

Walking in Two Worlds as Professional Oklahoma Indian Women

Framing Victim Services around Tribal Traditions



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Special Recognition of Slide Presentation by:
Hon. Terry Mason Moore, JD, MBA
Justice
Pawnee Nation Supreme Court

Framing Victim Services around Tribal Traditions



THE ADVANTAGE OF
USING OF TRIBAL
COURT

Framing Victim Services around Tribal Traditions

Three considerations for success in a Tribal Court system



Identify Appropriate
Traditional Methods
of Mediation
For Families in Crisis

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Three considerations for success in a Tribal Court system



Observe
Cultural Traditions
for Effective Teamwork in
Tribal Court

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Three considerations for success in a Tribal Court system



Provide Traditional
Critical Confidentiality
in the Court System




*Identify Appropriate Traditional Methods
of Mediation for Families in Crisis*

- AGREEMENT TO MEDIATE OR REQUIRED BY TRIBAL LAW
 - Encourage victims and families to mediate
 - If required by law, make the process inviting and less intimidating by explaining the process
 - Mediation can be non-threatening because parties are physically separated in different rooms



***Identify Appropriate Traditional Methods
of Mediation for Families in Crisis***

- WHAT IS MEDIATION?
 - An alternative dispute resolution (ADR) process
 - Parties are in separate rooms
 - A neutral mediator is apprised of the issues in the case and the alleged facts



***Identify Appropriate Traditional Methods
of Mediation for Families in Crisis***

- The mediator's objective is to help resolve issues by talking them through with each party
- A neutral mediator carries the message back and forth between parties
- Goal is to achieve agreement on one or more issues



Identify Appropriate Traditional Methods of Mediation for Families in Crisis

- Ideal mediator is trained in Indian law, local tribal law, local cultural practices and religion, familiar with family relationships and community, trained in counseling or psychology, familiar with networks for referral out



Identify Appropriate Traditional Methods of Mediation for Families in Crisis

- Mediation is most often required by law in civil disputes and domestic relations cases such as divorce and custody matters
- In such cases, the intent of mediation is to settle as many issues as possible before trial, or to avoid trial.
- Mediation can be used as a settlement conference



Identify Appropriate Traditional Methods of Mediation for Families in Crisis

- The Mediator can be appointed by the Judge or selected from a list of mediators from the Court Clerk or selected by mutual agreement of the parties
- The Mediator should be provided a copy of the law, the case file and the background and histories of the parties prior to the meeting



Identify Appropriate Traditional Methods of Mediation for Families in Crisis

- A Mediator may be a lay person
- The Mediator may have professional certification in the State or Tribe by completing a certain number of training and practice hours
- The Mediator should be familiar with tribal culture and traditions



Identify Appropriate Traditional Methods of Mediation for Families in Crisis

- Mediator can follow Anglo method with cultural emphasis, or consult elders for traditional local method and healing
- Mediation can occur in any location so long as the parties can be separated and have privacy




Identify Appropriate Traditional Methods of Mediation for Families in Crisis

- Choose a site for mediation where the victim is comfortable
- Play soothing music in the background
- Use comforting scents in the room such as potpourri, candles, scented oils
- Provide comfortable chairs to relax the victim and a table to keep it more focused



Identify Appropriate Traditional Methods of Mediation for Families in Crisis

- Encourage the victim to fully participate in the mediation to resolve as many issues as possible in order to diminish the number of issues for trial
- Allowing the victim to express feelings and thoughts and fears to the mediator can be cathartic



Identify Appropriate Traditional Methods of Mediation for Families in Crisis

- Not all mediation is successful
- Sometimes the parties refuse or are afraid to cooperate with the mediator
- If a mediation is successful, the mediator prepares an Agreement to be signed by both parties for the issues resolved
- If a mediation fails, the matter will proceed to the court process



Observe Cultural Traditions for Effective Teamwork in Tribal Court

- TRIBAL COURT
- Once a matter is in tribal court, the parties normally begin with an initial hearing called a preliminary hearing, show cause hearing, arraignment, etc. The purpose of the initial hearing is to advise the parties, particularly the defendant, of the charges



Observe Cultural Traditions for Effective Teamwork in Tribal Court

- At the initial hearing, the parties will already have consulted with attorneys and social workers
- If a crime is alleged to have been committed, the defendant has a right to an attorney
- In a child welfare matter, the child and the parent each have the right to an attorney
- An attorney may be appointed by the court



Observe Cultural Traditions for Effective Teamwork in Tribal Court

- In tribal court, the attorneys should be familiar with the Tribe's customs and traditions
- The victim or his/her attorney or social worker or parent can request the Judge to apply Tribal custom and tradition
- In many tribal courts, custom and tradition must be applied upon request



Observe Cultural Traditions for Effective Teamwork in Tribal Court

- The Pawnee Tribe of Oklahoma Law and Order Code, Title I, Tribal Courts, Section 8:
 - "The Courts shall apply the Tribal Constitution, and the provisions of all statutory law heretofore or hereafter adopted by the Tribe. In matters not covered by Tribal Statute, the Court shall apply traditional tribal customs and usages . . ."



