

Fall 2021 Conference Panel Descriptions

CLE Summary

DAY 1: 4.75 CLEs

DAY 2: 5 CLEs (including 1.25 ethics)

Total: 9.75 CLEs (including 1.25 ethics)

DAY 1 (all times in ET)

November 4, 2021 | 9:15-10:15am | From Tribal Judge to Assistant Secretary of Indian Affairs: How to Be Awesome (Keynote) | 1 CLE

Principal Deputy Assistant Secretary - Indian Affairs Bryan Newland

Bryan Newland is a citizen of the Bay Mills Indian Community (Ojibwe), where he recently completed his tenure as Tribal President. Prior to that, Bryan served as Chief Judge of the Bay Mills Tribal Court. From 2009 to 2012, he served as a Counselor and Policy Advisor to the Assistant Secretary of the Interior – Indian Affairs. He is a graduate of Michigan State University and the Michigan State University College of Law. He currently serves as the Principal Deputy Assistant Secretary - Indian Affairs.

This presentation will cover Mr. Newland’s personal journey/experience as in-house counsel, judge, and Principal Deputy Assistant Secretary as well as advice and lessons learned for those who are taking on a new or different role for their communities. The transition from judge to ASIA poses ethical challenges. It also poses practical challenges. This presentation will describe Mr. Newland’s journey from Judge to ASIA, and raise some of the ethical issues he’s confronted along the way. The presentation will also include lessons on addressing matters of sovereignty.

November 4, 2021 | 10:30-11:45am | Tribal Traditional Law in Practice | 1.25 CLE

Rodgerick Begay, Matthew LM Fletcher, Robert Alan Hershey

Rodgerick will talk about the difficulties of incorporating traditional law into modern practices in the context of the Diné Fundamental Law statute. He will talk about the differences in how Navajo views “law” versus what we learn in law school, courts, etc., and the struggles of trying to use traditional law through “expert testimony” by Navajo elders in federal/state courts because those courts have established principles for expert testimony. Robert will concentrate on what and who is necessary to educate non-Native judges about cultural testimony. He will explain some of the hearsay rule exceptions, but more importantly, why metaphoric memory is reliably passed down through generations in the context of the oral testimony of the Jemez Pueblo's elders and knowledge keepers. Matthew will discuss Anishinaabe law and jurisprudence through the stories in his book “Ghost Road.”

November 4, 2021 | 12:45-2:00pm | Consultation Practices | 1.25 CLE

A. Joseph Sarcinella, Wenona Singel, Ian F. Tapu

Tribal consultation laws, whether at the federal, state, or county level, allow Indigenous people to directly participate in decisions that impact their daily lives from health to education. However, because a hodgepodge of tribal consultation laws has emerged, the actual role Indigenous people play in the decision-making process varies significantly. Thus, the opportunity for tribes to meaningfully participate depends, in part, on the state(s) in which their homeland resides.

Approved by Minnesota Board of Continuing Legal Education for 9.75 CLE credits, including 1.25 ethics

Using legal epidemiology, an emerging field that combines the discipline of scientific research and the study of laws that impact health, this presentation tracks and analyzes state and territorial tribal consultation laws. With this framework in mind, this study can serve as a guide for tribes to develop an evidence-based, best-practices approach to intentional tribal participation based on references to other jurisdictions. This macro analysis into tribal consultation laws will provide the kind of novel data related to tribal-state collaboration that has yet to be collected, aggregated, and studied. Panelists will discuss tribal consultation from a variety of perspectives and discuss policies that tribes can use to best suit their communities.

Learning objectives:

Define the hallmarks of tribal consultation laws.

Explain the variety of tribal consultation laws across US jurisdictions.

November 4, 2021 | 2:15-3:30pm |

Beyond Brackeen: Ongoing Protections for Indian Children | 1.25 CLE

April Olson, Kate Fort, Austin Moore

Although the 5th Circuit decision in *Brackeen v. Haaland* has consumed the ICWA conversation for the last few years, the decision has limited impact. This panel will focus on continuing protections for Indian children. Panelists will discuss other legal methods to protect Indian children, such as state Indian child welfare legislation, and amendments to the federal ICWA.

Speakers include: Kate Fort, April Olson, and tentatively Austin Moore and In-Counsel (Invited).

DAY 2 (all times in ET)

November 5, 2021 | 9:00-10:15am |

Shifting the Balance of Power: Self-Governance and Consultation | 1.25 CLE

Rob Roy Smith, Geoff Strommer, Deborah Gee

Self-governance is an exercise of tribal sovereignty and self-determination. Tribal self-governance is, at its core, a framework for tribal progress because it empowers tribes. This panel will explore the history and key milestones of the tribal self-governance movement, with an emphasis on recent developments and upcoming challenges for the expansion of self-governance in agencies outside of the BIA and IHS. Related to the theme of progress, the panel will also address how tribes can use the consultation process to empower change with federal and state agencies by shifting towards a focus on tribal consent. The panelists will provide examples of experiences navigating self-governance and consultation to highlight the opportunities for tribes and in-house counsel to advance tribal sovereignty.

Geoff Strommer: The history, key milestones and future direction of the tribal self-governance movement.

Rob Roy Smith: Moving from consultation to consent, and ensuring that the tribal voice is heard and respected in - modern consultation with federal and state agencies.

Debra Gee: Current examples and experiences of self-governance from a tribal perspective.

November 5, 2021 | 10:30-11:45am | Party or Amicus?: Deciding When Your Tribal Nation Should Participate in Litigation | 1.25 CLE

Paul Spruhan, Chrissi Nimmo, Meghan Topkok

This presentation is designed for In-House counsel who advise tribal leadership on whether to intervene or be amicus in litigation affecting your tribal nation. We will discuss the pros and cons of becoming a direct party, whether to directly participate in the case or seek to have it dismissed, or filing an amicus brief alone or jointly with other tribal nations. We will discuss different types of intervention, such as a limited intervention to file a motion to dismiss under Rule 19 as an indispensable party, or as a full party with independent authority to file pleadings and discuss settlement. We will also discuss reasons for filing an amicus brief, and the reasons why such brief may or may not be a good idea in specific cases.

November 5, 2021 | 12:45-2:00pm | Advocacy Strategies: The Law Clerk Perspective | 1.25 CLE

Moderator: Rodina Cave Parnall

Lydia Locklear, Joaquin Ray Gallegos, Alexander Mallory, Roshanna Toya

Current and former law clerks will share practical advice to enhance written and oral advocacy. The panel will instruct on justiciability, writing techniques, briefing organization, court protocols, and oral argument approaches. The presentation will also assess the related mistakes that may influence a case. The panel will ultimately spotlight a framework for building a coherent case for clients, opposing parties, and the courts.

November 5, 2021 | 2:15-3:30pm | Egregious Misconduct | 1.25 CLE (ethics)

Matthew LM Fletcher

Indian Country lawyering is mostly unregulated. Tribes and tribal courts can regulate attorney conduct, but usually do not until there is egregious misconduct. This session will explore examples of egregious misconduct and how tribes could prevent and remedy misconduct. Tribal governments can and should adopt tribally specific rules of professional conduct.