Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DOTTI CHAMBLIN, Plaintiff, vs. TIMOTHY J. GREENE, et al. Defendants.	CIVIL ACTION NO. CV14 5491BHS DEFENDANTS' REPLY TO PLAINTIFF'S MOTION TO COURT TO ACCEPT CASE NOTE ON MOTION CALENDAR: August 8, 2014

I. INTRODUCTION

Plaintiff's Motion to Court to Accept Case on Grounds that the Tribal Council Chairman, STIHC Health Director,[1] and Makah Tribal Court Exceeded their Lawful Authority,

[1] Plaintiff has not named the Health Director as a Defendant.

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and Civil Rights Violations under 25 U.S.C.A. § 1302 ("Plaintiff's Motion") appears to be both a Response in Opposition to Defendants' Motion to Dismiss and a First Amended Complaint. For the sake of efficiency, Defendants respond in full to Plaintiff's Motion in this Reply. Defendants incorporate herein by reference their Motion to Dismiss and Memorandum of Points and Authorities in support of the Motion to Dismiss.

Plaintiff alleges that issuance of a restraining order violates the Indian Civil Rights Act (ICRA) and Plaintiff's treaty right to health care. Plaintiff is not an aggrieved party in that she prevailed in the Tribal Court when the Tribal Court dismissed the Petition for an Order of Protection against her. Any case or controversy there may have been is now moot because the Tribal Court dismissed the Petition for an Order of Protection against Plaintiff. There is no federal court jurisdiction in this matter. ICRA is only enforceable in federal courts in criminal cases through a habeas corpus petition under 25 U.S.C. § 1303. Since this is not a criminal case and does not involve a habeas corpus petition, ICRA does not provide federal question jurisdiction. The Treaty of January 31, 1855 Plaintiff relies upon does not create an implied cause of action by individual tribal members, and Defendants are immune from suit. Additionally, Plaintiff has not exhausted tribal remedies. Plaintiff also fails to allege a claim upon which relief can be granted, and Plaintiff has not properly served two of the three Defendants. Plaintiff is challenging the Tribal Court's dismissal of a Petition for an Order of Protection against Plaintiff in an attempt to change an administrative suspension of nonemergency services; these are two different processes, and Plaintiff must use the administrative appeal process to challenge the administrative suspension. This Court should dismiss this matter.

II. LEGAL ARGUMENT

A. Plaintiff Is Not An Aggrieved Party, and There Is No Case or Controversy.

Generally, "only a party aggrieved by a judgment or order of a district court may exercise the statutory right to appeal therefrom. A party who receives all that he has sought

generally is not aggrieved by the judgment affording the relief and cannot appeal from it." *Deposit Guar. Nat. Bank, Jackson, Miss. v. Roper*, 445 U.S. 326, 333 (1980). While this is not an appeal, Plaintiff seeks judicial review of the Tribal Court's decision even though Plaintiff prevailed at the Tribal Court. Under article III of the federal Constitution, federal courts only have authority over actual controversies and cases. *In re Grand Jury Proceedings Klayman*, 760 F.2d 1490, 1491 (9th Cir. 1985).

In the Tribal Court, Plaintiff was the defendant, and various parties sought an order of protection against Plaintiff. *See* Exh. 2 to Defendants' Motion to Dismiss. After utilizing an administrative remedy, the plaintiffs in the Tribal Court action decided not to pursue the order of protection, and the Tribal Court dismissed the action. *See* Exh. 1 to Defendants' Motion to Dismiss. Plaintiff here was not aggrieved by the Tribal Court's dismissal. On the contrary, the dismissal meant that no protection order would issue against Plaintiff in that matter. The dismissal also mooted any case or controversy stemming from the protection order action. While Plaintiff is under certain constraints related to her use of the Sophie Trettevick Indian Health Center ("Clinic"), those constraints derive from the Clinic's administrative action and not any action of the Tribal Court.[2] *See* Exh. 4 to Defendants' Motion to Dismiss. Plaintiff challenges the Tribal Court's dismissal, but she was not aggrieved by that dismissal, and the dismissal leaves no case or controversy for this Court to review.

