Tribal Courts Part II: Crow, Ft. Belknap, Fort Peck and Northern Cheyenne

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Tribal courts Part II: Crow, Ft. Belknap, Fort Peck and Northern Cheyenne

By Professor Cynthia Ford

In last month’s column, I discussed some general principles and resources that apply to evidence in all tribal courts, and then discussed the evidence rules and cases in Blackfeet Tribal Court, Chippewa Cree Tribal Court and Confederated Salish and Kootenai Tribal Court. This month I will complete the subject of Evidence in Montana’s Tribal Courts by discussing evidence law in the tribal courts of the Crow, Fort Belknap, Fort Peck and Northern Cheyenne reservations. I also want to share, up front, a great tool I have found since last month: The University of Washington Gallagher Law Library has a research guide specifically devoted to locating tribal court decisions, with a very handy table summarizing the sources tribe-by-tribe: https://lib.law.washington.edu/content/guides/Tribal. This resource is well maintained, and was last updated in January 2015. Now, on to specific information about the remaining tribes:

CROW RULES OF EVIDENCE

The Crow Tribal Court is located at Crow Agency, Montana. Its website2 is www.crowtribalcourts.org. (There is also a Facebook page3 but, like my own, it seems to be quite underutilized; the last posting on the timeline was in 2013). The website describes the Crow Court system:

The Judicial Branch consists of a statutory Crow Tribal Court, which is a trial court of general tribal jurisdiction, a statutory Crow Juvenile Court, and a statutory Crow Appellate Court (also known as the Crow Court of Appeals).

A Crow Traditional Supreme Court has been authorized by law but is not yet established.

The Crow Tribal Court consists of three judges elected at-large by the Tribal General Council: a chief judge (who is the head of the Judicial Branch) and two associate judges, each of whom serve unlimited 4-year terms. The Crow Tribal Court is authorized to appoint special judges to hear cases.

The Crow Appellate Court consists of an appellate judge (also known as the Chief Appellate Judge or Chief Justice), who is nominated by the chief judge (or tribal chairman if no nomination by the chief judge is made) and confirmed by the Legislature to a four-year term, along with two associate appellate judges (who can either be Crow Tribal Court judges or licensed attorneys) appointed per case by the chief appellate judge.

However, the Tribal Court website itself does not link to any legal authorities. The Tribe’s 2001 Constitution and Bylaws (but not the Law and Order Code) are located on the Tribe’s general government website, www.crow-nsn.gov/constitutions-and-bylaws.html, but simply provide for the Judicial Branch of Government without any detail as to the conduct of tribal court proceedings. The Crow Law and Order Code is available on at least three unofficial websites, all of which are consistent with one another; and in hard copy at the UMLS Jameson Law Library.3 Title 5 of the Code establishes the Tribal Court branch; Title 4 is reserved; and Title 5 is entitled “Rules of Civil Procedure.” Rule 11 of the Rules of Civil Procedure is short and clear:

RULE 11. EVIDENCE AND DISCOVERY.

(a.) Evidence. The rules of evidence applicable to civil actions in the Crow Tribal Court shall be the Federal Rules of Evidence, as amended....6

Title 8A of the Crow Tribal Law and Order Code deals with Criminal Procedure. It is not as clear about the Rules of Evidence as the civil portion of the Code:

8A-7-106. Trial Procedures.

The... rules of evidence to be followed by the court and all other details of judicial procedure shall be set out in rules of the court. In the absence of such a rule on a particular subject, the federal rules may be followed.

