

FALMOUTH TRAINING ON ENROLLMENT

2022 Outline of Topics By Carol Janick

Why worry about enrollment?

- We know who our people are.

WHY IS ENROLLMENT IMPORTANT?

To the individual:

- Tribe is the Government entity that most effects daily life
- Membership provides sense of community, heritage& history
- Membership provides access to services and benefits
- A special relationship exists with the Federal Government as a result of membership in a “Federally Recognized” Tribe

To the tribe:

- Deciding who is a member is how a tribe defines itself
- Guarantees the Tribe’s identity will be preserved in the future
- Defines who the government represents
- Good business practice
- Budget
- Assigning Land
- Economic Programs

Who is an Indian?

- “My Grandmother was 1/5 Indian on my mother’s side”
- “My great grandmother was a Cherokee _____.”

Indians are people who have tribal membership rights

- An Indian is a member of a group that is acknowledged to exist as a tribe by the Federal Government.

Who's in charge of enrollment?

- Tribes determine their own membership as sovereign political entities and as such can:
 - Establish membership requirements
 - Determine procedures for enrollment
 - Define rights associated with membership

Changing face of enrollment Eligibility decisions are more difficult!

- Increased complexity of Tribal government
 - Required knowledge of Federal and Tribal law
- Obtaining descendancy documentation
- Residency/Relationships are fragmented
 - Intermarriage
 - Adoption of children
- Ineligible people claiming tribal assets

Why are membership decisions so important? "A tribe's power over its own membership is the starting point for any discussion of Indian identity."

- Membership criteria is decided by the entire tribe and established in the governing document(s)
- The government must know its people to function effectively
- Identification and maintenance of member information is good business
- Complete accurate membership lists help maximize federal assistance and grant monies

Can federal or state law affect enrollment?

- Has the federal government been involved in enrollment issues in the past? If so, how and to what effect? What about state law?

Federal Law and Enrollment

Congress, BIA and the Federal Courts Acts of Congress

- Indian Reorganization Act
- Indian Civil Rights Act
 - Indian Child Welfare Act Special Congressional Acts
- Case Law • Waldron v. United States 1905
- United States ex rel. West v. Hitchcock 1907
- Santa Clara Pueblo v. Martinez 1978 Law and Bureau Policy
- Policy Statements (clarification)
- Solicitors Opinions (legal opinion)

Clear and concise written regulations are a requirement for modern tribal organizations to function.

Governing Documents What are they?

- Constitution
- Ordinance
- Resolutions
- Codes
- By-Laws

Governing Documents

- Constitution
- Sets forth Membership structure and criteria
- Establishes base for enrollment
- Defines future membership requirements
- Specifies procedures for adoption and confidentiality

Enrollment Ordinances, Rules & Regulations

- Allow for change
- Provide flexibility
- Demonstrates unity
- Protects Custom
- Provides for legal standing
- Preserves financial status
- Provides due process

- Protects individuals

Membership Requirements

- Ancestry to the Base Roll
- Blood Degree
- Residency
 - Adoption
- Maternal Descendent
- Paternal Descendent

Ancestry to the Base Roll:

- census
- allotment
- payment roll
- How is this documented?
- What proof is required?
 - Is the requirement spelled out in writing?
 - Is the requirement equally enforced?
 - Has the requirement been changed? How?
 - How are retro requests handled?

Membership Requirements Minimum Blood Degree

- How much?
- Indian Blood, Tribal Blood or both?
- Calculated based on?
- Proof Required?
- Standard set to limit size or to expand size?

Membership Requirements

- Applicant must file application within ___ days of child's birth
- Declaration of Intent to maintain U.S. citizenship

Enrollment Laws Hierarchy

Constitutional Laws -Amendments

- Supersedes Policies, Procedures, Rules, Regulations, Ordinances and Tribal Laws Ordinances
- Make new law
- Add to existing law
- Change or repeal existing law Resolutions
- Official Council acts that represent Council decisions

No ordinance or resolution may conflict with the Constitution!

Changing Membership Requirements How was the requirement established? WRITTEN IN THE CONSTITUTION

- Requires an amendment to the Constitution
 - An amendment changing membership requirements has the effect of abolishing all old ordinances and resolutions that conflict with the new PROVIDED IN AN ORDINANCE
- Pass new ordinance amending or replacing the old on

Changing Membership Requirements

- The new law cannot conflict with a higher law that already exists
- The new law must be voted on by the same body of people who passed the old law
- New laws cannot be applied retroactively
- New laws must be approved by the Secretary of the Interior if the Constitution requires
- Key terms should be defined carefully

Types of Tribal Members

- Basic or base enrollees
- Automatic eligibility
- Adoptees

Base or Basic Enrollees

- People who belonged to the Tribe at the time that membership requirements were established by law.

