

# CIVIL LEGAL AID SUPPORTS FEDERAL EFFORTS ON BEHALF OF TRIBES & TRIBAL MEMBERS

## THE NEED

The Federal Government's relationship with, and responsibility to, members of Federally-recognized Indian Tribes is long and complex, governed by treaties, court decisions, a multitude of Federal laws, and executive orders. Together, these affect many aspects of life for tribal members, including child custody, estate planning, healthcare, education, and more.

As a consequence of the historical practice of removing Native American children from their families for placement with non-Native families, Congress enacted the Indian Child Welfare Act (ICWA). Although the law created safeguards to preserve families, it is difficult to navigate without legal assistance. The same is true for the preparation of Indian wills, made more complex because tribal lands are held in trust by the Federal Government. The American Indian Probate Reform Act (AIPRA) was enacted to remedy fragmented ownership of tribal lands and address complicated succession and probate issues that arise under Federal and Tribal law, but it requires complicated involvement with state and Federal agencies.

Moreover, many Tribes enact their own laws to establish law and order on their lands, adding to the need for lawyers with specialized knowledge of Federal law and tribal law and practice – both to help Tribes develop laws that in some instances must be compliant with Federal law and to represent individuals before tribal courts.

## EXAMPLES OF THE FEDERAL RESPONSE

The Federal Government supports many programs that help tribal members navigate these often complex legal processes and assist Tribes with their own tribal justice systems. The Department of the Interior's Bureau of Indian Affairs Office of Justice Services helps fund and support 184 tribal courts and, with the support of the Department of Justice's (DOJ) Access to Justice Initiative, provides free Tribal Court Trial Advocacy Trainings, designed to strengthen the trial skills of tribal judges, prosecutors, and defenders.

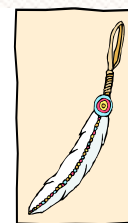
DOJ's Bureau of Justice Assistance (BJA) and Office on Violence Against Women (OVW) provides funding to Tribes for legal assistance to low-income tribal members through the annual Consolidated Tribal Assistance Solicitation. In addition to working directly with Tribes, BJA also supports legal services to Native Americans through the Tribal Civil and Criminal Legal Assistance program (TCCLA). TCCLA supports legal service non-profit organizations that provide representation to low-income Native American litigants in civil matters and indigent tribal criminal defendants who are charged with violations of tribal criminal law. It also supports core training and technical assistance for staff providing these services, peacemaking approaches and curriculum development and training on holistic representation approaches.

The Department of Health and Human Services' (HHS) Administration for Children & Families Children's Bureau (CB) provides funding and technical assistance to Tribes providing child welfare services to help strengthen and support these systems. CB's State Court Improvement Program works to promote ICWA compliance in state courts and the Tribal Court Improvement Program helps build and enhance tribal court capacity to hear child welfare cases. HHS's Indian Health Service supports Medical-Legal Partnerships in Indian Country and hosted a webinar to educate stakeholders on these partnerships.

The Corporation for National and Community Service (CNCS) has a commitment to serving Native American communities through a number of programs including AmeriCorps. In addition to supporting the placement of AmeriCorps members in legal services offices that serve Native American communities, CNCS also supports tribal communities by offering dedicated funding to Tribes to establish AmeriCorps programs within tribal nations.

**“Indian People and Tribes have unique and specialized legal needs because they are governed by their own tribal law and complex federal law that arise from their legal status, which is recognized in the United States Constitution. In many communities, there are no private attorneys and those that do not reside in or near Indian communities have little knowledge of federal Indian law or tribal law.”**

~National Association of Indian Legal Services, *Legal Needs & Services in Indian Country* (Jan. 2008)





**Indian communities are plagued by high rates of poverty, and a multitude of unmet legal needs. Legal aid can play a vital role in ensuring safety, stability, and economic security for tribal members.**

**~ Assistant Secretary - Indian Affairs Kevin Washburn  
U.S. Department of the Interior**

### **Legal Aid Helps**

- **Preserve Native American families** by assisting Tribes in developing and implementing welfare reform and by representing parents in cases that implicate ICWA.
- **Support victims of domestic violence** by preventing future violence through protection orders in court, securing or modifying child custody orders, counseling victims about safety, and providing holistic legal services to break the links between victim and abuser.
- **Protect land rights of Native Americans** by helping to prepare AIPRA-compliant wills to protect family property rights and representing tribal members in actions to protect their hunting and fishing rights on tribal land.
- **Provide representation to tribal criminal defendants and juveniles** in tribal courts.
- **Secure Federal recognition for Tribes** by serving as the Tribe's counsel in the Federal recognition process.
- **Develop tribal codes and ordinances**, which promote tribal sovereignty.
- **Protect tribal cultural and religious freedoms** by asserting the rights of Tribes to protect artifacts, burial sites, and the freedom to practice religious beliefs.
- **Secure Federal benefits for tribal members** by helping individuals enroll in their Tribe and receive Federally-guaranteed health and social services such as Social Security benefits, disability payments, and Indian Health Service benefits.
- **Support the resurgence of traditional indigenous justice practices such as peacemaking and talking circles** by providing training and technical assistance.

#### **Doctor prescribes a lawyer to keep family healthy and housed**

After Rose, a citizen of the Navajo Nation, lost her adult daughter in a car accident, she was left to raise five grandchildren. With no room for the children in her own house, Rose moved into her deceased daughter's apartment. Still grieving, Rose received an eviction notice from the housing agency, because she was not named on the apartment lease. She was told that she and the children had to move. When a pediatrician at the Indian Health Service clinic learned of the situation, she referred Rose to DNA-People's Legal Services Medical-Legal Partnership Program, funded by DOJ's Tribal Civil Legal Assistance Program. With the help of her DNA-People's Legal Services lawyer, Rose showed that tribal law and Federal policies allowed her to assume the lease obligations. Rose continued to care for the children in their own home and, with DNA's help, obtained legal guardianship over each grandchild.

#### **Legal aid helps Tribes prevent & respond to domestic violence**

Native American women living on reservations in Nebraska often experience severe poverty, geographic isolation, and violence. With many barriers to safety and economic self-sufficiency, Legal Aid of Nebraska (LAN) helped launch the Nebraska Native American Domestic Violence Coalition, which includes tribal domestic violence advocates, advocates who serve tribal members, and tribal, local, state and Federal law enforcement representatives and social services providers. When all four area Tribes – Omaha, Winnebago, Santee Sioux, and Ponca – passed tribal council resolutions supporting this work, LAN secured funding through DOJ's Consolidated Tribal Assistance Solicitation, to provide civil legal services to domestic violence victims for matters including help with divorce, child custody, child support, protection orders, landlord/tenant issues, consumer issues, bankruptcy, employment, tribal and/or public housing, and public benefits.

