

THE TRIBAL COURT GUIDE TO JUDICIAL CLERKSHIPS

Written in collaboration by the
American Indian Law Center, Inc., and
National American Indian Court Judges Association





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and **National American Indian Court Judges Association**

THE TRIBAL COURT GUIDE TO JUDICIAL CLERKSHIPS

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FOREWORD

LAW STUDENTS ARE INCREASINGLY INTERESTED IN CLERKING FOR TRIBAL COURTS. Given this interest, the **American Indian Law Center, Inc. Pre-Law Summer Institute (PLSI) Judicial Clerkship Committee** and the **National American Indian Court Judges Association (NAICJA)** have created this Guide to help tribal courts hire and manage judicial law clerks and obtain funding for paid judicial clerkships.

The topics in this Guide reflect the results of a survey the PLSI Judicial Clerkship Committee and NAICJA conducted of tribal court judges and staff across the country regarding whether tribal courts wished to hire judicial law clerks and what guidance they needed, if any, to do so. Tribal court judges and staff overwhelmingly responded that they wished to hire clerks, but that they wanted more resources about funding, hiring, and managing the clerks. This Guide addresses the survey responses.

By way of background, the **AMERICAN INDIAN LAW CENTER, INC.'S PRE-LAW SUMMER INSTITUTE (PLSI)** helps Native American students prepare for the rigors of law school. PLSI created its **Judicial Clerkship Committee** to increase the number of Native American judicial law clerks because Native Americans are vastly underrepresented in clerkship positions which tend to open doors, including the door to a judgeship. Native Americans are also severely underrepresented in the judiciary, and a diverse judiciary is important to ensure that it reflects the population it serves. The PLSI Judicial Clerkship Committee consists of PLSI alumni who are current and former judicial law clerks. The committee works to increase the number of Native American clerks by mentoring students, by presenting at law schools and conferences about the importance of clerkships and the hiring process, and by presenting at and funding students and tribal court judges to attend the American Bar Association's (ABA's) Judicial Clerkship Program.

NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION (NAICJA) is a nonprofit organization comprised of more than 200 tribal, state, and federal justice system personnel, including tribal leaders, judges, justices, peacemakers, court personnel, and practitioners who are devoted to strengthening and supporting tribal justice systems. NAICJA has a long-standing history of providing training and technical assistance to tribal judges and personnel. NAICJA has held the annual National Tribal Judicial and Court Personnel Conference for the past 52 years where it provides cutting-edge judicial training. The goals of NAICJA include advocating for tribal justice system funding, system improvements, cultural appropriateness of tribal judicial education and training, supporting cooperation among federal, tribal and state judiciaries, and providing a national forum for those working in the tribal justice system. NAICJA is developing a pipeline to the bench by educating future and current lawyers with the hope that they may one day become tribal, state, or federal judges. NAICJA views the partnership between the tribal bench and their judicial law clerks as a rich opportunity to build and strengthen tribal law.

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PREFACE

This Guide is primarily for tribal judges, justices, peacemakers, and other persons charged with resolving Indian country disputes, and for judges in our tribal justice systems who need support or more information on judicial law clerks. **Judicial law clerks are different than court clerks** because they perform a different set of tasks.

Typically, judicial law clerks are current law students, recent law school graduates, or recently barred attorneys. However, they can also be individuals with a M.A. in Law, Legal Studies, or Native American Studies. Judicial law clerks are full-time assistants to their judges. They assist tribal court judges in the following ways:

IMPROVING CASELOAD MANAGEMENT BY RESEARCHING
AND WRITING BENCH MEMORANDA, ORDERS, AND OPINIONS

ENHANCING COURT OPERATION AND ADMINISTRATION BY COLLECTING
AND ANALYZING DATA AND WRITING BENCH GUIDES

IMPROVING COURT SERVICES BY PREPARING
FORMS, INFORMATION SHEETS, MANUALS, AND GUIDES.

Judicial law clerks are a mainstay of federal and state courts, administrative courts, and military tribunals. They can become a mainstay of the tribal courts that implement the recommendations in this Guide. Clerks can enhance the efficiency and quality of a tribal court's decision-making process. In addition, creating more tribal clerkship opportunities for new attorneys and law clerks has long-term advantages. **These jobs offer practical experience for new clerks to learn how tribal court systems operate.** A tribal court can enrich a clerk's legal education. Tribal judges can contribute to the development of the judicial profession by mentoring new lawyers and law students.

Ultimately, the goal of clerkships is to carve new pathways to the bench by creating a new generation of prospective tribal judges.



THE TRIBAL COURT EXPERIENCE IS LIKE NO OTHER.

Judicial law clerks can be helpful allies in navigating the many issues facing our tribal justice systems. Like state and federal courts, tribal courts resolve a wide range of issues involving governance, families, business, contracts, and property disputes. However, tribal courts face challenges unique to Indigenous communities, such as tribal citizenship, law enforcement, and jurisdiction. Tribal judges resolve these challenges by applying customs and traditions along with federal Indian law precedent. Tribal courts are the ultimate form of **tribal sovereignty** because tribal judges have the autonomy to rebuild their communities outside the control of colonial systems. Now, more than ever, it is important to recognize the value that Native perspectives bring to the bench. The creation of clerkships can contribute to the diversity of experience and knowledge that strengthens the judiciary and bar.

THE PATH TO THE JUDICIARY IS NOT A PATH TO WALK ALONE.

New attorneys and law students can flourish and prosper under the guidance of tribal judges and justices. Tribal judges can guide new judicial law clerks as they explore tribal justice systems. Judges can help clerks by providing opportunities to engage meaningfully with justice systems, communities, and the legal profession within Indian country. Therefore, tribal judges have a unique opportunity to enrich a clerk's professional education while promoting the advancement of the tribal judiciary.

**WE HOPE YOU FIND THIS GUIDE
USEFUL AND INFORMATIVE, AND
ARE SUCCESSFUL IN HIRING A
JUDICIAL LAW CLERK.**

PART I. INTRODUCTION

This Guide offers general information on the creation, maintenance, and operation of tribal judicial law clerkships throughout Indian country.

Unfortunately, in Indian country, “[v]ery few judges have enjoyed the luxury of a clerk’s services—mostly due to lack of financial resources.”¹ Many tribal judges have a large docket and may find themselves buried under a heavy caseload. The clerk is an assistant, a consultant, and a confidant who is always at the judge’s side. Every tribal judge can benefit from the service of such a person. A clerk helps judges process cases efficiently and enhances the quality of the decision-making process.

The goal of this Guide is to help tribal courts create or modify clerkships in their tribal court systems.

Tribal judges can adapt the information presented here to suit their court’s needs.

The Guide contains six parts, followed by appendices.

¹ Massey Mayo Case & Jill E. Tompkins, A GUIDE FOR TRIBAL LAW CLERKS AND JUDGES, 9 (University of Colorado Law School 2007) (ebook).

PART I. provides a general introduction to judicial law clerks. It offers a broad overview of the various types of clerks and their functions. It presents the overall benefits of hiring a clerk, which include aiding with legal research and writing, and with court operations and administration.

PART II. helps tribal courts create new judicial law clerkships. Very few tribal courts have established clerkship programs.² This section suggests multiple funding sources and their websites. It provides tips on preparing to hire a new clerk, and it offers advice on how to initiate the hiring process.

PART III. helps tribal judges select a judicial law clerk. This section offers different methods and techniques for choosing the right applicant. It also helps judges through the final steps of the hiring process.

PART IV. recommends orientation for the judicial law clerk to help the clerk efficiently adjust to his or her new duties and tribal court facilities. Conducting an initial meeting with the tribal judge, or judges, and the clerk lays an important foundation for the clerkship. Setting clear expectations between the clerk and the judge is essential to the success of the clerkship.

PART V. provides helpful tips for mentoring a judicial law clerk. This section suggests how to best work with and train a new clerk. It includes helpful tips on how to develop an authentic and practical educational experience for the clerk. Some of the topics include how the judge can:

- Provide meaningful feedback to a clerk,
- Mentor the clerk in developing relationships with the court staff, other attorneys, and tribal members,
- Familiarize the clerk with the tribal community, and
- Train the clerk to help with court operations.

PART VI. offers advice on concluding the mentorship. It suggests that the judicial law clerk provide final status updates on projects, and that the judge conduct an exit interview and write an effective letter of recommendation.

This Guide cannot cover every question that will arise when creating a new clerkship. Each tribal court has a unique legal structure and culture that this Guide cannot capture. Instead, it offers a broad portrait of what a clerkship should look like.

2 PLSI Jud. Clerkship Comm., JUDICIAL CLERKSHIP HANDBOOK FOR AMERICAN INDIANS AND ALASKA NATIVES, 18 (Am. Indian L. Ctr., Inc. 2020) (ebook) (hereinafter PLSI JUDICIAL CLERKSHIP HANDBOOK).

A. THE ROLE OF JUDICIAL LAW CLERKS

Judicial law clerks have many distinct roles in various court systems. Clerks are usually recent law school graduates, current second and third year law students, or newly licensed attorneys.³ A judge may have one or multiple clerks. Some tribal courts employ a single clerk for multiple judges.⁴ The clerk's duties depend on the court. This Guide describes various roles and duties that a clerk may perform.