B. There Is No Federal Court Jurisdiction in This Matter.

Federal courts "are courts of limited jurisdiction." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). Federal question jurisdiction under 28 U.S.C. § 1331 requires a plaintiff's complaint to "establish either (1) that federal law creates the cause of action or (2) that the plaintiff's asserted right to relief depends on the resolution of a substantial

[2] Plaintiff has not exhausted her tribal remedies related to the administrative action. *See infra* Subsection C.

question of federal law." *Peabody Coal Co. v. Navajo Nation*, 373 F.3d 945, 949 (9th Cir. 2004).

Plaintiff alleges claims under ICRA, 25 U.S.C. § 1302 and the Treaty of January 31, 1855, 12 Stat. 939, Article XI ("Treaty").[3] The Supreme Court has made clear that ICRA may only be enforced in federal court in criminal cases through a habeas corpus petition under 25 U.S.C. § 1303. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 67-70 (1978). This is not a criminal case, and Plaintiff has not filed a habeas corpus petition. The Supreme Court found that ICRA "does not impliedly authorize actions for declaratory or injunctive relief against either the tribe or its officers." *Martinez*, 436 U.S. at 72. The *Martinez* Court explained that while

> Congress clearly has power to authorize civil actions against tribal officers, and has done so with respect to habeas corpus relief in § 1303, a proper respect for both tribal sovereignty itself and for the plenary authority of Congress in this area cautions that we tread lightly in the absence of clear indications of legislative intent.

Id. at 60. Similarly, the Treaty does not impliedly create a cause of action—let alone an action for monetary damages. *See* Exh. 1 to Plainiff's Motion. Nothing in the Treaty indicates any intention of authorizing a federal court action against the Tribe or its officials or employees, and any finding to the contrary would "undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves." *Williams v. Lee*, 358 U.S. 217, 223 (1959) ("Implicit in these treaty terms…, was the understanding that the internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal government existed").[4]

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[3] Even if Defendant Morisset, Schlosser, Jozwiak & Somerville was a proper party in this action, the law firm is not an Indian Tribe or a party to the Treaty. Thus, neither ICRA nor the Treaty apply to the law firm. It is unclear why the law firm is named as a defendant in this suit.

[4] Plaintiff also alleges that Article VI, Clause 2 of the federal Constitution provides federal court jurisdiction, but Article VI, Clause 2 does not give this Court jurisdiction or give rise to any of Plaintiff's claims.

Additionally, Defendants Greene and Haupt are immune from suit. Sovereign immunity bars bringing suits against tribes unless Congress has authorized the lawsuit or a tribe has waived its immunity. *Martinez*, 436 U.S. at 58-59; *Kiowa Tribe of Oklahoma v. Mfg. Technologies, Inc.*, 523 U.S. 751, 754 (1998). Waivers of immunity must be clear, express, unequivocal, and cannot be implied. *Martinez*, 436 U.S. at 58. Sovereign immunity also applies to tribal officials and employees acting within the scope of their authority. *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476, 479 (9th Cir. 1985); *United States v. Yakima Tribal Court*, 806 F.2d 853, 861 (9th Cir. 1986), *cert. denied*, 481 U.S. 1069 (1987). Plaintiff alleges that Defendant Greene is not immune because he exceeded his authority as Chairman by authorizing use of the Clinic's Violent and Abusive Patient Policy #33 ("Policy"), and Plaintiff alleges that Defendants Greene and Haupt waived their immunity by bringing an action in Tribal Court. Plaintiff's Motion at 3:1-11. Plaintiff is mistaken.