Automatic Eligibility

People who are born with the right to tribal membership based on the requirements for future membership that were established by the tribe's governing document.

Adoptees

An individual granted membership to the tribe although the individual does not meet the established requirements of the tribe for membership.

Making Membership Decisions-Follow the Constitution

- No exceptions to the law
- Every requirement must be met

Burden of Proof

- Burden of proof is on the
- applicant Documentation
- No enrollment action should be
- taken without supporting documents

NOTHING IS TRUE UNTIL YOU HAVE WRITTEN EVIDENCE!

Key points for calculating blood quantum:

- Blood degree is 1/2 of the combined blood degrees of the parents
- If paternity has not been established, only 1/2 of the mother's blood degree can be counted
- Other Indian blood quantum's should be calculated separately
- Blood quantum from non-recognized tribes can be used in

total Indian blood quantum calculations

- Unenrolled Indian blood may be counted as Indian blood
- Blood of terminated tribes is not recognized as Indian blood by the federal government.

Calculating additional blood quantum

- Mother 1/4 Ute Father 1/2 Ute 1/4 Zuni 1/4 Shoshone
Child Ute Blood Quantum $1/4 + 1/2 = 1/4 + 2/4 = 3/4 \times 1/2 = 3/8$ Plus Zuni Blood 1/8 Plus Shoshone Blood
- 1/8 Total Indian Blood Quantum = 5/8
- Calculating Blood Quantum Mothers Blood Quantum + Fathers Blood Quantum $2 \times 1/4 + 3/4 = 4/4 \times 1/2 = 4/8 = 1/2$
Same procedures are used for figuring Tribal blood degree and Total Indian blood degree.

Adopted Children -Children adopted by Tribal members

“Is a child adopted by a Tribal member eligible for Tribal membership?” Should be addressed in Constitution or Ordinance:

- “born of member” “natural child/children”
- “children of members”
- definition of children

Adopted Children-Children born to members, then adopted

- “Is the child of a Tribal member who has been placed for adoption eligible for Tribal membership?”
- Yes/No: Language in Constitution or ordinance
- •Are the rights of children ‘adopted out’ denied?
- •Is there a time limit for child enrollment?
- •Are documents of blood degree and descendency available?

Indian Child Welfare Act – 1978

In the adoption of Indian children, the court handling the adoption will provide to the Secretary of the Interior;

- copy of the adoption decree
- name and tribal affiliation of the child
- names and addresses of natural parents
- names and addresses of adoptive parents
- name of any agency maintaining files relating to the adoption

Indian Child Welfare Act

- The Secretary is responsible for maintaining absolute confidentiality of the information
 - When the child reaches the age of 18, the adoptive parents or a tribe may request eligibility information from the Secretary
 - If the birth parents have requested anonymity, the Secretary will certify whether the child is eligible for enrollment

Loss of Membership Disenrollment

- Is disenrollment allowed?
 - Burden of proof is always on the Tribe
 - Grounds and procedures must reflect due process:
 - Notice
 - Hearing
 - Method of Appeal
 - Official Notice
 - Accurate records

Loss of Membership Relinquishment

- Relinquishment is by member's choice
- Member must submit a written statement of relinquishment
- Tribe cannot require use of an official form
- Grounds and procedures must reflect due process:
 - Notice
 - Hearing
 - Method of Appeal

- Official Notice
- Accurate records
- Reinstatement or Restoration? Minors?

Dual Enrollment Is it permitted? •Distribution of assets •Tribal Constitution(s) •Is it specifically prohibited? •People “ever” enrolled or “currently” enrolled? Procedures for handling prohibited dual enrollment?

Keeping the membership roll current: Daily Events (maintenance)

- Births
- Deaths
- Applications
- Marriages & Divorces
- Relinquishments
- Disenrollment’s
- Elections
- Blood degree corrections
- Requests for information
- Correction

Automatic Data Processing

- Integrated database
- Automated Blood Quantum Calculation
- Genealogy Charting
- CDIB Generation
- Election Management
- Statistical Report Generation
- Document Scanning and Indexing
- Address and Residence Management
- Enrollment Status

DNA & Identity Testing

So how is DNA passed from generation to generation?

- MOTHER FATHER-1/2 DNA from Mother 1/2 DNA from Father
- DNA resides throughout the body in all living cells! Cell
- DNA is analyzed with the laboratory technique known as PCR (Polymerase Chain Reaction)
- DNA is isolated and replicated MILLIONS of times
- 16 specific locations are analyzed
- A unique DNA profile is established
- Profiles are compared to establish biological relationships

How is DNA identity testing used today?

