IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

THE CADDO NATION OF OKLAHOMA, and BRENDA EDWARDS, in her capacity as Chairman of The Caddo Nation of Oklahoma,	)	
Plaintiffs,	)	
v.	)	Case No. CIV-14-281-D
THE COURT OF INDIAN OFFENSES, FOR THE ANADARKO AGENCY,	)	
Defendant.	)	

DEFENDANT'S REPLY IN SUPPORT OF MOTION TO DISMISS

In reply to Plaintiff's Response to the Defendant's Motion to Dismiss and Brief in Support, the United States Attorney's Office submits the following.

A. Plaintiff Must Exhaust Administrative Remedies

Plaintiff's argument that she[1] need not exhaust administrative remedies is flawed on several fronts.

First, Plaintiff attempts to persuade this court that the CIO is not the tribal court and not entitled to the comity considerations from the federal courts that were set out in *Iowa Mut. Ins. Co. v. LaPlante,* 480 U.S. 9 (1987); *National Farmers Union Ins. Cos. v.*

[1] As the Court has already observed, there are "competing factions [who] each claim, exclusive of the other, to be the leadership authorized to act in an official capacity on behalf of the tribe." [Doc. No. 17, p. 2, fn. 2]. In fact, the Caddo Nation has even obtained injunctive relief prohibiting Edwards from acting on behalf of the tribe. Thus, defendant refers here to the plaintiff as "she" as this action is brought by Edwards, while the opposing faction is not a party before this court.

Crow Tribe of Indians, 471 U.S. 845 (1985). The holding of the Tenth Circuit and this court teach us otherwise. In *Tillett v. Lujan*, 730 F. Supp. 381 (W. D. Okla. 1990) ("Tillett I"), *aff'd* 931 F.2d 636, 640 (10th Cir. 1991) ("Tillett II"), a case that is factually and legally similar to the case before this court, the Tenth Circuit clearly held that CFR courts "also function as tribal courts." Significantly, United States Supreme Court precedent supports this conclusion. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 64 & n. 17 (1978) (referring to CIO courts as "tribal courts"). Accordingly, the Plaintiff's argument that the CIO is not a tribal court and is not entitled to comity from this court fails.

Second, the Plaintiff argues that there is no need for this court to extend comity to the CIO proceedings because the CIO clearly lacks jurisdiction over the current intra-tribal political leadership dispute. However, the mere fact that Plaintiff claims to be the Caddo Nation of Oklahoma and the Chairman do not make it so. Plaintiff's argument is premised on resolutions she selectively chooses and prefers to rely upon while conveniently ignoring the other resolutions, submitted by the Smith faction in the CIO, that directly contradict this assertion and specifically grant the CIO jurisdiction to hear the dispute. [Doc. No. 1-7, Ex. 2; Doc. No. 2-9, Ex. 2]. The very pendency of the CIO proceedings between the competing factions and conflicting evidence there are proof positive that there is an existing dispute on the issues of whether the Caddo Nation of Oklahoma has granted jurisdiction to the CIO over this dispute and who is entitled to act as Chairman on behalf of the tribe. What it is evident that the CIO did not exercise jurisdiction *sua sponte*; rather, it was in an action brought by the Caddo Nation where

both competing factions presented conflicting resolutions, evidence, and testimony supportive of their claim to act on behalf of the tribe. As in *Tillett I & II*, as a matter of comity the court should require Edwards to exhaust her remedies in the pending CIO action and, if necessary, with Court of Indian Appeals.

B. Plaintiff Admits Failure to Comply With Rule 4.

Plaintiff admits that she has failed effect service on the United States and comply with Fed.R.Civ.P. 4(i)(1). Plaintiff filed this action on March 31, 2014, and 86 days have passed before she initiated an attempt to serve United States Attorney General on June 25, 2014. [Doc. No. 21, p. 10, Ex. 5]. No explanation is offered for this failure. Thus, should this matter not be dismissed for failure to exhaust administrative remedies, jurisdiction over the Defendant is lacking until service is accomplished.[2]

C. Alternatively, Plaintiff has Failed to Join a Necessary Party Under Rule 19.

Finally, the Plaintiff alleges that the Smith faction is not an indispensable party to this action under Fed.R.Civ.P. 19 because the "United States has not provided any affidavits or other evidence of any interest of the Smith faction that needs protection." [Doc. No. 21, pp. 11-12]. This argument is belied by the evidence that Plaintiff herself submitted into evidence here. She ignores the competing resolutions that specifically grant the CIO jurisdiction and authorize the attorney, Mr. Rivas, authority to file the restraining order. [Doc. No. 1-7, Ex. 2; Doc. No. 2-9, Ex. 2]. Even the court noted in its Order that "[t]he

[2] Should this matter not be dismissed, the answer date for the Defendant should be 60 days from the date service is completed under Rule 4, i.e. when the Attorney General is served.

record before the Court includes other resolutions . . . which Defendant appears to have relied upon to find it had jurisdiction . . . ." [Doc. No. 17, p. 4].

Plaintiff is simply incorrect when she asserts that "Defendants should be in a position to protect ay [sic] interest that the Smith faction might argue." [Doc. No. 21, p. 12]. The defendant here is the Court of Indian Offenses – and the court does not represent either faction, does not advocate for/against either faction, and cannot be held to protect the interest of the Smith faction. Rather, the CIO relied on a case brought by the Caddo Nation and has made decisions mare on the record before it which contains competing resolutions between the factions claiming leadership of the Caddo Nation. If this case is not dismissed, the CIO simply seeks that both factions be involved in this litigation in the interests of justice.

In essence, Plaintiff argues that this court should wade into the troubled waters of interpreting tribal law and procedure and hold that she wins tribal political office without even hearing from the absent Smith faction. However, unlike *Kansas v. United States*, 249 F.3d 1213, 1225-27 (10th Cir. 2001), this is not a case where the propriety of a purely secretarial decision is being challenged. This is not a case where the interests of the CIO are aligned with those of the absent parties; neither the United States nor the Department of the Interior has issued an administrative decision regarding who is, or who is not, the political leadership of the Caddo Nation of Oklahoma. It therefore follows that if this court does not dismiss this case pending the exhaustion of well-established tribal court remedies, the absent tribal faction must be made a party so that it can present its own tribal law and procedure arguments to this court for a definitive ruling on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2014, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Eugene Bertman, Counsel for Plaintiff

I hereby certify that on July 2, 2014, I served the attached document by mail on the following, who are not registered participants of the ECF System: None

s/Robert J. Troester
Assistant U.S. Attorney