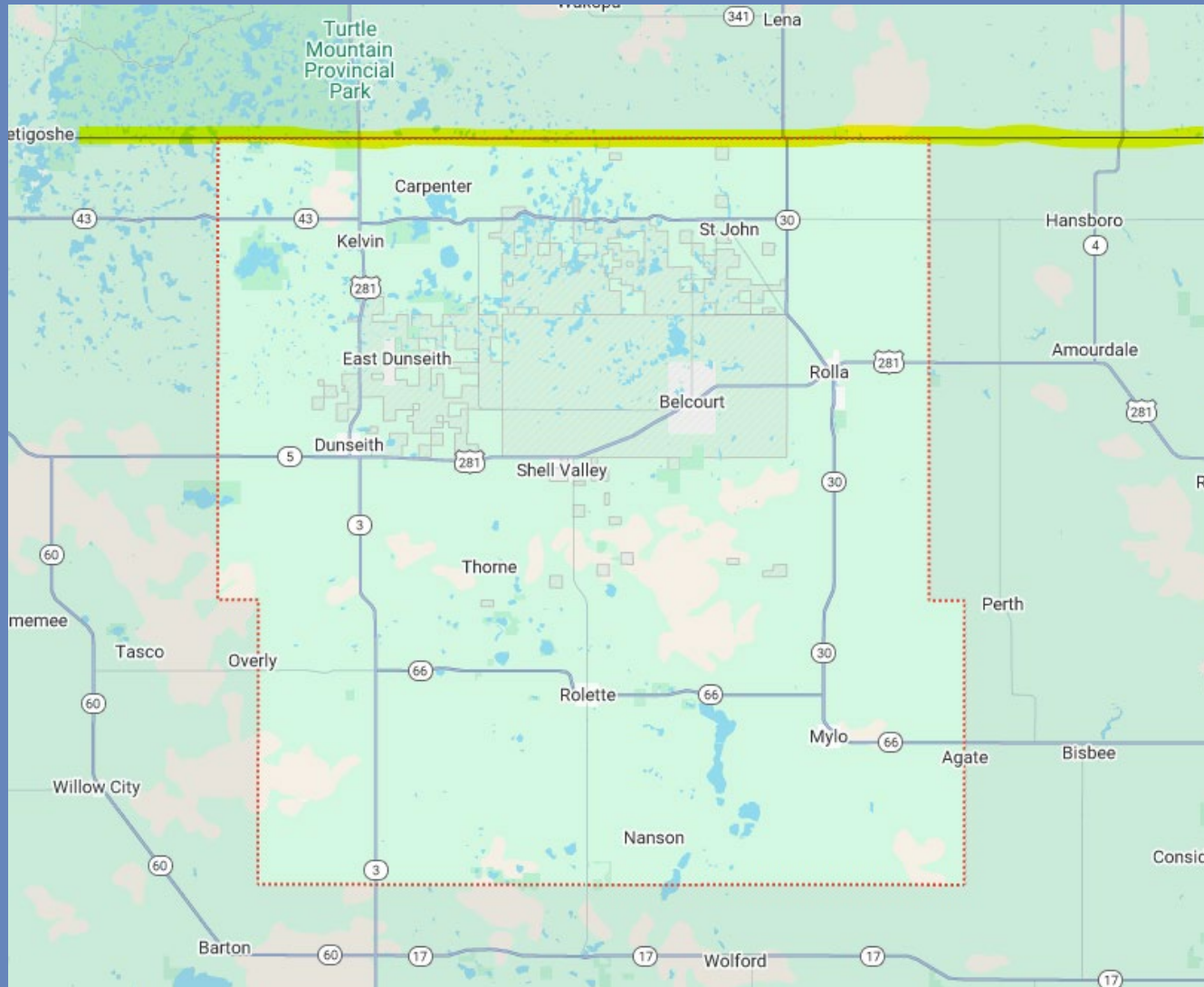


The Spirit Lake Reservation

- As of January 2021, Spirit Lake has a total enrollment of 7,559 members, of which 2,069 live on the Reservation. (<https://www.spiritlakenation.com/our-tribe/>)
- The Tribal Court is located on the Reservation in Fort Totten.
- The Reservation itself is 405 square miles – with 2,069 people spread across that area. There are a few small townships on the reservation, but most of it is heavily wooded and remote with residences dotting the landscape. As a result, service of process can be a serious issue for Spirit Lake cases and locating our obligors can also be a problem.
- The Spirit Lake Tribal Child Support Guidelines are an obligor-based system where we only need to collect the financial information of the non-custodial parent for child support purposes (unless the parties have equal residential responsibility over the child – in which case we will collect financial information from both parties.)



