

## Full Faith & Credit and Enforcement of Tribal Protection Orders Transcript

Welcome to today's webinar Full Faith & Credit and the Enforcement of Tribal Protection Orders. This webinar is presented by Kelly Stoner, Victim Advocacy Legal Specialist at the Tribal Law and Policy Institute and I will now turn it over to her to get us started.

Thank you so much, Abby and thank you to everyone who's joining out there, including those of you who are going to be listening to the recording. Let me introduce myself briefly to you so you can glean some context about the lens that I'm presenting through today. As Abby mentioned, I'm a Victim Advocacy Legal Specialist with the Tribal Law and Policy Institute. I have spent approximately eight (8) to nine (9) years as a tribal prosecutor prosecuting crimes, including crimes involving domestic violence and sexual assault in Indian Country. I was a tribal judge for eight (8) years for one of the tribes here in Oklahoma and a part of my docket included civil protection orders and some criminal enforcement of protection order work as well. I have over 29 years of experience teaching in law schools, both in Oklahoma and North Dakota on issues related to federal Indian law, tribal law, Indian Child Welfare Act and those sorts of things. As well as, 20 plus years of experience directing clinics that focused on the needs of Native American women and children in Indian Country, particularly as that relates to crimes of violence against Native American women in Indian Country. It's through all of those life experiences in my training that I'm coming to you today to talk about a very important topic when we're dealing with getting a tribal protection orders.

Just to keep me focused and to give you a heads up, sort of earmark, what's coming throughout the presentation today. To understand the importance of enforcement; why is that such an important issue when we're talking about tribal protection orders. Some of the discussion today may surprise you, depending on where you are and your experiences, if you have any trying to get enforcement of a tribal protection order outside of Indian Country. We're going to be discussing the Violence Against Women Act, not all of it, just a little sliver of it that has to do with protection orders. We're going to be talking about what's required to trigger the VAWA Full Faith and Credit mandate and what that is and what that means for victims who have tribal protection orders. We'll discuss what is a protection order, period, under the Violence Against Women Act. We will again sort of re-emphasize, we'll provide some drafting tips to you all on really clearly triggering the VAWA Full Faith and Credit Mandate when drafting tribal protection orders. Then we'll conclude the presentation today by discussing a few of the examples of California Tribal State Collaboration that's promoting enhancing the enforcement of tribal protection orders. We're going to hope to get that all done in our allotted time today and with that Abby let's get started.

Let's talk about what is cross-jurisdictional enforcement of tribal protection orders. I know many of you, if not all of you, out there listening today are lawyers, you're law trained, perhaps paralegals. You're coming in, you're going to be working with Native victims. The series of three webinars has really built itself into a stair step culminating into once you have the tribal protection order, what does that mean, will that be enforced outside of Indian Country and that's what cross jurisdictional enforcement entails, its enforcement of the tribal protection order in jurisdictions outside of the tribal jurisdiction that issued that protection order.

It's enforcing tribal protection order as it is written. It doesn't matter if, let's say outside of Indian Country in some county in California that particular type of remedy is not allowed in a protection order, perhaps California doesn't have this remedy that the tribal court ordered in its tribal protection order, California doesn't recognize that. It doesn't matter, when we really get down to the spirit of this Full Faith and Credit piece in the Violence Against Women Act of 2013, we really see that Congress is clear. Congress clearly intended for protection orders that meet these VAWA requirements to be enforced as written, no questions as long as you can tell that the protection order is still valid, it hasn't expired. This is a crucial crucial issue to victims who need to feel safe as they cross these tribal boundaries into state jurisdictions. They need to be able to rely on these orders, and if you look at this diagram here you will see that really there are two enforcement mechanisms. We'll delve into those briefly. The civil enforcement where you might be outside of Indian Country, there's been an alleged violation of the order and it's going to be a civil contempt or something of that nature. Or you will see, and you could see both civil and criminal, but criminal would encompass a violation of, if we're talking about moving outside of Indian Country with this tribal protection order and the need to have that, there's been a violation. Law enforcement from the state or county are called and there's possibly going to be a prosecution for a violation of that protection order as a state crime, that would be the criminal enforcement of a tribal protection order and we could really have both going at the same time.

Why is this issue about obtaining/achieving enforcement of the tribal protection order outside of Indian Country, why is that such a crucial issue. What it really gets down to is victim safety, it provides safety to that victim who may work, reside, a member of a tribe who goes in and under tribal law obtains a tribal protection order but also may travel 20-30 minutes outside of Indian Country to shop, to eat dinner, to buy groceries, and just knowing that that order, no matter which way that victim's going, in Indian Country/outside of Indian Country, is going to be enforced as written. It sends that message of safety, it also sends a message to the perpetrator. Oftentimes, maybe and I know the second webinar went over this in some detail, the jurisdictional quagmire/criminal jurisdictional quagmire in Indian Country, where we have the state prosecuting some crimes committed in Indian Country. We may have the tribe prosecuting those and in some instances even the federal authorities, depending on the type of crime. This really sends a message to that batterer, that perpetrator that it doesn't matter where this victim travels once this order is issued and it's enforceable, it will be enforced as written. Also, I think one of the things that I don't want to overlook, an important feature of enforcing these tribal protection orders, really goes back to recognizing sovereign authority of the tribe. Clearly, federal law sets forth that tribes have the civil authority to issue and enforce protection orders under VAWA and that the mandate is it doesn't matter if it's a state order, a tribal order, those orders if they comply with VAWA need to be enforced as written and that recognizes the inherent sovereign power of a tribe. A tribe that has its own laws, its own court system, that its orders will be enforced outside of Indian Country as well.