I could not find anywhere online a set of “Rules of the Court” for the Crow Tribal Court, so I observed FRE/MRE 601 and called some folks with personal knowledge. The clerk of the court was not really sure, but she referred me to the tribal prosecutor, Robert LaFountain, who was very helpful. He has served in that post for two years, and said he had not seen anything governing criminal evidence other than the Law and Order Code itself. He reported that, functionally, when there

1 Copyright Cynthia Ford.
2 The general Crow Nation website describes the Court and lists the current judges, but lacks the detail of the Tribal Court’s own webpage.
4 These three consistent websites are: the Montana State Indian Law Resource website, http://indianlaw.mt.gov/content/crow/codes/title_05.pdf; the National Indian Law Library maintained by the Native American Rights Fund (NARF), http://narf.org/nll/; and http://crowlaws.org/crow_law_and_order_code. This last resource has not been updated since July 8, 2013. Its founder/editor is Jay Harris, who was then employed by the Crow Tribe; he now is the county attorney for Big Horn County. He informs me that he does intend to maintain the site, and to improve it. We had a terrific telephone discussion about Crow tribal law in general, and it is clear that he is a keen student of the system and an asset to those who work within it.
6 As I recommended in last month’s column, I crosschecked this language against both of these versions are identical to the language quoted in the text.
are issues of evidence in criminal cases, the FRE are used. I also spoke to Bill Watt, the tribe's attorney general, who said he has not seen any set of court rules, but that he would look around to be sure he hadn't overlooked them. Jay Harris, author of the "Crowlaws" website, pointed me to the Code provision (3-303(2)(g)) assigning the responsibility for promulgating such rules to the chief judge of the Tribal Court.7

My conclusion is that, at this time, the Crow Tribal Court has not established any "Rules of Court" and that because there is an "absence of such a rule" on criminal evidence, "the federal rules may be followed." Thus, in the Crow Tribal Court, the FRE are to be applied in both civil and criminal matters.

The Crow Court of Appeals opinions are what I would call "semi-published." The official website for the court, Crowtribalcourts.org, does not have any link to appellate opinions. However, the Montana state Indian Law Portal, www.indianlaw.mt.gov/crow/decisions/default.mcppx, does have links to some cases from the Crow Court of Appeals from 1986 to 2002 listed by name, although they are not searchable. Additionally, the "Crowlaws" unofficial website has a link to published decisions from 1986-2002, and comments: "Note: this is not an exhaustive listing of Crow Tribal case law. Extraordinary difficulty arises when attempting to locate post-2002 decisions of the Crow Court of Appeals. For more information, please contact the Crow Tribal Judicial Branch at (406) 638-4050." The NILL website, http://narf.org/nill/tribes/crow_montana.html, shows some Crow Court of Appeals decisions are available at several sources, but again none seems to be more recent than 2002:


Finally, the UMLS Jameson Law Library has some Crow cases in its collection8 but the dates here are even more restrictive, ending in 1999. I have not read through all of the cases available from the combination of these sources, so I don't know for sure how many deal with evidence issues. If I were actually conducting a case in the Crow Tribal Court, I would read the cases to see if there is any specific Crow precedent. I would also cite the Advisory Committee Notes to the FRE and federal cases as persuasive but not binding guidance for the current Crow Tribal Court (and Court of Appeals), in addition to precedent from other tribes that follow the FRE.

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7 In the Montana and federal systems, this responsibility falls to the highest court in the system, rather than to the trial court: the Montana Supreme Court and U.S. Supreme Court each is responsible for the applicable Rules of Evidence. This difference is another result of the sovereignty of tribal nations.


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FORT BELKnap RULES OF EVIDENCE

The Fort Belknap Reservation in north-central Montana is home to the Assiniboine and the Gros Ventre tribes. "Today, the two tribes are united as one government called the Fort Belknap Indian Community."9 The tribes' Tribal Court is located in Harlem, Mont. The Fort Belknap Constitution10 and Bylaws11 were adopted in 1935; neither mentions a tribal court or judicial branch. However, Title I, Part I of the Tribal Code establishes the Fort Belknap Indian Community Tribal Court, and the rest of Title I is devoted to the operation of the judicial branch. The Code is found on the tribes' website at www.ftbelknap.org/documents/Fort%20Belknap%20Tribal%20Code.pdf.

