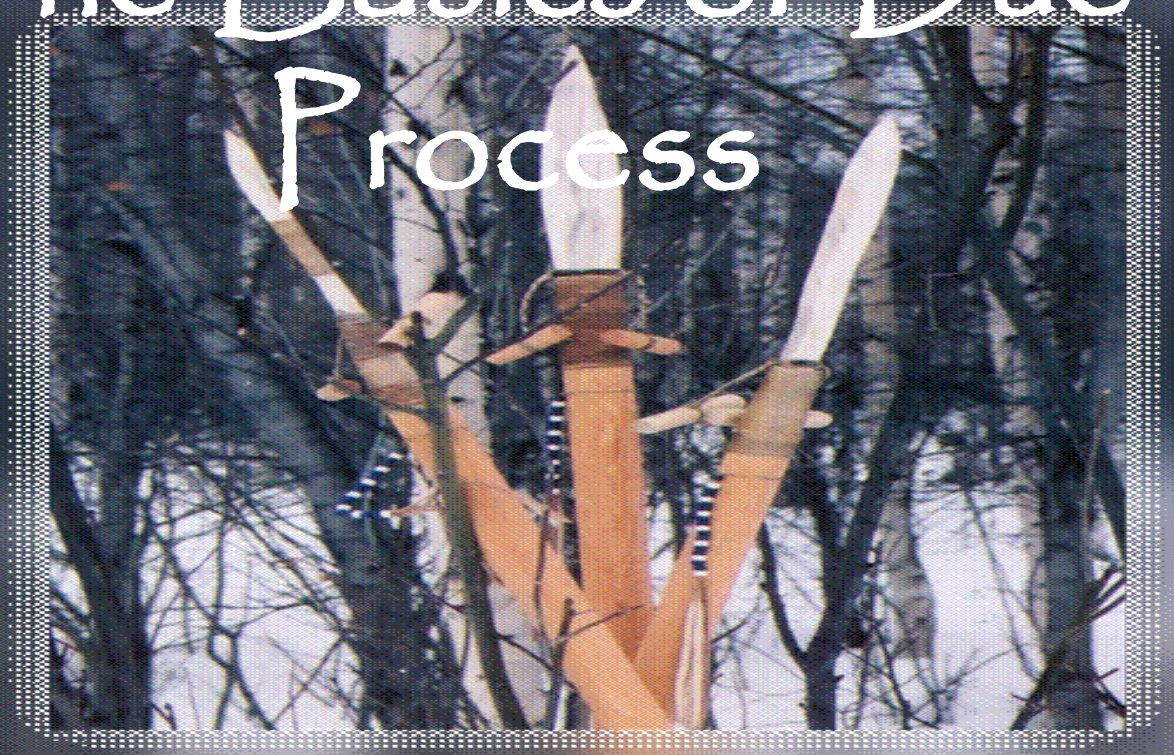
The Basics of Due Process



Tribal Management Program

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Why Due Process?

Because if you have **Jurisdiction** and you provide **Due Process**, the State of Alaska must recognize the decision of your court.

Why Due Process?

Because it's required

Indian Civil Rights Act of 1968 (25 U.S.C. §§ 1301-03)

§ 1302. *Constitutional rights*

No Indian tribe in exercising powers of self-government shall -
...deprive any person of liberty or property without due process of law;

Why Due Process?

Because it is fair

"the fundamental fairness principle at the core of the American system of justice."

BLACKS LAW DICTIONARY

- The actual legal proceedings that protect individual rights and liberties.

What is Due Process?

3 basic elements of Due Process

1. Notice- must tell the person about the hearing
2. Opportunity to be Heard-must give the person a chance to tell their side of the story
3. Fair and Impartial Hearing- must be held in normal fashion and no conflict of interest

What is Notice?

Notice- Letting the person know <u>when</u> and <u>where</u> there is a hearing and <u>what it is about</u>.

Different ways that Notice is provided:

- Personal service
- Mail
- Phone
- Published notice

What is the Opportunity to be Heard?

Opportunity to be Heard:

~must give the person a chance to tell their side of the story.

~If they choose not to come to the hearing or not to speak, that is their choice… you simply need to give them the opportunity.

~no pre-determined outcome.

What is a Conflict of Interest?

A Conflict of Interest occurs when a Judge is too close to a situation to be fair:

1. Immediate Family members (1st degree?)
2. Strong Personal Relationship
3. Direct financial, political or personal interest

~ It is up to your Tribe to define what is too close.

