

MINUTES: Committee on Tribal & State Court Affairs

(Unofficial until approved)

October 5, 2020 at 9:00 a.m.

Zoom

Members Present:

Justice Jerod Tufte, Chair, North Dakota Supreme Court

Judge Anthony Swain Benson, Northeast Judicial District

Judge Joseph Vetsch, Spirit Lake Nation Tribal Court

Kevin Hagen, Parole and Probation

Scott Hopwood, Director of Juvenile Court Services, Unit 4

Traci Hysjulien, Clerk of Court, Mountrail County

Sharon Thompson (Corrisa Baker), Circling Eagle Law, Fargo

Kyle Iron Lightning (on behalf of Scott Davis), North Dakota Indian Affairs Commission

BJ Jones, Sisseton-Wahpeton Tribal Court

Rodney Olson, Court Administrator, Unit 2

Michelle Rivard Parks, Assistant Director, Tribal Justice Institute

Members Absent:

Judge Madonna Marcellais, Turtle Mountain Band of Chippewa Tribal Court

Judge Michael Swallow, Standing Rock Tribal Court

Amanda Engen, Spirit Lake Nation Tribal Court, Juvenile Court

Mandy Davis, Turtle Mountain Band of Chippewa Tribal Court, Juvenile Clerk

Others Present:

Sara Behrens, Staff

Nikos Valance, Restorative Justice

Lynette Morin, Project Coordinator for Tribal Justice Institute

Chair Tufte called the meeting to order and directed the members' attention to the February 8, 2019 minutes. Judge Benson moved to approve the minutes, Mr. Jones seconded and the motion carried.

Discussion was had about the turnover in tribal leadership and the need to include new individuals on the committee. Dave Christenson is the new judge in Berthold replacing Judge Seaworth. Verna Gone resigned her position. Mr. Jones is no longer a judge. Staff will reach out to get the names and contact information for the new judges.

Ms. Morin from the Tribal Justice Institute explained that they do a lot of projects for the Department of Justice. They work with tribes all over the lower 48 and Alaska across many subject matters. They also do strategic planning with the tribes. She wanted to be here today to discuss the Intergovernment Collaboration Grant. It currently has a law enforcement focus and they are working on collaboration between law enforcement and tribal agencies. They have been asked by BJA to develop a proposal to expand that work and they would like to involve attorneys general. A lot of tribal attorneys in other areas of the country are called tribal attorneys general.

Nikos Valance was present to discuss his restorative justice projects. He is currently working on pilot projects with the MHA Nation and state courts to compare the process. He has found that although these innovations are taking place, there hasn't been a systematic type of documentation as to how they are developed and implemented. Each court does things in a way that represents its cultural background and values.

Justice Tufte pointed out that some members have less knowledge about the terms and asked for a bit more background. Mr. Valance explained the basic difference between the western model of justice and restorative justice, or peacemaking, is that the western model is adversarial and the restorative model is not.

Mr. Jones offered to contact the new chief judge for MHA Nation regarding this project. The courts work well when there is overlapping jurisdiction but Fort Berthold is not 280 jurisdiction so it is unlikely to find overlapping jurisdiction. It's frustrating to him that there can be litigation going on in both state and tribal courts and then the federal court will get involved. He thinks the restorative justice model could help reduce the friction. He believes Judge Christenson would be very receptive. Judge Parks has seen restorative justice implemented at various points in the proceedings.

Mr. Valance noted there is money out there for this type of work but there needs to be a firm plan regarding how to proceed and what the budget would be. Mr. Jones noted that Ms. Thompson's law firm is working on updating tribal code for Fort Berthold.

Education Opportunities

Judge Benson explained he is the chair of the Minority Justice Implementation Committee and there was discussion at the last meeting about where the state courts get potential jurors. There has been an invitation to the tribes to share rolls of members to include in the jury pool but they have not done so. Travis Finck noted that they used to give some training and education on the process and there was discussion about doing better with doing outreach to tribal members on how the jury process works in state court. He wanted to see if there was interest in collaboration.

Mr. Jones explained that Standing Rock had a problem with needing to get non-tribal members for domestic violence cases. Somehow they worked with Sioux County to come up with a joint list of potential jurors. Perhaps someone could reach out to Standing Rock and see how they did

that to use as a model. Judge Swallow isn't present, but the new chief clerk is Amanda Silk and he can reach out to her to get some information. Judge Parks thinks the opportunity for collaboration and opening a dialogue with the tribes is a ripe discussion and works both ways. Special domestic violence jurisdiction allows non-Indians to be prosecuted. Mr. Jones suggested asking Standing Rock if they would do a presentation on how they get non-members on their juries. Chair Tufte suggested a joint meeting with the MJI Committee at Standing Rock if they are willing to host.

Judge Parks pointed out that it's a well-settled matter of law when talking about Indian and non-Indian membership it's a political classification and not a racial classification. Someone could identify as a Native American and not be considered Native American for membership purposes.

Judge Benson will bring the ideas back to the MJI Committee and see if he can get in touch with someone from Standing Rock.

Collaboration with Law Enforcement

Mr. Jones directs the Tribal Judicial Institute at UND. Intergovernmental collaboration with law enforcement is used to assist tribes and states to enter into agreements such as cross-deputization, extradition agreements, and training agreements. The grant manager mentioned that she would like to see focus on reaching out to states with tribal and state judge forums to see if they could be expanded to include attorney general types from the state and tribal levels to see if that could be utilized as a vehicle for collaboration. A committee could be expanded or a subcommittee formed to focus on law enforcement issues between tribes and states.

Mr. Iron Lightning commented getting judicial people in contact with law enforcement would be a good step. Judge Parks suggested a round table at a government to government training would be a good idea. Chair Tufte and Staff may reach out to members individually about next steps for upcoming meetings.

Mr. Jones asked about a federal representative on the committee. Staff explained there has not been one since she has been staff for the committee. Chair Tufte explained that the rule was amended prior to Staff joining and he thinks previously there was a federal representative but then there was a question about whether we can have a federal member voting but he does think it would be a good idea to invite a federal representative. He will reach out to Judge Welte.

Judge Parks commented that this Committee previously discussed some family law issues such as protection orders. She asked where we envision going with the committee. Chair Tufte stated he is happy to have any member of the committee suggest topics. We've gone longer periods of time between meetings because it can be a challenge finding the right sized topics to discuss. Part of the mission is to identify those discrete topics where we can make substantive progress. A significant part is also to develop relationships and understand who to reach out to when a particular situation arises.

Judge Parks explained one issue that has come up has pertained to protective custody orders and involuntary commitments. It's more of an enforcement of court orders issue. The biggest issue with commitment proceedings involves transportation. They have also encountered problems with people presenting with mental health issues and they have nowhere to send them. No hospitals will take them and they can't be detained. Chair Tufte suggested inviting a judge from Jamestown who sees a lot of commitments. Judge Clark has expressed interest in being a mentor.

Having no further business, the meeting adjourned at 10:40 a.m.