Let's move into, we've mentioned a couple of times already, the VAWA Full Faith and Credit. I'm going to spend some time on this because this is such an important trigger, to really invoke federal authority as Congress is trying to get a seamless enforcement of VAWA qualifying protection orders. We'll go over that in a few minutes, but these protection orders that comply with VAWA 2013, to get these enforced

without question as long as the order hasn't expired. Let's go through what Full Faith and Credit means on the next slide.

This is what it means, that that protection order that's issued by any state, tribe, or territory if it's violated in another jurisdiction, that it'll be enforced. There's no question about whether the tribe had authority to issue the protection order, there's no questioning about whether the remedy is available in a California court, it's going to be enforced without question. Clearly that's the spirit of the Congressional Act in VAWA 2013. Again that victim safety issue, I sitting as a tribal judge, one of my one of my biggest fears in these protection order cases, is that I would have a victim come in to the tribal court and I would do everything appropriate according to tribal law, all the language to trigger VAWA Full Faith and Credit is in the protection order itself and that victim rely on that order and go five miles into town to eat dinner and have the order violated, call law enforcement, and law enforcement says well you're a non-member the tribe doesn't have jurisdiction over you, it's not enforceable. That's what this entire federal law is trying to avoid and one of the key things/messages too throughout all of this is law enforcement needs to, all law enforcement needs to, enforce the orders as it's written and let the lawyers and the courts wrangle with any legal issues. As long as that order appears valid on its face, in other words it hasn't expired, law enforcement should enforce that as it's written and that is a huge piece of this full faith and credit.

Here's the actual federal statute itself, if you want to pull it and highlight it. I did bold some of the language here that I thought was really important. If those of you who are going in to work with anyone in Indian Country that's wanting to get a protection order

and then you're getting word about enforcement problems outside of Indian Country, sometimes it's nice to have this federal statute to back you up, if in fact there's not a recognition of the sovereign powers of the tribe. Know that there's a requirement, it's not all protection orders here, it's any protection order that's consistent with Subsection (b), which we're going to go over here in a second and it shall be accorded Full Faith and Credit and it should be enforced by the court and law enforcement of the other state that's wanting to enforce this order or that's getting information about a violation, as if it were that jurisdiction's own order. Not a question about subject matter jurisdiction, whether the tribe had it, enforced as it's written. Let's move on real quickly to the very next slide because here's the real nitty-gritty to all of this.

Again, I said it's not every protection order it's not a blanket, all protection orders shall. That previous slide said all protection orders that substantially comply with this statute here. Let's take a good look at what is really going to be required in order for you to obtain a VAWA compliant tribal court protection order. This again is the mandate that it be enforced everywhere. I think if you get a tribal protection order, maybe that's not VAWA compliant, clearly it's going to be enforceable in the Indian Country, the jurisdiction issuing the protection order, and if that's the case the victim needs to know that. That is a safety issue. But if all of this language is included in the tribal protection order, those of you out there who might be drafting these up or suggesting to tribal court judges that the order needs to contain, you would ask that contain this particular language. Those victims we hope are going to be able to get uniform enforcement of their protection order. Let's look at what 18 USC 2265 (b) really says.

It says, we need these statements in the tribal protection order, the tribal court (as we're talking about a tribal protection order here) has jurisdiction over the parties, that the tribal court has jurisdiction over the subject matter under the law of the tribe. There are two pieces, the third piece is really about due process. It's the tribe has provided reasonable notice, an opportunity to be heard, to the defendant the person against whom the order is sought, to protect the defendant's due process. Now we'll go over if it's an ex-parte order, and most of you know what that is, it's that emergency order, sometimes they're called, where the victim goes in and talks to the judge privately. The judge is only hearing one side of the story and if the judge finds whatever the law requires the judge to find, that there's an emergency or an immediate threat perhaps, the judge will issue this emergency order, only hearing from one side and then that order must be served on the defendant and then we're going to have a full hearing providing the defendant with an opportunity to be present, a reasonable opportunity to be heard and before we issue the permanent order. It's really important to pull the tribal law here and copy it because the tribal laws will usually, just like state laws, will say if it's an ex parte emergency order there needs to be a full hearing on the merits within so many days, unless there's a good cause to continue. We want to make sure that this protection order indicates that we're following tribal law, with respect to the number of days until this full hearing. Again if you have any questions I know I have to go kind of quickly through some of this so we get everything covered today, but making sure that you understand that this is the federal statute that gives us the parameters of what protection orders will be entitled to the federal Full Faith and Credit mandate.

