TRIBAL LAW ADVOCACY

Wintersession 2021

Professors Kekek Stark & Monte Mills

Monday, January 4 – Friday, January 8

9:00 am – noon

VIA ZOOM

Join Zoom Meeting

<https://umontana.zoom.us/j/97120703739?pwd=WkZyc2kzdlR4S21jVXdPUDlPeDRTQT09>

Meeting ID: 971 2070 3739

Passcode: 847068

1. **Course Description.**

Welcome to ‘the Crucible of Sovereignty.’ The exercise of inherent sovereignty by the nation’s 574 federally recognized Indian tribes depends on qualified and dedicated lawyers and advocates. Whether within a tribal courtroom, before a tribal appellate body, in Tribal Council chambers, or in the day-to-day work demanded by these ‘third sovereigns,’ advocacy within a tribal law setting demands unique skills, qualifications, and knowledge. Tribal Law Advocacy aims to prepare students for that work by providing a skills-based simulation course requiring students to produce written and oral advocacy in a tribal law setting.

**II. Learning Objectives.**

This course is designed to simulate the issues and challenges presented to attorneys working in tribal courts and tribal governments. Therefore, the primary objectives of the course revolve around skills needed to competently address those issues and tackle those challenges. By the conclusion of the course, students will be able to:

* Identify and contextualize the unique sources of sovereignty, law, and procedure within a tribal law setting;
* Compare and contrast practical approaches to advocacy between tribal law settings and other forums while also recognizing the different types of advocacy required before tribal courts and tribal governing (legislative) bodies;
* Plan, organize, prepare and present arguments before both a tribal court (judicial forum) and a tribal governing body (legislative forum); and
* Enhance various other skills and values necessary to succeed as an advocate in a tribal law setting, including the use of technology, cross-cultural competence, and collaboration with clients and other professionals.

**III. Course Requirements.**

1. **Readings:** We will rely on a variety of readings and additional materials throughout the week. The proposed class schedule (below) includes a number of readings and additional materials may be provided as we progress through the class.
2. **Assessment:** The primary focus of the class will be on the oral advocacy prepared and presented by students toward the end of the week-long course. In addition, students will also be responsible for and assessed on their in-class participation and short written assignments related to their oral advocacy presentations. The course will be assessed as follows:

Class Participation: 10%

Written assignments: 30%

Oral Advocacy: 60% as follows:

Tribal Court Presentation: 30%

Tribal Council Presentation: 30%

These presentations will be assessed using a rubric that takes into account your planning and preparation, substantive coverage, advocacy style and competence, response and utilization of feedback, teamwork and collaboration, and your post-presentation reflection on your work.

1. **Academic Honesty/Conduct:** All students must practice academic honesty. Academic misconduct is subject to an academic penalty by the course instructor and/or a disciplinary sanction by the University. All students need to be familiar with the Student Conduct Code. The Code is available for review online at <http://www.umt.edu/vpsa/policies/student_conduct.php>. Law students should also be familiar with the Law School Honor Code, which can be found in Appendix A of the Law Student Handbook.
2. **Disability Services for Students (DSS):** Students with disabilities may request reasonable modifications by contacting Disability Services for Students. The University of Montana assures equal access to instruction through collaboration between students with disabilities, instructors, and (DSS). "Reasonable" means the University permits no fundamental alterations of academic standards or retroactive modifications. For more information, please consult Registering with Disability Services.
3. **Laptop Usage:** Class participation includes staying focused on the topic under discussion and being ready to participate in discussions; however, if you think you may have a tendency to surf the web, or otherwise show material unrelated to the classroom topic being discussed, please ensure your activities will not distract others in the class. If you find the non-class related activities of other classmates distracting during class time, please notify me so appropriate steps can be taken to handle the situation.

**IV.** **Course Schedule and Readings:**

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| **Date** | **Reading** | **Assignment** |
| Monday, January 4 | Frank Pommersheim, *The Crucible of Sovereignty: Tribal Courts, Legitimacy, and the Jurisdictional Backdrop*, in Braid of Feathers: American Indian Law and Contemporary Tribal Life;  Joseph Tomas Flies-Away, Carrie Garrow, and Miriam Jorgensen, *Native Nation Courts: Key Players in Nation Building* and Stephen Cornell and Miriam Jorgensen, *Getting Things Done for the Nation: The Challenge of Tribal Administration*, in Rebuilding Native Nations: Strategies for Governance and Development | Research and review tribal constitution and code provisions regarding the establishment of a tribal court, court rules and procedure, and the appellate system. Draft a short memorandum summarizing the key parts of those provisions for the tribe that you have researched.  Word Limit: 250 words  Due: 9:00 am Tuesday, Jan. 5 |
| Tuesday, January 5 | *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978); Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301, et seq.; Robert J. McCarthy, *Civil Rights in Tribal Courts: The Indian Bill of Rights at Thirty Years*, 34 Idaho L. Rev. 465 (1998);  Case Materials and Packet (to be provided) | Draft a research memo outlining the key facts, legal issues, and questions you have related to the case presented.  Word Limit: 250 words  Due:  9:00 am Wednesday, Jan. 6 |
| Wednesday, January 6 | Chapter 4 (oral argument) in John T. Gaubatz & Taylor Mattis, The Moot Court Book: A Student Guide to Appellate Advocacy; Patrick M Shannon, *Tribal Court Advocacy*, 67 Michigan Bar J. 377 (1988); Vine Deloria, Jr., and Clifford M. Lytle, *The Evolution of Tribal Governments*, in American Indians, American Justice, pp. 80-109 | Prepare an opening statement and outline of your planned presentations, including your themes for each.  You will be presenting your opening statements (not less than 3 minutes each) in class and receive feedback. |
| Thursday, January 7 | **Tribal Council Presentation.** | Prepare a one-page summary to be presented to the Tribal Council in conjunction with your presentation.  Word Limit: one page  Due: 9:00 am Thursday, Jan. 7  **You will be making your presentation during our class time.** |
| Friday, January 8 | **Tribal Court Argument.** | Prepare a one-page summary of your argument.  Word Limit: one page  Due: 9:00 am Friday, Jan. 8  **You will be making your argument during our class time.** |