I. TYPES OF JUDICIAL LAW CLERKS

There are various types of judicial law clerks throughout the country. Many of their duties depend on the court's jurisdiction. However, the clerks' primary function is to work closely with judges to handle their caseload. Generally, clerkships fall into two categories: those with trial courts and those with appellate courts. While trial and appellate clerkships operate in similar ways, there are some important differences.

Trial court judicial law clerks are the judiciary's "jacks-of-all-trades" because they assist in anything related to the decision-making process.⁵ A trial court law clerk might research and prepare written materials for the judge; attend hearings, trials, and settlement conferences; draft orders; perform administrative tasks; and do anything else the judge asks.⁶ The clerk reviews the record, briefs, and other submitted materials in a case.⁷ Some clerks observe the progress of a case from beginning to end, while others never see the "finish line" because some cases last longer than the clerkship.

Appellate court judicial law clerkships generally involve less varied tasks than trial court clerkships. An appellate law clerk usually focuses on research, writing, and analysis to help the judge decide cases. He or she will research relevant statutes, case law, and secondary sources.⁸ The clerk researches the issues, prepares a bench memorandum, and drafts an opinion after the appellate court decides the case.⁹ Additionally, the clerk may help the judge prepare for oral arguments by summarizing the main issues and developing questions.¹⁰

3 *Id.* at 2.

4 The Puyallup Tribe has a single clerk working for multiple judges.

5 Mary L. Dunnewold, Beth A. Honetschlager, & Brenda L. Tofte, JUDICIAL CLERKSHIPS, A PRACTICAL GUIDE, 8 (Carolina Academic Press 2010).

6 *Id.*

7 PLSI JUDICIAL CLERKSHIP HANDBOOK, *supra* note 2, at 3.

8 *Id.*

9 Dunnewold ET AL., *supra* note 4, at 9.

10 PLSI JUDICIAL CLERKSHIP HANDBOOK, *supra*, at 3.

2. JUDICIAL LAW CLERKS IN OTHER JURISDICTIONS

Tribal Courts must compete for judicial law clerks with other jurisdictions. The federal courts offer many clerkship opportunities, but the number of openings in state courts varies with a state's population and the resulting size of its judiciary. Inadequate funding limits clerkships at the trial level, but intermediate appellate courts provide more opportunities.¹¹ Generally, a state's highest court offers ongoing clerkship opportunities.¹²

The state and federal court systems have specialty courts on the trial and appellate levels that also employ judicial law clerks.¹³ For example, the federal court system includes the Court of International Trade, the Federal Claims Court, and bankruptcy courts.¹⁴ At the appellate level, opportunities in specialty courts include Military Appeals Court, a Veterans Appeals Court, and a Temporary Emergency Court of Appeals.¹⁵ Some states have similar specialty courts for cases involving tax, worker's compensation, children, and drug courts. Additionally, some administrative law judges in federal agencies hire clerks.

A tribal clerkship experience is very different from federal and state courts because tribal courts may blend tribal law and custom with Anglo-American legal principles.¹⁶ Judges can teach law clerks to handle conflict between tribal members using tribal law and custom.¹⁷ Importantly, tribal judges can promote tribal self-determination and sovereignty by offering a clerkship to Native American and Alaska Native law students and new attorneys.

11 *Id.* at 8.

12 *Id.*

13 Dunnewold ET AL., *supra*, at 16.

14 *Id.*

15 *Id.*

16 Case & Tompkins, *supra* note 1, at 11.

17 *Id.*

B. WHY HIRE A TRIBAL JUDICIAL LAW CLERK?

Having a judicial law clerk can benefit everyone in the tribal judicial system. A clerk can assist the tribal judge with legal research and writing, court services, and administrative duties. Additionally, a tribal clerkship offers many advantages to the clerk because it allows the clerk to contribute to the legal profession and the judiciary. A tribal court clerkship provides a valuable experience to learn the cultural and community values of a tribal court system.

I. RESEARCH AND WRITING

A judicial law clerk's greatest asset is the research, writing, and analytical skills initially developed in law school and then refined under the mentorship of the judge. A clerk expects to research, analyze, write court documents, and act as a soundingboard for the judge during the decision-making process.

The judicial law clerk should learn to research all sources—not just laws and cases but also court practices, court manuals, self-help guides, and administrative manuals.

The judicial law clerk can help the judge with any written projects. The clerk may write a bench memo that objectively evaluates the facts, relevant laws, and the parties' arguments.¹⁸ The judge may prefer to write opinions independently, or may ask the clerk to write a first draft of court orders and opinions.¹⁹ To promote administrative and judicial efficiency, the judge should inform the clerk about his or her preferred writing style. Finally, the clerk helps the judge with proofreading and cite-checking.

A judicial law clerk may brief the judge on issues that require quick resolution.²⁰ Instead of writing time-consuming memos, the judge and clerk may talk about issues prior to a hearing or trial. This meeting offers a chance to discuss any problematic issues, examine the arguments, and discuss the questions the judge might ask the attorneys.

2. COURT OPERATIONS/SERVICES

A judicial law clerk can play an essential role on the tribal court staff by helping the judge run an organized and efficient chamber. Because the court interacts with lawyers and lay persons, there are numerous opportunities to learn about judicial values such as access to justice. Tribal law clerks can help with:

- Providing public resources and documents, such as creating court information sheets and pro se litigant forms;
- Assisting with case management systems to increase the efficiency of the court's docket;
- Rewriting or creating new tribal court forms and rules; and
- Scheduling, organizing records, assembling documents, and phone calls for the judge.²¹

¹⁸ Dunnewold ET AL., *supra* note 4, at 22.

¹⁹ *Id.* at 23.

²⁰ *Id.*

²¹ *Id.* at 25.

3. COURT ADMINISTRATION

Judicial law clerks can assist with court administration, but this should not be their primary function. A clerk may perform additional duties during hearings and trials by marking exhibits, researching evidentiary issues, and preparing jury *voir dire* and jury instructions.²² A clerk can stand in for court staff, if necessary, by setting up the courtroom, announcing the judge, administering oaths, accepting exhibits, and operating court equipment.²³ However, a clerk mainly seeks a clerkship to gain practical legal experience. Therefore, the judge should minimize a clerk's administrative duties to ensure an optimal learning experience.

4. CONTRIBUTION TO LEGAL AND JUDICIAL PROFESSION

The goal of a clerkship is to prepare judicial law clerks for success in the legal profession and the judiciary. A clerkship opens the door to career advancement because clerks develop a "behind-the-scenes" understanding of how courts operate.²⁴

Many employers find this knowledge valuable because a clerk learns how a judge thinks, make decisions, and runs the courtroom.²⁵ Most importantly, a clerkship offers a hands-on opportunity for a tribal judge to train a new prospective judge.

5. CULTURAL AND COMMUNITY VALUES

A tribal clerkship will be the first experience working in an Indigenous community for many judicial law clerks. Clerks will have the chance to develop new relationships within and outside the tribal court. They will learn not only from the judge but also from the cultural community. These relationships offer exclusive opportunities for the clerk to learn and understand tribal customs and culture. Clerks working in Indian country have a unique perspective from which to view alternative forms of dispute resolution and to help tribal judges develop new areas of tribal law.

22 Case & Tompkins, *supra* note 1, at 14.

23 Dunnewold ET AL., *supra* note 4, at 4.

24 *Id.*

25 *Id.*

C. TERMS OF EMPLOYMENT

This section provides a general overview of different types of employment a tribal court may offer to a judicial law clerk. The tribal court may hire the clerk as a tribal employee, intern, extern, or independent contractor. Each position offers benefits and disadvantages to the tribal court. Therefore, the judge must consider which type of clerk the court needs.

I. CONTRACT EMPLOYEES

The tribal court can hire the judicial law clerk as a contract employee, also known as a “traditional clerkship.”²⁶ This position is for new attorneys looking for an “apprenticeship-type” position.²⁷ Traditional clerkships are usually one- or two-year commitments. Some tribal courts retain “career” or “permanent” clerks who assist judges indefinitely.²⁸ These multi-year clerkships are rare and competitive in tribal courts.²⁹ Therefore, the career tribal clerkships are highly sought by prospective candidates.

A traditional judicial law clerk’s terms of employment are determined by contract. These employees might receive fringe benefits, such as paid time off, medical insurance, or retirement contributions. A portion of the clerk’s earnings are withheld for tax purposes, and the hiring organization pays Social Security and Medicare taxes.

2. INTERNS AND EXTERNS

Tribal courts may utilize law students in judicial internships or externships. These positions are short-term and usually span a semester or summer.³⁰ These clerks perform the same work as traditional clerks, but on a limited scale.³¹ These positions are an excellent resource for tribal judges with limited funds. Judicial internships and externships offer an opportunity for tribal judges to see how their courtrooms can benefit from temporary clerks and traditional clerks.