Section VII of Title I, enacted on March 8, 1999, anticipates the adoption of court rules dealing with evidence issues:

C. The Chief Judge and Associate Judges shall adopt rules of pleadings, practice, and procedures applicable to any or all proceedings in the Court and in the Court of Appeals. In addition, they shall adopt uniform rules for the admission of evidence... (Emphasis added)

Additionally, Section VI of Title II of the Code, "Civil Procedure," is entitled "Evidence." Its subsections address:

6.1 Oral Testimony—Admissibility;
6.2 Scope of Examination and Cross- Examination;
6.3 Documentary and Tangible Evidence;
6.4 Record of Excluded Evidence;
6.5 Evidence on Motion;
6.6 Interpreters;
6.7 Official Records; and
6.8 Record Search. (Another section of Title II, 11.2, also deals with evidence at trial but simply refers back to sections 5 and 6). However, Title II section 11.28 does have a substantive impact on civil trials:

11.28 Evidence as to Character

Not more than two witnesses will be allowed to testify as to character in any civil cause, without leave of the Court being first had and obtained.

This provision appears to be quite different from the state and federal rules of evidence 404a, both of which essentially ban character evidence in civil cases, essentially limiting the number of witnesses on the subject to zero. By allowing as many as two character witnesses, the Fort Belknap Code at least implies that character evidence may be admissible in civil cases.12

Title III of the Fort Belknap Law and Order Code governs Criminal Procedure. Part X of Title III is entitled "Evidence of Character," and contains three sections. The second of these, Section 1.2, echoes the two-witness limit for criminal as well as civil cases. The third, Section 1.3, lays out the Tribe's restrictions on evidence.

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9 http://www.ftbelknap.org/fortbelknaphistory.html
12 Interestingly, the next section in Title II, Civil Procedure, is entitled "Guilty Plea."
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from previous page

for evidence of prior sexual conduct in sex crime prosecutions, akin (but not identical to) FRE 412 and M.C.A. § 45-5-511. Section 1.1, "When Evidence of Character May Be Presented," is titled encouragingly but its text is still murky:

A. In all questions affecting the credibility of a witness, his general moral character may be given in evidence.

B. The prosecutor and the defendant may take and use depositions of witnesses in accordance with the Rules of Civil Procedure.

Neither Title III, Part X, Section 1.1 nor Title II, Section 11.28, contain any clear prohibition against use of character to prove action in conformity therewith in civil cases or in criminal cases by the prosecution (as MRE and FRE 404(a) do). Further, Section 1.1 above certainly expands on the federal and state rules 608 limiting evidence of character of a witness to the single trait of "truthfulness or untruthfulness" by allowing evidence in tribal criminal cases of the "general moral character of the witness" whose credibility is at issue.

The other significant aspect of Section 1.1 is its allusion to "the Rules of Civil Procedure," which corresponds to Title I, Section VII, authorizing the Judge to adopt rules of procedure and evidence. I could not locate either Rules of Procedure or Rules of Evidence on the Tribe's website or through the Montana Indian Law portal website for Tribal Court Rules for Fort Belknap.13 When I called the Clerk of Court's office, I was told that they did not know of any rules other than the Law and Order Code, but that the newly retired Tribal Judge Russell Healey might know. She, in turn, told me that there are no rules (of either procedure or evidence) apart from the Code, and that tribes are just beginning the process of revising the 1999 Code.

Although the Tribes' Law and Order Code establishes an appellate court, the official website does not contain any reference to decisions of that court. Unofficial sources are also unhelpful. As is the case with the link for Fort Belknap Court Rules, the Montana Indian Law portal shows "no materials" for Fort Belknap under "Tribal Court Decisions."14 The Jameson Law Library at UMLS has a copy of the Tribal Code15 but for appellate decisions directs the researcher to the NARF/NILL website, which in turn indicates that Fort Belknap Tribal Court opinions may be located "At Indian Law Reporter (not available online). See NILL's cumulative subject index of tribal court cases in the ILR. 1984. Abbreviations: Ft. Blkp. Tr. Ct." When I typed "Belknap" into the search block, I found a citation to a single case from 1984: Fort Belknap Community Council, et al., No. CV83-238 (Pt. Blkp. Tr. Ct., Jan. 20, 1984) 11 ILR 6017. As I advised last month, now that I have that citation, I would call very helpful folks at the UMLS Law Library16 and ask them to print, scan and email that decision to me. Retired Tribal Judge Russell Healey confirmed that the current Fort Belknap appellate opinions are not published anywhere, although again there is talk of doing so in the near future.

