

Tribal Appellate Courts A Practical Guide to History and Practice

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The U.S. Department of Justice, Bureau of Justice Statistics conducted a census of more than 92 percent of federally recognized tribes, and found that an estimated 59 percent of tribes had some form of formal, independent judicial system.¹ Although there is no federal law that requires tribes to have appellate courts, of the tribes operating judicial systems, 91 percent have an appellate court.² Thus, understanding tribal courts and the tribal appellate process is essential to protecting your clients' rights.

Tribal courts should be approached by the legal practitioner the same as when entering a foreign or separate state jurisdiction. You should thoroughly acquaint yourself with the tribal government's structure by reviewing the tribe's primary legal document — its constitution. This review will reveal whether the tribe has organized a separate and independent judicial branch of government or whether the tribe's legislature has administratively established a court and appellate court by delegation of its quasi-judicial authority.

Tribes that do not have established, independent courts often participate in the Code of Federal Regulation Court, which is also known as the Court of Indian Offenses (CFR Court). Both those that participate in the CFR Court and those that do not may have some judicial functions exclusively handled by the legislative authority or an internal administrative appeals board.

Before we discuss these various forms of tribal appellate courts, a brief outline and scope of tribal court authority is necessary. Power to establish tribal court arises from the Indian tribe's sovereignty as an extension of its general

governmental and political authority.³ It is only limited by its treaties, federal statutes or lack of tribal laws specifically exercising that reserved authority.⁴ Tribal courts are not inferior courts to the federal courts or Oklahoma state courts; therefore, there is no direct appellate review of tribal court decisions in those courts, with the exception of *habeas corpus* violations that may be reviewed in federal district courts.⁵

The U.S. Constitution and Oklahoma Constitution do not apply to Oklahoma Indian tribes;⁶ however, that does not mean litigants are without fundamental protections in tribal court. In 1968, Congress passed the Indian Civil Rights Act (ICRA), which closely mirrors the U.S. Bill of Rights. Congress requires tribes to provide the ability "to petition for redress of grievances" and the basic protections of due process, freedom of speech, protection against self-incrimination and other fundamental rights.⁷ Additionally, many tribes have adopted substantive laws, statutes and constitutions through their own governmental processes which contain similar protections as those found in the U.S. Bill of Rights.