

American Indian Law Resources: Litigation

Research Guide

Last Updated: February 2013

The following is intended only as an introduction to begin research related to legal matters involving Indian tribes in Southern California.

Overview:

Tribes are sovereign nations subject to the plenary powers of Congress. Most are governed by tribal councils which have their own administrative procedures that must be exhausted prior to commencement of any action. These are tribe specific, as with any autonomous nation, and the potential litigant should contact the council of the tribe for direction on how to proceed before that tribe.

Bear in mind that with all issues relating to tribes and tribal land there is interplay between Tribal Law, Federal Law, and State Law. Immunity and Jurisdiction are primary issues that should be explored at the start of any legal inquiry regarding tribal or individual liability. Ascertaining the proper forum for an issue before instituting action will save immensely on time and resources.

In San Diego County the Intertribal Court of Southern California hears cases on a wide variety of topics ranging from Indian Child Welfare, Environment, Tribal Housing, Land Use and Trespass, Civil Disputes, and others. The Court works on a circuit court format whereby a Judge travels from one reservation to the next presiding over assigned cases.

Immunity:

Tribes have sovereign immunity and cannot be sued unless there is an express waiver from the Tribe or Congress. Consult one of the below resources in order to determine whether immunity applies to your situation.

See also, generally, the Indian Civil Rights Act of 1968 (25 USC §1301-03).

Jurisdiction:

The State of California (as well as certain other states) has concurrent criminal and civil jurisdiction over crimes and causes of action arising in Indian Country . (18 USC § 1162 and 28 USC § 1360). Indian Country is defined in 18 USC §1151). This creates a somewhat complex issue of which court has jurisdiction in which instance. There is no bright line test; litigants should be prepared to conduct thorough research regarding their factual scenario in light of specific tribal and state law and procedure.

Indian Child Welfare Act (ICWA):

The philosophy behind this Act is that it is in the Indian child's interest to encourage and protect his/her membership in tribe and connection to tribal community – this is not limited to Indian child custody proceedings. In many dependency and delinquency hearings there is an affirmative duty to inquire whether the child in question is an Indian child.

See, generally, 25 USC §1901 et seq; 25 CFR §23.1 et seq, BIA Guidelines for State Courts (Fed Reg 67584 1979) related US Supreme Court cases, CA WIC §224 et seq, CA Family Code §175 et seq, CA Probate Code §1459 et seq. See also: our library's Research Guide for ICWA.

Resources:**Intertribal Court of Southern California**

49002 Golsh Road

Valley Center, CA 92081

Ph: 760 751-4142

Fax: 760 751-3078

Email: tribalcourt@isc-court.us

www.courts.ca.gov/14902.htm

<http://isc.us/Welcome.html>

California Indian Legal Services

www.calindian.org

Local office:

609 S Escondido Blvd.

Escondido, CA 92025

Ph: 760 746-8941; 800 743 8941

Fax: 760 746-1815

Library Resources:

American Indian Law In a Nutshell, William C. Canby Jr. Thompson West
KF 8205.Z9 C36 2009

American Indian Law Deskbook
KF 8205.A76 2008

Bench Handbook – The Indian Child Welfare Act – Administrative Office of the Court,
KF 8210.C45 B46 2008

Landmark Indian Law Cases – AALL Publications KF 8204.5 .L36 2002

The Rights of Indians and Tribes – Stephen L. Pevar, Southern Illinois University Press,
KF 8210.C5 P48 2002

Search the SDCPLL online catalog for access to some electronic/online resources.
<http://millennium.sdcll.org/>