First, Defendant Greene did not have any involvement in the use of the Clinic's Policy. Declaration of T. Greene at ¶2. Second, even if Defendant Greene was involved in the Clinic's use of the Policy against Plaintiff, Plaintiff has not been subjected to any constraint on her ability to access the Clinic that exceeds one year. *See* Exh. 4 to Defendants' Motion to Dismiss at pg. 2 (Notice of 12-Month Suspension of Nonemergency Services). Third, Plaintiff relies on inapplicable case law to suggest that Defendants Greene and Haupt have waived their sovereign immunity. The Clinic's Tribal Court Petition for an Order of Protection against Plaintiff did not waive Defendant Greene's or Defendant Haupt's sovereign immunity for new claims brought by an adverse party in Federal District Court, and it did not constitute consent to Plaintiff's claims. *See Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 510 (1991) ("Tribe did not waive its sovereign immunity merely by filing an action for injunctive relief."). Further, Plaintiff did not raise any counterclaims in the Tribal Court. The Tribal Court properly dismissed the action when the Tribal Court plaintiffs moved to voluntarily dismiss the Petition for an Order of Protection; at that point, there were no

claims left to be adjudicated.[5] Defendant Haupt merely performed his job as Chief Judge when he dismissed the Tribal Court action. To the extent Defendant Haupt acted in this matter, such acts were within the scope of his authority and he is immune from suit. Defendant Greene took no part in the Tribal Court proceedings or in the administrative action taken by the Clinic. *See* Declaration of Timothy J. Greene at ¶2. Thus, Defendant Greene has sovereign immunity from suit in this action.

C. Plaintiff Has Failed to Exhaust Her Tribal Remedies.

To the extent Plaintiff challenges the Clinic's administrative 12-month suspension of nonemergency services, Plaintiff has failed to exhaust her tribal remedies. The Supreme Court first articulated the tribal exhaustion rule in *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845 (1985). The Ninth Circuit has explained that "[t]he Supreme Court has mandated the exhaustion of tribal remedies as a prerequisite to a federal court's exercise of its jurisdiction[.]" *Burlington N. R. Co. v. Crow Tribal Council*, 940 F.2d 1239, 1245 (9th Cir. 1991). The tribal exhaustion requirement includes exhaustion of both administrative and judicial remedies before a federal court may adjudicate the claims at issue. *Burlington N. R. Co.*, 940 F.2d at 1247. There are three reasons for requiring exhaustion of tribal remedies: (1) the federal policy of supporting tribal self-determination and self-government, (2) judicial efficiency in that a full record is developed at the tribal level prior to any federal court adjudication, and (3) an explanation of the basis for tribal jurisdiction, which provides other forums with the benefit of tribal expertise in this area. *Id.* at 1245-46; *see also Nat'l Farmers Union Ins. Companies*, 471 U.S. at 856-57.

[5] *Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes* ("*Dry Creek*"), 623 F.2d 682 (10th Cir. 1980) is not only inapposite since Plaintiff may challenge the Clinic's administrative suspension of services through the administrative process provided in the Notice (*see* Exh. 4 to Defendants' Motion to Dismiss at 3), the Ninth Circuit has rejected *Dry Creek*'s narrow exception to the *Martinez* decision. *See, e.g., R.J. Williams v. Ft. Belknap Hous. Auth.*, 719 F.2d 979, 981 (9th Cir. 1983).

The exhaustion determination requires this Court to balance "the need to preserve the cultural identity of the tribe by strengthening the authority of the tribal courts, against the need to immediately adjudicate alleged deprivations of individual rights." *Selam v. Warm Springs Tribal Corr. Facility*, 134 F.3d 948, 953 (9th Cir. 1998) (quoting *United States ex rel. Cobell v. Cobell*, 503 F.2d 790, 793 (9th Cir.1974)). Where a wholly internal, civil matter is at issue, the balance most heavily favors requiring exhaustion of tribal remedies. Tribes retain the power to make their own internal substantive laws and enforce those laws in their own forums. *Martinez*, 436 U.S. at 55-56.