FORT PECK RULES OF EVIDENCE

The Fort Peck Assiniboine & Sioux Tribes, which include several bands from each tribe, occupy the Fort Peck Reservation, headquartered in Poplar, Montana. The Tribes' official website is www.fortpecktribes.org, which contains a link to the Tribal Constitution.17 There is a separate website for the Tribal Court, www.fptc.org, which includes links to the Fort Peck Tribes Comprehensive Code of Justice (CCOJ)18 and to a Civil Form Book (which both explains civil procedure and helpfully provides forms for litigants to use in their tribal court civil cases). Title 2 of the Code deals with the Tribal Courts, Chapter 1 with the Tribal Court and Chapter 2 with the Court of Appeals. Title 2, Section 104 states:

Section 104. Rules of Court.

The Chief Judge may prescribe written rules of court, consistent with the provisions of this Code, ... the rules shall be approved by the Tribal Executive Board before becoming effective.

Appendix 2 to the Tribal Code is "Rules of Civil Procedure,"19 effective Oct. 1, 2007. There are 11 rules of Civil Procedure, including Rule 9-6(5) which requires civil parties at the final pretrial conference to exchange trial exhibits and identify objections thereto; failure to do so presumptively waives use/objection at trial. Under Rule 9-6(6), the parties must also identify at the pretrial conference the witnesses they intend to call at trial. Nothing else in the Rules of Civil Procedure deals with the admissibility of evidence at trial.

The Code (CCOJ) does have separate titles for "Criminal Procedures" and "Civil Procedures" (Titles 6 and 8 respectively). For criminal cases, Title 6, Section 510 is blessedly short and clear:


(a) The Federal Rules of Evidence shall be followed in all Tribal Court proceedings. (Emphasis added).

(b) When necessary, the Tribal Court will supplement the Rules of Criminal Procedure of this Title with the Federal Rules of Criminal Procedure.

For civil cases, the situation is murkier because of the apparent conflict between Title 6, Section 510's language about "all" tribal court proceedings and other language in the civil procedure title. Title 8, Section 201, "Trial procedure," provides:

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13 www.indianlaw.mt.gov/no_material.mcpx, which reported "We have no materials on this topic."
14 www.indianlaw.mt.gov/no_material.mcpx.
16 The phone number for the Reference Desk is 406-243-2699.
17 www.fptc.org/ccoj/ccoj.html. www.fortpecktribes.org/tribal_history.html The Montana Indian Law portal also has a link to "2013 Proposed Changes to the Constitution and Bylaws," www.indianlaw.mt.gov/content/fortpeckconstitution/2013_ft_peck_prop_const_changes.pdf, but I have not been able to find verification of their adoption.
18 www.fptc.org/ccoj/ccoj.html.
19 www.fptc.org/ccoj/appendix/appendix_2.pdf
(a) ... the rules of evidence to be followed by the court and all other details of judicial procedure may be set out in rules of court.

(b) All testimony of witnesses shall be given orally under oath in open court and subject to the right of cross-examination. Documentary and tangible evidence shall also be received in open court.

The very last section of Title 8 deals with “Applicable laws and discretionary guidance.” It states “where appropriate, the Court may in its discretion be guided by statute, common law or rules of decision of the State in which the transaction or occurrence giving rise to the cause of action took place.” CCOJ Title 8, Section 501(d). Curiously, there is no reference in the Civil Procedure Title to the Federal Rules of Evidence, and the direction of Section 501(d) to state law seems inconsistent with the mandate of Title 6, Section 510. To add to the confusion, yet another provision in Title 6, dealing with Wellness Court (for proceedings in which substance abuse plays a part), refers to tribal Rules of Evidence but not to the FRE:

Section 1004. Rules of evidence.

