

AVCP Tribal Justice Master Series Training
Part 2: Code Development and Drafting

July 22, 2020, 1:00 PM – 3:00 PM
Skype Teleconference

AVCP TRIBAL JUSTICE MASTER SERIES TRAINING – PART 2
DAY TWO - JULY 22, 2020

- 1:00 P.M.** **DRAFTING CODES - THE OUTLINE:** *Tribal Laws, Election Procedures, Tribal Court Structure, Authority, Purpose and Scope*
Winter Montgomery
- 1:30 P.M.** **Q & A**
- 1:40 P.M.** **RESOLVING CONFLICTS-** *Transitions of Power, Informing Tribal Members*
Estelle Thompson & Clay Venetis
- 2:05 P.M.** **Q & A**
- 2:15 P.M.** **AVOIDING CONFLICT IN CODES AND BEST PRACTICES**
Alex Cleghorn
- 2:45 P.M.** **Q & A**
- 2:50 P.M.** **QUESTIONS AND ANSWER SESSION**
- 3:00 P.M.** **END OF DAY 2**



Resolving Conflicts in Tribal Courts

AVCP Tribal Justice Master Series, Part II

Estelle Thomson, Tribal Court Program Director Native Village of Paimiut

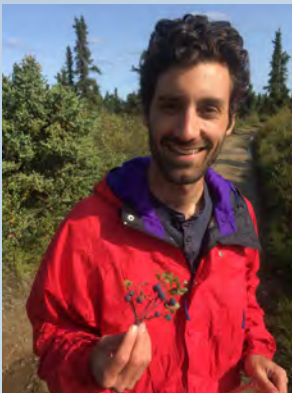
Clay Venetis, Staff Attorney, Alaska Legal Services Corporation

July 22, 2020

Your Presenters



- Estelle Thomson is an enrolled member of the Native Village of Paimiut. Her ancestors are among the original five families who made up the ancestral village. She has been serving Paimiut since 2018 in various capacities. She is the Interim Traditional Council President as well as the Tribal Court Program Director for the Native Village of Paimiut.



- Clay Venetis is a Staff Attorney for the Alaska Legal Services Corporation, in the Fairbanks office. He works with Tribes throughout Alaska.

Resolving Conflicts

- It might not be what we think.
- It's all about relationships and shared responsibility
 - Tribal Courts
 - Municipal Courts
 - State Courts



Intertribal Relations: Utilizing Relationships and Resources to take care of problems (Estelle & Clay)

- Shared Human Resources (benefits, less conflict of interest, etc.)
- Shared Courts/Offices
- Shared documents (codes, court forms, etc.)
- Shared Training

Jurisdiction Issues (Clay)

- This Tribe vs. That Tribe
- Tribe vs. State Jurisdiction



Models

- Kokechik Basin Inter-Tribal Consortium on Tribal Justice & Public Safety
- Inter-agency agreements
 - Outline roles and responsibilities
 - Diversion agreements
 - Cooperative case management



School Policies

- Explain how the school addresses academic and behavioral problems.
- Outline the school's policies regarding tardiness, absence, and discipline.
- Provide policy information about:
 - School cancellations for bad weather and other reasons.
 - Emergency procedures.
 - Transportation.
 - After-school activities.
 - Volunteering.

Quyana

- Questions for presenters can be directed to:
- Clay Venetis, Alaska Legal Services Staff Lawyer, cvenetis@alsc-law.org
- Estelle Thomson, Native Village of Paimiut, estellet@nvptc.org

Avoiding Conflict in Codes and Best Practices

Alex Cleghorn, Legal and Policy Director



— Alaska Native —
JUSTICE CENTER
Voices for Justice



Tribal Law Terminology

Ordinance. Statute. Act.

All terms mean the same thing - Tribal Law.

- **Code. Organized collection of Tribal Law.**
- **Codification. The process of organizing Tribal Law based upon the subject matter of the Tribal Law.**



Avoiding Conflict?

