

LAW 631J/K Indian Law Clinic I & II

Spring 2024

Part 1: Course and Contact Information

Credit Hours

Clinic I: 4
Clinic II: varies

Meeting Days/Times: Monday and Wednesday, 10:15am to 11:55am

Meeting Location: Room 346

Instructor Information

Instructor: Prof. Kate Fort
Prof. Saza Osawa

Preferred pronouns: she/her/hers

Office: Room 215K (Fort)
Room 216 G or Zoom (Osawa)

Office Hours: Zoom, phone, or in person, by appointment

Office Telephone: (517) 432-6992 (Fort)
(517) 432-6866 (Osawa)

E-mail: fort@msu.edu
saza.osawa@law.msu.edu

Zoom: Prof. Osawa Meeting Room
Join Zoom Meeting
<https://msu.zoom.us/j/98629977274>

Meeting ID: 986 2997 7274
Passcode: 830370

D2L: <https://d2l.msu.edu/d2l/home/1957795>

A. Course Description

The MSU Indian Law Clinic is an appellate clinic where students practice in tribal, state, and federal courts. This Clinic provides students with the opportunity to work the environment of a small law firm dedicated to the practice of appellate law involving tribes and Native peoples. Students in the Clinic conduct legal research and write briefs, bench briefs, and opinions for various tribal clients.

B. Course Overview:

This Clinic provides students with the opportunity to work as if in a small law firm dedicated to the area of indigenous law. The work involved requires reading, researching, and writing skills on a variety of different projects. The Clinic is funded to do two major projects and students work on both. First, the Clinic has the Tribal Appellate Clerk program where students provide legal assistance to tribal justices in making appellate decisions. This includes research, writing legal memos, drafting bench memos, and draft opinions.

The Clinic also runs the ICWA Appellate Project where we represent tribes in Indian Child Welfare Act state appellate cases. Students work on drafting briefs, assisting with amicus strategy, and providing limited requested research for tribes at the trial level. ICWA is a highly litigated law, but the requirements of ICWA benefit vulnerable children who are overrepresented in the foster care system. Ensuring compliance with the law in state court is one way to address persistent disproportionality numbers and resulting racial inequity for American Indian and Alaska Native (AI/AN) children in care.

As in any Clinic, work can ebb and flow, and students may be assigned additional projects by the Clinic Director as needed. The projects will always be related to indigenous law and support tribal interests.

C. Prerequisites & Corequisites

Prerequisite: Rhetoric, Writing, and Advocacy

Corequisite: Federal Law in Indian Tribes

D. Textbook & Course Materials

Matthew L.M. Fletcher, AMERICAN INDIAN TRIBAL LAW (2nd ed. 2020)

E. Recommended Texts & Other Readings (Resources available in the Law Library or online)

CHILDREN, TRIBES AND STATES by Barbara Ann Atwood

FACING THE FUTURE: THE INDIAN CHILD WELFARE ACT AT 30, by Mathew L.M. Fletcher, Wenona T. Singel, & Kathryn E. Fort

INDIAN CHILD WELFARE ACT HANDBOOK 2ND ED. By B.J. Jones, et al.

AMERICAN INDIAN CHILD WELFARE AND THE LAW: CASES AND MATERIALS, by Kathryn E. Fort

A Practical Guide to the Indian Child Welfare Act, available at

www.narf.org/icwa.

COHEN HANDBOOK OF FEDERAL INDIAN LAW

REBELLIOUS LAWYERING, by Gerald P. Lopez
POINT MADE, by Ross Guberman
JUST WRITING, by Anne Enquist & Laurel Currie Oates
ALASKA NATIVES AND AMERICAN LAWS by David S. Case and David A. Voluck

Additional resources, including cases, are available at:

<https://turtletalk.wordpress.com/kate-e-fort/icwa-appellate-clinic/>

F. Course Requirements

- Computer with internet connection (DSL, LAN, or cable connection desirable) and working video camera and microphone
- Access to Desire2Learn (D2L), Zoom, and Microsoft Teams

G. Course Structure

This is an in-person course with one remote instructor. Prof. Osawa will attend in person once a month and via zoom to our in person class the rest of the time. For classes when Prof. Osawa is the only instructor, class will meet via zoom.

