

PROPOSAL OF THE NATIVE AMERICAN BAR ASSOCIATION  
TO INCLUDE INDIAN LAW  
ON THE NEW MEXICO BAR EXAMINATION

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SUMMARY

Indian people and Indian lands are an increasingly important part of the New Mexico economy. As a result, New Mexico lawyers have a growing need for knowledge of Indian law if they are to provide competent representation to their clients, Indian and non-Indian alike. This proposal would add Indian law as a subject on the New Mexico bar exam, thereby assuring that all newly admitted attorneys in New Mexico have a basic understanding of Indian law.

POLICY PROPOSAL

The subjects tested on the NM bar exam are governed by N.M. R. Gov. Admiss. 15-203B, which lists the areas of concentration that may be covered by the bar exam. Changes to the Rules must be considered by the Board of Bar Examiners and adopted by the New Mexico Supreme Court. We propose adding the following language to 15-203B:

(5) Indian law, including subjects such as federal Indian law, criminal and civil jurisdiction in Indian Country, and the Indian Child Welfare Act under state and federal law.

RATIONALE

- **American Indians play an increasingly important role in New Mexico.** New Mexico is home to 23 tribes and pueblos. In 1998, the population of American Indians comprised 9.2% of the state population. In the 1990 census, Native Americans numbered 134,000 people.
- **New Mexico Tribes and Pueblos control a large amount of land.** Although natives make up about 2% of the U.S. population, they hold 4.2% of the land in the U.S. In New Mexico, total trust acreage stands at about 8,169,407 acres, comprising over 10% of the entire land area. With those land holdings come tribal jurisdiction - legislative, regulatory and judicial. As one example, law enforcement within Indian country is often a complex jurisdictional interplay of tribal, state and federal law.
- **Increased Indian economic activity has caused a dramatic growth in the importance of Indian law issues in New Mexico.** Business activity by New Mexico Indian tribes and Indian people has grown dramatically in recent years, prompted especially by the expansion of gaming, taxation, and natural resource development in Indian Country. Tribes regularly engage in business themselves and through tribal corporations and do

business with Indians and non-Indians alike. Non-Indians regularly lease tribal lands for resources and industry. Increased capital, growing demand for resources on Indian lands, and federal policies favoring investment in Indian Country mean that economic activity in New Mexico Indian Country will continue to grow.

- **The New Mexico courts and legislature have added to the body of Indian law.** Over the past decade, New Mexico state courts have worked hard to build cooperation with tribal courts on issues of jurisdiction and cross-border enforcement of court orders. The New Mexico legislature and executive agencies have worked to facilitate intergovernmental agreements between state and tribal agencies and to accommodate tribal governments' interests in the protection of children and enforcement of child support obligations. Tribal and state agencies have worked together to address issues of education, taxation, and reducing crime.
- **The state's law school already recognizes the importance of Indian law for all New Mexico lawyers.** The UNM School of Law addresses Indian law issues across its curriculum, including in courses such as advocacy, torts, property, family law, federal jurisdiction, conflicts of law, UCC, and business associations, among others. In addition, it offers a special Indian Law Certificate Program for those wishing to specialize in the field, including courses such as Native American Rights, Indigenous Peoples' Law, Tribal Courts, State-Tribal Relations, ICWA, Land Claims, Economic Development, Indian Water Law, Indian Tax, and Gaming, among others.
- **The need for a fair and informed discourse of Indian law issues requires the legal profession to be trained in Indian law.** An informed discussion is necessary before legal decisions on Indian issues take place. Many judges and legislators profess to being inexperienced on Indian law. Members of the New Mexico Supreme Court have expressed support for Indian law trained candidates for the bench and members of the legislature have expressed the need for education of their colleagues about Indian law issues. The public is served by having Indian law-practitioners speak intelligently about Indian law issues before the media and public.
- **Indian law literacy improves the chances of a fair trial.** Having Indian law trained judges does not mean the Indian litigants will win, rather it means there will at least be a fair trial because of the informed discussion of the pertinent legal issues. The result is better decision-making by the courts and less potential for error. Likewise, New Mexico lawyers must be able to educate the public and profession about basic Indian law matters to address a historic misunderstanding of Indian tribes and state/tribal relations.