... The Rules of Evidence adopted by the Fort Peck Tribes shall not apply in any Wellness Court proceedings.

Thus, the statutory provisions are ambiguous, given the fact that there do not appear to be any formal Tribal Rules of Evidence as contemplated for civil actions. (For sure, in criminal cases in Fort Peck Tribal Court, the FRE govern.) This is not uncommon in any statutory scheme, sadly, and is exactly the situation where the system’s appellate opinions may fill the gap. Fort Peck’s decisions do exactly that.

Fort Peck publishes its appellate decisions on the Tribal Court website in PDF format at http://www.fptc.org/opinions/opinions.html. The most recent decision posted is dated Feb. 2, 2015; the earliest is 1986. I counted, with no guarantee of precision, 634 opinions, in chronological order. Again without warranty, I was able to search these opinions, the Tribal Code, and the Civil Form Book by using the freefind search block on the first page of the opinions link. (I first searched for the simple word “evidence” and got what we refer to technically in the law as “a boatload” of results.) Later in my research, I again used the search function, this time more specifically for “Rules of Evidence.” This yielded many references to the Code, and to several Court of Appeals opinions. As I love to find, one of these decisions definitively answered the question:

... it would be appropriate to adopt rules of evidence to be adhered to in Tribal Court for subsequent trials and hearings. Because a Tribal Court decision or an Appellate Court opinion could possibly be reviewed by a Federal Court, hereinafter the Federal Rules of Evidence shall be followed in all Tribal Court proceedings. This Court deems it appropriate that Tribal Prosecutors, Public Defenders and Lay Counselors and Attorneys practicing in Tribal Court to [sic] familiarize themselves with the Federal Rules of Evidence and hereinafter apply the same in Tribal Court proceedings.


Thus, without leaving the tribes’ own website, I was able to find Code provisions on my question of which rules of evidence apply in the Fort Peck Tribal Court, and to resolve a possible ambiguity in the Code provisions on civil and criminal proceedings by reference to opinions by the Fort Peck Court of Appeals. Based on these authorities, I conclude that in the Fort Peck Tribal Court, in both civil and criminal cases, the F.R.E. apply, and that there is no separate set of Tribal Rules of Evidence for the Fort Peck Tribal Court. And, just sayin’, Fort Peck is clearly the winner of all the tribes in Montana on the accessibility of legal information related to evidence rules and their application. Thanks, and way to go!

NORTHERN CHEYENNE RULES OF EVIDENCE

The Northern Cheyenne Tribe, whose reservation is in southeastern Montana abutting the Crow Reservation, has a website: www.Cheyennenation.com. The Tribal Constitution, as written in 1934 and amended in 1960 and 1996, explicitly provides for three branches of government, including the judicial branch. The direct link to the judicial branch is www.cheyennenation.com/ncj/judicial.html. At the bottom of that page, there is another link to the Tribe’s Law and Order Code online, but this takes you to the NARF/NILL site. Thus, it’s better to access the Northern Cheyenne Code simply by going to http://narf.org/nill/codes/northern_cheyenne/index.html or via the Montana Indian Law portal: www.indianlaw.mt.gov/northerncheyenne/codes/default.mcpx. The Jameson Law Library at UMLS also has a hard copy of the Code: REF KF8228.C53 1987.

Title I of the Law and Order Code, “General Provisions,” contains Section 1-1-4, which establishes the judicial branch:

There is hereby established the Northern Cheyenne Court, constituting the Judicial Branch of Tribal government, comprised of the Trial Court, Appellate Court, Constitutional Court and Office of the Court Clerk, as described in Chapter 3 of Title IA of this Code.

The Trial Court is the court of general subject matter jurisdiction for both civil and criminal cases. The subject matter jurisdiction of the Constitutional Court is limited...
Prosecuting Medicaid fraud offenses

By Debrah Fosket and Chris McConnell

The Montana Medicaid Fraud Control Unit (MFCU) was created by the 1995 legislative session and became operational in May 1996. Currently, 49 states, the District of Columbia, and Puerto Rico have MFCUs. The unit’s activities are subject to the oversight of the Office of Inspector General, U.S. Department of Health and Human Services, which must recertify the unit annually. Organizationally, the MFCU is a unit of the Division of Criminal Investigation under the aegis of the Attorney General’s Office.