2 types of potential conflict

- **Conflict in community regarding Tribal Law**
- **Conflict in Tribal Laws**
 - **Conflict between Constitution and Tribal Law**
 - **Conflict between Tribal Laws**



Avoiding Community Conflict

Authority to make and enforce Tribal Law
comes from Tribal citizens

Keep community informed and involved



Avoiding Community Conflict

Best practices

- Work on Tribal Law in open meetings
- Encourage Tribal citizens to participate in meetings
- Special meeting to encourage attendance
- Present at local school to encourage youth to participate
- Survey – ask questions
- Post drafts of written Tribal Law in public areas



Avoiding conflict in Tribal Laws

Best practices

1. Read current Tribal Law
 - Constitution
 - Other Tribal Laws
2. What do Constitution and Tribal Law say about hearings, Tribal Court or Judges?
 - Identify changes if needed
3. Plan for how to approach needed changes



Avoiding conflict in Tribal Laws

Constitution – voted on by tribal citizens

- What does your constitution say about Tribal Court or Judges?
 - Almost all authorize Tribal Council to establish a Tribal Court
 - » *Its ok if Constitution does not say this – inherent sovereignty authorizes Tribal Government to establish a Tribal Court*
 - Are there any details about Tribal Court or judicial branch?



Avoiding conflict in Tribal Laws

Why is it important to read your constitution?

- It is the written foundation of Tribal Law
 - Any details in Constitution about Tribal Court cannot conflict with Tribal Law.
 - Tribal Law must align with Tribal Constitution.
- May have been changed (amended) over time
- Oral history may be different than what is written



Avoiding conflict in Tribal Laws

Constitution – voted on by tribal citizens

- What does your constitution say about Tribal Court or Judges?
 - Almost all authorize Tribal Council to establish a Tribal Court
 - » *Its ok if Constitution does not say this – inherent sovereignty authorizes Tribal Government to establish a Tribal Court*
 - Are there any details about Tribal Court or judicial branch?



Avoiding conflict in Tribal Laws

What Tribal Law is already written down?

- What does written Tribal Law say about hearings, the Tribal Court or Judges?
 - Amend to refer to the Court as the hearing body.
- What if written Tribal Law does not say what you actually do? **It's OK!** Just change the written Tribal Law.
 - Written Tribal Law should agree with how things are actually done, how the Tribal Government actually operates.



Avoiding conflict in Tribal Laws

Best practices – Put into practice

1. Read current Tribal Law
 - Constitution
 - Other Tribal Laws
2. What do Constitution and Tribal Law say about hearings, Tribal Court or Judges?
 - Identify changes if needed
3. Plan for how to approach needed changes



Avoiding conflict in Tribal Laws

Example 1

Constitution	Tribal Law
<p>Section about Tribal Court says: To provide for the maintenance of law and order and the administration of justice, including the establishment of appropriate tribal courts and other judicial bodies.</p> <p>This Constitution lists establishing tribal courts as something the Tribal Council can do.</p>	<p>Traditionally, laws and customs of the Tribe were enforced without outside intervention since time immemorial. The Tribal Council has established a tribal court under the inherent sovereignty of a federally recognized Indian tribe, through sovereign powers delegated to the Tribal Council to exercise under Article X of the Traditional Constitution of the Tribe.</p>



Avoiding conflict in Tribal Laws

Example 2

Constitution	Tribal Law
<p>The Village shall have the following powers: To do all things for the common good which it has done or has had the right to do in the past and which are not against Federal law and such Territorial law as may apply.</p> <p>This Constitution does not list establishing tribal courts as something the Tribal Council can do.</p> <p><i>That is ok</i> – inherent sovereignty authorizes Tribal Government to establish Tribal Court.</p>	<p>No written Tribal Law.</p> <p>If written Tribal Law is needed – see examples...</p>