The Turtle Mountain Reservation



The Turtle Mountain Reservation

- The reservation belongs to the Turtle Mountain Band of Chippewa Indians. The reservation itself is 72 square miles.
- As of July 10, 2024 there are 33,726 enrolled members of the Turtle Mountain Tribe according to data from the Turtle Mountain Enrollment Office. (<https://www.indianaffairs.nd.gov/tribal-nations/statistics>). According to that same data, there is a total population on the reservation of 12,879 people.
- There is only one major township on the reservation – Belcourt which is where the tribal government and the tribal court are located. As of the 2020 census, 1,510 people resided in Belcourt.
- Like Spirit Lake and North Dakota, Turtle Mountain's child support guidelines are an obligor-based system.



Jurisdictional Issues

- When should a case be brought in tribal court vs. in state court?
- What are the determinative factors in a case that point the way for us?
 - The major thing that we look at here is tribal enrollment status and the current residential addresses of the custodial parent and non-custodial parent.
- When there is concurrent jurisdiction between the tribal courts and state court, who wins out?
 - Again, we will look to the demographic information of the parties and use that to determine if there is more weight to bringing the action in the tribal courts or in state court.
 - There is an additional consideration that we must make in paternity cases, which is: was the child conceived on the reservation or off the reservation?
 - Finally, in situations where we are seeking to modify an existing order, rather than to establish a new order: continuing existing jurisdiction (CEJ) applies.



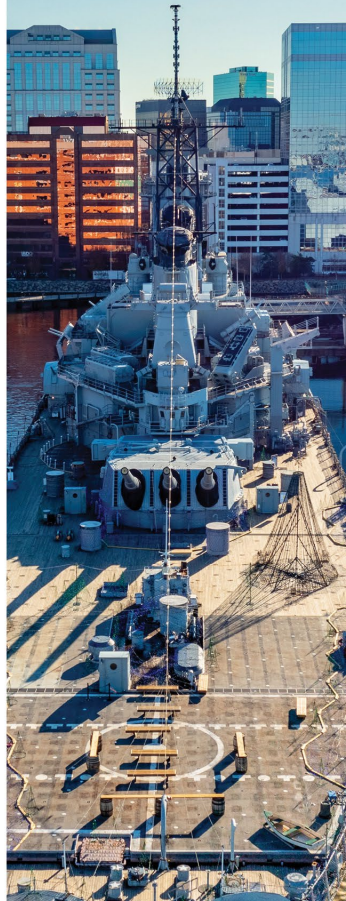
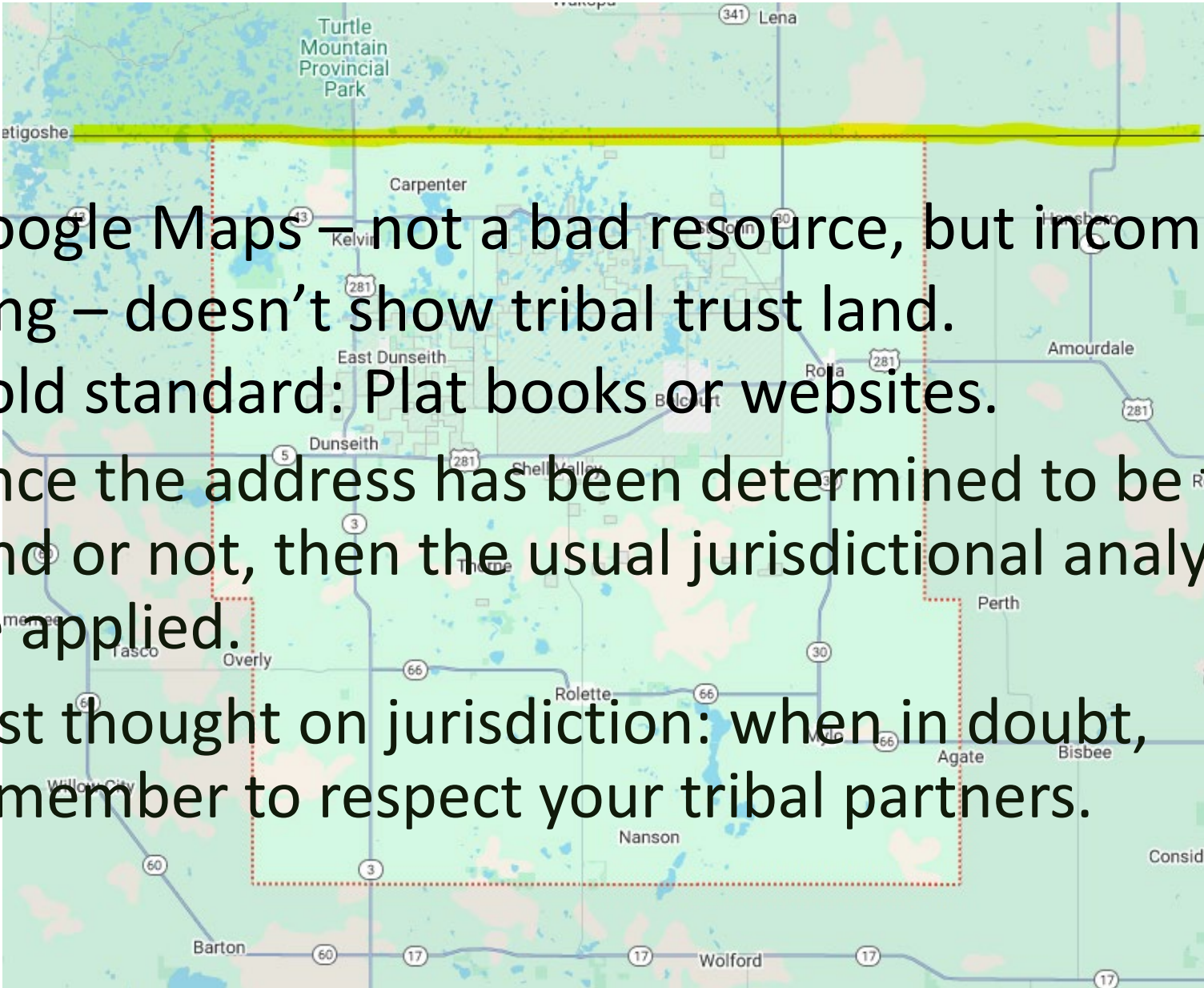
Jurisdiction – continued