~ If a Judge cannot be fair (or will be seen as unfair) the Judge should step down and not hear the case.

Not sure if there is a Conflict of Interest?

If you are unsure if hearing a case would be a conflict of interest, you should ask yourself two questions:

1. Can I be fair?
2. Will the community see me as being fair?

What is Due Process?

Best Practices:

1. Keep Good Records
2. Follow Your Court Rules
3. Explain Your Decision
4. Protect Confidentiality

Judicial Ethics

The Strength of any court systems depends upon the respect given to it by the members of the community

Judicial Ethics are critical in preserving that respect!

- Confidentiality
- Fairness
- Impartiality

What type of Justice System may a Tribe use?

- **Tribes can enforce their laws through their <u>own</u> justice systems.**

The only requirement is that the Tribe have <u>Jurisdiction</u> and that the Tribal Justice System provide <u>"Due Process"</u>

1. Notice
2. Opportunity to to be heard
3. Fair and impartial hearing

The Alaska Supreme Court on Due Process:

"But this Due Process analysis <u>in no way requires tribes to use procedures identical to ours in their courts…</u>

[state] courts should strive to respect the **cultural differences** that influence tribal jurisprudence, as well as to recognize the **practical limits** experienced by smaller court systems." *~Alaska Supreme Court in John v. Baker 1999*

The Alaska Supreme Court on Due Process:

"…tribes have the 'power to make their own substantive law in internal matters and to enforce that law in their own forums.' Similarly, the Supreme Court has stressed that tribal sovereignty is valuable precisely because it enables Native Americans 'to control their own internal relations, and to preserve their own unique customs and social order.'"

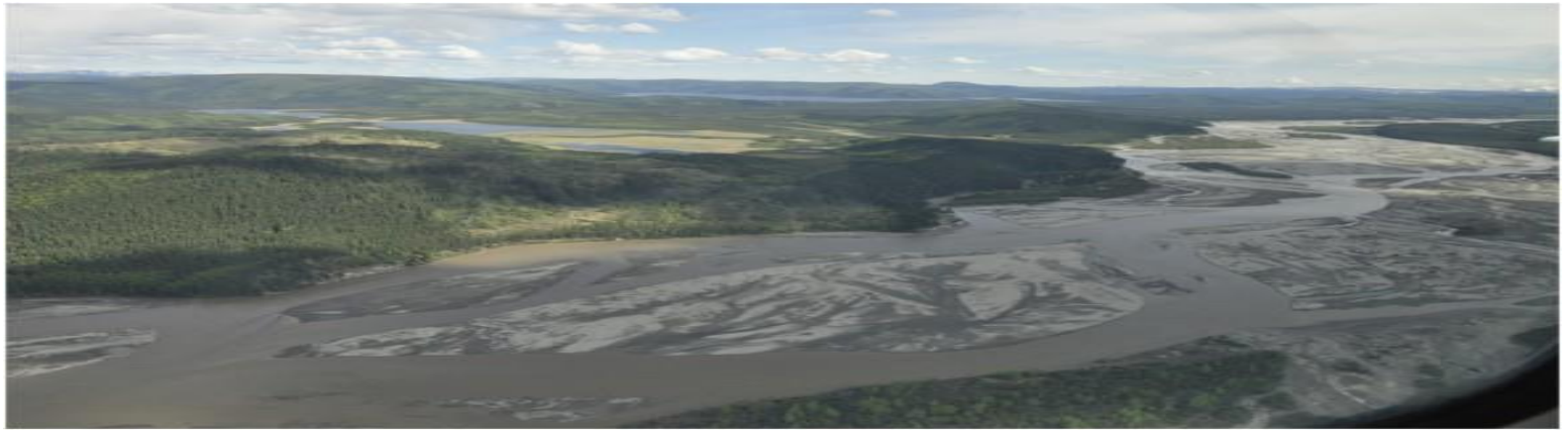
~Alaska Supreme Court in John v. Baker 1999

...More from the Alaska Supreme Court

"The United States Supreme Court has similarly 'rejected . . . attacks on tribal court jurisdiction' based on allegations of 'local bias and incompetence'…

We therefore reject any hint of inadequacy of review that might be inferred from the State's characterization of the Minto Tribal Court as a " 'relational' tribal court that applies unwritten, cultural law" and "is unfamiliar with core Western jurisdictional concepts." --
~Alaska Supreme Court in Parks v Simmonds 2014

If your Tribe has jurisdiction and if your tribe provides Due Process, the State of Alaska will respect the decision of your justice system!



Thank You!

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