Again you're going to hear me say this several times because this is probably one of the most important pieces of the slide show today, is making sure that the tribal protection orders that you're getting for your clients trigger this VAWA Full Faith and Credit language. If it does not, for whatever reason, that the victim know that. Because then perhaps the advocate can do some additional safety planning. This might be what you would want to see in a tribal court protection order, could be the tribes already have this in their protection order forms. We're going to go a little bit deeper than just slapping these words on a piece of paper here though. We really want, if possible, to have you go ahead and insert if it's not a done already, everybody's all about forms and I get that, I sat on the bench and the tribal clerks were wanting to keep the docket on schedule, wanting me to hurry things along and get the orders done quickly. I think it's super important for enforceability issues that we get some tribal code citations in here. If you look at the tribal laws that are applying in the tribal jurisdiction you most likely will find who can request a protection order and you can find where the civil courts were created, sometimes that's in the tribal constitution, and what types of civil cases the tribal courts can hear. All of those citations need to find their way into the tribal court protection order. Again talking about that reasonable notice, an opportunity to be heard to the defendant, finding those pieces in the tribal code to cite to as well about the hearing was held within so many days pursuant to the tribal code and put the citation in there. Again, if it's an ex parte order that you've complied with whatever tribal law says you need to comply with with respect to having that permanent hearing where all parties are present and have an opportunity to be heard. Those again are the three pieces that are going to trigger this VAWA Full Faith and Credit mandate.

Let's move on into, now that you've got the three pieces that you have to have in the tribal protection order to trigger the VAWA Full Faith and Credit mandate. Let's take a look at how VAWA defines a protection order; is it a narrow definition, will all protection orders qualify.

Here are some of the points that are made by 18 USC 2266. It is a super broad, sweeping, inclusive definition of a protection order. It's any order that's issued by a court, whether it's state or tribal. It can be a civil order. It can be a criminal order. If the order fits within the definition of protection order under this statute, it does not matter what the order is named. It doesn't matter if it's called a stay away order, a restraining order, a personal protection order, a family violence prevention order, it doesn't matter. The definition in this federal statute includes any order that prevents, so we're going to look at the order you want to get the form, does it say that the order is preventing violent or threatening acts, harassment, sexual violence, contact or communication with another person, it could be any one of those that will qualify as a protection order. I want you to know this definition is so broad, it includes any remedy that is issued as a part of this protection order. It may include child custody provisions, child visitation, child support. It possibly could include property division. All of that, every provision in there, is considered a part of the protection order that should be enforced as written. I'm here in Oklahoma and one of the issues I first heard when I came back here from North Dakota is that there was some pushback from some state authorities about enforcing tribal protection order custody provisions because in this state court here in Oklahoma, you cannot address custody in protection order. You can put the children on the protection order, if you can meet the evidentiary basis for that but you cannot ask for custody in a protection order. We have 38 federally recognized tribes here in Oklahoma, who the majority of whom allow for custody to be addressed in a protection order so that's super important. Put that on your radar as a possible enforcement snag. Again going back now to the federal law to first we'll say tribal sovereignty, because this is a an order from a sovereign so it should be enforced as written, but also we have the backup here of federal law saying that it should be enforced as written.

As we look at again this definition of a protection order, I wanted to give you the actual text of the statute here. The last slide teased down a few of the highlights but what you're seeing here is the statute and I put in italics here, you can see how broad sweeping this is and clearly, all of these provisions that are a part of this protection order is included in this VAWA Full faith and Credit mandate. I'll give you a second to look through that.

You all will have access to the PDF of the PowerPoint here and you can go back and highlight as needed. That's the nitty gritty folks of the VAWA Full Faith and Credit mandate of all protection orders. We're addressing it here to enhance the enforcement of a tribal protection order. Let's move on to some additional drafting tips, if you will. For those of you who are going into Indian Country, taking a good look at the forms and if you identify areas that you think could be strengthened, I would just suggest that you respectfully ask the tribal court if you might draft the protection order for the court's convenience. That you want to put some additional citations to tribal law for enforceability purposes and I think if you need to have a frank conversation outside of the courtroom to visit the issue and gauge the tribal judge's openness. I'm sitting here and I think it's if it's done in a very respectful way,

that's very respectful of tribal sovereignty, because that's what you're asking is to bolster the enforceability prospects of this tribal court order outside of Indian Country, by using and citing to tribal law so I think that's an important issue to address. Again those three pieces that I want you to keep in your mind here as we're talking about Full Faith and Credit and triggering the mandate of federal law to enforce these protection orders. We really have to focus in on jurisdiction over the subject matter, jurisdiction over the person, we're particularly concerned about the defendant. We'll go through that in just a few more minutes. Usually when the petitioner goes in and requests a protection order they're submitting their person to the jurisdiction of the court. It's the defendant and especially that defendant who it's an emergency order and they haven't had an opportunity to have a say or we're having trouble getting service on. I think those are the kinds of red flags that we're going to be thinking about that might go to the heart of enforceability of the tribal protection order and also that notice, an opportunity to be heard. Those sort of have some overlap to them.

