

Minnesota Tribal Court - Lawyers for Divorce and Custody

Tribal Courts Generally

Federally recognized Indian tribes have a very special attribute. It is their inherent right of self-government. "Recognition" of a tribe means that it is recognized by the United States Government as having a government to government relationship and that the tribe exists in a domestic dependent nation status. Recognized tribes have the right to operate under their own governmental systems and their own governmental constitutions and laws.

In Minnesota, there are eleven recognized tribes which include:

- Bois Forte Band of Chippewa
- Fond Du Lac Band of Chippewa
- Grand Portage Band of Chippewa
- Leech Lake Band of Ojibwe
- Mille Lacs Band of Ojibwe
- Red Lake Nation of Chippewa
- White Earth Band of Ojibwe
- Lower Sioux Community
- Prairie Island Indian Community
- Shakopee Mdewakanton Sioux Community
- Upper Sioux Community

In 1953, Congress enacted Public Law 83-280 conferring jurisdiction over most criminal and civil actions arising in Indian country to the courts in five particular states including Minnesota with the exception of the Red Lake Indian reservation. Federal laws enacted after 1953, including the Indian Child Welfare Act (ICWA), and the Indian Civil Rights Act (ICRA), permitted tribal courts to exercise substantial jurisdiction both inside and outside Indian country. The expansion and exercise of tribal jurisdiction depended upon the existence of credible tribal dispute resolution forums. As a result, there was a strong impetus for the recognized tribes to establish their own judicial systems.

A direct consequence is that, presently, most tribes have established court systems where appointed Judges preside over legal disputes covered under the Tribal Code. Since each tribe is sovereign, they may enact their own laws, and procedural court rules. By the same token, the tribe may determine what types of cases its courts will hear and what types they will not hear. Often, tribal courts resolve matters related to juvenile law, civil disputes, criminal law (for tribal members only) and family law. The laws are enacted by a tribal council. Generally, those laws and ordinances are in codified form and set forth in a Tribal Code. Often, the codes and procedural rules enacted by a tribe are similar to existing state laws with some variations.

Tribal Court Authority

The Tribal Court interprets the laws and ordinances passed by the Tribal Council. Tribes may also decide over what issues it wishes to have jurisdiction. Many tribes have enacted family law statutes. A tribal court may have jurisdiction over a divorce or custody proceeding if one of the parties is a resident member of that tribe and that party meets jurisdictional requirement set up by the tribal code. In many instances, the tribal code will require that the party have residency on tribal land for a certain period of time before jurisdictional requirements are met.

Where one party is a resident member of the tribe and the other party is not, there may be concurrent jurisdiction between the state and the tribal court. In such an instance, the divorce or custody proceeding may be filed in either state court or tribal court often resulting in a race to file between parties in order to choose a particular jurisdiction.

Changing Courts - State v. Tribal Court

A Motion may always be brought in either state court or tribal court to deny jurisdiction and shift the proceeding to a more desirable forum. Such a Motion is called a Motion for *forum non conveniens*. In deciding such a motion, a court may consider the following factors:

1. The relative ease of access to sources of proof;
2. availability of compulsory process for attendance of unwilling, and the cost of obtaining will, witnesses; and
3. all other practical problems that make trial of a case easy, expeditious and inexpensive.

As the Minnesota Court of Appeal stated in *Amatuzio v. Amatuzio*, 410 N.W. 2d 871, 875 (Minn. App. 1987), the court must weigh relative advantages and obstacles to fair trial. What is particularly compelling is that the Court also placed a substantial burden of proof on the party seeking to change the location of the action stating that unless the balance is strongly in favor of the moving party, the choice of forum should rarely be disturbed.

Enforceability of Orders Between State and Tribal Court

Although tribal court orders are not given "full faith and credit" which would make them automatically enforceable, orders entered by a tribal court are generally enforced. Minnesota's General Rules of Practice for District Court promulgated by Minnesota's Supreme Court includes language in that regard. Rule 10.01 states "Where mandated by state or federal statute, orders, judgments, and other judicial acts of the tribal courts of any federally recognized Indian tribe shall be recognized and enforced." Rule 10.02 also indicates that recognition is discretionary under certain circumstances. In cases other than those governed by Rule 10.01(a), enforcement of a tribal court order or judgment is discretionary with the court. In exercising this discretion, the court may consider the following factors:

- (1) whether the party against whom the order or judgment will be used has been given notice and an opportunity to be heard or, in the case of matters properly considered ex parte, whether the respondent will be given notice and an opportunity to be heard within a reasonable time;
- (2) whether the order or judgment appears valid on its face and, if possible to determine, whether it remains in effect;
- (3) whether the tribal court possessed subject-matter jurisdiction and jurisdiction over the person of the parties;
- (4) whether the issuing tribal court was a court of record;
- (5) whether the order or judgment was obtained by fraud, duress, or coercion;
- (6) whether the order or judgment was obtained through a process that afforded fair notice, the right to appear and compel attendance of witnesses, and a fair hearing before an independent magistrate;
- (7) whether the order or judgment contravenes the public policy of this state;

(8) whether the order or judgment is final under the laws and procedures of the rendering court, unless the order is a non-criminal order for the protection or apprehension of an adult, juvenile or child, or another type of temporary, emergency order;

(9) whether the tribal court reciprocally provides for recognition and implementation of orders, judgments and decrees of the courts of this state; and

(10) any other factors the court deems appropriate in the interests of justice.

Tribes also codify similar ordinances that allow for the enforcement of State Orders in tribal courts.

To enforce an order, the process would include filing a certified copy of the Judgment or order in the new forum and seeking a reciprocal order enforcing its provisions within that court's jurisdiction.

Attorneys in Tribal Court

Since each tribe has sovereign authority, each may also determine who is admitted to practice within its court system. In most instances, attorneys may appear on behalf of any party in any proceeding before the court, provided they are licensed to practice by the tribal court. A license to practice is usually issued by the Tribal Court upon filing with the Court Administrator an affidavit attesting that the applicant is licensed to practice law and that the attorney has read and understands the tribes Constitution, codes and procedures.

In any proceeding, it is extremely important to have experienced and aggressive representation. Often, knowing where it is most beneficial to file a case can provide a significant advantage. Certainly understanding the nuances related to procedural rules and statutory distinctions can result in a significant advantage in any court room proceeding.

Author

Maury D. Beaulier is family law lawyer who has developed an expertise in the tribal courts throughout Minnesota. Admitted to practice in a number of Minnesota tribal courts, he regularly represents tribal members and non-tribal members in family law matters such as divorce, custody, adoption, child abuse and neglect, and paternity. For a consultation visit divorceprofessionals.com or call 612.240.8005.