

New York Federal-State-Tribal Courts and Indian Nations Justice Forum

Cayuga • Oneida • Onondaga • St. Regis Mohawk • Seneca • Tonawanda Seneca • Tuscarora • Shinnecock • Unkechaug
N.Y. State Unified Court System • United States Courts for the Second Circuit Resident in the State of New York

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Welcome

The mission of the Forum is to foster understanding and improve cooperation among jurisdictions.



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History

The New York Tribal Courts Committee and the New York Federal-State-Tribal Courts Forum originate from a project of the Conference of Chief Justices, an organization of the chief judges of the courts of the 50 states, the District of Columbia and United States territories, whose mission is to improve the administration of justice in state court systems. In 1985, the Conference created a committee to address state civil jurisdiction over Indians, after questions were raised by the United States Supreme Court's two decisions in *Three Affiliated Tribes v. Wold Engineering*. The Committee on Jurisdiction Within Indian Country, later called the Tribal Relations Committee (TRC), held a series of panels and conferences on tribal jurisdiction. The TRC obtained funding from the National Center for State Courts and the State Justice Institute to study tribal-state court relations, and set up demonstration forums in Arizona, Oklahoma, and Washington.

In 1991, the TRC held a national conference in Seattle, Washington, with representatives of tribal, federal and state governments and justice systems. The TRC study and demonstration forums emphasized the need for cooperative efforts among federal, state and tribal entities, and the idea of creating forums to address and to resolve jurisdictional conflict expanded after this initial conference. By 2003, 17 states had created tribal-state court forums. In addition, the National Center for State Courts and the State Justice Institute published a 10-page guide for creating a forum, as encouragement for other states.

In 2002, Chief Judge Judith S. Kaye of the New York Court of Appeals created the New York Tribal Courts Committee to study the possibility of establishing a federal-state-tribal courts forum in New York and to explore how different justice systems might collaborate to foster mutual understanding and minimize conflict. She appointed Justice Marcy L. Kahn of the New York State Supreme Court to chair the Committee. Justice Edward M. Davidowitz, also of the New York State Supreme Court, soon joined the Committee and, under the guidance of Justices Kahn and Davidowitz as co-chairs, the Committee has worked for more than five years in a variety of ways to accomplish its mission.



Emerging Issues and Consensus for a Forum

On May 22, 2003, the Committee met in Liverpool, New York, with representatives of New York's nine state-recognized Indian Tribes and Nations to ascertain their interest in developing a federal-states-tribal courts forum. Since then, meetings have been held semiannually in Liverpool and Syracuse, New York. The initial meeting sought to identify topics of special concern to the Nations.

Among the issues discussed were difficulty with implementing the Indian Child Welfare Act (ICWA), especially in ensuring an appropriate tribal role in state family court decisions regarding the placement of Indian children through foster care or adoption; tribal efforts to implement judicial systems and law enforcement through their own governments; and the need to education and train state court judges on Indian government and culture. The Committee asked that tribal representatives discuss in their home communities the possibility of

establishing a permanent forum in New York to address such issues.

At the group's second meeting on November 3, 2003, Native participants agreed to help establish a permanent federal-state-tribal courts forum in New York. Subsequently, the group focused on three main issues: the placement of Indian children by the state family courts under ICWA; the resolution of jurisdictional conflicts arising from disparate rulings among federal, state and tribal justice systems; and the need to educate state and federal judges on tribal law and culture.

During the three years following those initial meetings, members of the Committee and interested members of all nine Nations and Tribes have met every six months in Syracuse as the New York Federal-State-Tribal Courts Forum Planning Group ("Planning Group") to address these and other issues of continuing and developing mutual interest.