It is important to note that there are limitations for tribal judges when working with law students. The ABA prohibits law students from working more than 20 hours a week.³² Typically, only second- and third-year law students may participate in these programs. In addition, a judge “cannot delegate his professional responsibility to a law student employed in his office.”³³ The extern or intern cannot perform the “professional functions of a lawyer” until admitted to the bar.³⁴ “The student in all [their] work must act as agent for the [judge] employing [them], who must supervise [their] work and be responsible for [their] good conduct.”³⁵

26 Case & Tompkins, *supra* note 1, at 22.

27 *Id.*

28 PLSI JUDICIAL CLERKSHIP HANDBOOK, *supra* note 2, at 2.

29 Case & Tompkins, *supra*, at 23.

30 Dunnewold ET AL., *supra* note 4, at 10.

31 *Id.* at 11.

32 A.B.A., *Frequently Asked Questions* (accessed Aug. 6, 2021), https://www.americanbar.org/groups/legal_education/resources/frequently_asked_questions/.

33 A.B.A. Opinion 85 (1932).

34 *Id.*

35 *Id.*

INTERNS AND EXTERNS CONTINUED

Judicial externships provide law students an opportunity for practical experience. Instead of payment, students earn academic credit. Typically, an extern earns academic credit according to the number of hours worked. For example, one credit hour could require 50 hours of work during the semester.³⁶ Externships usually have a classroom component that requires one or more legal writing projects.³⁷ Many law schools impose limits on the use of students. They may require that a bar-licensed attorney supervise an extern or intern, which is a problem for non-licensed tribal judges.³⁸ However, some law schools make exceptions in these situations.³⁹

Internships are different from externships. These positions can either be paid or unpaid, and the student does not earn academic credit. Interns can work during the school year and summer. If an intern is volunteering, then their schedule can be flexible. Internships can be a convenient way to set up a judicial law clerkship when working with a law school. The law school helps with the hiring process and takes that burden off the tribal court. For example, Seattle University Law School's Center for Indian Law and Policy offers an internship for the Tulalip Tribal Court. The Center selects the interns to work for the Tribal Court. This paid internship is funded by the Tribes.⁴⁰ This collaboration allows the tribal court to employ a continuous rotation of temporary student clerks.

36 *Id.*

37 *Id.* at 24.

38 Case & Tompkins, *supra* note 1, at 23.

39 "At the University of Colorado Law School, tribal judges are qualified as externship supervisors, regardless of whether they are licensed or not." *Id.*

40 Interview with Brooke Pinkham, Staff Dir., Center for Indian Law and Policy (July 2, 2021).

3. INDEPENDENT CONTRACTORS

Independent contractors provide a service for a specific reason or on a limited basis. The length of the service, the scope of work, compensation, confidentiality, and other terms are governed by contract. They may also be referred to as “owner-consultant agreements” or “professional services agreements.” If the tribal court signs contracts with pro tem judges, public defenders, or other consultants, then it may have the option to hire a judicial law clerk as an independent contractor.

Independent contractors are different from employees in several important ways:

- They may not have access to the employer’s resources or records in the same manner as a regular employee;
- They are not eligible for overtime, paid time off, insurance, or other fringe benefits; and
- They are responsible for paying taxes on their earnings.

Federal and state employment and taxing agencies apply certain factors to determine whether a contractor is an employee or an independent contractor. If a taxing agency determines that a person is misclassified as an independent contractor rather than an employee, then the employer must withhold taxes and comply with applicable labor laws governing wages, earnings, and leave.

Individual tribes, grant agencies, and foundations may require specific steps before the court can engage an independent contractor. Examples are:

- Approval by legal counsel, accountant, or administrative official;
- Standard provisions in the scope of work;
- Minimum number of bids from qualified candidates;
- Native American or Alaska Native preference;
- Advertising requirements;
- Funding restrictions; and
- Standard language such as disclaimers about the selection process.



PART II. CREATING A JUDICIAL LAW CLERKSHIP

In this section, the guide provides detailed examples on how to obtain funding, initiate, and prepare for the process and responsibility of hiring a judicial law clerk.

A. OBTAINING FUNDING

"It is well known that [funding] resources are limited in many tribal justice systems."⁴¹ Some tribal courts will have no funds to pay a judicial law clerk. This Guide recommends pursuing tribal funding first. If tribal funding is unsuccessful, then federal funding and foundation grants are good alternatives. Also, recent law school graduates might have access to scholarships and fellowships. Additionally, as discussed above, law schools can be a source of unpaid externs and interns if funding is not available.

I. TRIBAL FUNDING

The search for funding starts with the tribe. Each tribe has its own structure for allocating funds. First, determine which branch of government to approach. One judge may need to request funding from the tribal council, while another may have independent authority to allocate funding.

2. FEDERAL FUNDING

The federal government offers funding to hire tribal law clerks. For example, the Bureau of Indian Affairs (BIA) provides clerkship funding through the office of Tribal Justice Support (TJS) for federally recognized tribes. Congress mandates that the BIA provide training, technical support, and funding, when available, to all tribal courts.⁴² TJS is committed to the "development and enhancement of tribal justice systems."⁴³ It provides appropriated funding upon request from a tribal court and based on a Tribal Court Assessment.⁴⁴ The assessment helps tribal courts create strategic plans.⁴⁵ Tribal courts may apply for TJS funding once a year and re-apply annually. However, a tribe does not need an annual assessment. There is no application deadline, so tribes may make requests at any time. However, avoid applying in September as funds might not be available at the end of the federal fiscal year. If necessary, TJS will grant emergency funding to support a tribal justice system.⁴⁶ For more information on the assessment process, visit www.bia.gov/CFRCourts/Assessments.

The federal government also may have short-term funds that tribal judges can utilize. Because these funds may not be available indefinitely, the court should check whether the government is still offering this funding. Additionally, the tribal court might have to make a creative argument that short-term federal funds should cover judicial law clerks. For example, the American Rescue Plan Act (ARPA) of 2021 might be a resource for funding for judicial clerks.⁴⁷ Through ARPA, Congress allocated "\$772.5 million for tribal government services, public safety and justice, social services, child welfare assistance, and other related expenses."⁴⁸ A tribe may argue that allocating ARPA funds for a judicial law clerk meets the law's requirements.

41 Case & Tompkins, *supra* note 1 at 22.

42 25 U.S.C. § 3601 *et seq.*

43 U.S. Dep't of the Interior Indian Affairs, *Tribal Just. Support Directorate* (accessed Aug. 6, 2021), <https://www.bia.gov/bia/ojs/tjs>.

44 U.S. Dep't of the Interior Indian Affairs, *Tribal Court Assessments* (accessed Aug. 6, 2021), <https://www.bia.gov/CFRCourts/Assessments>.

45 *Id.*

46 *Id.*

47 U.S. Dep't of the Treasury, *Coronavirus State and Local Fiscal Recovery Funds for Tribal Governments* (accessed Aug. 6, 2021), <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-fund/tribal-governments>.

48 U.S. Dep't of the Interior Indian Affairs, *The American Rescue Plan: How It Helps American Indians and Alaska Natives* (accessed Aug. 6, 2021), <https://www.bia.gov/service/american-rescue-plan-act/what-arp>.

3. GRANTS

Grants from federal agencies and nonprofit organizations are available to tribal courts. The Department of Justice (DOJ) launched the Consolidated Tribal Assistance Solicitation (CTAS) in response to concerns raised by tribal leaders about the department's grant process.⁴⁹ "CTAS is not a program but is a single solicitation, under which tribes may apply to seven separate grant programs, from four grant-making offices, through a single application."⁵⁰ Since 2010, CTAS has awarded more than 2,500 grants totaling more than \$1.1 billion to American Indian and Alaska Native communities.⁵¹

CTAS has an **interactive online tool** to assist a person through the application process.⁵² It generally has a set application window. More information can be found at <https://www.justice.gov/tribal/grants> including the helpful online guide *Preparing for the Coordinated Tribal Assistance Solicitation*. In addition, tribes are encouraged to apply for other, non-tribal-specific DOJ grant funding.⁵³ Visit www.justice.gov/tribal for more information.

Nonprofit organizations are another funding source for judicial law clerks. For example, the American Indian Law Center, Inc. (AILC) offers funding for summer clerks and research assistants. AILC's flagship program is the Pre-Law Summer Institute (PLSI) for American Indians and Alaska Natives.⁵⁴ This program prepares Native American law students for the rigors of law school.⁵⁵ PLSI alumni constitute a broad network of potential applicants for summer clerkships. AILC can fund a clerk as a research assistant at a tribal court. The funding for summer research assistants varies from year to year. Please contact **Rodina Cave Parnall** (ailcinfo@law.umn.edu) for more information.

49 U.S. Dep't of Just., Tribal Justice and Safety, *Grants* (accessed Aug. 9), <https://www.justice.gov/tribal/grants> (hereinafter *CTAS Grants*).

50 U.S. Dep't of Just., Coordinated Tribal Assistance Solicitation, *Fact Sheet* (accessed Aug. 9, 2021), <https://www.justice.gov/tribal/page/file/1353346/download>.

51 *CTAS Grants*, *supra* note 46.