The Clinic has a seminar portion and a clinical portion. The seminar will be taught in person during class meeting times. We will also do project rounds during class meeting times. Students may also be required to meet with Prof. Osawa for additional guidance on work. Both professors are available . On Wednesdays, Prof. Fort and/or Osawa will be available in person in the Clinic space for you to work, ask questions, and check in with us.

The seminar portion of the class will include weekly readings and reflections. As a part of this portion of the class, you will receive the second session of ABA required education on bias, cross-cultural competency, and racism. We will cover this in our readings throughout the semester, including *Racial Bias in American Foster Care, However Kindly Intentioned: Structural Racism and Volunteer CASA, Abolition, Settler Colonialism, and the Persistent Threat of Indian Child Welfare*, and REBELLIOUS LAWYERING, Chpt. 1, as well as through written reflections on the reading and discussion in class.

H. Technical Assistance

If you need technical assistance at any time during the course or to report a problem you can:

- Visit the [Distance Learning Services Support Site](https://lib.msu.edu/dls) (lib.msu.edu/dls)
- Visit the [Desire2Learn Help Site](https://help.d2l.msu.edu) (help.d2l.msu.edu)
- Or call Distance Learning Services: (800) 500-1554 or (517) 355-2345
- To learn D2L use, login with your MSU NetID and password at d2l.msu.edu, select “Self Registration” from the menu bar, register for and complete the course named “Students - Getting Started with D2L.” Also be aware of the “Help” option

on the D2L Home page menu.

I. Resource Center for Persons with Disabilities (RCPD)

- To make an appointment with a specialist, contact: (517) 353-9642
Or TTY: (517) 355-1293

[Web site for RCPD](http://MYProfile.rcpd.msu.edu): MYProfile.rcpd.msu.edu

Part 2: Instructional Objectives

The primary learning objectives for this course are:

Develop and employ analytical, advocacy, interviewing, and related lawyering skills:

- Formulate legal-factual theories to help clients solve their problems;
- Learn to sift through unstructured scenarios to identify and organize relevant facts;
- Employ substantive law and procedural rules to turn facts into probative and persuasive evidence; and
- Develop and implement written advocacy for effective representation of clients in formal settings.

Develop and employ initiative, creativity, and problem solving:

- Demonstrate initiative—take charge of your work while consulting with supervisors—do not wait to be told what to do, ask;
- Conceptualize client representation as problem solving; and
- Generate, explore, and implement creative solutions to client problems.

Understand and practice professionalism:

- Devise strategies to assure diligent representation and thorough preparation for all aspects of client representation;
- Take responsibility for representing your clients;
- Recognize ethical issues when they arise and reflectively apply relevant principles and rules to reach an appropriate resolution;
- Treat others with civility in all interpersonal interactions; and
- Work effectively with partners and as part of the clinic group.

Develop an understanding of how to work effectively with other professionals to address a client's problems:

- Appreciate and respect the different perspectives that other professionals bring to problem-solving, and how those perspectives can complement each other; and
- Understand and appreciate the roles, ethical obligations, and approaches that are appropriate to different professions, and how the lawyer's role is similar to and different from other professionals' roles.

Establish and maintain effective client-lawyer relationships:

- Develop client interviewing and counseling skills;
- Listen to and engage with the client throughout representation;
- Appreciate client differences and respond empathically to client needs; and
- Avoid losing sight of the client in the client's case.

Critically examine systems that develop and enforce child welfare law:

- Think critically about the effectiveness of child welfare systems, historical trauma, and the effect of years of federal and state attempts to break up American Indian families;
- Scrutinize the fairness and appropriateness of legal rules and their application throughout these systems;
- Consider the way race and socioeconomic status are implicated in the system; and
- Formulate and implement strategies to uphold and improve just rules, procedures, and practices, and to change and abolish those that are unjust.