The Clinic utilized its Policy to administratively suspend Plaintiff's nonemergency services for 12 months, and the Policy provides two levels of tribal administrative review—Plaintiff may first appeal to the Tribe's General Manager, and if Plaintiff is not satisfied by the General Manager's determination, Plaintiff may appeal to the Governing Body (the Tribal Council). *See* Exh. 4 to Defendants' Motion to Dismiss at 2-3. Plaintiff alleges that she has exhausted her tribal remedies. Plaintiff's Motion at 2:23-28. Plaintiff has not exhausted her administrative remedies, because Plaintiff has not appealed to the Tribe's General Manager. *See* Declaration of Patty Manuel at ¶6. Plaintiff attempted to give Ms. Patty Manuel, the acting General Manager during the week of May 5, 2014, a Notice of Appeal of the Tribal Court's dismissal of the Petition for an Order of Protection, but Ms. Manuel rejected the Notice of Appeal because an appeal of a Tribal Court decision must be filed in the Tribal Court. *See id.* at ¶¶2-5; Makah Law and Order Code (MLOC) § 1.9.04 (attached as Exh. A); Exh. 2(B) to Plaintiff's Motion. Plaintiff's letter to the Tribal Council did not constitute an administrative appeal under the Policy because Plaintiff had not first appealed to the General Manager and Plaintiff's letter challenged the Tribal Court's dismissal of the Petition for an Order of Protection instead of the Clinic's administrative suspension. *See* Exh. 3 to Plaintiff's Motion. Even if this Court has jurisdiction over Plaintiff's claims, which it does not, this Court must require Plaintiff to exhaust her tribal administrative remedies by appealing the Clinic's

suspension of nonemergency services first to the Tribe's General Manager and then to the Tribal Council.

D. Plaintiff Fails to State a Claim Upon Which Relief Can Be Granted.

Under FRCP 12(b)(6), federal courts may dismiss a complaint if it fails to state a claim upon which relief can be granted. Where a complaint's "well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (quoting FRCP 8(a)(2)). A pleading that merely contains "'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

In order to survive a Rule 12(b)(6) motion to dismiss, Plaintiff's factual allegations "must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true . . . ." *Twombly*, 550 U.S. at 555. That is, Plaintiff's complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). The *Iqbal* Court explained that "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Conclusory allegations are not entitled to the presumption of truth. *Khalik v. United Air Lines*, 671 F.3d 1188, 1193 (10th Cir. 2012); *see also Heyer v. Governing Bd. of Mt. Diablo Unified Sch. Dist.*, 521 F. App'x 599, 600-01 (9th Cir. 2013). Even pro se pleadings "must still present factual allegations sufficient to state a plausible claim for relief." *Perkins v. Matthews*, 13-17064, 2014 WL 3037551, at *1 (9th Cir. July 7, 2014) (citing *Hebbe v. Pliler*, 627 F.3d 338, 341–42 (9th Cir. 2010)).

Plaintiff's Motion includes new allegations that the duration of the administrative suspension of nonemergency services violates the Policy and ICRA. *See* Plaintiff's Motion at 1:23-25, 3:3-5, and 6:6-13. Contrary to Plaintiff's allegations, Plaintiff's suspension lasts

exactly one year; the suspension was issued on January 8, 2014 and it expires on January 8, 2015. *See* Exh. 4 to Defendants' Motion to Dismiss. The Clinic's January 3, 2014 letter did not immediately suspend Plaintiff's nonemergency services. *See* Exh. 4(C) to Plaintiff's Motion. Additionally, no portion of ICRA prohibits civil restraints from lasting longer than one year.[6] *See* 25 U.S.C. § 1302. Plaintiff claims that her "treaty right to health care has been unjustly diminished or qualified[.]" Plaintiff's Motion at 2:17. The Treaty, however, only includes a promise by the United States to provide medical services at the cost of the United States. *See* Exh. 1 to Plaintiff's Motion at 5. Plaintiff is still receiving her routine medical care, and there is no Treaty violation or diminishment. *See* Exh. 4 to Defendants' Motion to Dismiss at 2-3; Exh. 1 to Plaintiff's Motion at 5.