The MFCU investigates and prosecutes offenses committed by Medicaid providers, alone or in a conspiracy with recipients. Medicaid fraud is defined in Mont. Code Ann. § 45-6-313. The MFCU does not investigate stand-alone allegations of fraud by Medicaid recipients. Such cases, which could constitute recipient welfare fraud, might be investigated by the Montana Department of Public Health and Human Services.

Medicaid fraud may include the filing of false claims. See Mont. Code Ann. § 45-7-210. Examples of Medicaid fraud or false claims may include provider claims for double billing, up-coding, fictitious services, unnecessary services, billing for services not provided, and billing contrary to established rules and policies. Medicaid fraud may also include the acceptance or payment of kickbacks for furnishing services or items under the Medicaid program.

The MFCU can investigate and prosecute alleged offenses that are committed by Medicaid program personnel when such crimes affect the administration of the program. The MFCU can also investigate alleged Medicare fraud and fraud in any federal health care program in connection with a Medicaid investigation.

In addition to the preceding situations, the MFCU is authorized to investigate and prosecute patient abuse, patient neglect and elder exploitation within Medicaid-funded facilities, which may involve physical violence, sexual abuse or financial exploitation. The MFCU can investigate abuse in any health care facility, even if the alleged victim is not a Medicaid recipient. A facility is basically any enterprise that cares for two or more clients, including board and care homes and personal care homes.

The Montana MFCU works with the National Association of Medicaid Fraud Control Units and the U.S. Department of Justice to investigate national companies for fraud. Additionally, we work with health care professionals and other law enforcement agencies in the Montana Health Care Task Force, a group headed by assistant U.S. attorneys who prosecute health care fraud. The group is made up of federal and state prosecutors and investigators, as well as health care professionals and investigators employed by private organizations.

The MFCU works closely with the Montana Department of Public Health and Human Services, Surveillance Utilization and Review Section (SURS). Clear and open communication between the MFCU and SURS regarding possible provider fraud, referrals and audits enables the more efficient use of state investigative resources. For example, SURS may assess possible problem billing and then refer to the MFCU those providers whose billing patterns indicate fraud being perpetrated against the state’s Medicaid system. Not every case that is investigated by the MFCU leads to prosecution and conviction. The investigations must meet a stringent review by the MFCU prosecutor before charges are filed.

The Montana Department of Justice maintains a hotline for citizens to report Medicaid-provider fraud or elder abuse. Please call the Medicaid Fraud hotline at 800-376-1115.

Debrah Fosket is director of the Montana Medicaid Fraud Control Unit. Chris McConnell is an assistant Montana attorney general.

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to and exclusive for claims that legislative enactments of the Tribal Council are unlawful and for removal of judges. Title IA, effective Oct. 27, 1997, was enacted to "reorganize the Judicial Branch to facilitate implementation of the Tribal Constitutional requirement of separation of powers." Section 1A-2-2. The Code contains separate titles for Civil Procedure (Title IV) and Criminal Procedure (Title V). Title VI is entitled "Rules of Evidence Code" and comprises 38 rules beginning with "Purpose, Scope and Construction" and ending with "Authentication of Writings." Rule 1 indicates that the Rules of Evidence apply "in all proceedings in all courts of the Northern Cheyenne Reservation." (Emphasis added).

Some significant aspects of the Northern Cheyenne Rules of Evidence are that:

- judicial notice may be taken of both law and fact (Rule 12);

- instead of several specific hearsay exceptions, there is a single general exception allowing the Court to admit hearsay "which is deserving, needed, and otherwise admissible, and the [opponent] has had fair notice" (Rule 17);

- privileges include: self-incrimination.