52 Office of Juvenile Just. and Delinquency Prevention, *CTAS Online Tool* (accessed Aug. 9, 2021), <https://tribalyouthprogram.org/resources/funding-opportunities/ctas/>.

53 U.S. Dep't of Just. *Grants* (accessed Aug. 9, 2021), <https://www.justice.gov/grants>.

54 Am. Indian L. Ctr., Inc., *What Is PLSI* (accessed Aug. 9, 2021), <https://www.ailc-inc.org/plsi/>.

55 PLSI JUDICIAL CLERKSHIP HANDBOOK, *supra* note 2, at 18.

4. SCHOLARSHIPS/FELLOWSHIPS

A recent law school graduate may approach a tribal court seeking a judicial law clerkship. If the tribal court does not have an established clerkship program, the court may advise the candidate to apply for a scholarship, fellowship, or grant. A tribal judge may need to take an active role in helping a potential clerk secure funding by endorsing a funding application⁵⁶ or writing a letter describing the work, the benefits of the clerkship, and a record of funding.⁵⁷ Some law schools offer public interest fellowships to their graduates. Other organizations that support student fellowships are the MacArthur Foundation,⁵⁸ Equal Justice Works,⁵⁹ and the Skadden Fellowship.⁶⁰ These fellowships are highly prestigious and competitive. Therefore, the judge's help with a candidate's application for a competitive fellowship is essential.

5. LAW SCHOOLS

Some law schools are an excellent source of funding for judicial law clerkships through postgraduate fellowships. If a law school does not have this type of funding, they can facilitate unpaid student internships and externships.

⁵⁶ Case & Tompkins, *supra* note 1, at 18.

⁵⁷ *Id.*

⁵⁸ MacArthur Foundation (accessed Aug. 9, 2021), <https://www.macfound.org/>.

⁵⁹ Equal Justice Works (accessed Aug. 9, 2021), <https://www.equaljusticeworks.org/>.

⁶⁰ Skadden Fellowships (accessed Aug. 9, 2021), <https://www.skaddenfellowships.org/>.

B. PREPARING TO HIRE

This section focuses on judges wanting to work with a judicial law clerk for the first time.⁶¹ The judge should evaluate the court's needs before recruiting a clerk. The judge can assess the potential clerk's duties by collecting in-house data. In addition, a discussion with the court staff will help the judge determine whether a clerk is necessary. The court staff may give valuable insight on areas that need assistance. The judge will need to assess whether there is office space for an on-site clerk or whether the clerk must work remotely. Lastly, the court must determine the clerk's compensation.

I. COLLECTING DATA

An essential first step is to collect in-house data. Evaluating the court's needs for a judicial law clerk can be done in multiple ways. The court can collect data by reviewing the number of cases on the docket. The judge may need to compile a list of reasons to justify hiring a clerk. This Guide provides some helpful questions to help the judge make this determination.

**DOES THE JUDGE NEED HELP REVIEWING PLEADINGS,
MOTIONS, BRIEFS, TRANSCRIPTS, AND RECORDINGS?**

**ARE THERE SPECIFIC AREAS OF FEDERAL OR TRIBAL LAW
IN WHICH THE JUDGE NEEDS RESEARCH ASSISTANCE?**

**DOES THE COURT NEED TO UPDATE ITS PUBLIC RESOURCES
AND DOCUMENTS FOR PRO SE LITIGANTS,
ATTORNEYS, AND COURT STAFF?**

**CAN THE TRIBAL COURT BENEFIT FROM
SPECIAL PROJECTS LIKE SUMMARIZING
AND INDEXING JUDICIAL DECISIONS,
DEVELOPING PROPOSED AMENDMENTS TO
TRIBAL RULES, AND UPDATING THE TRIBAL LIBRARY?**

61 Case & Tompkins, *supra* note 1, at 42.

2. DISCUSSION WITH COURT STAFF

A discussion with the court staff may help the judge determine the judicial law clerk's duties. The court staff may be struggling to fulfill their duties. They may need help maintaining their case management system. They may be performing tasks that are outside their job description. Here are some helpful questions to discuss with the staff.

IS THE STAFF PERFORMING TASKS THAT ARE MORE SUITABLE FOR A JUDICIAL LAW CLERK?

ARE THERE TASKS THAT HAVE PROVEN EXTREMELY CHALLENGING FOR THE COURT CLERK?

ARE THERE WRITTEN TASKS THAT THE COURT CLERK SPENDS MORE
THAN HALF OF THE WORKDAY ATTEMPTING TO ACCOMPLISH?

IS THE COURT STAFF TRAINED TO DO LEGAL RESEARCH?

3. COURT FACILITY

This section deals with the potential limitations of the tribal court's facility. The judicial law clerk may not be able to work on-site due to lack of office space and/or nearby housing. In that case, a remote clerkship may work. Remote work is increasingly common due to the world-wide dislocation caused by the COVID-19 pandemic.⁶² Many law students and attorneys are now accustomed to working remotely via virtual meeting platforms such as Zoom, Skype, and Google Meet.

Of course, there are disadvantages to remote work. An on-site judicial law clerk develops a trusting collaboration with the judge plus first-hand knowledge of the tribal court. A clerk's work in the tribal community can have lasting effects. A clerk may feel unfulfilled by a remote clerkship, so this is an important discussion to have with a potential clerk before a clerkship starts.

4. COMPENSATION

There is no published salary table for judicial law clerks in Indian country, so compensation will vary from tribe to tribe. Some tribes can pay competitive clerk wages, and others cannot. Nonetheless, there is a market for clerkships. Many Native American law students and new attorneys may be actively seeking tribal clerkships despite low wages. The opportunity to work for tribal justice can outweigh the pay scale. A tribal court may want to research the salaries of clerks in local tribes in order to make their clerkship regionally competitive.

Based on the job description, the tribe's human resources (HR) office may conduct a market study. Market studies measure the range of compensation for similar positions in the relevant job market. This range of compensation is applied to the selected candidate's experience and education and a figure is selected within that range. If the position is grant-funded, a market study may be unnecessary.

C. INITIATING THE HIRING PROCESS

After the judge has evaluated the court's needs for a judicial law clerk, the next step is to initiate the hiring process by creating a compelling job announcement. Many clerkships require applicants to submit a packet of materials. The materials help the judge decide who to interview. This Guide offers helpful tips on where to advertise a new clerkship position. See the next pages for more information.

JOB ANNOUNCEMENT

- ☐ JOB TITLE
- ☐ JOB DESCRIPTION
- ☐ LOCATION AND HOUSING
- ☐ DUTIES
- ☐ QUALIFICATIONS AND EXPERIENCE
- ☐ SALARY AND BENEFITS
- ☐ NATIVE AMERICAN OR ALASKA NATIVE PREFERENCE
- ☐ MATERIALS
- ☐ DEADLINE

MATERIALS

- ☐ RESUME
- ☐ COVER LETTER
- ☐ LETTERS OF RECOMMENDATION
- ☐ PROFESSIONAL AND PERSONAL REFERENCES
- ☐ TRANSCRIPT
- ☐ WRITING SAMPLE

I. JOB ANNOUNCEMENT

When creating a job announcement, consider the judicial law clerk's primary function. List the clerk's essential responsibilities and duties. Crafting a compelling job announcement is critical to attracting the most qualified candidates. The key is a balance between providing enough detail about the position while keeping it concise.⁶³ It should lay the foundation for recruiting, developing, and retaining talent.⁶⁴ It sets expectations by clarifying responsibilities, anticipated results, and performance evaluation. A job description typically contains the following components:

JOB TITLE

A job title should be a concise and specific description of the job. "Targeted job titles are more effective than generic ones, so be precise by including key phrases that accurately describe the role."⁶⁵ Specific job titles make it easier for potential applicants to find the position using search engines. *Examples include the key phrases "judicial law clerk," "law clerkship," and "tribal court law clerk."*

JOB DESCRIPTION

Give an overview of the tribe and position expectations, "open[ing] with a strong, attention-grabbing summary."⁶⁶ A description includes an introduction, the clerk's role, and a summary of duties.

LOCATION AND HOUSING

Specify the job's location (on-site, remote) and whether housing is available or provided by the tribe.

DUTIES

Describe the clerk's basic functions and daily activities. The clerk's core duties should be detailed but concise,⁶⁷ with an emphasis on any duties unique to the tribal clerkship.

QUALIFICATIONS AND EXPERIENCE

Define the education and experience required for the position, including any preferred qualifications, such as desired areas of study, and the applicant's status (i.e., law student, recent law graduate, or newly barred attorney).

SALARY AND BENEFITS

List the salary range and fringe benefits.

NATIVE AMERICAN OR ALASKA NATIVE PREFERENCE

Include a statement about Native American or Alaska Native preference if applicable.

MATERIALS

List all required application materials (continued on next page). Specify any required format (i.e., Word document, PDF, etc.) and describe how to submit the materials.

DEADLINE

Clearly state the application deadline. Consider including a statement that late, incomplete, and/or unresponsive applications will not be reviewed or considered.