Plaintiff also alleges that the Policy violates ICRA's equal protection clause "because it authorizes allegations of hearsay to be used as evidence…." Plaintiff's Motion at 2:19-22. Hearsay evidence has nothing to do with equal protection, and Plaintiff fails to allege any equal protection violation. Similarly, Plaintiff fails to state a due process claim; as explained above, adjudication of the administrative suspension must occur through the administrative appeal process, and Plaintiff is not entitled to any explanation of advice between an attorney and client.[7] *See* Plaintiff's Motion at 6:20-25. Finally, Plaintiff "objects" to Defendant Haupt's statements regarding the Tribe's Corporate Charter. *See* Plaintiff's Motion at 6-7. This

[6] Plaintiff alleges that a civil restraint lasting longer than one year violates the MLOC and ICRA, but the sections Plaintiff relies upon govern criminal sentences and not civil restraints. *See* Plaintiff's Motion at 6:6-13.

[7] In addition, Morisset, Schlosser, Jozwiak & Somerville did not provide advice to the Tribal Court or the Tribal Council or the Clinic at any stage of the administrative or Tribal Court procedures. Had any advice been given, it would be protected from disclosure to Plaintiff by the attorney-client privilege. *See* Declaration of Rebecca JCH Jackson (filed with Defendants' Motion to Dismiss).

objection fails to state a claim upon which relief can be granted.[8] None of Plaintiff's allegations amount to a claim upon which this Court can grant relief.

E. Plaintiff Has Not Effectively Served Certain Defendants.

FRCP 4(e) governs service of a summons and complaint on an individual within a judicial district of the United States. FRCP 4(e)(2) provides for (a) personal service, (b) leaving a copy "at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there," or (c) delivering a copy "to an agent authorized by appointment or by law to receive service of process." FRCP 4(e)(1) allows service by following state law in courts of general jurisdiction in the state where the district court is located. Service by a party is not effective service.

Defendant Morisset, Schlosser, Jozwiak & Somerville is a Washington corporation. RCW 23B.05.040 and RCW 4.28.080(9) require personal service on various officers or agents of corporations or personal service on the Secretary of State in certain circumstances not applicable here. RCW 4.28.080(15) provides that unless otherwise specified, service of process must be made upon a defendant personally, or by leaving a copy of the summons at the house of his or her usual abode with a person of suitable age and discretion who resides therein. If service of process cannot be provided under the terms of RCW 4.28.080(15) with reasonable diligence, the summons may be served by leaving a copy at the defendant's "usual mailing address with a person of suitable age and discretion who is a resident, proprietor, or agent thereof, and by thereafter mailing a copy by first-class mail, postage prepaid, to the person to be served at his or her usual mailing address." RCW 4.28.080(16).

On June 23, 2014, Plaintiff served Defendant Haupt by delivering a copy of the summons and Complaint to his Clerk, Sarah Parker. Plaintiff served Defendant Morisset,

[8] Importantly, the Makah Tribe was at all times acting in its constitutional, governmental capacity pursuant to § 16 of the Indian Reorganization Act (25 U.S.C. § 476) in this matter and not in its corporate capacity under § 17 of the Indian Reorganization Act (25 U.S.C. § 477).

Schlosser, Jozwiak & Somerville by mail. Such attempted service of process was ineffective under federal and state law. Defendant Haupt's clerk is not his authorized agent, and therefore leaving a copy of the summons and Complaint with the clerk failed to effectively serve Defendant Haupt. Also, Plaintiff was present during service on Defendant Haupt's clerk.[9] *See* Plaintiff's Motion at 7:29-30. Service of process on Defendant Morisset, Schlosser, Jozwiak & Somerville by mail was not effective either.