Understand and learn about tribal courts and alternative forms of justice:

- Consider the three sovereign system in the United States and how tribal nations co-exist in the larger polity;
- Question the assumptions inherent in western style court systems;
- Discuss and develop cultural humility to understand why a tribal justice system may look considerably different than other systems; and
- Consider the ideals of rebellious lawyering and how working for non-law trained judges require deference and consideration in decision making.

Develop as a professional including:

- Develop the skills of a reflective practitioner;
- Develop an ability to work effectively across barriers such as class, race, and culture;
- Improve confidence to work with other professionals, including judges, other attorneys, advocates, and experts;
- Learn new technology for project management;
- Function in a work environment by:
 - Demonstrating reliability;
 - Taking initiative;
 - Communicating effectively with supervisors, support staff, and co-workers;
 - Demonstrating time management;
 - Following all office procedures; and
 - Working zealously and efficiently.

Perpetuate access to justice by:

- Understanding the value and limitations of the law in relation to other problem solving methodologies including negotiation, arbitration, and litigation; and
- Providing the highest quality of services to all parties.

Part 3: Course Outline Schedule

January 8	Prof. Osawa in Person Reading: AITL pp. 1-106 Tribal Governments; Tribal Justice Systems Introductions and Discussion of Projects
January 10	Prof. Osawa in Person Jesse Alvarez—CLIO and Clinic Orientation Continued discussion of reading Assignment of projects
January 15	Reading: AITL, pp. 435-484 Domestic Relations
January 17	Continue to cover reading and discuss casework/projects Blackfeet Appellate Court Oral Argument via Google Meet, 12pm
January 22	Reading: AITL, pp. 829-833 Professional Responsibility Rebellious Lawyering, pp. 1-56 (class handout)
January 24	Continue to cover reading and discuss casework/projects
January 29	Reading: AITL, pp. 493-564 Property
February 5	Prof. Osawa teaching Reading: AITL, pp. 185-214 Tribal Membership
February 7	Continue to cover reading and discuss casework/projects Identify potential dates for travel to Blackfeet Nation
February 12	Reading: The “Write” Way: A Judicial Clerk’s Guide to Writing for the Court
February 14	Discuss reading, casework/projects
February 19	Reading: AITL, pp. 569-623 Contracts

February 21	Continue to cover reading and discuss casework/projects
February 26 February 28	SPRING BREAK SPRING BREAK
March 4	Reading: AITL, pp. 686-737 Jurisdiction
March 6	Continue to cover reading and discuss casework/projects
March 11	Reading: Abolition, Settler Colonialism, and the Persistent Threat of Indian Child Welfare (class handout)
March 13	Reading: <i>However Kindly Intentioned</i> (class handout) <i>Racial Bias in Foster Care</i> (class handout)
March 18	Continue to cover reading and discuss casework/projects
March 20	Reading: NACC Red Book ICWA Chapter (class handout)
March 25	Discuss reading and casework/projects
March 27	Reading: AITL, pp. 111-185 Tribal Constitutions
April 1	Continue to cover reading and discuss casework/projects
April 3	Reading: AITL, pp. 743-787 Tribal Regulatory & Administrative Law
April 8	Continue to cover reading and discuss casework/projects
April 10	Reading: AITL, pp. 787-829 Tribal Regulatory & Administrative Law
April 15	Discuss projects, finalize and wrap up
April 17	Discuss projects, finalize and wrap up
April 22	LAST CLASS—Turn in final memo summarizing your work for the semester

Part 4: Grading Policy

A. Evaluation

You will be evaluated not only on your progress in meeting the above goals and the quality of your casework, but also on the timeliness of assignment completion, your record keeping and documentation of your cases and work, your participation in class, and your participation in and overall contribution to the day to day operation of the Clinic.

