

## All Other Case Types

If the cause of action arose in “Indian Country”<sup>1</sup> and involves one or more tribal members, special considerations apply. Under 25 U.S.C. 1360 (a) – (c) a state court in California has general civil adjudicative jurisdiction over causes of action which arise in Indian Country and involve Indians. However, the state court has no authority to adjudicate interests in real or personal property held in trust by the United States or subject to a restriction against alienation. (25 U.S.C. 1360 (b)) In actions not involving trust property, state courts have adjudicatory jurisdiction, but the laws to be applied when the action arises in Indian Country and involves Indians may be different. The U.S. Supreme Court has held that PL-280 did not extend the states civil regulatory laws to Indian Country.<sup>2</sup> Further, 25 U.S.C. 1360 (c)<sup>3</sup> requires the state court to apply tribal law not inconsistent with state law to resolve civil causes of action when exercising its civil adjudicatory jurisdiction over matters arising in Indian Country and involving Indians.

### Guide

- Judicial decision makers can act only on the information they are provided by litigants, attorneys, court staff, or other participants in the court process.
- Consider improving information sharing with the court in the following ways:
  - ✓ Require all court-connected service providers, such as mediators, facilitators, self-help center staff, and legal aid staff to review their intake procedures and forms to include information for litigants explaining why their ancestry and how their property is held might be relevant to their case
  - ✓ Refer court-connected service providers to training on PL-280 as it relates to court customers so that they understand why this information is important to the court
  - ✓ Require all court-connected service providers to help court customers understand why the court would need this information in their case if it is relevant
  - ✓ Review local court rules, procedures, and operations for potential revisions that would promote this type of information sharing with the court
- Consider learning about and coordinating with tribal community services
  - ✓ Contact local tribal services and learn what they can offer

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<sup>1</sup> Indian Country” is defined in 18 U.S.C. § 1151 “Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country”, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

<sup>2</sup> See *Bryan v. Itasca County*, 426 U.S. 373 (1976).

<sup>3</sup> Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

Print out a list of tribal resources, which can be found at the [AOC's Tribal/State Programs](#): Services are listed by county and type of service, such as dental, domestic violence, education, housing, legal, medical, mental health, and substance abuse treatment. This list could be incorporated into a court brochure and available in the courtroom or distributed by the clerk. Here are two typical examples of tribal services:

(1) [Tribal TANFF](#)- every county social services department has a tribal TANF office

(2) [Indian Health Programs](#)- every county has an Indian health program

- Consider developing a protocol that will identify cases where Native American ancestry and/or property information would be relevant
  - ✓ If your court is close to a reservation, then the parties' address or zip code may give you reason to believe they are living within the boundaries of the reservation
  - ✓ If the case involves the adjudication of property rights and the property is within the boundaries of the reservation, then the protocol can include how the court will let the parties know that it may be limited in issuing orders relating to the property. (For more information, see benchguides 201 and 202)
  - ✓ If the pleadings or forms filed with the court indicate that the parties are using tribal services in your county, then the protocol can include scripts tailored to the type of case. For example,
    - There may be special services and programs, or special considerations the court must take into account in this case if you are (list identified groups and include Native American or tribal member). If ... if this is or you think it may be relevant to you, please let the court (attorney, clerk, other) know and we can provide you with further information on ... “

#### Permissible Ways to Raise the Question of Ancestry

1. I see from the petition (or other court document) that the parties reside at address, which may be within the boundaries of the Name of Tribe. Before this court can issue orders affecting your property rights, the court must make sure it can exercise jurisdiction. For this reason, I'm going to ask you a series of questions about your residence.
2. I see in the court report that your son is receiving medical services at the United American Indian Involvement (Los Angeles County's Indian health program), and while not everyone who uses Indian health programs are Native American, I wanted you to know that if you are Native American, then you may be eligible for and the court can order (as part of your sentence/probation terms and conditions) culturally appropriate services.