Creating the Forum

In 2004, the group formalized the New York Federal-State-Tribal Courts Forum, creating and adopting an organizational structure and mission statement. Although these plans call for all nine State-recognized Nations to be members of the Forum, at this writing, in addition to the New York Unified Court System and the United States Courts for the Second Circuit, only the Oneida Indian Nation, St. Regis Mohawk Tribe, Seneca Nation of Indians, Shinnecock Tribe and the Unkechaug Nation have formally designated their members and alternate members to the Forum. While some of the Haudenosaunee Nations have not yet formally joined, their leaders continue to send members of their communities to the Forum meetings to serve as their "eyes and ears."

As part of the Forum's development, the Committee visited the Onondaga Nation longhouse, where they met with chiefs, clan mothers and council members from the Haudenosaunee, including the Onondaga Nation, Cayuga Indian Nation, Tonawanda Seneca Nation, Mohawk Nation Council and the Tuscarora Nation. Members of the Committee also visited the Tuscarora and Oneida reservations, where they met with tribal officials and toured each Nation's territory.



The First New York Listening Conference

As early as its second meeting, the Planning Group proposed an educational session at which tribal representatives could meet with federal and state judges to discuss the key issues previously identified by Native peoples in New York. The prime importance of these issues was readily apparent – ICWA, jurisdiction, and judicial education are all interrelated. Problems in one area could not be solved without, at the same time, successfully addressing each of the other issues.

On April 26-27, 2006, the First New York Listening Conference convened state and federal judges and court officials in sessions with tribal judges, chiefs, clan mothers, peacemakers and other representatives from the justice systems of New York's Indian Nations and Tribes, to exchange information and learn about our respective concepts of justice.

In November 2007, the Forum sponsored another educational session on ICWA which brought together clan mothers, law guardians and other persons involved in care of children who come before the courts.

The Forum continues to meet biannually to creatively respond to its mission. The Forum does not address issues relating to casino gaming,

land disputes, taxation or the substance of any matters currently in litigation.

Excerpted with permission from an article by Judge Marcy L. Kahn, Judge Edward M. Davidowitz and Joy Beane, "Building Bridges Between Parallel Paths: The First New York Listening Conference for Court Officials and Tribal Representatives," 78 New York State Bar Journal 10, 12-13 (Nov./Dec. 2006)

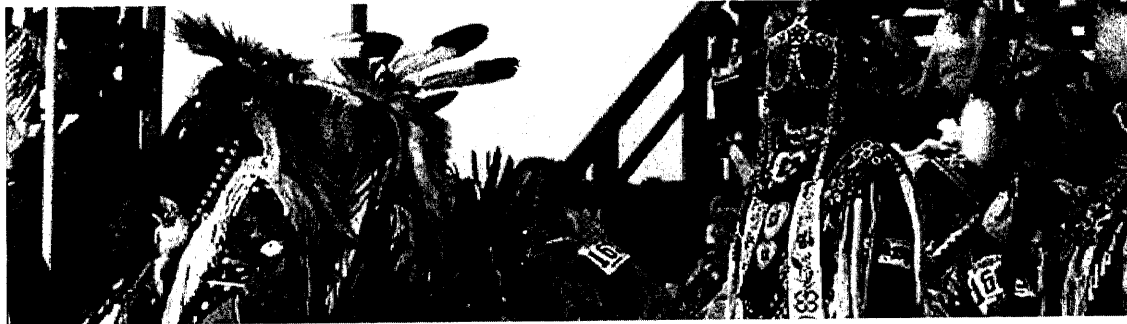


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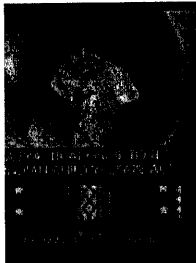
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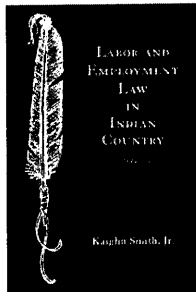


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Founded in 1970, the Native American Rights Fund (NARF) is the oldest and largest nonprofit law firm dedicated to asserting and defending the rights of Indian tribes, organizations and individuals nationwide.

NARF's practice is concentrated in five key areas: the preservation of tribal existence; the protection of tribal natural resources; the promotion of Native American human rights; the accountability of governments to Native Americans; and the development of Indian law and educating the public about Indian rights, laws, and issues.