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www.montanabar.org
Larry L. Baer

Larry L. Baer passed away on Feb. 5, 2015, at the age of 70. Larry was a man full of passion and love, dedicating himself to his family and friends.

He is survived by his wife, Shirley; his mother, Adelaide; his three children, Samuel, Carin and Charles; and his two grandchildren, Lauren and Vaughan.

He was born in Chicago, lived in many states, but loved Montana and was happy to call it "home."

James Edward Congdon III

MISSOULA – James Edward Congdon III quietly passed away Wednesday, Jan. 28, of natural causes. He was born Aug. 13, 1925, in Ottawa, Ill., to James E. Congdon Jr. and Erma Benson. James was raised in Walworth, Wis., and grew up sailing on Lake Geneva. He attended Park College in Parkville, Mo., where he met and married Opal J. Ringen. He went on to the University of Wisconsin Law School where he received his LLB.

Jim joined the Air Force in 1952 as a JAG Corps officer and served for 18 months before being discharged. From there he attended John Marshall Law School receiving his LLM. For health reasons, he and Opal headed west and settled in Missoula in 1961. Deciding he wasn’t finished with his education, they returned east, living in New Jersey while he attended New York Law School where he received his SJD. They couldn’t get out of New Jersey fast enough and returned to Missoula for good in 1964.

Jim joined the Air Force Reserve, again in the JAG Corps and stayed for 21 years until he retired in 1980 at the rank of lieutenant colonel. He practiced law in Missoula from 1964 until his retirement in 2008. He also served as city attorney for Superior for many years.

Jim was a member of the East Missoula Lions Club and the Missoula Mendelssohn Club. He served on the board of directors of the Marshall and Mary Brondum Special Assistance Foundation. One of his passions was sailing and he loved spending time at Flathead Lake in the summers doing just that.

His parents; his sister, Mabel Louise; and his twin brother, Floyd; preceded James in death. He is survived by his wife of 66 years, Opal of Missoula; daughter, Christine and husband David Howe of Florence; son, Walter and wife Ann of Missoula; granddaughters, Amber Bass, Elizabeth Bass and Ona Congdon; and grandson, Sam Congdon.

Graveside services with full military honors were held Monday, Feb. 9, at the Western Montana State Veterans Cemetery. Condolences may be left for the family at dalyleachchapel.com.

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advocate-client; spousal testimonial (not just communications); clergy-penitent; physician-patient; and public officer, for “official information communicated to him in an official confidence” (Rules 18-26).

It is very difficult to find any published opinions to augment interpretation and application of the Tribal Code, including the Rules of Evidence. The Northern Cheyenne Tribal Court official website does not contain any published appellate opinions, nor are there any on the Montana Indian Law portal. NILL shows that Northern Cheyenne opinions are “At Indian Law Reporter (not available online). Coverage includes 1985-1988. Abbreviations: N. Chy. Tr. Ct.” The University of Washington Indian Law Guide’s very handy table confirms that two Northern Cheyenne cases were published by the Indian Law Reporter, one in 1985 and one in 1988. (The Westlaw database does not contain any entry for Northern Cheyenne.) However, neither of these Northern Cheyenne cases appears in the topic search of the NILL for “Evidence” or “Rules of Evidence,” so I assume that neither of these deals with my topic for today: Evidence in Tribal Courts in Montana.

CONCLUSION

The tribal courts are important partners in the administration of justice, civil and criminal, in Montana. Because they are components of sovereign nations located within the state, they are entirely free to develop and apply their own rules of evidence. Some tribes have chosen to follow, closely or not, state or federal rules; others have markedly different principles of admissibility. I hope that this two-part series will give you a starting point for your research into the applicable statutory and judicial evidence law for any case you may bring or defend in a particular tribal court.

26 Yes, I know what this makes me but I am OK with that for this column. If I were being paid to represent someone where this assumption would matter, of course I would obtain and analyze both cases. 27 And, don’t forget, admission to their bars. Your federal or state license may work in some of the tribal court systems, but others require passage of a tribal bar examination. So, before you even begin to research evidence law in a particular tribal court, make sure you can practice there.