When we talk about tribal civil jurisdiction and I still hear this, I've spent my entire career working in an Indian Country, and I still run into judges outside of Indian Country, who come back and say things to me when I was on the bench like you have no authority to issue protection orders involving non-member Indians. Again, that has been such a pervasive theme outside of Indian country. That Congress came back again, here in 2013, and attempted for the second time, the first time might have been in 2010, to send the message a clear message outside of Indian Country to outside courts. Let's go through this one, because I do want to if you could bear with me reading some of this. I did put the parts I thought were super important in italics but it says, notice the heading, tribal civil jurisdiction over, we're talking about subject matter here, for purposes of this section a court of an Indian tribe shall have full civil jurisdiction to issue, there we go issue, and enforce. Now that's civil authority, protection orders involving any person, now any person is member Indians, non-member Indians, non-Indians and other persons, from maybe outside of the United States who may be present in the tribal court. Any person, and it goes through some civil enforcement language there, in matters over any person in matters arising anywhere in the Indian Country or, so we have two ways to get this going here, otherwise within the authority of the Indian tribe. I want to break that down for you, in matters rising anywhere in the Indian Country; that does not, this is untested because every tribe is different, it's a different jurisdiction but I would argue that matters arising in in Indian Country could absolutely include matters that occurred outside of Indian Country, if the fear continued on with the victim inside Indian Country. The victim got some texts, the victim got a call, the victim had one of the defendant's family members come up and instill this fear. Again, we need to go back and see exactly what it takes, what kind of evidence it takes to demonstrate to the tribal court and it's going to be tribal law to justify getting this protection order. Usually what we see, fear of imminent harm, fear of emotional harm, just depends on the tribal law you're reading. These are sort of like that thing you learned in law school about the continuing tort, it starts in one place and it keeps on happening because in this case the fear is coming along with the victim into Indian Country. I want you to keep that in mind, that broad view, when you're talking about in matters arising anywhere in the Indian Country, because these will be things you need to demonstrate to the tribal court to justify a finding from the court that the court has civil jurisdiction over this case, subject matter jurisdiction. The other way to do this, let's say something happened outside of Indian Country and the victim has come into Indian Country. Now, again the fear might be there but clearly I think this statute is saying, to give some definition to both of these phrases we see here, otherwise within the authority of

the Indian tribe, could mean according to tribal law. So in matters arising anywhere in Indian country, clearly yes jurisdiction over all persons but it can also occur if you can't establish a matter arising in Indian Country, if tribal law allows for that victim to come in and ask for a protection order. It really does require you to get that tribal law out and take a good view at it next to the subject matter jurisdiction piece in 2265 (e) to put together your arguments. Then again, asking the tribal judge, on the record, to make a finding that subject matter jurisdiction in this case exists pursuant to tribal law and cite to the tribal law there and indicate that this matter arose in Indian Country and/or, if you're doing the alternative, otherwise is acceptable to tribal law, it's in conformity with tribal law. Very important that you get this first piece done because, those of you who remember back to law school for some of us it's longer than others, but remembering that subject matter jurisdiction, in most instances, cannot be consented to, it cannot be waived, the court either has it or it doesn't and you can usually discern what courts have subject matter jurisdiction over certain matters by looking to the constitution and the law of the jurisdiction. That's subject matter jurisdiction. Let's go, I don't know the extent to which everyone's level of comfort is in practicing American Indian law but one of the things we need to really look at is, there is a United States Supreme Court case out there from 1978, I believe and it's called the Montana case. It comes from the U.S. Supreme Court and this case, even though congress seemed to me to be clear in 2265 about the civil jurisdiction of tribes to issue and enforce protection orders involving all persons in those two areas - when the matters arise in Indian Country or otherwise within the authority of the tribe, we may still run into enforceability arguments by outside jurisdictions about whether or not Montana, this test applies. Let's just take a quick look at it and then I'll give you my two cents as a former tribal judge and tell you how I address the issue. For some of you, you're going to have to decide which avenue you want to take with this and some tribal judges may also have a keen sense about whether or not the the tribal court needs to follow this test.

Let's take a look at that Montana test. Again, we're still in subject matter jurisdiction here. This case, I want to say 1978, it is the test about whether a tribe has regulatory authority, and by other cases that came after this, civil adjudicatory authority over matters involving non-members. You see how that applies because as a tribal judge, I often had times where I might have two non-members in front of me and according to tribal law that's perfectly acceptable. I would have subject matter jurisdiction over the case but outside jurisdictions may think that tribes have no civil jurisdiction over non-members unless this test is met, even though we have the VAWA language clarifying tribal civil authority to issue and enforce protection orders. This Montana test, again we would use this test before VAWA 2013 I would argue, but we would use this test to assess tribal civil jurisdiction to issue and enforce civilly, tribal protection orders in matters involving non-members. It's really important for those of you, because we had a little bit of criminal jurisdiction in the previous webinar. When we talk about tribal civil jurisdiction we use very different terms than we use in tribal criminal jurisdiction, at least we thought we did, until we got the last supreme court case but for today's lesson, I'm going to say, we use ordinarily when we're assessing tribal civil jurisdiction we use the words member and non-member. Member, those will be the enrolled members of the tribe. Non-members might include Indians of federally recognized tribes who are not enrolled in the tribe that's exercising jurisdiction, it would also include non-Indians, they're all lumped in there together under non-members. Whereas in tribal criminal jurisdiction, we use the word Indian and non-Indian. That's usually what the Supreme Court cases are really talking about, they don't use the word member or non-member, ordinarily. Let's take a look at what this Montana test requires and whether or not the VAWA 2013 language we just went over, about civil authority of tribes over all persons to issue enforce these protection orders. Whether it overruled this case or not, is an open