63 Indeed, *How to Write a Job Description* (accessed Aug. 9, 2021), https://www.indeed.com/hire/how-to-write-a-job-description?gclid=Cj0KCQjw9O6HBhCrARIsADx5qCSgtZBlyzO0KdCFurqtdZzulZks4op7JhaaHNGxCFiJuli3flvAWPQaAn cOEALw_wcB&aceid=.

64 Wright State University Human Resources, *Writing an Effective Job Description* (accessed Aug. 9, 2021), <https://www.wright.edu/human-resources/policies-and-resources/writing-an-effective-job-description>.

65 Indeed, *supra* note 60.

66 *Id.*

67 *Id.*

2. MATERIALS

A typical clerkship application requires a resume, cover letter, letters of recommendation, professional and personal references, transcripts, and a writing sample. These materials help the judge narrow down the pool of applicants.

RESUME

A good resume shows the applicant's work experience, skills, and interests and is tailored to the job opportunity.⁶⁸ A typical resume is between one and two pages.⁶⁹ Experience in law review, moot court, or work as a teaching or research assistant are excellent indicators of research and writing experience. An applicant with a previous judicial externship or internship experience shows familiarity with a clerkship. Competitive applicants will have a high GPA, class rank, and an A– or higher legal writing grade.⁷⁰

COVER LETTER

A cover letter should typically fit on one page with one-inch margins.⁷¹ It introduces the applicant and, most importantly, it explains why the applicant is interested in the position. It should describe the applicant's research, writing, and analytical experience. The cover letter allows the judge to learn about the applicant's personality and it demonstrates the applicant's formal writing skills.⁷² Many judges look closely for any grammatical errors because correct grammar indicates attentiveness to detail.

LETTERS OF RECOMMENDATION

An application may typically ask for one to three letters of recommendation. Determine whether you would like the letters delivered separately by the author, or if the applicant should collect the letters and submit the letters themselves.

PROFESSIONAL AND PERSONAL REFERENCES

In lieu of formal letters of recommendation, it may be advantageous to ask for the applicant's professional and personal references. This allows for a conversation between the reference and the hiring authority that is more personable and tailored to questions that may arise when discussing the potential candidate with the reference.

TRANSCRIPT

Clerkship announcements usually require a law school transcript.⁷³ Specify whether an official or unofficial transcript is required. Be aware that an official transcript may take longer to receive as it may be mailed versus emailed and the applicant will likely need to pay for the cost. If the court is interested in an applicant with exceptional academic achievements, a transcript conveys that information. A judge may also gain insight into the applicant's background and knowledge of specific areas of the law.

WRITING SAMPLE

The writing sample highlights the applicant's analytical skills, comprehension and articulation of legal issues, and ability to reach and defend a well-reasoned conclusion.⁷⁴ Typical samples are between five and ten pages. The sample must reflect the candidate's own work. A good sample includes a cover page with a brief description of the sample, a summary of the facts, a description of any edits by others, or a statement that others have not made any edits.⁷⁵ If the sample is a work product, then it must include a statement that the applicant has permission to use it.

68 PLSI JUDICIAL CLERKSHIP HANDBOOK, *supra* note 2, at 13.

69 *Id.*

70 *Id.*

71 *Id.*

72 Recruiter.com, *11 Things You Should Assess in Every Cover Letter You Read* (accessed Aug. 9, 2021), <https://www.recruiter.com/i/11-things-you-should-assess-in-every-cover-letter-you-read/>.

73 PLSI JUDICIAL CLERKSHIP HANDBOOK, *supra* note 2, at 15.

74 *Id.*

75 *Id.* at 16.

3. ADVERTISING

There are many avenues for advertising a judicial clerkship position:

THE SPECIFIC TRIBE'S WEBSITE,

TURTLE TALK,⁷⁶

THE TRIBAL IN-HOUSE COUNSEL ASSOCIATION,⁷⁷

NATIONAL NATIVE AMERICAN LAW STUDENTS ASSOCIATION,⁷⁸

NATIONAL NATIVE AMERICAN BAR ASSOCIATION,⁷⁹

INDIVIDUAL STATE NATIVE AMERICAN BAR ASSOCIATIONS,⁸⁰ OR

INDIAN LAW SECTIONS OR LISTSERVS,⁸¹

AND A LAW SCHOOL'S JOB PORTAL.

There are several ways to recruit judicial law clerks as independent contractors. Most of them require the judge to craft a scope of work and minimum qualifications, which should reflect the judge's expectations and the court's specific needs.

REQUEST FOR QUALIFICATIONS (RFQ)

RFQs set forth criteria for the successful candidate and invites interested candidates to submit their qualifications using a resume and letter of interest and/or other supporting documents. RFQs can be a stand-alone requirement when compensation is fixed (particularly in situations in which the position is grant funded) and can be used to screen out less-qualified candidates.

REQUEST FOR PROPOSALS (RFP)

RFPs are generally used for professional solicitations when the court seeks a career clerk with a specific legal education and relevant experience. Compensation typically is negotiable. Although an RFP may be too formal for judges seeking new attorneys, law students, or graduates with legal training, it may be required by the judge's employer or an external funding entity.

CALL FOR APPLICATIONS

A Call for Applications is less formal announcement to invite candidates to apply based on the criteria in the announcement.

These announcements should be distributed to resources visited by prospective judicial law clerks such as law schools, tribal organizations, and sites that provide resources relevant to Indian law and tribal law practitioners. General employment sites such as Indeed.com do not always reach the target pool of candidates. The judge can decide whether these sites are suitable.

76 Turtle Talk, *Job Announcements* (accessed Aug. 9, 2021), <https://turtletalk.blog/2021/08/06/job-announcements-10/>.

77 Tribal In-House Counsel Association, *Job Announcements* (accessed Aug. 9, 2021), <https://tica.wildapricot.org/Job-Announcements>.

78 National Native American Law Students Association, *Career & Internship Board* (accessed Aug. 9, 2021), <https://www.nationalnalsa.org/career>.

79 National Native American Bar Association, *Job Postings* (accessed April 18, 2022), <https://www.nativeamericanbar.org/job-postings-2>.

80 California Indian Law Association, *Job Announcements* (accessed April 18, 2022), <https://www.calindianlaw.org/job-announcements.html>.

81 Oregon State Bar Indian Law Section, *Employment Opportunities* (accessed on April 18, 2022), <https://indianlaw.osbar.org/employment-opportunities>.

D. RESPONSIBILITY OF HIRING

The judge should decide who will participate in the hiring process, which can be lengthy and time-consuming. The judge may not have time to handle the entire process. Therefore, enlisting the help of other judges, court staff, tribal council, and tribal members may be necessary. However, the judge should make the final decision.

I. THE JUDGE

If the judge has sole authority to hire the judicial law clerk, then the hiring process likely depends on what law governs, if any. There may be tribal employment regulations including:

TRIBAL/NATIVE AMERICAN OR ALASKA NATIVE PREFERENCE

VETERAN PREFERENCE

MERIT-BASED EMPLOYMENT (HIRING BASED ON ABILITY TO PERFORM)

STANDARDIZED POSITION DESCRIPTIONS

INTERNAL VERSUS EXTERNAL HIRING

ELIGIBILITY FOR EMPLOYMENT BENEFITS

Even if there is no applicable regulation, the tribe's governing body may have adopted a hiring policy. An external funding entity may require a drug-free workplace, a criminal background check, and minimum education and work experience.

2. HUMAN RESOURCES OR ANOTHER AGENCY

Some tribes use an Human Resources (HR) department to oversee hiring. The department manages the relationship between the employee and the employer. These departments often develop standardized job announcements, position descriptions, and applications. Other tribes may have administrative officials in charge of hiring. While the judge may make the final hiring decision, the nuts and bolts of the process are handled by the HR team or the administrative official. The judge should ensure that any funding requirements or other conditions are met.

During the hiring process, HR sends the judge the list of applicants and may identify which applicants satisfy hiring-preference criteria and meet the minimum qualifications. The judge should review each application carefully to identify the most suitable candidates. When the judge has selected one or more candidates, HR may reach out to contact references and to set up interviews. This is a good stage of the process to assign applicants a research and writing project with a firm deadline. Candidates who miss the deadline may not be invited to an interview.

Prior to the interview, HR may present standardized questions and ask the judge for a list of job-specific questions. Examples of these questions are located in Appendix C. There may be an interview panel of one or more judges, an HR representative, and/or a tribal official who works with the tribe's justice system. Even though HR facilitates the hiring process, the judge or the panel decides who to hire. HR works with the judge on the start date, time, and location.

PART III. SELECTING A JUDICIAL LAW CLERK

Selecting a judicial law clerk should be a thorough process. "Not only must you be comfortable with the selection, but the court staff must feel at ease with the person selected."⁸²

The candidate must be a good fit with the tribal court staff because the clerk will interact with the staff daily. Therefore, the judge should choose the appropriate person very carefully.

This section offers tips on interviewing candidates, narrowing the applicant pool, selecting a candidate, and the final steps of the hiring process.

A. CHOOSING A CANDIDATE

This section provides guidance about navigating through a pool of candidates and offers tips on interviewing, writing tests, approvals, and job offers.