1. Casework

During the semester, you may be responsible for representing tribal government clients in various capacities. You are expected to treat all Clinic clients and your work responsibly and professionally, and to handle all matters in a timely and respectful fashion. Your casework may include case planning, legal and factual research, correspondence, document drafting, file maintenance, and all other work on behalf of your clients. Your grade will be based on a myriad of factors involving your casework, including how well you progress on a project, communication with your senior attorneys and clients, and timely completion of assignments.

2. Additional Projects

At times students will be assigned projects that do not involve a tribal client. These projects include work on policy initiatives and developing resources for current and former tribal clients. Grades in this area will be based on your communication, research skills, writing, and a timely and full completion of the project.

3. CLIO Activities Entry

We will be using CLIO for all clinic work. You must use it to track your hours, and we will use it to assign tasks and activities. Jesse Alvarez will give a CLIO orientation during the second class period, and you should familiarize yourself with the program. All Clinic files are in CLIO and your assignments should be saved there as well. Each student should create a folder with your name as the title, in the matter you are working on for your assignments.

4. Student Hours

As with any client-related work, you can expect that your workload over the term will fluctuate. The ABA states a credit hour requires 1 hour (50 min) of in class instruction *and* 2 hours (120 min) of out of class work. This class is four credits, meaning you have to attend 4 hours in class and 12 hours of work outside class. When you enter your hours in CLIO, you must enter both in-class time and out of class time as a TOTAL amount of time. Your total at the end of the semester should be 180 hours. Out of class time includes work on projects and reading assignments, as well as any other external requirements such as attending oral arguments. There may be times as we move through the semester where we will not have Wednesday class and give you that time to work on your project. This does not reduce your total number of hours required.

In the Clinic, this number should be viewed as an average over the course of the term, and not as a requirement that you must meet every week. That said, you should monitor your hours closely and not allow yourself to fall behind—it is your responsibility to speak with your supervisors in the event that you do not have sufficient assigned work.

All of your work can or must be done elsewhere and you are allowed to count hours of clinic work that you do outside the clinic. You are not required to sign in or out of the clinic.

B. MSU Policy Statement

Students are expected to adhere to the policies of Michigan State University whether noted in this syllabus or not. Instructors have the right to add or adjust policies within limits for the specifics of their courses. While the below may appear at first glance to be common policy boilerplate there may be nuances or course specifics within it that the student must be aware of and adhere to.

C. Late Work Policy

The golden rule of the legal professional is to complete all tasks in a timely manner. Your license will someday depend upon it. Accordingly, we strongly encourage you to submit all assignment in a timely manner, before the deadline. However, the savvy legal professional also knows it is often ok to ask for more time. Thus, if you need more time to complete your work, please contact us to make arrangements.

D. Assigning and Viewing Grades

Final grades will be assigned in accordance with the College of Law's grading policy. If you have any question on your grades, please contact Prof. Fort.

Part 5: Course Policies

A. Confidentiality & Professionalism

Remember that we operate a law office. That means that the cloak of confidentiality and attorney client privilege must surround everything we do with regard to clients and their cases. **DO NOT remove client or case materials from the Clinic.** All files must be kept in the Clinic, unless you have received specific authorization from a faculty supervisor to remove the file, such as for a court appearance or client meeting. Keeping the files in the Clinic will also make it possible for your supervisor to answer questions that arise about a case in the event that you are not around. **DO NOT** place Clinic work on computers or disks to which others have access. **DO NOT** discuss your cases with people who are not in the Clinic. Moreover, when you discuss cases with appropriate people, do it in a manner that minimizes the chances of being overheard. **TAKE CARE** with any email communication regarding client matters to ensure confidentiality. In addition, remember that when speaking with others who are legitimately involved in the case, such as relatives, witnesses, or opposing counsel, you must be especially cautious not to disclose confidential client information and to always talk about your client in a professional and respectful manner. The manner in which you interact with others and present your client's case reflects on both your client and you as a professional.