question of law. Here's what the Montana test is, you have to establish either one of these two prongs or the tribe cannot exercise civil authority over non-members. Here it is; the parties entered into a consensual relationship with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. Now you might not have to think really hard or deeply to say oh well if there's an intimate relationship here, and many protection orders although not all, require demonstration of a intimate relationship, could meet that first test. Or number two, the conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. Wow, all you need to do is google domestic violence and Native Americans and you will get everything you need there to demonstrate that this issue of domestic violence, sexual assault, stalking, sex trafficking is affecting the political integrity. If we're having trouble getting these protection orders enforced. Economic security, how many times were law enforcement called. Or the health or welfare of the tribe. You will even find, and it's not unusual at all to find, tribal codes that have a purpose section in their domestic violence code that actually says, look we meet this Montana test right here because this is what the domestic violence is doing to our people. It seems very reasonable to argue that 2265 (e), the civil jurisdiction piece in VAWA 2013 that deals with tribal civil jurisdiction, it is a partial overruling of this particular test being applied narrowly to issuing civil protection orders or enforcing civil protection orders, tribal. If neither of those tests are there, typically what would happen is usually it's a federal court where jurisdiction of the tribe is being questioned, the federal courts would find there was no civil jurisdiction there for the tribe to issue or enforce protection orders involving non-members. Tricky topic here, and as a tribal judge what I would typically do because I'm just not sure, and I do have a law review I co-authored with a dear friend of mine coming out soon that addresses this topic, I do feel after the research that there is a very strong argument that matters arising in Indian Country there is an overruling of the Montana test in this narrow situation, if you're looking to the phrase "or otherwise within the authority of the tribe" there's still a good argument, maybe not as strong, as something that's happened within the tribal jurisdictional boundaries but I'll leave that for another day, just bringing this up on your radar. If you have questions please put them in the chat, we can talk about that further. As a tribal judge, I always did both. I found, when the facts and the evidence permitted me, I would find civil subject matter jurisdiction pursuant to tribal constitution and tribal code. I would find civil jurisdiction to issue and enforce pursuant to the federal law in VAWA 2013, we just went over. I would also find that, in the alternative, the tribe had civil jurisdiction to issue and/or enforce the protection order pursuant to this Montana case and I would go over the prongs and then would go over the evidence that plugged into each of those prongs that made me find that the prongs had been satisfied. I know, it's time consuming but until we get some sort of clear direction, which I think Congress would say sheesh we've done this twice it seems so clear, we're going to have to just be mindful of these issues because this is directly tied to victim safety.

If we're talking about these drafting tips, I've given you some already. I wanted you to have this in the PowerPoint, when you're laying that tribal protection order form out next to the PowerPoint there, many tribes have their codes online where you can actually do your work there or you can get a copy, perhaps from the tribal court clerk or you can go sit at the courthouse with the copy and write down what you need. Is there a Tribal Constitutional provision that speaks to subject matter jurisdiction over civil cases, maybe over civil cases involving non-members. Now, this gets a little tricky too because when VAWA 2013 came out some tribes indeed had to go back and actually change their Constitution



because it would say something like, the court hereby creates a Supreme Court and then inferior courts that will hear civil matters against member-Indians or it might say against Indians and not include that non-Indian in there, so really go back and write down the citation. Then what part of the tribal code provision indicates the court can hear protection orders, specifically protection orders and tribal law, again they may have a domestic abuse code, you might find the provision sprinkled out throughout a particular piece of the civil code. Take the time to go back and highlight those so you can actually insert those tribal code citations into your tribal protection order. Again, if either party is a non-member, which is something that does need to be brought up in court. Explaining, even though we shouldn't have to, even though the federal mandate is there. I'm thinking more here of the victim and enforceability and the difficulties, if there are any, getting these tribal protection orders in force. Taking the extra time to demonstrate that you've done belts and suspenders, as far as civil jurisdiction goes if the case involves non-members.

Let's move on into jurisdiction over the person or parties and I'm going to ask you all to think about minimum contacts, International Shoe with the caveat that those do not necessarily apply across the board in Indian Country but the notions of fairness, that it's not unfair to think that this person, the defendant, would be asked to litigate some of these civil issues in tribal court. We'll think about personal jurisdiction and again looking to tribal law there to see what the tribal law says about not only who can petition for a protection order but the court will hear civil matters involving all persons with respect to the protection order. Then again I want to think about minimum contacts and sometimes in the civil protection order cases, when I was on the bench I would have both parties show up with no attorney and in that case it seems incumbent upon me to make sure that I'm get making this record as fairly and clearly as I can to demonstrate particularly these three pieces. That I would ask questions of the defendant, now if there's an attorney perhaps the attorney can ask questions of the defendant, even if the defendant doesn't have an attorney or if the defendant does. But talking about that defendant's contacts with the tribe and I'm thinking about contacts like; were you aware when you entered into this relationship that this person was a member of the tribe or a member of another tribe, is the child enrolled, do you accept any tribal benefits from the tribal jurisdiction or any other tribe, do you have a tribal car tag, do you attend any of the festivities, lots of tribes will have open to the public certain festivities during the summer or fall, it just depends on the tribe and lots of people from outside of Indian Country come in to participate in those festivities. I really want to know have you been here ever, do you know this person has relatives here, have you ever talked to any relatives over the phone, all of those kinds of things that you can think of that might come into play in demonstrating that this person was aware, the defendant was aware that that their victim with whom they have an intimate relationship is native, a member or a member of another tribe even. Thinking about those sorts of contacts.