I. INTERVIEWING CANDIDATES

The interview process begins after the court has narrowed down the candidates based on their submitted materials. Many judges will not interview candidates who provide poorly written materials. Some judges have the court staff analyze the materials and vet the candidates before the interviews.

After the court selects applicants to interview, the next step is to prepare for the interviews. The tribal court should determine if the interviews will be in person or remote. The candidate's answers will give insight into his or her background and skills and can clarify the judge's broader, more significant questions.



BROAD AND SIGNIFICANT QUESTIONS

IS THE CANDIDATE TRULY INTERESTED IN TRIBAL LAW AND TRIBAL COURT?

HAS THE CANDIDATE RESEARCHED THE TRIBE AND THE COURT?

IS THE CANDIDATE SENSITIVE TO THE DIFFERENCES AMONG
FEDERAL, STATE, AND TRIBAL COURTS?

WILL THE COURT STAFF AND THE COMMUNITY BE
COMFORTABLE WITH THIS CANDIDATE?

CAN I WORK CLOSELY WITH THIS CANDIDATE UNDER STRESSFUL CIRCUMSTANCES?

WILL I END UP REDOING THIS CANDIDATE'S WORK PRODUCT,
OR WILL IT BE DONE RIGHT THE FIRST TIME?

WILL THIS CANDIDATE KEEP CONFIDENCES?

WILL THIS CANDIDATE BE RELIABLE AND EFFICIENT?

The interview should allow the judge to understand the applicant's thought process and ability to make judgments.⁸³ "The interview should be a conversation, during which the applicant demonstrates [their] competency, judgment, personality, and interest."⁸⁴ It reveals how well the applicant articulates their thoughts, level of self-confidence, maturity, and overall preparation. The interview is an opportunity for the applicant to establish a good rapport with the judge. The hired applicant will spend the majority of their time with the judge. Therefore, the judge should enjoy the applicant's company and personality.

83 *Id.* at 57.

84 *Id.* at 58.

2. WRITING TEST

Some tribal courts administer a writing test after the initial interviews. Typically, the test is an assignment that allows the judge to assess an applicant's research and writing skills. The judge may ask applicants to complete a draft opinion or bench brief.⁸⁵ Everyone gets the same writing assignment so that the judge can compare writing styles and skills on a level playing field.⁸⁶

The writing test reduces the applicant pool to a final candidate. It can present a typical problem that the judge encounters on a daily basis or a more challenging question. It should pose a real or hypothetical problem tailored to the court's needs. The problem may involve tribal law on an Indian law issue. An Indian law problem allows the candidate to demonstrate the ability to research the tribe's law, policy, and culture.

The test assignment should require the candidate to research and write a memorandum for the presiding judge. The judge should include precise formatting details in order to see how well a candidate follows instructions.⁸⁷ The test should include a short deadline, such as one or two weeks.⁸⁸ A time constraint demonstrates an applicant's productivity and ability to work under pressure.

3. APPROVAL

Once the judge chooses a candidate, they may need to confer with other tribal entities for final approval and to determine if the candidate must submit any additional materials.

4. EXTENDING AN OFFER

A judge may extend a job offer at the end of the interview, within a few days after getting approval, or in a few weeks after reviewing the writing test.⁸⁹ A judge may make an "exploding offer," which the candidate must accept immediately, or the offer expires.⁹⁰ Most candidates apply for multiple clerkships, so the candidate may want additional time to consider the offer and to negotiate some details. Usually, a candidate accepts the offer by phone when the judge calls. The judge may also send an offer letter that requires the offeree to submit an acceptance letter.⁹¹

85 PLSI JUDICIAL CLERKSHIP HANDBOOK, *supra* note 2, at 20.

86 *Id.*

87 *Id.*

88 *Id.*

89 *Id.* at 21.

90 *Id.*

91 *Id.*

B. HIRING A JUDICIAL LAW CLERK

After the judge selects a judicial law clerk, the court needs to complete additional paperwork to comply with the tribe's employment process. The judge needs to write a clerkship contract for services, and may need to complete law school paperwork for judicial interns and externs.

I. EMPLOYMENT

Employment processes vary widely from tribe to tribe. The judge should inquire about the tribe's hiring process to determine what steps are needed to advertise, interview, select, and hire a judicial law clerk. This Guide describes a general hiring process.

2. SERVICES CONTRACT

The contract should reflect the expectations and duties of the judicial law clerk. The clerk will have discretion on how to complete the duties and projects assigned by the judge, but the judge must provide clear instructions with deadlines, review, and feedback. The contract should include the scope of work, compensation, duration, behavior and conduct, ownership of work product, modification, liability, reporting supervisor, and the court resources the clerk can access, such as equipment, library resources, and legal databases.

A sample contract for services is attached [Appendix L]. The tribal court may require final approval or execution of the contract by another official or entity. If required, the judge should check with their employer and any external funding entity to make sure all necessary provisions are in the contract. The contract should include termination provisions, such as:

- End of the contract period;
- Loss of funding/end of funding period;
- Failure to comply with contract terms (breach); and
- Any/no reason with notice given a fixed number of days/weeks in advance.

The contract should specify what the clerk must submit at the end of the clerkship: memos, research, notes, access passes, keys, etc. As a best practice, the contract should require the clerk to write a transition memo that describes the status of pending and completed projects. This memo helps the judge evaluate the clerk's performance and complete any outstanding projects (or assign them to the next clerk).

3. INTERN/EXTERN

Most law schools require a contract for internships and externships. The hiring process will vary according to the contract. For example, a judge may need to consult with the law school's internship or externship committee to submit the correct paperwork. Every law school has specific requirements, and the student is responsible for learning and meeting them.⁹² Before starting a position, the intern/extern should thoroughly review and understand the law school program guidelines.

PART IV. ORIENTATION

This section offers guidance on orientation. Thorough orientation to the court lays a solid foundation for a successful clerkship. It helps the judicial law clerk determine where they “fit” in the tribal court system. Many courts throw clerks into their new positions without initial guidance on their roles and duties. The first opportunity to engage with the tribal judge is a significant learning opportunity that the clerk may never have again.

A. ORIENTATION

Orientation can take many forms. It can be a quick tour of the court or a more formal process. The court may already have a procedure in place. If no procedure is in place, the judge may:

- Conduct an initial meeting with the judicial law clerk;
- Introduce the clerk to the court staff;
- Discuss confidentiality and ethics rules;
- Brief the clerk about office protocols, such as punctuality, security, safety, emergency procedures, filing systems, routing phone calls, dress code, computer usage, and research databases such as Lexis/Nexis and Westlaw; and
- Assign first projects to the clerk.

I. INITIAL MEETING

The judge should hold an initial meeting with the judicial clerk on day one to set expectations. This meeting sets the tone for an open and accessible working relationship between the judge and the clerk. The clerk needs to be familiar with confidentiality and ethics rules. The judge should assign first projects and provide required materials to the clerk at this meeting. This meeting allows the judge to explore what the clerk seeks to accomplish during the clerkship. It gives the judge an opportunity to get to know the clerk a bit more. Here are a few suggested discussion topics:

- Let the clerk know how the judge can help them succeed;
- Assess the clerk's understanding of the job;
- Ascertain the clerk's learning or development goals; and
- Develop a shared understanding with the clerk about what to expect.

2. ETHICS

Judicial law clerks need clear training from the judge on the requirements they must strictly meet during the clerkship. On day one, the judge should require the clerk to carefully read important documents such as standards of conduct, codes of ethics and professional responsibility, rules of judicial conduct, court rules of employee conduct, and any general tribal government employee manual.⁹³ If the court does not have written ethics rules, the judge can require the clerk to review the Federal Judicial Center's publication *Maintaining the Public Trust: Ethics for Federal Judicial Law Clerks*.⁹⁴

"Tribal judges are held to the highest ethical standards," and their clerks are, too.⁹⁵ The ethics rules ensure that a judicial law clerk acts honestly and is loyal toward the tribunal. These ethics rules apply outside the court and in the tribal community. The clerk represents the tribal court and must be mindful of that responsibility by restricting their behavior outside the courtroom. For example, some tribal courts hear cases involving the tribe's gaming enterprise, so the tribal court may prohibit judges and clerks from gambling at tribal facilities to avoid the appearance of impartiality.⁹⁶ In addition, the judge may restrict the clerk from socializing with the tribal community.⁹⁷ Prohibiting the clerk from using alcohol and legal recreational drugs helps to avoid any appearance of impropriety. The clerk may be a tribal court liaison with outside entities, which could risk the tribal court's appearance of impartiality.⁹⁸ In addition, the clerk should be mindful of the postings on their public social media accounts.

The ethics rules also apply to cultural matters. Some ethics rules are unique to tribal courts. For example, if gift-giving is a custom or tradition, it will be problematic if a party in a pending tribal court case presents a gift to the clerk.⁹⁹ Accepting unsolicited gifts may pose an ethical concern about out-of-court communications and the appearance of impropriety and undue influence.¹⁰⁰

93 *Id.* at 33.

