

# Tribal Courts in Wisconsin for the Practitioner New to Tribal Courts

Dane County Bar Association  
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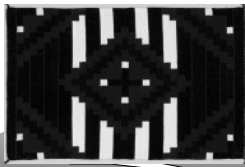
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## Wisconsin Tribal Courts

- Overview
  - Brief background and history
  - Discussion of Tribal Courts in general
  - Wisconsin Tribal Courts
  - Q & A



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## Tribes in Wisconsin

- Eleven federally recognized Tribes in Wisconsin
  - Bad River Band of Lake Superior Chippewa
  - Forest County Potawatomi
  - Ho-Chunk Nation
  - Lac Courte Oreilles Band of Lake Superior Chippewa
  - Lac du Flambeau Band of Lake Superior Chippewa
  - Menominee Indian Tribe
  - Mole Lake (Sokaogon) Band of Lake Superior Chippewa
  - Oneida Tribe of Indians of Wisconsin
  - Red Cliff Band of Lake Superior Chippewa
  - St. Croix Band of Lake Superior Chippewa
  - Stockbridge-Munsee Band of Mohicans



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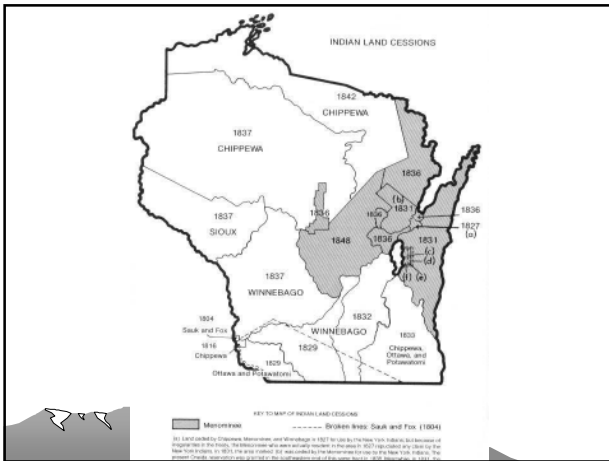
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## Indian Tribes

- The United States recognizes Indian tribes as “domestic dependent nations.”
  - Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831).

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## Indian Tribes

- Tribes do not draw their powers from any source of federal law. Rather, they are the inherent powers of sovereigns that pre-exist the federal Union.

– United States v. Wheeler, 435 U.S. 313, 323-24 (1978); Talton v. Mayes, 163 U.S. 376, 384 (1896).



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## U.S. Supreme Court on Tribal Courts:

- We have repeatedly recognized the Federal Government's longstanding policy of encouraging tribal self-government. This policy reflects the fact that Indian tribes retain "attributes of sovereignty over both their members and their territory," to the extent that sovereignty has not been withdrawn by federal statute or treaty.

• -Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. 9, 14 (1987)(internal citations and quotation marks omitted)



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## U.S. Supreme Court on Tribal Courts

- The federal policy favoring tribal self-government operates even in areas where state control has not been affirmatively preempted by federal statute.

– Id.



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### U.S. Supreme Court on Tribal Courts

- Tribal courts play a vital role in tribal self-government, and the Federal Government has consistently encouraged their development.

– *Id.* at 15.



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### Public Law 280

- Wisconsin is a Public Law 280 state. 28 USC § 1360, 18 USC § 1162.
- Under PL-280, the State of Wisconsin has criminal jurisdiction on Indian Reservations, over Indians (except on the Menominee Reservation).



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### Public Law 280

- State Courts have concurrent civil adjudicatory jurisdiction over private causes of action arising on Reservations.
- Public Law 280 does not grant the State civil regulatory jurisdiction on Indian reservations.

– *Bryan v. Itasca County*, 426 U.S. 373 (1976).



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## Wisconsin Tribal Courts

- All eleven Tribes in Wisconsin have some form of a judicial system.
- Formality and procedure vary, but all are based on the adversarial process.
- In addition to adversarial court, the Ho-Chunk Nation operates a Traditional Court and other Tribes have peacemaking available.



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## Wisconsin Tribal Courts

- **What law is applied in Tribal Courts?**
  - Tribal law
- **Is it written down?**
  - Yes. Many tribes have their Court rules and ordinances available online.
- **Resource for Tribal Court information**
  - [www.judicare.org](http://www.judicare.org) has links to all tribal courts with information online. Phone numbers to each Court also available.



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## Wisconsin Tribal Courts

- **Do I need to be admitted to practice?**
  - Varies by court; most allow one-time appearance pending application.
  - Some courts have entrance examination.
  - Call the Clerk of Courts.



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## Wisconsin Tribal Courts

- **What types of actions do tribal courts hear?**

- Civil disputes
- Employment
- Divorce
- Child Support
- Contract claims
- Constitutional challenges
- Election disputes
- Domestic violence restraining orders
- Name changes
- Juvenile actions
- Abuse and neglect cases
- Workers compensation appeals



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## Wisconsin Tribal Courts

- **Do Indian tribal courts provide due process?**

- Yes; amount of due process varies by issue and jurisdiction.



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## Wisconsin Tribal Courts

- **Indian Civil Rights Act, 25 USC § 1302**

- Imposes on Indian tribes by federal statute substantially similar, but not identical, obligations under the U.S. Bill of Rights
- Notable differences:
  - Establishment Clause
  - Right to counsel
  - Jury trial



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## Wisconsin Tribal Courts

- Going to a new tribal jurisdiction:
  - Find out as much as possible about law and local rules.
    - Tribal constitution
    - Tribal court code
  - Recon on judges
  - Talk to other lawyers who have practiced there (call the Tribal Attorney).
  - Case law
  - Requirements for practice
  - Respect



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## Wisconsin Tribal Courts

- Other issues
  - Tribes possess sovereign immunity from suit. Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978)
    - Tribal law on immunity varies by Tribe.
  - Teague v. Bad River Band of Lake Superior Chippewa Indians, 2003 WI 118.
  - Full faith and credit; Wis. Stat. § 806.245



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## Wisconsin Tribal Courts

- DOS AND DON'TS
  - DO show respect.
  - DO NOT rely on Wisconsin Bar Admission for admission to tribal court practice.
  - DO educate yourself.
  - DO NOT expect Tribes to be the same.
  - DO be aware of your biases.
  - DO NOT cite to or rely on Wisconsin law unless adopted by the Tribe.



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