I would want you to also, as you're drafting now, I know what this will be very time consuming at the beginning but as you move along the tribal citations probably won't change necessarily that often so once you spend the time to get this down, you really have done so much to strengthen, in my mind, the enforceability of the tribal protection order. Again, thinking this victim might not even stay in California. You want the enforceability in California but you also want other states to recognize exactly that what

this drafting is doing with respect to VAWA Full Faith and Credit. In this slide I'm simply reminding you to cite to tribal law here, super important when you say Jane Doe petitioned this court for protection order and such and such day pursuant to, put the tribal statute there that allows Jane to come in and petition for a protection order. The statutes that have to do with exercising civil jurisdiction over members/non-members/non-Indians and really being short, this is really important, it's sometimes not enough for you as lawyers to go into court and to ask all of these questions about contacts and you're receiving some benefits or your family's receiving benefits and not asking the tribal judge, whose dockets may be incredibly busy, to say Your Honor at the end you've heard testimony from such and it was about particularly contacts with the tribe, we're asking you to make a finding today Your Honor and enter it into the order that the defendant has some contacts with the tribe here, sufficient contacts, with the tribe so that due process has been met. I'm asking, reminding the tribal judge, to do just that so that this language makes its way into the order.

Reasonable notice, an opportunity to be heard. It's overlap with the jurisdiction over the persons. Remember, how I said earlier in subject matter jurisdiction that you can't consent to that, it can't be waived. The tribe either has it according to tribal law or doesn't. Very different with jurisdiction over the person, we're again not so worried about the petitioner, but in personal jurisdiction issues parties can consent to personal jurisdiction. They can waive it by appearing and not objecting to it, it's a very different creature than subject matter jurisdiction - the power of the court to hear this type of case, in the first instance. Who shows up and whether the court can exercise it over those people, that's a different set of rules. When we think about notice and opportunity to be heard it's really important to demonstrate, on the record, whether the defendant received notice. All tribes do this a little bit differently; may go out by mail, certified receipt requested, a restricted delivery, it may be served by tribal law enforcement, whatever the tribal code is indicating so when that petitioner comes in and she asks for a protection order, a copy of the protection order will be served on the defendant. I think it's really important and I think tribal advocates do a great job of explaining that to the victim because what they write in that order is subject to cross; it's going to come in, defendant gets a copy of it. Also, it's super important to ask. If it's law enforcement serving it, what happens with that affidavit of service, will that make its way into the court file? Going in a little bit early to ask the clerk if the documents of service on the defendant are in the in the court file. And to flag this for the tribal judge, if the judge is busy and and and sort of skips over whether or not the defendant was served or if those documents of service are in the court file, that's going to be very important to enforceability. Also, even if you have the case, which is not uncommon to have a case where the perpetrator is or the batterer is running from service. You've gotten the emergency order, you've attempted to serve it and now you're going to have a hearing on the date and there's no service so you're going to ask that it be continued and you keep trying to serve and you know the defendant is there and maybe even knows of it. To be thinking about checking tribal law on this topic of constructive notice, did the defendant's mother call the petitioner and say we got this, but he's not here and he's not coming to that hearing at two o'clock. He knows about it but he's not coming. Those sorts of pieces, will the tribe allow that as constructive notice or some tribes are also have in their civil procedure code, service by publication being allowed. Usually in those instances, where you can find those, and maybe it's not in the DV code maybe you're going to ask the tribal judge, Your Honor we've tried three tries we're back in here before the court, my client still wants the protection order, I note that the civil procedure code allows for service by publication, I'm

going to ask you Your Honor would you allow us to serve by publication, if we demonstrate to you all the steps we've taken that have been unsuccessful. Getting that going because nothing, nothing takes the wind out of the sails of a victim thinking that she might actually sometime get justice here, is for the defendant to be able to evade service. I know you all may be thinking back again to your days of law school where maybe your Civil Procedure professor says to you, be careful about orders that are based on notice by publication because usually the statutes will say the defendant will have within a year to come back and say you didn't try what you should have tried to get service on me, you knew I was here, I sent you letters from here you didn't serve me here. They're on shakier ground than actual service, so just another tool though for you to consider for those cases where you just keep having to go back over and over and over again and you can't seem to get service on the defendant.

We'll talk here again about some some drafting tips. Again going directly to the heart of due process and notice and opportunity to be heard. Very important that the order, on its face, demonstrate whether or not first of all whether or not the defendant appeared, which is the third one there, and whether or not the defendant was provided an opportunity to tell their side of the story, to ask questions of the victim, those sorts of issues. You might think well that just really goes without saying, if the defendant is there, that they were given a notice and the opportunity to be heard, but I had a lawyer call me in the past couple of years here, who was just distraught because, and this wasn't a tribal court this was in state court, the attorney took the client in to get a protection order. They had service on the defendant, so all that's good. The attorney's just clicking off the Full Faith and Credit piece and the defendant stands up, the defendant doesn't have an attorney, but the defendant stands up to say something and the defendant was upset/nervous and started to say a few more things and the judge just shut the defendant down and said I don't want to hear another word from you in this courtroom, something like I've read over all the documents and I'm going to issue this protection order. Now I'm asking you, is the victim going to stay in that jurisdiction because right then, we lost one of the prongs of VAWA Full Faith and Credit mandate so you want to be sure that the order is clear.