Avoiding conflict in Tribal Laws

Example 2

Constitution	Tribal Law Examples
<p>The Village shall have the following powers: To do all things for the common good which it has done or has had the right to do in the past and which are not against Federal law and such Territorial law as may apply.</p> <p>This Constitution does not list establishing tribal courts as something the Tribal Council can do.</p> <p><i>That is ok</i> – inherent sovereignty authorizes Tribal Government to establish Tribal Court.</p>	<ol style="list-style-type: none">1. The Village Council shall serve as the Tribal Court.2. The Tribe’s Elders Council shall perform all judicial functions, the procedures to be set by Tribal Law.3. The Tribal Court will consist of a panel of judges. Judges are appointed by a majority vote of the Tribal Council. At least 2 and no more than 5 judges will hear each case.



Avoiding conflict in Tribal Laws

Example 3a

Existing Tribal Law Example Tribal Court Law	Is Any Change Needed if Setting up Tribal Court?
<p>Section 1. Judicial Authority. The judicial authority of the village shall be vested in the Village Tribal Court. In exercising such judicial authority, the Court may hear all matters arising within its jurisdiction.</p>	<ul style="list-style-type: none">• Section 1. No change needed. States that Tribal Court has judicial authority.



Avoiding conflict in Tribal Laws

Example 3b

Existing Tribal Law Example Tribal Court Law	Is Any Change Needed if Setting up Tribal Court?
<p>Section 2. Composition of Tribal Court.</p> <p>The Court shall consist of the members of the Tribe's Traditional Council. The Council shall sit as the Court from time to time as matters shall arise within the jurisdiction of the Court.</p>	<p>Section 2. Questions to ask:</p> <ul style="list-style-type: none"> • Has Tribe decided Council acts as Court? If yes, no changes. • Has Tribe decided Court and Council should be separate? If yes, change is needed.



Avoiding conflict in Tribal Laws

Example 4a

Existing Tribal Law Example Disorderly Conduct Law	Is Any Change Needed if Setting up Tribal Court?
<p>Section 1. Violation Any person who engages in fighting, public indecency, or in some other way disturbs the public or is hazardous to the health, safety, and welfare of the people of the Village, is guilty of disorderly conduct.</p>	<p><i>This section defines the violation. Does not mention Tribal Court.</i></p>



Avoiding conflict in Tribal Laws

Example 4b

Existing Tribal Law Example Disorderly Conduct Law	Is Any Change Needed if Setting up Tribal Court?
<p>Section 2. In furtherance of this Ordinance, the Tribal Council shall have exclusive authority to administer and implement this Ordinance.</p> <p>Section 3. Any person who violates this Ordinance shall be subject to the penalties of the Tribal Council.</p>	<p>Section 2. Tribal Council manages and puts into effect Tribal Law. This is government role of Tribal Council. No change needed.</p> <p>Section 3. Penalties for violating Tribal Law are usually the role of Tribal Court. Change is needed.</p>



Contact information

907-793-3550

Alex Cleghorn
Legal and Policy Director
Alaska Native Justice Center
amcleghorn@anjc.net



