

# Appellate Courts: How to Ensure a Fair and Impartial Tribunal

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# Why an Appellate Court?

Appellate Courts serve a basic function in all judicial systems, whether your system is more “traditional” or “Western” or some combination.

Appellate Courts assure the trial court properly applied the law to the facts.



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# How Does an Appellate Court Work?

- Simply, any Appellate body must be separate from the trial court, and must exercise independence from the trial court.
- How that Appellate body is put together is less important.
  - Inter-tribal courts
  - Village-specific appellate body
  - Council
  - Elders
  - Other ideas?



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# Fairness

- Appellate Courts make sure the result from the trial court is based in law
- Appellate Courts make sure the trial court did not unfairly exclude facts
- Appellate Courts, in our world, also give litigants a second chance.
  - Village and Tribal members trust the court system.



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# Impartiality

- Ensure the result wasn't political
- Ensure the result was based upon law and not “feelings”



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# Why Does this Matter?

- Village courts are part of a larger system
- The larger system includes tie-ins to state and federal courts
- This does NOT mean you have to act or look like a state or federal court
  - You shouldn't!



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# It only has to be fair, not identical!

- “Some tribal courts have held that due process can have a different meaning in a tribal court than in a federal or state court” Hopi Tribe v. Mahkewa, (Hopi 1995)
- “While the meaning of due process under the Indian Civil Rights Act is similar to due process as defined under the United States Constitution, it is different. An Indian Tribal Court’s interpretation and application of due process represents the unique tribal sovereign, its distinctive tradition, culture and more.” Alonzo v. Martine (Navajo 1991).



# Two Recent Examples

- United States v. Bryant (2016)
  - Upheld conviction of an Indian based upon a federal habitual offender statute.
  - Bryant was previously convicted in tribal court under ICRA.
  - Tribe had no public defender available.
  - U.S. Supreme Court held ICRA doesn't violate a person's Sixth Amendment right to counsel
  - Tribal Court convictions in compliance with ICRA are valid predicate convictions for federal charge.



# Two Recent Examples

- Dollar General Corp. v. Mississippi Band of Choctaw Indians
  - Divided court U.S. Supreme Court (4-4)
  - Therefore Fifth Circuit opinion upheld
  - In that opinion, Choctaw was affirmed to have civil jurisdiction over a non-Indian corporation for tort (civil wrong)
  - This case was closely watched because it could have seriously hurt tribal jurisdiction.
  - However, the case was sent up to the Fifth Circuit after a full hearing by Mississippi Choctaw Court of Appeals



# So What Does this All Mean?

- Non-Indian courts are showing deference to tribal court decisions
- Tribe and Villages, however, must provide some basic fairness and impartiality
- The simplest and most effective way to do that is use a Court of Appeals.