Can you imagine what an odd situation for the attorney, whose client is sitting there thinking I'm gonna win and I don't even need to say anything or take the stand, and I was so nervous. Then the attorney thinking oh my gosh, just blown out of the water on Full Faith and Credit here, how do I fix this without alarming my client and my client thinking I want to have a trial. Odder things have happened, I'm sure but just a little bit of word to you all out there about how to handle that. Also, in this order identifying whether the court date has been scheduled according to tribal law and if it's a situation where you've set the hearing according to tribal law but you didn't get service, usually those statutes will say something to the effect of the court can continue for good cause, just making sure that all that language is in there. That you met the requirements of the timeline on the hearing dates and the judge has found good cause to continue it to the next hearing date. Again, noticing in the order, saying out loud, that the defendant was served with a copy, in compliance with tribal law. However that was supposed to be served. Again, it's time consuming here on the front side of this and some of this may already be done. Tribes are really doing a great job at addressing these issues but if you're practicing in this area and you realize the lethality of some of these cases, it just merits us all as professionals to get in there and look it over again and see if we can say anything any more clearly than what it already is in the form. Don't be

afraid to ask the tribal judge, respectfully to include additional provisions in the order. I understand again about busy dockets and the tribal clerk would put a court minute in my file wanting me to fill it out on the bench and I could in some cases but in some cases I took notes and I needed to go back and reflect on credibility and did it match up and whose story was more believable. I just couldn't do it on the spot so we can't rule out forms altogether, they're necessary but I think we can make those forms a little bit stronger by putting in some additional language and definitely citations to the Tribal Constitution and code where those are relevant.

Now we are going to move into the piece of the presentation that focuses in on California and some of the California Tribal cross-jurisdictional efforts that have been made to strengthen the enforcement of tribal protection orders outside of Indian Country. The very first one that I'd like to take a look at here today is up on the screen now. It's a California Department of Justice Information Bulletin, it gives you the number there. It came out in 2016, so we're five years out now.

Let's go to the next slide to get a little more information of how this is a cross-jurisdictional collaboration. One of the things that I would encourage you all to do and I know some of you may or may not have been into tribal court and you may or may not have worked with Native victims of domestic violence in Indian Country, so one of the things I think we all need to do is to ask, usually the best person to ask about this is the tribal victim advocate, are there enforceability issues in certain areas outside of Indian Country, in your cases it would be California. Are there certain counties where we're getting some pushback on tribal protection orders being enforced. I think one of the things you need to do is really assess, is it an issue and if it is an issue, what is the issue? Some of this might have been going on, I don't know for sure in California but what we do get here is the Department of Justice in California stepping up to make some declarations here about the enforceability of tribal protection orders and again remember it's tribal protection orders that are triggering VAWA Full Faith and Credit, the requirement that they be enforced as written. What we see is highlights that you would find if you were to pull that bulletin up, which you have the link to now, but this is the declaration from, I believe it was the Attorney General in California. Presentation of the Protection Order, that identifies the protected party and the defendant, the person against whom the enforcement is sought and on the face of the protection order appears to be currently in effect, in other words it doesn't have a date that it expires that has already passed, that is probable cause to believe that is a valid tribal protection order. That seems simple, right. One of the things you want to do is to make sure that expiration date is noted on the order, usually you can underline it, do something so that the law enforcement officer at 3am can tell whether or not that tribal protection order is still valid. Then the directive to California law enforcement is, is it in sync with VAWA 2013, the directive is to enforce that as if it were a California order, enforce it as it's written. The bulletin goes even further than that and says in the absence of the protection order, if the victim doesn't have a copy of the protection order with him or her, law enforcement may consider other information to find probable cause that a protection order exists so the law enforcement has the authority here start asking the victim; when did you get it, where did you get it, do you remember the the expiration date, that sort of thing, who was it against. Clearly a directive here to California law enforcement what they cannot do; they cannot require this tribal court protection order to be certified in order to be enforceable, that is not a requirement and in fact VAWA 2013 indicates that is not a requirement to enforceability. Also California law enforcement cannot require the tribal protection order be registered or filed with a court in California before it is enforceable, that is not

required. Lastly, the tribal court protection order cannot be required to be in the state's database to be verified and enforced, that is not a requirement and federal law indicates that as well. This bulletin is really bringing attempting to bring California in line with VAWA 2013 mandates, with respect to the enforcement of tribal protection orders. There's a brochure, we gave you the link there, many of you may be familiar with this already I just wanted you to have a handy way to get to them if you wanted to refresh your memory. It too echoes the DOJ bulletin it came out several months after that and it's well organized, it has common questions and answers, it's got links on it as well. So the brochure is there as well.