- Legal issues-wills, estates
- Resolve doubt •Child Support and Custody
- Native American Tribal Enrollment
- Social Security Benefits
- Immigrations and Adoption

Can DNA testing determine if an individual meets tribal blood quantum requirements? The answer: NO. No test exists that will do this!

BEWARE Some industry claims may be misleading... Genetic markers exist for including a tested individual in the Native American gene pool, just as individuals are said to be Caucasian, African American, Asian etc. DNA testing cannot determine your percentage of Indian blood.

DNA testing can help...but how? Why use DNA testing for tribal enrollment?

- Objective method for enrolling new members
- Legally proven, scientific testing process
- Preserve Tribal heritage

DNA testing for paternity

- All tested parties are living
- Test the known Tribal Members (M & F) and the alleged offspring
- Determine Yes or No for a biological relationship
- 99.99% and greater for ‘inclusions’ or
- 0% for ‘exclusions’

Paternity Testing For Enrollment

- Enrollment Claim Newborn or Enrollee of Any Age- Locate The Living Tribal Members (Parents) and Collect Specimens For Testing Analyze Trio Living Tribal Members (The Parents) And Enrollee (Child).

How do you collect DNA specimens?

- Preferred method: the painless mouth cheek (buccal) swab technique
- Use swab similar to Q-tip tm
- Brush against inside of cheek, or
- Blood can be obtained from arm
- Remember, DNA is DNA!

How to set up a test...

- Complete fax form, or by telephone
 - Schedule specimen collection appointments
 - Collect specimens at hospital, clinic
 - Paperwork and photo’s ensure parties
 - Collection facility ships overnight to DDC
 - Testing begins immediately
 - 9 days for results faxed & mailed
- Form
Specimen Collection
Analysis
Test Results

What is the “Chain of Custody”?

- The legal way to ensure the correct person's are being tested.
- Tested parties are positively I.D.'d, photographed and fingerprinted.
- Process can be tailored to meet tribes need for confidentiality.

Membership Ordinances

- An ordinance cannot change a Constitutional provision
- An ordinance defines terms in a Constitution to avoid controversy
- Establishes procedures for implementing the Constitution

Membership Ordinances

Authority:

- cite the Constitutional authority to enact the Ordinance.

Contained in the Membership Article:

- most often the Tribal Council
- can be Membership Committee
- sometimes given to membership Purpose Include a brief statement explaining the purpose of the Ordinance to avoid confusion.

Membership Ordinances Definitions

- "Adopted Child"
- "Adoption"
- "Applicant"
- "Base Enrollee"
- "Constitution"
- "Direct Descent"
- "Disenrollment"
- "Documentation"
- "Incompetents"

- “Member”
- “Minor”
- “Notarized”
- “Relinquishment”
- “Resolution”
- “Shared Benefits”
- “Sponsor”
- “Tribe”
- “Tribal Council

Eligibility Criteria

The entire Membership Article of the Constitution should be included in the Eligibility Criteria Section. This allows a single document to include all enrollment criteria and procedures.

Enrollment Applications - Filing

- Who must file an application
- When and where to file an application
- What the application must contain
- What documentation must accompany the application

Enrollment Applications

- Processing Outline the steps to be taken in handling applications for membership received by the Tribe. Specify who is responsible for each action and establish timeframes in which actions are to be taken.

Loss of Membership

- Provide procedures for voluntary loss of membership- Relinquishment
- Provide procedures for involuntary loss of membership - Disenrollment or Removal

Appeals

- Who may file an appeal
- How and when an appeal may be filed
- How an appeal will be handled
- What tribal entity makes the final decision on appeals

Records

- Written guidelines on documents required for memberships
- Who has access to the roll
- What information is required to update information on the roll
- Identification of the tribal entity responsible for confidentiality and protection of records

Tribal Blood Degree Requirements

If a Blood Degree requirement exists, the method used in computing blood degree should be established by law.

- Beginning Point
- Method to request changes
- What types of blood degrees will be counted

Adoption into Membership

If the Constitution provides for adoption into membership, the Ordinance:

- States that the Tribe will not adopt into membership, or
- Outlines procedures under which adoptions will be made

Amendments Outlines

- methods, procedures and requirements for the amendment of the Ordinance.

Certificate of Enactment

- Included at the end of the Ordinance to certify.

Keys to Effective Enrollment

- Make sure the administrator has the necessary tools
- Protect privacy and confidentiality
- Act equitably and fairly in all enrollment decisions
- Record and document all actions

Keys to Effective Enrollment

- Know tribal and Federal laws and follow them
- Recognize that enrollment is an important governmental function and make it a priority
- Select a quality, competent and trustworthy administrator