- Jurisdiction matrix – a chart that allows easy assessment of jurisdiction.
 - If that doesn't answer their question, attorneys are available!
- Another issue: Tribal trust land



Jurisdiction – Tribal Trust Land

- Google Maps – not a bad resource, but incomplete.
- Bing – doesn't show tribal trust land.
- Gold standard: Plat books or websites.
- Once the address has been determined to be trust land or not, then the usual jurisdictional analysis must be applied.
- Last thought on jurisdiction: when in doubt, remember to respect your tribal partners.



Service of Process

- Another issue that we regularly face is effective service of process.
- Rural state, sparse population.
- Reservations can have poor infrastructure in terms of roads, no public transportation.
- Many obligors have no discernible residential address and the only address we can locate for them is a PO Box, which is often shared between many family members.
- Personal service remains the best option. If you can, find someone local to the reservation.



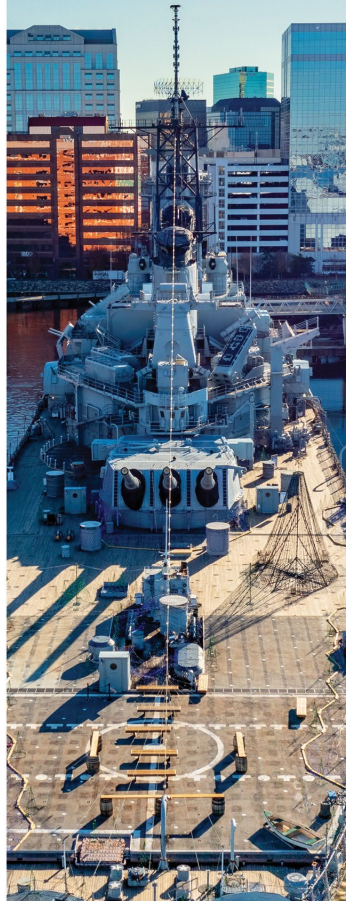
Communication and Cooperation

- This can be an issue, but it doesn't have to be.
 - Boxing out tribal partners only makes the job harder.
- Establish clear lines of communication.
 - By limiting points of contact, you can foster a broader, more open relationship with the tribal court.



Conclusion/Takeaway

- Bottom line: Respect.
 - It's a tough caseload.
- Respect the tribe's jurisdiction, their processes, and the people that you'll be working with in the tribal court system.
- Build a cooperative relationship with the tribes.
- Questions?



Questions?

CONTACT INFORMATION – E-MAIL ADDRESSES

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