III. CONCLUSION

For the reasons and facts stated above, Defendants respectfully request that this Court dismiss Plaintiff's Complaint for not being an aggrieved party and a lack of case or controversy, lack of jurisdiction under FRCP 12(b)(1), failure to exhaust tribal remedies, failure to state a claim upon which relief can be granted under FRCP 12(b)(6), and ineffective service of process under FRCP 12(b)(5).

Respectfully submitted this 8th day of August, 2014.

MORISSET, SCHLOSSER, JOZWIAK & SOMERVILLE

s/Frank R. Jozwiak
s/Rebecca JCH Jackson

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[9] Plaintiff was also present when Defendant Greene was served.

CERTIFICATE OF SERVICE

I certify that on August 8, 2014, I caused the foregoing DEFENDANTS' REPLY TO PLAINTIFF'S MOTION TO COURT TO ACCEPT CASE, DECLARATION OF TIMOTHY J. GREENE, DECLARATION OF PATTY MANUEL, and EXHIBIT A to be electronically filed with the Clerk of the United States District Court for the Western District of Washington using the CM/ECF system, and I caused the foregoing documents to be mailed, by transmitting a true and correct copy via First Class Mail and Federal Express with all costs of delivery prepaid, to the following non-CM/ECF participant:

Dotti Chamblin
PO Box 597
Neah Bay, WA 98357

Dotti Chamblin
310 2nd Avenue
Neah Bay, WA 98357

s/Rebecca JCH Jackson
Rebecca JCH Jackson

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EXHIBIT LIST

Exhibit A Makah Law and Order Code § 1.9.04

EXHIBIT A

MAKAH TRIBAL LAW AND ORDER CODE

Makah Indian Tribe
of the Makah Indian Reservation, Washington

MAKAH LAW AND ORDER CODE

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TITLE 4: RULES OF COURT

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TITLE 8: TRIBAL POLICE CODE

TITLE 9: EXCLUSION

TITLE 11: DOMESTIC VIOLENCE CODE

TITLE 12: FAMILY CODE

§ 1.8.02 Fees

Each witness answering such subpoena shall be entitled to a fee for each day his services are required in Court in an amount to be set by the Tribal Council upon recommendation by the Tribal Court. Witnesses who testify voluntarily shall be paid their actual traveling and living expenses incurred in the performance of their function by the party calling them, if the Court so directs. The fees of witnesses in civil actions shall be paid by the party calling them.

CHAPTER 9
Appellate Proceedings

§ 1.9.01 Court of Appeals

A Court of Appeals shall sit at such times and places as is proper and necessary for the dispatch of any appeals, to hear appeals from final judgments, sentences and other final orders of the Tribal Court.

§ 1.9.02 Judge

When there is need for a Court of Appeals to sit, the Tribal Council shall appoint as the Judge of the Court of Appeals any judge from any other Indian Reservation pursuant to Section 1.4.07 herein. Such judge shall constitute the Court of Appeals for such appeal. No person shall be qualified to sit on the Court of Appeals in any case wherein such judge: (a) sat as the original trial judge, (b) has any direct interest in the case, or, (c) is a relative by marriage or blood, in the first or second degree, to a party.

§ 1.9.03 Limitations

There may be established by Rule of Court the limitations, if any, to be placed on the right of appeal, as to the type of cases which may be appealed, as to the grounds of appeal, and as to the manner in which appeals may be granted, according to the needs of the jurisdiction.

§ 1.9.04 Notice of Appeal

Within ten days of the entry of judgment, the aggrieved party may file with the trial court written notice of appeal, and upon giving proper assurance to the Court that the judgment, if affirmed, will be satisfied, such parties shall have the right to appeal, provided the case to be appealed meets the requirements herein established or by Rules of Court. The giving of proper

assurance is subject to the discretion of the Tribal Court, and may include the posting of a bond, the giving of collateral, third party guarantees, or any other method which the Tribal Court, in its discretion, determines to be satisfactory.

