TRIBAL SUPPORT - PAST, PRESENT AND FUTURE

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What can you learn from the tribal courts to help you increase collections at home? Whether you work for a state IV-D program or a tribal IV-D program, do you know the legal issues regarding tribal child support? Come increase your knowledge and gain insight as the tribal attorneys discuss the stages of a case from paternity to enforcement actions from their perspective.
Overview

- Background
- Jurisdiction
- Case Processing – Similarities and Distinctions
- Cooperation
- Collaboration
Background

- Tribes officially became part of the Child Support Enforcement Program with the passage of the welfare reform in 1996. Personal Responsibility and Work Opportunity Reform Act (PRWORA)

- PRWORA allowed tribes to join the IV-D program and authorized the operations of tribal child support enforcement programs and tribal cooperative agreements with state IV-D agencies.

- Currently there are 59 tribes that operate tribal child support programs throughout the United States with another 4 in the start up phase.
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 and California) 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.
Opening Discussions

- PL-280 Myths
- Due Process Misconceptions
- Core Principals Tribal Subject Matter Jurisdiction
Debunking Myths Regarding PL-280 States

- PL 280 did not extinguish any tribal court jurisdiction
- Many situations exist where both state and tribal courts have jurisdiction
- Collaboration = Successful Outcomes
Due Process Misconceptions

- Fundamental Fairness
- Indian Civil Rights Act
Core Principles Tribal Subject Matter Jurisdiction

- Tribal powers are inherent rather than derived from the federal government and Indian nations possess all powers of a sovereign government except as limited by federal authority.
- The federal government under its constitutional power over Indian affairs has limited inherent tribal authority by treaty and by statute. And, in some instances, tribal authority has been limited by judge-made federal law.
Tribal Codes

- Tribal Courts and Tribal IV-D Programs operate under the laws of the Tribe through Tribal Codes.
- In a majority of situations the Tribal Code will be similar to their State counterparts.
- Where Tribal Codes differ is usually associated with the desire of the Tribe to maintain its culture, tradition, principles, values and mores.
- These differences may occur substantively and/or procedurally.
Tribal 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.
- Administrative tribunals are used by some Tribes.
Case Initiation

- Tribes initiate cases in the following situations
  - Applications
  - Referrals from other Tribal Programs
    - Can be same tribe IV-A program as well as other tribal IV-D program
    - Not all tribes operate IV-A
  - Referrals from States
Case Transfers

- There are two types of transfers:
  - Administrative Transfers
  - Legal Transfers
Establishment of Paternity

- Establishment of Tribal Paternity is governed by 45 C.F.R. Section 309.100
- Establishment requirements for states are located at 45 C.F.R. Section 303.5
Paternity Similarities Between States and Tribes

- 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, or where there is an adoption proceeding pending.
Paternity Establishment Distinctions Between States and Tribes

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Distinctions Continued…

- 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
Establishment of Support Orders

- Establishment of Tribal Support Orders is regulated by 45 C.F.R. Section 309.15
- Establishment of State Support Orders is regulated by 45 C.F.R. Section 302.56
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: Oneida 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
  ❖ 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

- 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 – Oneida 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.
Cooperation

- Federal Regulations require Tribes and States to work cooperatively with one another, 45 C.F.R. Section 302.36 for States and 45 C.F.R. Section 309.120 for Tribes.
Differences Among Tribes

- Although every Tribe does not have a IV-D program, there are 566 federally recognized Tribes.
- Each Tribe has a different culture, custom, and tradition, although some may be similar or related.
- Many times tribal codes, laws, constitutions, and customs reflect the values and principles that guide tribal life necessitating laws, policies and procedures be different from Tribe to Tribe.
Consultation-Cornerstone for Successful Collaboration

- Establish a shared vision
- Develop personal relationships
- Create processes for averting and resolving disputes
Collaboration Example

**WI State and Tribal Training Initiative**

- Working together to develop training for State Bureau of Child Support staff with a roll out to the County CSA staff
  - Identifying cultural/procedural differences between counties/tribes and tribes
  - Identifying “best practices” of working together
Questions?

Thank You

- Honorable Tish Keahna Kruzan
  Tish.Keahna@redcliff-nsn.gov

- Honorable Charles Tripp
  laic49@yahoo.com
Don’t lose sight of the big picture. Communication is KEY! Be proactive; reach out when questions arise. Don’t jump to conclusions. Remember you hold the keys for success.