

Tribal Courts fill access to justice needs, offer practice opportunity for lawyers

Chief Judge Stacie FourStar (JF) of the Fort Peck Assiniboine and Sioux Tribal Court, and Montana Legal Services Association Staff Attorney, Kathryn Seaton (KS) recently had a wide-ranging discussion touching on the role of tribal courts, their importance in communities and what role Montana’s attorneys might have in advancing racial justice in tribal courts.

KS: How would you describe what a tribal court is?

JF: Every tribal court in the country is different. Montana has seven different tribal court systems. The Fort Peck Tribal Court is a court of general jurisdiction that was established in 1965.

KS: It’s interesting that you say a court of general jurisdiction, because there are many limits on who and what a tribal court has jurisdiction over. But, at the same time, a tribal court is like a state court in that it is dealing with the general legal problems of a community.

JF: It is very complicated. At Fort Peck we have implemented the Violence Against Women Act and Tribal Law and Order Act which means we are able to have expanded jurisdiction and sentencing. When we talk about general jurisdiction, it’s traffic tickets to murder charges.

KS: In terms of handling all of those big and small legal matters for a community, what is your opinion on why tribal courts are important? Or, why can’t a tribal member just go to the state district court in their county?

JF: From back in the day when I started as a prosecutor, I could see that the westernized system wasn’t going to work for my community. We needed to implement restorative justice on a community level to address the historical and inter-generational trauma. We always want to consider, what can the tribal court offer that the state or federal court can’t? Often, it’s those alternatives to sentencing and restorative justice. In many cases, the tribal court can act more swiftly to keep



Fort Peck Assiniboine and Sioux Tribal Court Chief Judge Stacie FourStar is shown. (Photo provided)

peace and protect the community.

KS: I find that tribal courts can often respond much more quickly on the civil side as well. There is also the aspect that a tribal court system is reflective of the community’s needs and values. For example, a parent might be granted less parenting time in state court because a home is viewed as “too crowded” due to multigenerational living. Whereas, the tribal court may view a multigenerational home as advantageous or at least consider cultural norms. Many times, there is a presumption that tribal courts are different from state courts and

therefore inferior, but not a consideration of ways in which tribal courts may be different and superior. What are your thoughts?

JF: Our tribal court is able to utilize specialty courts with a lot of freedom and leeway. We have an investment in the system because the offenders are members of our community. In Bozeman, you may never see an offender again, but in tribal courts, you know his mom, his grandma, and his kids go to school with your kids. We want to stop the cycles of violence and poverty because we have an investment in the community. We don’t

just give you a piece of paper that says what to do. We are going to grab your hand, walk with you, and sit with you until you get it done. We are also much less restricted in changing our laws. If we want our laws to change, it's a relatively quick process. We have an opportunity to be very cutting edge, or we can choose to see what other jurisdictions are doing and go with the flow.

KS: Another advantage I see in my tribal court practice is a focus on giving litigants an opportunity to be heard, instead of a focus on procedures. There is much more emphasis placed on getting everyone to come to court and making sure they have an opportunity to say their piece. Litigants fundamentally don't care about if the exact procedures around an entry of judgment are followed, for example. They want to have the chance to go to court, say their piece, and feel they are able to talk and be listened to by the judge.

JF: I totally agree with that. There are times when a litigant just wants to vent. I will let them so long as they aren't swearing or being crazy. If you want to vent, I

can hear it. Then, the other side will get the same opportunity.

KS: Are there cases you see coming through your court that have a racial justice component that people might not think of?

JF: Housing is a major one. We had a bunch of evictions being filed by non-tribal landlords during the height of the pandemic. It was very difficult because people weren't able to, for example, get a job, because the tribe was shut down. They couldn't even get a job application. We had people waiting in line in cars for hours to get food. It became a big access to justice issue. We had a hard time figuring out how to make decisions.

KS: What would you say to an attorney who is hesitant to practice in tribal court, or maybe thinks that because they aren't a member of that community, they don't have a role to be involved in the court system?

JF: I would tell an attorney, if you want to experience something outside of what you are used to, tribal court is the best place to do it. There is a lot of room for error. There's a lot of room to grow

INTERESTED IN TRIBAL COURT PRACTICE?

If you are interested in practicing in the Fort Peck Tribal Court, the next Bar Exam administration will be June 25, 2021, in Poplar. Interested applicants should contact the court at 406-768-2400 to sign up.

in tribal court, to learn the practice, and to learn the law. You would never go without work. There is always something going on. Even with the little jurisdiction that we have, we run through upwards of 5,000 criminal cases each year. That's just the criminal cases. It's completely busy all the time. I would encourage people to practice in tribal court and step out of that norm. If they are looking for a path to make change or to create a vision that they have, tribal court would be the place to do it.

KS: Thank you for your time, Judge FourStar!

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