Additional information for tribal protection orders in California. Again, we just went over this, the California DOJ Bulletin said you don't have to register, you don't have to verify. If you have a protection order and the expiration date is not passed, it should be enforced as if it were a California order. That's a wonderful philosophy, that's in sync with VAWA 2013. While we know, those of us who are out in the real world, is even if we have nice words on paper and even if we have commands from Congress and even if we have commands from your highest criminal justice authority in California, you may still run into pockets where there is pushback, there's pushback. I did research this morning and California has been, it seems to me, has been really trying to strengthen enforcement of tribal protection orders. There's a variety of different options for victims who have tribal protection orders to sort of belts and suspend the California enforcement of their protection orders, even though it's not a requirement. I wanted to make that clear to you all, these are not requirements to enforceability but what these are are options and I think explaining these options to tribal victims that have tribal protection orders, allowing them to decide if they want to exercise these options, is an important piece to to all of this enforceability of tribal protection orders in California. In the perfect world, we wouldn't need any options because it would just be being done but again not sure about all the counties there. Let's take a look at this, it says while registration in the California Court System is not required, it can be helpful in ensuring protection for victims and this should always again be at the option of the victim. You can register the tribal protection order with the California court using the DV600, many of you probably already know what that is. What the DV600 does, it is a form that is filled out by the petitioner that has the tribal protection order, filling out all the data requested in the form and then a judge in the California Court System will review it and if everything's in order will sign off on it. Then it is entered into the California Law Enforcement Telecommunications Systems or CLETS and CLETS feeds also into the national database so that law enforcement at 3am could at least pull up some basic information about the protection order but il do want to let you know that, and this is an important piece that I think you're really going to have to discuss with respect to victim safety and get that tribal advocate involved in the discussion, even though it doesn't look to me like this DV600 has to be served on the defendant, that's one of the big pushbacks about registering it, requiring registration, or verification, or filing a motion to have it become a state court order, this tribal protection order. Usually that requires notice and opportunity to be heard to the defendant and if the petitioner is in hiding for safety reasons, all of that just means it's another barrier to the victim getting on to healing it's oh we got to go through this again, so there are valid reasons that a victim might have for not wanting to exercise these options. Anyway the judge will sign off on the DV600. Then I did want to bring up a couple of things about it, it looks to me like the order is sealed at that point, the request that it be entered into the CLETS, it's sealed but there are agencies that can get a look at the request for this that's put out on the DV600,

requesting the order be registered so law enforcement can get a copy of it, the person who registers the DV600 and does the written requests with an ID can get a copy of it, and the defendant can get a copy of the request the petitioner victim has made that her tribal protection order be registered in California, if the defendant is charged with a crime of violating that protection order. Again, every case is different. Those may seem very harmless to you all out there but to a victim, best to get that tribal victim advocate in there to talk about any safety concerns that filling out the DV600 may entail. A great option for those victims who want to make sure that their tribal protection order is in a national database and some of you who may not have a lot of experience or history working in this area in Indian Country, many tribes across the nation are having difficulty, not all there are federal programs that are stepping up we're getting more and more tribes being able to access the federal database, where they can enter their protection order, at least certain provisions of their protection order. So that at 3AM in Texas, when there's a tribal protection order issued by California tribe, law enforcement can actually see there is a current protection order in effect and that really helps with enforceability. Here's one way, if the California tribal court does not have access to the federal database, and some of your California tribes do, to get that tribal protection order actually put into the federal database. Also California has the California Courts Protective Order Registry and they have the California Restraining and Protection Order Systems, California is really working on getting those synchronized but it seems to me that the protection order registry is an interesting creature because it allows for the entire copy of the protection order to be put in the registry here. This is statewide registry, it's for California as a state, all the counties. The actual provisions of the order can be put in this registry so again just thinking about what what kind of options would be best for your client, what kind of safety issues might come up if you decide that that the client is interested in exercising any of these options that would strengthen enforceability.

We've talked about the DV600, we've talked about the Protection Order Registry in California, and this Rule 5.38 are the procedures for filing a tribal court protective order in California. We gave you a link there, there's no filing fee required so you can look through that and just know again this is really up to the client and you have to assess the unique situation that the client is dealing with, as well as whether or not the tribal court protection order is going to find its way into a federal database, that's going to strengthen hopefully enforcement of the tribal protection order.

A couple of resources, the Tribal Law and Policy Institute, we gave you a link there that is a link to drafting tips for VAWA 2013 Full Faith and Credit mandate, the language you might want to include in your tribal protection orders. It also goes over issues such as what language is necessary in the tribal court protection order to trigger the Federal Firearm Prohibition of possessing firearms or ammo while subject to a valid protection order. It also goes into Special Domestic Violence Criminal Jurisdiction that congress addressed in VAWA 2013, where some tribes that meet the federal mandates of the law, the federal statute, will be exercising criminal jurisdiction over non-Indians for the first time since 1978, when there was a Supreme Court case that restricted a tribe's authority to do that are now exercising, once again, inherent criminal authority over non-Indians who commit crimes of dating violence, domestic violence, or violation of a protection order in Indian Country. This is a big move, step in the right direction, for tribes getting back their sovereign powers to keep their citizens safe so take a look at that. TLPI has drafted a couple of checklists for drafting tribal protection orders involving member Indians and another checklist for drafting tribal protection orders in matters involving non-members,

which could also include non-Indians so those checklists are located there. Then we also included, there's a lot of good information about Full Faith and Credit on the national center's website there, and then we also included both of those checklists a link to those for you here as well.

You can look at the California resources, just want to give you a snapshot of some of the things you could see there, under the California courts, really extensive tools for you, including some that are very tribal specific.

As Kelly stated I'll put up her contact info, thank you for joining the webinar today.

Thanks for that Abby and I would just add to folks that are out there to not hesitate to reach out to me if you have questions. We really would encourage you all to take on the task of coming in to Indian Country and representing victims of domestic violence, dating violence, sexual assault, stalking in tribal courts and wish you the best of luck. Please reach out if we can help you in any way and thank you all for joining today and staying tuned in, especially during the jurisdictional pieces those can get kind of intense. Thanks everyone have a great day.