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# AMERICAN INDIAN LAW

Research Guide

## INTRODUCTION

Research in the area of American Indian law is complex and particularly challenging for jurisdictional, conflict of laws, and identity issues. Depending upon the legal issue involved, federal, state, and/or tribal law may apply. An understanding of federal Indian policy is essential in forming the foundation for research. Federal statutes apply to most criminal, civil and jurisdictional issues. Executive orders, proclamations, and other executive department actions also play a role in Indian law jurisprudence. States have some jurisdiction in selected issues affecting Indian tribes. Tribes also generally have legislative, administrative and judicial systems similar to the federal government, including individual tribal codes. There is no national tribal code. For some tribes, the tribal council functions as the tribal court. There are court opinions which must be used in tribal courts or tribal councils. There are also cultural, religious customs and common law considerations. Finally, some local laws may also apply.

Indian tribes were recognized as sovereigns (having their own governments) by the Europeans who settled America. The first form of government relations between the Europeans and the Indians were treaties. Treaties were used to make peaceful alliances with the Indians and to obtain land in exchange for promises of various kinds of protections. They were often negotiated with Indian representatives other than tribal leaders and without complete understanding on the part of the Indians. Treaty making was discontinued in 1871. Treaties currently in force remain primarily with particular Indian tribes. The Secretary of the Interior is responsible for maintaining relations with the Indians and must publish a list of recognized tribes in the *Congressional Record* on an annual basis.

## U.S. STATUTES, TRIBAL CODES, TREATISES & OTHER RESOURCES

Title 25 of the *United States Code* and the annotated versions, *United States Code Annotated* and *United States Code Service*, contain most of the federal statutes. Title 18 contains the criminal statutes. The same material can be found in LexisNexis, Westlaw, HeinOnline, and LexisNexis Congressional. Title 25 of the *Code of Federal Regulations* provides the regulatory materials. State legislation is different for each jurisdiction and can be accessed through individual state code indices.

Tribal codes may be difficult to obtain and apply to individual nations. Some tribes have their codes on their tribal web sites. Some collected codes can be found at:

- Tribal Court Clearinghouse  
[http://www.tribal-institute.org/lists/tribal\\_law.htm](http://www.tribal-institute.org/lists/tribal_law.htm)
- National Tribal Justice Resources Center  
<http://www.tribalresourcecenter.org/>
- Native American Rights Fund - Tribal Law Gateway  
<http://www.narf.org/nill/triballaw/index.htm>
- Washington Governors Office of Indian Affairs  
<http://www.goia.wa.gov/>

### TREATISES & HANDBOOKS

- William C. Canby, *American Indian Law in a Nutshell* (4th ed. 2004). (KF8205.Z9C36 2004 - Circulation Reserve)
- Felix S. Cohen, *Felix S. Cohen's Handbook of Federal Indian Law* (2005 ed.). (KF8205.C36 2005 - Greenan Reading Room & Circulation Reserve)
- *American Indian Law Deskbook, Conference of Western Attorneys General* (Hardy Meyers et al. ed., 3d ed. 2004). (KF8205.A76 2004 - Third Floor)
- Stephen L. Pevear, *The Rights of Indians and Tribes: The Basic ACLU Guide to Indian and Tribal Rights* (3d ed. 2004). (KF8205.A76 2004 - Third Floor)

### DICTIONARIES, DIRECTORIES & ENCYCLOPEDIAS

- *Treaties with American Indians: An Encyclopedia of Rights, Conflicts, and Sovereignty* (Donald L. Fixico ed. 2008). (KF8203.6 .T74 2008 - Third Floor)
- *The Encyclopedia of Native American Legal Tradition* (Bruce Elliott Johansen ed. 1998). (KF8204.E53 1998 - Third Floor)
- *Reference Encyclopedia of the American Indian* (Barry T. Klein ed., 12th ed. 2006). (E.76.2.R4 2006 - Greenan Reading Room)
- *Notable Native Americans* (Sharon Malinowski ed. 1995). (E89.M67 1995 - Greenan Reading Room)
- Gary A Sokolow, *Native Americans and the Law, a Dictionary* (2000). (KF8203.6.S66 2000 - Greenan Reading Room)

