

WASHOE TRIBAL COURT TRADITION COMES FULL CIRCLE

BY SUZANNE GARCIA, ESQ.

For centuries, the family groups making up the Washoe Tribe used an effective dispute resolution system. Inter-familial disputes were normally resolved internally with a trusted family leader facilitating a just result. Intra-familial disputes were resolved by meetings between family leaders. This dispute resolution system continued to be used even after members of the Washoe Tribe were impacted by the arrival of settlers. However, as members of the tribe were pushed to the margins of society and lost their lands to the influx of people, they increasingly found themselves at the mercy of decisions made by the new settlers' institutions: federal and state courts.

Through the Indian Reorganization Act, tribes seeking federal recognition were required to put aside their traditional governmental structures and adopt the western model. Recognizing that individuals living on Washoe lands needed a dispute resolution system and that the decisions rendered by that system had to be recognized by federal, state and local entities to be effective, in 1979, the Washoe Tribe organized its tribal court in a manner similar to western courts.

The Washoe Tribal Court applies the laws contained in the tribe's comprehensive Law and Order Code. Currently, the code has approximately



Sarah Winnemucca, a northern Paiute, fought for American Indian rights. Photo courtesy of the Nevada Historical Society.

31 titles that address topics such as civil and criminal procedure, crimes, sex offender registration, land use and child dependency. The court conducts itself according to criminal and civil court rules, including a detailed ethics code that establishes culturally sensitive conduct standards as well as general legal ethics standards comparable to those applied in state and federal court systems. Amendments and additions to the code and the court rules are adopted by the 12-member Tribal Council. Though the Washoe Tribal Court is not established as a constitutionally separate branch of the tribe's government, the Tribal Council emphasizes the importance of a strong and independent court. The chairwoman of the tribe and the Tribal Council do not interfere in pending court matters and are exempt from jury duty. In 2010, the court handled 139 criminal matters, seven child dependency matters, 12 juvenile delinquency matters, 50 traffic violations and 77 other civil matters of various sorts.

The Washoe Tribe places a high priority on public safety and the Washoe Tribal Court is an important component of ensuring that safety. As noted in the jurisdictional matrix provided in the article written by Assistant United States Attorney Sue Fahami, in many criminal cases, the Washoe Tribe and the federal government share jurisdiction. The United States Attorney for the District of Nevada, however, has a large jurisdiction and operates on limited resources. Too often, speedy justice is simply not available for those living in Washoe Indian Country. As such, the importance of the Washoe criminal

justice system cannot be overstated. The Washoe Tribe's system is the most effective means of addressing public safety problems in Washoe Indian Country. Those staffing the tribe's criminal justice system understand the dynamics, strengths and problems faced in the Washoe communities at a level that could not possibly be expected from the larger and more distant federal system.

It is important to remember that the Washoe Tribe's efforts towards public safety benefit those living both on and off Washoe land. Neither crimes nor criminals respect jurisdictional boundaries. In recognition of this fact, the Washoe Tribe has worked diligently to develop collaborative working relationships with the federal agencies, with the states of Nevada and California, and also with local jurisdictions (Carson City, Douglas County and Alpine County). In these times of budget cuts and reduced resources, working together to combine resources and efforts is the best way to enhance the safety of all. The prosecutor is cross-deputized as an Alpine County, California, prosecutor and is assigned to cases where the crimes are alleged to have occurred in Washoe Indian Country. The Washoe Tribe appreciates the fact that it has positive intra-jurisdictional relationships and recognizes that the spirit of cooperation it finds in its state, local and federal partners is not necessarily present in other parts of the United States.

The Washoe Tribe works constantly to develop available services for crime victims. The tribe is working actively towards developing a Court Appointed Special Advocate (CASA) program to give the children at the epicenter of dependency proceedings a voice. In addition, the Washoe Tribe employs a Victim Services Coordinator to assist victims of child abuse and their non-offending family members negotiate the criminal justice system and access resources that will promote healing. Also, the tribe worked closely with Douglas County to develop a Special Advocates for Elders (SAFE) program so that elders and vulnerable adults appearing before the court have an advocate. Last but certainly not least, the tribe employs a number of domestic violence advocates.



The Washoe Tribe is not only concerned with victims' rights, it is also concerned with the rights of defendants. The tribe provides licensed attorneys to indigent defendants as public defenders and defendants have the right to request jury trials. Tribal Court juries are comprised of six adults and up to two alternates. Appeals from the Washoe Tribal Court are heard by the Inter-Tribal Court of Appeals that is managed by the Inter-Tribal Council of Nevada and operates in Reno.

In addition to handling criminal matters, the Washoe Tribal Court provides a civil forum for those living in Washoe Indian Country. The civil docket includes cases pertaining to child dependency, domestic relations, restraining orders, divisions of estates, public nuisance and traffic violations. As in other jurisdictions, there is a process for asking the Washoe Tribal Court to recognize decisions issued by other courts.

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Like all governments, the Washoe Tribe must make difficult decisions about dividing limited funds between important programs. As a result, the Washoe Tribal Court must find a way to operate with minimal resources. Unlike the state courts, the tribal court judge does not have clerks at his disposal to perform research and draft orders. Neither the prosecutor nor the court clerk have full-time staff. The long-term solution to this problem will only be found in economic development. As such, the tribe pursues economic development with an eye on providing more and better services and programs for those living on Washoe lands.

Although it can be difficult to operate an effective court/legal system in a jurisdiction that has a small tax base, there are also benefits to operating a small jurisdiction. Unlike Nevada, the Washoe Tribe does not have to have draft codes and court rules that attempt to address issues in both the rural areas and the large urban centers. The tribe can tailor its written infrastructure to more effectively address the specific needs of its constituents. In addition, if a code provision or court rule needs to be amended, the legislative body – the Washoe Tribal Council – is accessible. It meets every month.

The small size of the Washoe Tribe's jurisdiction makes it easier to launch innovative programs. Many state court systems recognize that the adversarial western court model does not always produce the most effective results in sensitive areas such as family law and child dependency cases. Their solution is to implement pilot programs, such as family group decision making, which resemble the aforementioned traditional Washoe dispute resolution systems. Because the Washoe Tribe is a smaller jurisdiction, and because these kinds of pilot programs resonate with traditional Washoe culture, it is easier for the tribe to design and implement similar programs. Additionally, because the state courts have come to recognize that these forms of dispute resolution provide effective justice, the tribe has fewer worries that decisions arrived at via the traditional forms of dispute resolution will be disregarded.

The Washoe Tribal Court is not perfect; no court is. Not only does the Washoe Tribal Court face the challenge of engendering confidence in the larger legal community, the court is challenged, like many courts, with engendering and maintaining confidence in the public that it serves. The western model continues to have its place in the tribe's judicial

system in part because it is more easily understood and accepted by the larger legal community. Traditional Washoe methods of dispute resolution resonate with Washoe people who often feel that they never should have been forced to give up their traditions in the first place. A hybrid of the two models will allow the Washoe Tribal Court to provide a more effective form of justice in Washoe Indian Country. ■



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wide variety of issues that include drafting amendments to the tribe's code, policy and procedures and negotiating intra-jurisdictional agreements. The assistance of the Washoe Tribe's legal and judicial departments in writing this article is gratefully acknowledged.