

# DUE PROCESS

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RICK A. GARCIA, ESQUIRE | DIRECTOR

*with assistance from* KEVIN M. ILLINGWORTH, JD | UAF



# WHY DUE PROCESS??

Because if you have  
**JURISDICTION** and you provide  
**DUE PROCESS**, the State of Alaska  
**MUST** recognize  
the decision of ***YOUR*** court



# WHY DUE PROCESS??

Because it is fair



“the fundamental FAIRNESS principle is at the core of the American system of justice”

BLACKS LAW DICTIONARY

The actual legal proceedings that protect individual rights and liberties.



# WHY DUE PROCESS??

**Because it's REQUIRED**

INDIAN CIVIL RIGHTS ACT of 1968  
(25 USC §§1301-03) - §1302. *Constitutional rights*

The actual legal proceedings that  
protect individual rights and liberties



# WHAT IS DUE PROCESS??

## 3 Basic Elements of Due Process

1. **NOTICE** — must tell the person about the hearing
2. **OPPORTUNITY TO BE HEARD** — must give the person a chance to speak and to tell their side of the story
3. **FAIR AND IMPARTIAL HEARING** — must be held in normal fashion and NO conflict of interest



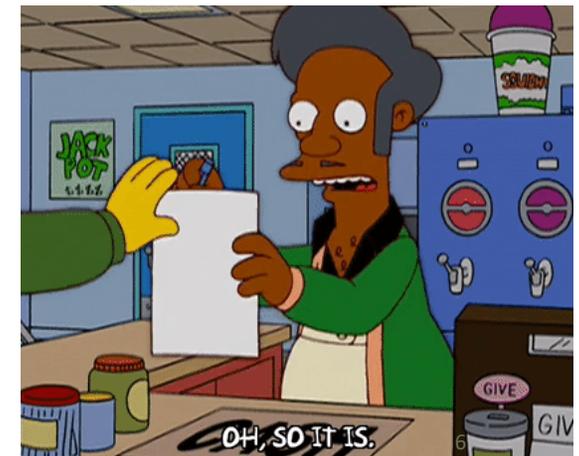
# 1. NOTICE

## What is Notice?

NOTICE – letting the person know **when** and **where** there is a hearing and **what it is about**

Different ways Notice is provided:

- Personal service
- Mail
- Phone
- Published notice



## 2. OPPORTUNITY TO BE HEARD

What is Opportunity to be Heard?

OPPORTUNITY TO BE HEARD – must give the person a chance to tell their side of the story!



If they choose not to come to the hearing or appear and not to speak...that is THEIR choice. You simply need to give them the opportunity.

# 3. FAIR AND IMPARTIAL HEARING – CONFLICT OF INTEREST

## Fair and Impartial Hearing – What is a Conflict of Interest?

CONFLICT OF INTEREST – a conflict of interest occurs when a Judge is too close to a situation to be fair.  
Either because of:

1. Immediate family member (1<sup>st</sup> degree?)
2. Strong personal relationship
3. Direct financial, political, or personal interest

- It is up to your Tribe to define what is too close.

- If a Judge cannot be fair (or will be seen as unfair) the Judge should step down and not hear the case.



# JUDICIAL ETHICS

The strength of any court system depends on the **respect** given to it by the members of the community

Judicial ethics are critical in preserving that respect!!

- Confidentiality
- Fairness
- Impartiality



# DUE PROCESS BEST PRACTICES

1. Keep good records
2. Follow your court rules
3. Explain your decision
4. Protect confidentiality



# WHAT TYPE OF JUSTICE SYSTEM MAY A TRIBE USE?

TRIBES CAN ENFORCE THEIR LAWS THROUGH THEIR OWN JUSTICE SYSTEMS

The ONLY requirement is that the Tribe have jurisdiction and that the Tribal Justice System provide due process



# The Alaska Supreme Court on Due Process

“But this Due Process analysis in no way requires tribes to use procedures identical to ours in their courts...

[state] courts should strive to respect the **cultural differences** that influence tribal jurisprudence, as well as to recognize the **practical limits** experienced by smaller court systems.”

*~Alaska Supreme Court in John v. Baker 1999*



# The Alaska Supreme Court on Due Process

“...tribes have the ‘power to make their own substantive law in internal matters and to enforce that law in their own forums.’ Similarly, the Supreme Court has stressed that tribal sovereignty is valuable precisely because it enables Native Americans ‘to control their own internal relations, and to preserve their own unique customs and social order.’”

*~Alaska Supreme Court in John v. Baker 1999*



# CONCLUSION

If your tribe has **jurisdiction** and if your Tribe provides **due process**, the State of Alaska will respect the decision of your justice system!!



# QUYANA!!