94 Fed. Jud. Ctr., *Maintaining the Public Trust: Ethics for Federal Judicial Law Clerks* (accessed Aug. 9, 2021), https://www.fjc.gov/sites/default/files/materials/24/Maintaining_the_Public_Trust_Revised_4th_Edition_2019.pdf.

95 Case & Tompkins, *supra* note 1, at 33.

96 *Id.* at 35.

97 *Id.*

98 *Id.*

99 *Id.*

100 *Id.*

3. CONFIDENTIALITY

Confidentiality and conflict-of-interest rules apply to judicial law clerks,¹⁰¹ so they must be cautious about discussing their work with non-employees of the tribal court.¹⁰² Judges rely on their clerks to keep confidences when conversing with other judges and other court staff.¹⁰³

Confidentiality might be more challenging if the judicial law clerk works remotely. The clerk may need to include a confidentiality statement in all e-mail correspondence.¹⁰⁴ If the clerk participates in video meetings and hearings, then the judge should ensure that no third parties are with the clerk at their remote worksite.¹⁰⁵ Additionally, the clerk may need to keep electronic files stored in a secured location. Sending files over the internet may require additional software to ensure confidentiality.¹⁰⁶ The court may require the clerk to delete electronic files once the clerkship has ended.¹⁰⁷ The judge may need to remind the clerk that the confidentiality rules are life-long and that the clerk may not disclose work-derived information after the clerkship ends.¹⁰⁸

4. OTHER TRIBAL COURT MATERIALS

The judge should give the judicial law clerk relevant materials to promote the clerk's success. It is unlikely that the clerk will have an in-depth knowledge of a particular tribal court.¹⁰⁹ Because many tribes do not publish their tribal constitution, code, or court opinions, the judge must give the clerk access to this body of law and to the tribal law library. Giving the clerk a brief history of the tribe to read and briefing the clerk on tribal customs and traditions will provide helpful context.

101 *Id.* at 34.

102 *Id.*

103 *Id.*

104 *Id.*

105 *Id.*

106 *Id.*

107 *Id.*

108 *Id.*

109 *Id.* at 47.

PART V. MENTORING A JUDICIAL LAW CLERK

The judge is the key role model and mentor for the judicial law clerk.¹¹⁰ The clerk accepted the job to learn directly from the judge, so the judge should help the clerk develop professional job skills and relationships. This section offers tips and methods for training clerks plus guidance for handling challenges and solving problems.

A. WORKING WITH A JUDICIAL LAW CLERK

"Mentoring a judicial law clerk will come naturally and easily to you if you enjoy working with them and respect your clerk's abilities."¹¹¹ The foundation of a stable clerkship is having open communication. The judge should ensure that the clerk feels comfortable coming to them for advice and guidance.¹¹² An open-door policy is foundational. "As much as possible, allow the clerk to freely express themselves and test their legal reasoning."¹¹³ The judge should provide meaningful feedback to the clerk, which will improve the clerk's productivity. The judge's assistance in developing a clerk's relationships inside and outside the courtroom ideally will create lasting formative experiences for the clerk.

I. PROVIDING MEANINGFUL FEEDBACK

The judge's role is to give instructive feedback on the judicial law clerk's work product and habits by communicating effectively. The best teaching opportunities usually come out of everyday occurrences.¹¹⁴ These occasions allow the judge to point out lessons, pitfalls, and alternative perspectives. For example, after an oral argument or hearing, the judge can explain the disposition of the issues and instruct the clerk to prepare a draft opinion or order. Explaining how to prepare the draft is better than merely describing it.¹¹⁵ The judge should help the clerk solve problems by asking questions, posing alternative methods, and prodding the clerk to find solutions.¹¹⁶

2. DEVELOPING RELATIONSHIPS

A judicial law clerk develops a relationship with the judge and the legal community. The clerkship should help build the clerk's self-confidence.¹¹⁷ Clerking in a tribal court allows the clerk to meet other lawyers. These relationships can lead to avenues for career advancement. Additionally, the clerk develops a relationship with the tribal community that can enhance the quality of the clerkship experience and the clerk's future law practice.

111 *Id.*

112 *Id.* at 43.

113 *Id.*

114 Being an Effective Mentor 101, Practical Strategies for Success, 8.

115 *Id.*, 9.

116 *Id.*

117 Dunnewold ET AL., *supra* note 4, at 6.

3. PROJECTS

Most of the judicial law clerk's projects and tasks should be legal in nature and helpful to the judge and the tribal court.¹¹⁸ Traditionally, a clerk helps the judge handle high-priority work, but the judge also may assign low-priority projects that are important to the tribal court. Whatever the project, the judge should try to "ensure that it requires in-depth legal research, writing, and analysis."¹¹⁹ The clerk may assist with:

RESEARCHING RECENT DEVELOPMENTS IN INDIAN LAW
AND PROPOSING WAYS TO INCORPORATE IT INTO
THE TRIBAL JUDICIARY SYSTEM

HELPING TO DEVELOP NEW INITIATIVES,
SUCH AS A PEACEMAKING COURT

INVESTIGATING THE TRIBAL COURT'S JURISDICTION AND
AUTHORITY, AND FORECASTING POSSIBLE LEGAL CHALLENGES

DRAFTING PARTS OF A GRANT APPLICATION

DEVELOPING NEW COURT PROTOCOLS

118 Case & Tompkins, *supra* note 1, at 49.

119 *Id.*

B. TRAINING A JUDICIAL LAW CLERK

I. RESEARCH AND WRITING SKILLS

Research, writing, and analysis are a judicial law clerk's core skills. Therefore, each project should give the clerk the opportunity to research relevant sources and authorities, and to write in the appropriate style. The ability to adapt writing styles to different levels of comprehension is an important skill. The clerk should be exposed to different writing styles directed at judges, law-trained professionals, court-trained professionals, and the general public.

2. JUDICIAL WRITING

Judicial writing is a skill that a judge develops throughout their career. It differs from persuasive writing because it is not intended to take one party's position over another. Judicial writing determines facts, interprets the law, and applies facts to the law. Teaching this technique to a judicial law clerk prepares them for more advanced tasks, such as writing bench memoranda and orders.

In addition, the judge trains the judicial law clerk on judicial reasoning. This training gives the clerk powerful insight into the judicial process. Therefore, the judge should take the time to review the record, discuss hearings and research, and break down issues with the clerk.

3. COURT ADMINISTRATION

A court is more than the cases it hears. It is a complex system with processes that lay a path to the court and ultimately to the resolution of a dispute. Understanding the process and the tools needed is an important part of learning how a court operates. The judge's role is to make sure the process includes the benchmarks of a justice system: access, fairness, due process, impartiality, clarity, and resolution.

A judicial law clerk can contribute to this system by developing operating procedures, forms, guides, and training for court staff and litigants. Each task gives the clerk the opportunity to research the law, interview stakeholders, prepare documents, and adopt different writing styles.

4. COURT CLERKS

The judicial law clerk may work closely with court clerks. Maintaining a productive working relationship with the court clerks is critical to a well functioning judicial system. The judicial law clerk may review documents and court records, prepare orders, and develop procedures based on the court clerks' input. The judicial law clerk must become familiar with the role of the court clerk in order to understand how a court operates.

5. TECHNOLOGY

The COVID-19 pandemic demonstrated the value of information technology in providing court services to tribal communities. Information technology has gone far beyond word-processing software. The judicial law clerk can research software and other technological solutions to enable the court to improve services to the tribal community in areas such as:

- Video conferencing;
- Case management;
- GPS monitoring and drug/alcohol monitoring;
- Management of child custody matters;
- Social media and evidentiary rules; and
- Crime, domestic violence, and family wellness matters.

6. CULTURAL AND COMMUNITY VALUES

"Tribes are sovereign nations with their own rules, customs, and traditions."¹²⁰ The judge should train the judicial law clerk on the tribe's history and constitution. The clerk needs to be familiarized with the tribal laws, unwritten traditions, and customs. Additionally, the judge should teach the clerk the distinctive aspects of working in Indian Country.

Many tribal reservations have unwritten customs. "Some tribes may close their doors for reasons that are not common to the Anglo-American system."¹²¹ For example, a tribal court may postpone hearings for a death in the community or tribal holiday.¹²² These customs might be completely foreign to a new clerk. Therefore, the judge should advise the clerk to be sensitive to local customs and respect them.

Lastly, the judge should train the clerk on cultural sensitivity. "A critical aspect of cross-cultural interaction is the attitude one projects. Arrogance is not an admirable trait."¹²³ Many judges and court staff are not law-trained, so it is important for the clerk to respect everyone in the tribal court system. A clerk should not behave as if they write better or are more knowledgeable of the law than other tribal court staff. The clerk should be gracious and humble in the tribal court and community. The judge and court staff should give the clerk advice and direction on these matters.

120 *Id.* at 31.

121 *Id.* at 32.

122 *Id.*

123 *Id.* at 31.

C. REMEDYING ISSUES WITH THE JUDICIAL LAW CLERK

In a perfect world, the clerkship will run smoothly. However, this is not always the case. This section intends to help judges solve problems that can arise when working with a judicial law clerk. The most crucial action for the judge is to document the problems. Each document should specify the problem, the judge's feedback, the clerk's response, and whether the problem was solved.

