

Defender Initiatives in Indian County

Webinar Q&A

Moderator: Cabell Cropper (NCJA)

Presenters:

Cody Nelson (Anishinabe Legal Services, Inc.)

Alex Sierck (Center for Holistic Defense, Bronx Defenders)

Ann Sherwood (Defenders Office of the Confederated Salish and Kootenai)

1. What impact do you think TLOA implementation will have on programs and services?

Cody Nelson: *We are not anticipating a big change on the impacts of our programs. For example, Red Lake has its own in-house counsel. Malax is within the service area, and we're working on implementation. It is a three hour drive each way to get to certain tribes, and some of them have their own in-house legal services.*

Ann Sherwood: *We already have three attorneys who provide criminal defense. This creates a positive effect, as those people could be prosecuted in tribal courts as an alternative to the Department of Corrections.*

Cabell Cropper: *In regard to collaboration with state courts, what kind of interaction do you have with state defenders or courts?*

Cody Nelson: *There are two separate public defense systems. One is through the state, and another is through regional native public defenders. Public Law 280 promotes frequent collaboration. There is a fine line between what is categorized as civil regulatory and criminal prohibitory. State court cases are often moved to tribal courts.*

Ann Sherwood: *We receive the jail roster from county jails. We can make contact with state public defenders in order to coordinate defense and share information.*

2. How common are conflicts in tribal defense, and how do you deal with the conflicts?

Ann Sherwood: *It's a problem. We have a program that deals with civil and criminal cases, which limits family law. Our program is supposed to represent the accused in domestic violence cases, creating conflict that needs to be improved.*

3. Does hard sentencing of TLOA move tribal courts in an adversarial direction rather than for holistic defense? It does not seem to have support for holistic defense training. Can someone comment on this?

Alex Sierck: *People hear about holistic defense and think that it could be inconsistent with being an aggressive litigator. Holistic defense can actually make one more aggressive as a litigator. Attorneys know important information about clients such as their psychological background, which is not just helpful for plea bargaining. Holistic defenders are more successful than traditional public defenders. Lawyers know about the community, and are better at arguing in front of community judges.*

Ann Sherwood: *I agree with Alex. Holistic defense does not mean that you plead for every case. Cooperation is increased with holistic defense. We have to be ready to go to trial. Systems can be traditional even with TLOA, and individuals have to be provided with counsel.*

4. Are federal funding sources available to non-recognized tribes under federal or state law?

Marina: *Resources are provided to accused through legal assistance that is directed to non-profits. These resources are also given directly to federal members and recognized Indian tribes. There is coordinated tribal assistance that is directly for federally recognized tribes. We share with tribal groups interested in resources from our office. There are local JAG grants, for which 21 tribes are eligible. Tribes can go through state JAG resources to attain funding. Other sources directed towards tribes include tribal and court advocacy services.*

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