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What is the Tribal Supreme Court Project?

During its 2000 Term, the United States Supreme Court issued two devastating Indian law opinions: *Atkinson Trading Co. v. Shirley* (Tribes lack authority to tax non-Indian businesses within their reservations) and *Nevada v. Hicks* (Tribal Courts lack jurisdiction to hear cases brought by tribal members against non-Indians for harm done on trust lands within their reservations). These opinions were devastating in that they struck crippling blows to tribal sovereignty and tribal jurisdiction -- the most fundamental elements of continued tribal existence. These losses were indicative of the Court's steady departure from the longstanding, established principles of Indian law and were among a string of losses suffered by Indian tribes over the past two decades.

In response, in September 2001, Tribal Leaders met in Washington, D.C., and established the Tribal Supreme Court Project (Project) as part of the Tribal Sovereignty Protection Initiative. The purpose of the Project is to strengthen tribal advocacy before the U.S. Supreme Court by developing new litigation strategies and coordinating tribal legal resources, and to ultimately improve the win-loss record of Indian tribes. The Project is staffed by attorneys with the Native American Rights Fund (NARF) and the National Congress of American Indians (NCAI) and consists of a Working Group of over 200 attorneys and academics from around the nation who specialize in Indian law and other areas of law that impact Indian cases, including property law, trust law and Supreme Court practice. In addition, an Advisory Board of Tribal Leaders assists the Project by providing the necessary political and tribal perspective to the legal and academic expertise.

What Does the Tribal Supreme Court Project Do?

The U.S. Supreme Court is a highly specialized institution with a unique set of procedures that includes complete discretion on whether it will hear a case, and a much keener focus on policy consideration than the lower federal courts. The Tribal Supreme Court Project is based on the principle that a coordinated and structured approach to tribal advocacy is necessary to preserve tribal sovereignty. The Project performs the following functions in an effort to make better tools available to enhance the overall quality of tribal advocacy before the Supreme Court:

- In conjunction with the National Indian Law Library, monitors Indian law cases in the state and federal appellate courts that have the potential to reach the Supreme Court (NILL Indian Law Bulletins)
- Maintains an on-line depository of briefs and opinions in all Indian law cases filed with the U.S. Supreme Court and cases being monitored in the U.S. Court of Appeal and State Supreme Courts (Court Documents)
- Prepares an Update Memorandum of Cases which provides an overview of Indian law cases pending before the U.S. Supreme Court, cases being monitored and the current work being performed by the Project
- Offers assistance to tribal leaders and their attorneys to determine whether to file a Petition for a Writ of Certiorari (see definition) to the U.S. Supreme Court in cases where they lost in the court below
- Offers assistance to attorneys representing Indian tribes to prepare their Brief in Opposition (see definition) at the Petition Stage (see definition) in cases where they won in the court below
- Coordinates an Amicus Brief (see definition) writing network and helps to develop litigation strategies at both the Petition Stage and the Merits Stage (see definition) to ensure that the briefs receive the maximum attention of the Justices

Project Pages

- [Court Documents](#)
- [Ten Year Report](#)
- [Articles and Updates](#)
- [Workgroups \(password secure\)](#)
- [Glossary of Terms](#)

Additional Links

- [NILL Indian Law News Bulletins](#)
- [U.S. Supreme Court](#)
- [U.S. Solicitor General's Office](#)
- [SCOTUSblog](#)
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- When appropriate, prepares and submits Amicus Briefs on behalf of Indian tribes and Tribal Organizations
- Provides other brief writing assistance, including reviewing and editing of the principal briefs, and the performance of additional legal research
- Coordinates and conducts Moot Court (see definition) and Roundtable opportunities for attorneys who are presenting Oral Arguments (see definition) before the Court
- Conducts conference calls and fosters panel discussions among attorneys nationwide about pending Indian law cases and, when necessary, forms small working groups to formulate strategy on specific issues

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