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Intertribal Bar Association Grows

By Pat Broderick

San Diego County has more American Indian reservations than any other county in the United State, each with its own customs and traditions, posing a challenge to lawyers trying to represent litigants in tribal disputes.

It's a role that the Intertribal Court of Southern California Bar Association has been trying to fill in the five years since it was established.



"We have about 80 attorneys now, but I expect to see more than 100 shortly," said tribal court administrator Temet Aguilar. "The court system is steadily growing. It's a tough, difficult and rewarding experience."

The tribal bar was a logical next step to the establishment of the Intertribal Court in 2004, with Aguilar taking a leading role in both efforts.

"There had been prior attempts to create a tribal judiciary, and this was the first time it succeeded, with the right people, the right time and place, and the funding was in place," he said.

Working with the Southern California Tribal Chairmen's Association, Aguilar secured a \$150,000 grant from the Bureau of Justice Assistance to implement the court.

"Knowing our tribes and how they function, that is half your battle. If this was ever going to be created, it had to be created from within our own leaders, tribes and people," he said. "When you bring in outsiders, it doesn't always work well."

The tribal bar is a diverse group of attorneys who come from all over, from San Diego's east county to Orange County, Arizona and Washington, among other areas. While there are no geographic boundaries for admittance, there are strict rules: Applicants must be in good standing with any state or federal bar of the United States, with no disciplinary proceedings pending; understand the court's rules of procedure, tribal and federal laws; be recommended by a current bar member; and be of "high moral character and integrity," among other requirements.

Aguilar said chief judges and other legal minds on Indian reservations were tapped to develop San Diego County's tribal bar.


Erik C. Jenkins, a partner with Fuller Jenkins in San Diego and a bar member who also serves as a judge pro tem in the intertribal court, said he considers its evolving judicial system "a collaborative effort."


"You have the opportunity as a lawyer to work with various tribes and tribal courts to help their systems of law develop," he said.

Previously, Jenkins did work for tribes in North Dakota, South Dakota and Michigan, helping their tribal attorneys write legal codes.

"To be a part of the genesis of this, to me, is about as rewarding an area to be in as a lawyer," Jenkins said.

The rise of tribal courts, along with the tribal bars they've spawned, can be traced to the gaming industry, he said, and the casinos that have enriched some reservations.

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"As tribal members get wealthier, family issues are often driven by financial issues," Jenkins said. "So the need for legal analysts for family law increases."

Tribal courts tend to have a different ambience than mainstream state and federal courts, Jenkins observed, because of the nature of their diversity.

"If you sit in on a tribal court hearing and then in state court, you would see a much more collaborative process in the tribal setting," Jenkins said. "You get the results that are in the best interest of the parties involved, rather than the procedure-driven results you often see in matters litigated in state court."

Dorothy Alther, senior staff attorney for the California Indian Legal Services and one of the first to join the tribal bar, said her organization helps tribes develop formal laws.

"It's easier to bring a case in tribal court, because the judge has the benefit of having a written law, rather than having to bring in witnesses to explain what their customs and traditions are," she said.

With its Justice Center based on the Rincon Reservation in Valley Center, the court hears a variety of disputes, including issues involving tribal enrollment, child welfare cases and civil violations. Functioning as a circuit court, it provides such resources as computerized case management, while judgments are based on each participating tribe's laws, ordinances, customs and history.

The court serves 17 federally recognized tribes in the county, and it has contracts with others in Northern California, Nevada and Arizona.

"You are in another world," said Chief Judge Anthony J. Brandenburg, who became the court's first chief judge in 2005, and also set up its appellate system. "Every tribe is different, and some tribes operate by way of codes and rules and regulations. Some tribes have constitutions, and some tribes operate purely on customs and traditions." The main challenge is building trust, he said.

"Native peoples don't trust the Western system," Brandenburg said. "You've got 400 years of bad history."

But the Intertribal Court maintains a healthy rapport with law enforcement outside the reservation, he said.

San Diego County District Attorney Bonnie Dumanis agreed. "It's been a model," she said.

John Madigan serves as the tribal liaison for the San Diego County sheriff's office, as well as a judge pro tem, handling civil cases in the tribal court.

His job is to keep his fingers "on the pulse of all the different tribes," giving them a uniform source for assistance with problems or questions.

Madigan also works closely with the justice department, the gaming commission and the attorney general's office on tribal issues.

"We work out a lot of problems," Madigan said. "Many counties don't have this good of a relationship. It's a role model for the United States."

Maria Roberts, a partner at Stokes Roberts & Wagner in San Diego and a tribal bar member, considers the court "user friendly."

"Cases brought before the ICSC are adjudicated in a more timely and efficient manner than if those cases were brought in state and federal court, because of how busy state and federal courts are," she said.

Ultimately the mandate of the intertribal court is to be culturally sensitive.

"The tribe and tribal families are the center of our universe," Brandenburg said. "We're just a service that revolves around that - doing what we can, whether it's Indian child welfare, contract, land or environmental issues, hunting, fishing - you name it. We fit in, but we have to remember that we're dealing in a native community where the tribal council is a sovereign power that determines everything."