—Alaska Native—
JUSTICE CENTER
Voices for Justice



Compare Constitution to Tribal Law

Constitution	Tribal Law
<p>To provide for the maintenance of law and order and the administration of justice, including the establishment of appropriate tribal courts and other judicial bodies.</p> <p>This Constitution lists establishing tribal courts as something the Tribal Council can do.</p>	<p>Traditionally, laws and customs of the Tribe were enforced without outside intervention since time immemorial. The Tribal Council has established a tribal court under the inherent sovereignty of a federally recognized Indian tribe, through sovereign powers delegated to the Tribal Council to exercise under Article X of the Traditional Constitution of the Tribe.</p> <p>A Tribe may decide not to set up a separate Tribal Court.</p>
<p>The Village shall have the following powers: To do all things for the common good which it has done or has had the right to do in the past and which are not against Federal law and such Territorial law as may apply.</p> <p>This Constitution does not list establishing tribal courts as something the Tribal Council can do. That is ok – inherent sovereignty authorizes Tribal Government to establish Tribal Court.</p>	<p>Example Tribal Laws:</p> <ul style="list-style-type: none"> A. The Village Council shall serve as the Tribal Court. B. The Tribe’s Elders Council shall perform all judicial functions, the procedures to be set by Tribal Law. C. The Tribal Court will consist of a panel of judges. Judges are appointed by a majority vote of the Tribal Council. At least 2 and no more than 5 judges will hear each case. <p>Different Tribes may choose different ways to set up a Tribal Court.</p>
<p>Section 3. <u>Other Council Powers</u>. The Tribal Council shall exercise the following powers subject to the limitations imposed by Federal law and this Constitution:</p> <p style="padding-left: 40px;">(p) To exercise its judicial powers through the creation of tribal courts, the <u>function</u>, <u>duties</u> and <u>jurisdiction</u> to be established by ordinance.</p> <p>This Constitution lists establishing tribal courts as something the Tribal Council can do. This Constitution also says that Tribal Law will establish the Tribal Court’s: (1) function; (2) duties; and (3) jurisdiction. Make sure Tribal Law mentions all 3.</p>	<p>Section 3. Purpose</p> <ul style="list-style-type: none"> D. History. Since time immemorial the people have resolved dispute and conflict, maintained community peace, and delivered justice through the use of traditional tribal laws, customs and practices. E. Modern purpose. To honor prior customs, history, traditions and experience to preserve, strengthen and continue the Tribal Court into the future. To ensure efficient and fair administration of justice the Tribal Court shall continue to resolve conflicts and dispute and enforce Tribal Law through the application of cultural traditions, customary and traditional values, and written law. <p>Section 4. Authority.</p> <p>Section 5. Jurisdiction.</p>

	<p>Section 6. Court Structure. Tribal Court will consist of a panel of judges. Judges are appointed by a majority vote of the Tribal Council. At least 2 and no more than 5 judges will hear each case. ...</p> <p>Section 7. Judges. (A)Qualifications. (B)Selection of Judges. (C)Terms.</p> <p>Section 8. Elders and Other Advisors.</p> <p>Section 9. Legal and Professional Consultation.</p> <p>Section 10. Appeals.</p> <p>Tribal Law can include more than what is mentioned in Constitution but Tribal Law cannot conflict with Constitution.</p>
--	---

Read Tribal Law to see if change is needed for Tribal Court

Tribal Law Example	Is any change needed if setting up a Tribal Court?
<p>Tribal Court</p> <p>Section 1. Judicial Authority. The judicial authority of the village shall be vested in the Village Tribal Court. In exercising such judicial authority, the Court may hear all matters arising within its jurisdiction.</p> <p>Section 2. Composition of Tribal Court. The Court shall consist of the members of the Tribe’s Traditional Council. The Council shall sit as the Court from time to time as matters shall arise within the jurisdiction of the Court.</p>	<p><i>Is any change needed?</i></p>
<p>Disorderly Conduct</p> <p>Section 1. Violation Any person who engages in fighting, public indecency, or in some other way disturbs the public or is hazardous to the health, safety, and welfare of the people of the Village, is guilty of disorderly conduct.</p> <p>Section 2. In furtherance of this Ordinance, the Tribal Council shall have exclusive authority to administer and implement this Ordinance.</p> <p>Section 3. Any person who violates this Ordinance shall be subject to the penalties of the Tribal Council.</p>	<p><i>Is any change needed?</i></p>

Use for your own review

Compare Constitution to Tribal Law

Constitution	Tribal Law
<i>Fill in here</i>	Fill in here

Read Tribal Law to see if change is needed for Tribal Court

Tribal Law	Is any change needed if setting up a Tribal Court?
<i>Fill in here</i>	Is Tribal Council acting as Tribal Court? Is Tribal Court separate from Tribal Council? Fill in here