## SELECTED RESEARCH GUIDES

- Nancy Carol Carter, *American Indian Law: Research and Sources*, 4 Legal Reference Services Quarterly 5 (1985). (Periodicals – Third Floor)
- Nancy Carol Carter, *American Indian Tribal Governments, Law, and Courts*, 18 Legal Reference Services Quarterly 7 (2000). (Periodicals – Third Floor)
- Nancy Carol Carter, *The Special Case of Alaska: Native Law and Research*, 22 Legal Reference Services Quarterly 11 (2003). (Periodicals – Third Floor)
- John W. Gillingham, *Pathfinder: Tribal, Federal, and State Court Subject Matter Jurisdictional Bounds: Suits Involving Native American Interests*, 18 American Indian Law Review 73 (1993). (Periodicals – Third Floor)
- Penny A Hazelton, et al., *Washington Legal Research Deskbook* (3d ed. 2002). (KFW75.W37 2002 - Reference Reserve)
- Joe Leavengood, *Finding the Law on the Rez: An Overview of Researching Indian Law in Idaho and on the Internet*, The Advocate, Official Publication of the Idaho State Bar, March 2003, at 28. (Periodicals – Third Floor)
- Robert J. McCarty, *Native Justice: A Look at Tribal Court Jurisdiction in Washington State*, Washington State Bar News, August 1999, at 35. (Periodicals – Third Floor)
- University of Minnesota Law School Library, *Indian Law Research* (2009).  
<http://local.law.umn.edu/library/pathfinders/IndianLaw.html>
- Supreme Court of Oklahoma, *Sovereignty Symposium 16th: 2003: From Sacagawea to Space*. Oklahoma City, Okla., Supreme Court of Oklahoma (2003). (KF8201.A4 2003 - Third Floor)

## FINDING CASES

There is no comprehensive publication for tribal opinions. Some opinions can be accessed through LexisNexis and Westlaw and found in the *Indian Law Reporter* and the *Navajo Reporter*. Some of the web sites listed above also provide access to tribal court opinions and sites for individual tribes or nations sometimes include court opinions.

### Court Opinions Online

- LexisNexis
  - Department of Interior Board of Indian Appeals Decisions
  - MT Crow Tribal Court Decisions from 2000
  - MT Confederated Salish and Kootenai Tribal Court Decisions from 1989
  - MT Fort Peck Tribal Court Decisions from 1984

- NC Cherokee Courts from 2000
- Westlaw
  - Federal Native American Law - Interior Board of Indian Appeals Decisions (FNAM-IBIA)
  - Oklahoma Tribal Court Reports (OKTRIB-CS)
  - Federal Native American Law - Cases (FNAM-CS)
- National Tribal Justice Resource Center
  - <http://www.tribalresourcecenter.org/legal/opfolder/default.asp>

### **Court Opinions in Print**

- American Indian Lawyer Training Program, *Indian Law Reporter*. (KF8201.A315 - Second Floor)
- National Indian Law Library Staff, *Landmark Indian Law Cases* (2002). (KF8204.5.L36 2002 - Third Floor)
- Judicial Branch of the Navajo Nation, *Navajo Reporter*. (KF8228.N3A5 - Third Floor)

### **LAW REVIEW RESEARCH**

Legal periodicals provide a broad array of materials on Indian law. Some journals are devoted specifically to Indian law, some have special issues on the topic, and others provide scholarly articles, case notes, and even pathfinders relating to Indian law. The Index to Legal Periodicals & Books (WilsonWeb) and LegalTrac provide indexing for legal periodicals. The full text of some articles can be found in LexisNexis, Westlaw, and HeinOnline.

### **PERIODICALS AND NEWSPAPERS**

- *American Indian Law Review* (Periodicals – Third Floor)
- *Indian Country Today* (Periodicals – Third Floor & <http://www.indiancountry.com/>)
- *The NARF Legal Review* (KF8201.A3N37 - Third Floor & <http://www.narf.org/pubs/nlr/index.html>)