Remember that your written work—whether it involves filling out a simple application or drafting a brief—reflects on the clinic and, more importantly, on your clients. You are expected to take ownership and responsibility for your work. You must always prepare documents well in advance of deadlines for supervisor review.

Additionally, you **DO NOT** have permission to record this course. Not only are there FERPA concerns with recording online classes, but the topics discussed in clinic meeting times are privileged conversations.

1. AI Policy

While use of generative AI will not automatically affect your grade negatively in this Clinic, it will be considered absolutely unacceptable if confidential client information, or identifying information of any kind regarding our clients, is input into any generative AI product. Many AI platforms collect and retain data generated during user interactions, and so to avoid any risk of breaching our duty of confidentiality, it is absolutely prohibited to input client information of any kind into any of these systems. If your professor learns that you have done so, this will have a significant negative impact on your grade and may lead to additional discipline.

2. Limits to Confidentiality (Information from Students to Professors)

Students should be aware that University employees, including instructors, may not be able to maintain confidentiality when it conflicts with their responsibility to report certain issues to protect the health and safety of MSU community members and others. As the instructor, I must report the following information to other

University offices (including the Department of Police and Public Safety) if you share it with me:

- Suspected child abuse/neglect, even if this maltreatment happened when you were a child,
- Allegations of sexual assault or sexual harassment when they involve MSU students, faculty, or staff, and
- Credible threats of harm to oneself or to others.

These reports may trigger contact from a campus official who will want to talk with you about the incident that you have shared. In almost all cases, it will be your decision whether you wish to speak with that individual. If you would like to talk about these events in a more confidential setting you are encouraged to make an appointment with the MSU Counseling Center.

B. Attendance

Attendance at each clinic class meeting is required. If you are unable to attend class for any reason, please email Profs. Fort and Osawa **prior** to the start of clinic class.

1. Illness Policy

Please do NOT come to class if you are ill OR TEST POSITIVE for COVID, influenza, or other illness. Please do NOT come to class if you have a stomach ailment. Please wear a mask if you are feeling poorly. We are more than happy to make up class time with you via Zoom.

2. Participation

Students are expected to actively participate in class.

C. Commit to Integrity: Academic Honesty

Article 2.III.B.2 of the [Academic Rights and Responsibilities](#) states that “The student shares with the faculty the responsibility for maintaining the integrity of scholarship, grades, and professional standards.” In addition, the College of Law adheres to the policies on academic honesty as specified in [General Student Regulations](#) 1.0, Protection of Scholarship and Grades; the [all-University Policy on Integrity of Scholarship and Grades; and Ordinance 17.00, Examinations](#). See [Spartan Life Online](#) (splife.studentlife.msu.edu) and/or the [MSU Web site](#) (msu.edu) for more.

Therefore, unless authorized by your instructor, you are expected to complete all course assignments, including homework, lab work, quizzes, tests and exams, without assistance from any source. You are expected to develop original work for this course; therefore, you may not submit course work you completed for another course to satisfy the requirements for this course. Also, you are not authorized to use the www.allmsu.com Web site to complete any course work in this course. Students who violate MSU academic integrity rules may receive a penalty grade, including a failing grade on the assignment or in the course. Contact your instructor if you are unsure about the appropriateness of your course work. (See also the [Academic Integrity webpage](#).)

D. Inform Your Instructor of Any Accommodations Needed

[From the Resource Center for Persons with Disabilities](#) (RCPD): Michigan State University is committed to providing equal opportunity for participation in all programs, services and activities. Requests for accommodations by persons with disabilities may be made by contacting the Resource Center for Persons with Disabilities at 517-884-RCPD or on the web at rcpd.msu.edu. Once your eligibility for an accommodation has been determined, you will be issued a Verified Individual Services Accommodation (“VISA”) form. Please present this form to me at the start of the term and/or two weeks prior to the accommodation date (test, project, etc.). Requests received after this date will be honored whenever possible.