Observe Cultural Traditions for Effective Teamwork in Tribal Court

- Pawnee Tribe of Oklahoma Law and Order Code, Title III, Civil Procedure, Section 4:
 - “The customs and traditions of the Tribe, to be known as the Tribal Common Law, as modified by the Tribal Constitution and statutory law, judicial decisions, and the condition and wants of the people, shall remain in full force and effect with the Tribal jurisdiction in like force with any statute of the Tribe”



Observe Cultural Traditions for Effective Teamwork in Tribal Court

- Some tribes have a separate justice system for the use of custom or tradition:
 - Peacemaker courts
 - Cultural Court
 - Restorative Justice/Community Sentencing Circles
 - Healing and Wellness Court
- These alternatives may require the consent of both parties



Observe Cultural Traditions for Effective Teamwork in Tribal Court

- Culture and tradition can be applied through:
 - Member of local tribe – adult or elder program
 - Courtesy contact with victim’s tribe for advice or services connection
 - Child Protection team – BIA or tribe
 - Victim’s church or religious leader



Observe Cultural Traditions for Effective Teamwork in Tribal Court

- A victim may feel shame, guilt, depression, anger, which can be addressed through:
 - Children’s services – mental health
 - Vulnerable Adult services
 - Guardianships by family member



Observe Cultural Traditions for Effective Teamwork in Tribal Court

- If a victim needs professional help and is a danger to him/herself:
 - Commitment to facility



Observe Cultural Traditions for Effective Teamwork in Tribal Court

- Throughout the court process and trial, a victim can receive culturally sensitive services and assistance and can be counseled by traditional persons for his/her testimony and healing
- Use a 'wellness court' format for regular provider meetings with the victim to determine effectiveness of services and unmet needs



Observe Cultural Traditions for Effective Teamwork in Tribal Court

- All providers working together can help to ensure a successful outcome for the victim regardless of how the trial ends for the defendant



Provide Traditional Critical Confidentiality in the Court System

- CONFIDENTIALITY
 - The non-disclosure of private and sensitive information belonging to a victim or client



Provide Traditional Critical Confidentiality in the Court System

- CONFIDENTIAL INFORMATION
 - Counseling files
 - Medical files
 - Juvenile case files
 - Defined by law



Provide Traditional Critical Confidentiality in the Court System

- CONFIDENTIAL INFORMATION
 - Protected information includes personal information such as account numbers, financial information, legal advice, medical conditions, personnel files,



Provide Traditional Critical Confidentiality in the Court System

- Adult victims, especially vulnerable adults as defined by tribal law, have a right to privacy in the counseling and services provided
- Child victims in the child welfare or juvenile system, and some vulnerable adults, are protected by law and the proceedings are closed to the public to protect confidentiality



Provide Traditional Critical Confidentiality in the Court System

- All providers are required to take an oath or sign an oath of confidentiality
- Explain to providers what confidentiality applies in this particular case according to law
- Explain to providers what information can be shared and with whom it can be shared
- All officers of the court are subject to confidentiality



Provide Traditional Critical Confidentiality in the Court System

- Be willing to provide the victim a copy of the oath of confidentiality or the tribal law
- If you are not sure about the law in the case, ask the Judge



Provide Traditional Critical Confidentiality in the Court System

- CONFIDENTIALTY applies to:
 - Child victims
 - Some vulnerable adults
 - CASA in Child Welfare cases where children are abused or neglected
 - Social workers
 - Providers (therapists, counselors)



Provide Traditional Critical Confidentiality in the Court System

- CONFIDENTIALTY applies to:
 - Services
 - Evaluation
 - Monitoring
 - Progress
 - Placement under ICWA
 - Therapeutic Foster Care
 - Medical Care



Provide Traditional Critical Confidentiality in the Court System

- The provision of services to a victim may involve counseling by a non-certified traditional healer or roadman or church member
- Practitioners of culture and tradition may be required to share certain information as part of the traditional healing



Provide Traditional Critical Confidentiality in the Court System

- Non-certified personnel, including traditional healers or religious leaders, should sign an oath of confidentiality to place in the case file and should understand the consequences of disclosure
- Their oath of confidentiality may be different than that required for licensed personnel who are subject to revocation of license



Provide Traditional Critical Confidentiality in the Court System

- The judge or attorneys may be practitioners of tradition and culture and can use their knowledge to facilitate the progress of the case
- The judge will explain the rules of confidentiality to the providers and parties whether traditional culture is used or not.



Framing Victim Services around Tribal Traditions



IN SUMMARY: THE ADVANTAGES OF TRIBAL COURT

TRADITION AND CULTURE ARE VALUABLE ASSETS
UNIQUE TO A TRIBAL COURT SYSTEM

TRIBAL JUDGES HAVE THE FLEXIBILITY TO APPLY TRIBAL
CUSTOM AND TRADITION UPON REQUEST
IN MOST TRIBAL CODES OR CONSTITUTIONS

USE THE TRIBAL COURT TO HEAL THE VICTIM

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THE ADVANTAGE OF USING TRIBAL COURT