§ 1.9.05 Stay of Execution

In any case where a party has perfected his right of appeal as established herein or by Rules of Court, a stay of execution of judgment may be granted in the discretion of the Court of Appeals by request of the appellant, and, if granted, the sentence or judgment shall not be carried out unless and until affirmed by the Court of Appeals.

§ 1.9.06 Clerk

The Clerk of the Tribal Court shall also serve as the Clerk of the Court of Appeals. Within twenty (20) days after a Notice of Appeal is filed, the Clerk shall prepare, certify and file with the Court of Appeals all papers comprising the record of the case appealed, including the verbatim transcript or tape of the Tribal Court proceedings.

§ 1.9.07 Briefs and Memoranda

Within thirty (30) days of the filing of the Notice of Appeal or within such longer time as the Court of Appeals shall allow, the appellant shall file three copies of a written brief, memorandum or statement in support of his appeal, including the reasons or grounds for the appeal. One copy shall be kept in the Court file, one copy shall be delivered to the Court of Appeals and one copy shall be mailed to each other party or such party's attorney or spokesman. The respondent shall have twenty (20) days after receipt of the appellant's brief, memorandum or statement within which to file a reply brief, memorandum or statement and shall file and serve such in the same manner as the appellant's brief, memorandum or statement. No further response shall be allowed either party without leave of Court.

§ 1.9.08 Appellate Review

The Court of Appeals shall decide all cases upon the briefs, memoranda and statements filed plus the record of the Tribal Court without oral argument unless either party requests oral argument and shows to the Court that such will aid the Court's decision or unless the Court decides on its own to hear oral argument. No new trial shall be held by the Court of Appeals.

§ 1.9.09 Decision

The Court of Appeals shall issue a written decision and all judgments on appeal shall be final. The Court of Appeals shall have the power to affirm or reverse, in whole or in part, the decision of the Tribal Court below or to order that a new trial be held.

§ 1.9.10 Tax Appeals

Any party contesting the assessment of any taxes owed to the Tribe, or any party appealing a judgment for taxes owed or a judgment for any other remedy provided under any tax ordinance of the Tribe, must pay the assessed tax or judgment before he may appeal under this Chapter. Upon the payment of such taxes and upon the posting of a $100.00 bond for costs, the appealing party may be granted a stay of execution as to the part of the judgment other than the taxes found to be owing, and that part of the judgment shall not be carried out unless and until affirmed by the Court of Appeals. Any forfeiture of seized goods shall be stayed pending the appeal, and the Tribe shall hold the goods seized in a safe place until the final resolution of the case. If the goods are perishable or threaten to decline speedily in value, the Tribe may sell such goods in a commercially reasonable manner and hold the amount realized until the final resolution of the case.

CHAPTER 10
Clerk, Records and Probation Officers

§ 1.10.01 Clerk

The Chief Judge with the concurrence of the Tribal Council shall appoint a Clerk of the Court and such Assistant Clerks as deemed necessary. The Clerks of the Court shall be under the supervision of the Chief Judge. The Clerks shall render assistance to the Court, to the police force of the Reservation, and to individual members of the Reservation in the drafting of complaints, subpoenas, warrants, and commitments and any other documents incidental to the lawful function of the Court. It shall be the further duty of the Clerks to attend and keep a written record of all proceedings of the Court, to administer oaths to witnesses, and to perform such other duties as the Chief Judge shall designate. The Clerks, before entering upon their duties, shall, at Tribal expense, post bond in an amount determined by the Tribal Council, or shall be covered by the blanket bond provided for all Tribal employees.

§ 1.10.02 Records

The Tribal Court shall keep for its own information and for inspection by duly qualified officials, a record of all proceedings of the Court, which record shall reflect the title of the case, the names of the parties, the substance of the complaint, the names and addresses of all witnesses, the date of the hearing or trial, by whom conducted, the findings of the Court or jury, and the judgment, together with any other facts or circumstances deemed of importance to the case.

§ 1.10.03 Copies of Laws