I. WORK PRODUCT

Work product becomes a problem if the judicial law clerk does not submit an assignment as instructed by the judge on or before the deadline. The judge's written feedback with clear instructions gives the clerk a concrete reference as they work on an assignment. The judge may need to break the assignment into smaller parts and set clear deadlines on each part to keep the clerk on track.

2. INAPPROPRIATE CONDUCT

The judge should specify expectations about the judicial law clerk's on-duty conduct. The clerk's problematic conduct may involve poor appearance, offensive language, lack of professionalism, and/or inappropriate behavior. If the clerk presents conduct issues, then the judge should address them immediately by specifying the conduct and concerns raised, and describing the required improvement.

3. CONFIDENTIALITY

Maintaining confidentiality is essential to the court's credibility. A judge must counsel a judicial law clerk who fails to exercise the appropriate discretion. The judge must act quickly to minimize any potential damage. If the breach violates the terms of employment or applicable law, or if it affects a pending matter before the court, then the judge should consider terminating the clerk. The judge may need to consult with the HR department if the clerk is a direct employee. If a clerk is a student intern or extern, the judge should contact the law school.


In all cases, if the judge determines that a breach has significantly harmed the court's credibility, the tribal community or government, or another affected party or entity, then ending the clerkship early may be appropriate. It is important, however, to follow any applicable law or policy and work with the HR department or a pertinent official to determine whether termination is an option, and whether other steps must be taken first.



PART VI. ENDING THE CLERKSHIP



This section of the guide walks through wrapping up the judicial law clerkship and the importance of ongoing mentorship.



A. WRAPPING IT UP

I. STATUS UPDATES ON PROJECTS

At the end of the clerkship, the judicial law clerk should provide a status update on completed and unfinished projects. While a clerkship may only last a couple months, there will be projects that are ongoing and not completed. It is advisable to instruct the clerk to create a transition memo for the judge and staff to have as guidance about which tasks are left to complete. Not only is the transition memo helpful to the tribal court, but it is a great practice and exercise for the clerk, as such memos will be relevant to their future practice.

2. ORGANIZATION PROJECTS

If a judicial law clerk is assigned an organizational project, it will be important for them to explain the method of organization, often in a memo or instructional guide. This will help future clerks and tribal court staff navigate the organizational project after the clerkship has ended.

3. LETTERS OF RECOMMENDATION OR REFERENCES

It should be expected that a current or former judicial law clerk may request letters of recommendation or a professional reference request from the judge. Be prepared to write letters of recommendation or act as a professional reference for several years after the clerkship, as the clerkship may be one of the clerk's first legal professional positions. Be sure to keep records such as the exit interview and evaluation, as they will help guide you in drafting responses when time has passed between the clerkship and the request.

4. EXIT INTERVIEW AND CLERKSHIP EVALUATION

At the end of the clerkship, the judge should conduct an exit interview to discuss what the judicial law clerk felt worked or did not work with the clerkship. The exit interview is an opportunity to announce whether the judge will continue to be a resource or reference as the clerk moves forward in their career. As a best practice, the judge should consider the question of letters of reference or other post-employment communication before the interview takes place. If the judge had a negative experience with the clerk, they may want to use the exit interview to simply wrap up business.

A clerkship evaluation is an optional tool for evaluating the clerkship successes and potential improvements. An evaluation can be oriented to provide feedback to the clerk or feedback to the tribal court. It can be a useful tool to highlight and praise as well as provide constructive criticism. A written evaluation may be an easier way to get honest feedback versus an exit interview.

Both the exit interview and clerkship evaluation are helpful tools for the clerk and the tribal court and can be used to make improvements for future clerkships, analyze the effectiveness of the clerkship, and provide an assessment on efficiency, training and overall satisfaction.

B. ONGOING MENTORSHIP

The end of a clerkship does not have to mean the end of the professional relationship between the judge and the clerk. It is beneficial to remain in a mentoring role with the clerk as they advance on in their legal career. Facilitating the mentor relationship benefits the legal profession as a whole and encourages the clerk to consider a judgeship later in their professional career. Continuing the mentorship may open doors to the clerk that could provide for future employment with the tribal court, and to continue work in tribal courts and within Indian Country.

CONCLUSION

THIS GUIDE IS PRIMARILY INTENDED TO HELP TRIBAL COURTS ESTABLISH AND ADMINISTER THEIR FIRST JUDICIAL CLERKSHIPS .

IT MAY ALSO SERVE AS A HELPFUL REMINDER OF DO'S AND DONT'S TO TRIBAL COURTS WITH WELL-ESTABLISHED CLERKSHIPS.

In either case, the **American Indian Law Center, Inc.**, and the **National American Indian Court Judges Association** hope that tribal judges everywhere will find this Guide and the resources in the Appendices to be practical tools that they can use for years in the process of enhancing the judicial branch of tribal government.

ACKNOWLEDGMENTS

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THE AMERICAN INDIAN LAW CENTER, INC.

The American Indian Law Center, Inc. is the oldest existing Indian-managed and Indian-operated legal and public policy organization in the country. AILC is a 501(c)(3) non-profit corporation. It aims to strengthen, promote, and honor Indian Country communities through education, training, and leadership.¹²⁴ Its mission is to provide training and technical assistance to tribes, tribal organizations, and tribal courts. AILC accomplishes its mission by focusing on three main areas:

- The Pre-Law Summer Institute,
- Policy and Legal Analysis, and
- The Southwest Intertribal Court of Appeals (SWITCA).

AILC has worked with officials from more than 20 states, hundreds of tribes, and Native American organizations. It has trained thousands of professionals and paraprofessionals. As a result, AILC has unique, in-depth knowledge about tribal institutions, including tribal courts and their place in the tribal government, and about tribal, state, and federal relations.

THE NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION

The National American Indian Court Judges Association (NAICJA) is a national association comprised of tribal justices and others committed to assisting and supporting tribal justice systems. NAICJA is a 501(c)(3) non-profit corporation established in 1969. Its mission is to strengthen and enhance tribal justice systems through education, information-sharing, and advocacy. NAICJA focuses on securing resources and providing training and technical assistance for the daily functioning of tribal justice systems. Additionally, NAICJA is the national voice of tribal justice systems when advocacy is needed. NAICJA ensures that quality, culturally appropriate tribal judicial education is available nationwide. Finally, the association provides support to tribal judiciaries by creating opportunities for networking and mentorship.¹²⁵

124 Am. Indian L. Ctr, *About Us* (accessed Aug. 10, 2021), <https://www.aile-inc.org/>.

125 Nat'l Am. Indian Ct. JJ. Ass'n, *About Us* (accessed Aug. 10, 2021), <http://www.naicja.org/about-us/>.

PART VII. LIST OF APPENDICES

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Appendix A: Sample Job Descriptions

JOB ANNOUNCEMENT

Judges Law Clerk / Appellate Clerk RED LAKE NATION TRIBAL COURTS



Open: March 8, 2021-Until filled

Primary Function:

Responsible for providing administrative support for Judicial Staff by drafting proposed court orders, corresponding, assembling and organizing quarterly appellate court terms, assembling case materials; providing information and explaining processes to filers petitioning the court; writing reports and legal memoranda. Reports to Chief Judge and Associate Judges, full-time position, benefits, salary; DOQ.

ESSENTIAL RESPONSIBILITIES AND DUTIES:

- Prepares legal drafts of proposed court orders, assembling and organizing files for judges and assisting those filing with process information for filing of various civil petitions
- Assemble, organize and maintain appellate court files, serve as clerk of appellate hearings
- Assembles case materials by collecting, organizing and summarizing information, documents, reports, and evidence
- Assist in the quality improvement of the court by helping with Tribal Code, reviewing Federal Laws and court opinions including precedents and reasoning, and trends using standard print texts and computers; preparing legal memoranda.
- Maintain appellate court calendar by entering and updating scheduled hearings, communication and correspondence with the appellate panel and organizing the quarterly term and any special term of the appellate court, ensure notice and availability of parties to appellate hearings, serve as the clerk of appellate court and maintain the appellate files
- Keeps up to date on revisions to current Tribal Code and Federal Laws as it pertains to Indian Country.
- Perform other duties as assigned.

EDUCATION/WORK EXPERIENCE/QUALIFICATIONS:

- Preferred higher education and/ or legal experience, writing skills
- Excellent organizational skills with the ability to handle multiple tasks.
- Excellent communication skills; verbal and written.
- Able to handle stressful situations in a professional manner.
- Adhere to and have knowledge of the Data Privacy Act.
- Must be of high moral character to uphold the integrity of the Court.
- Computer knowledgeable using various software and other office machines used in the Courtroom
- Knowledgeable in the Tribal Coded and ordinances.
- Employment contingent upon successfully passing Pre-Employment Drug/Alcohol Test and Background Check.

TO APPLY: Applications and copies of certificates/diplomas are accepted at the Government Center – Human Resources Department, P.O. Box 546, Red Lake, MN 56671 Phone (218) 679-1847.

Appendix A: Sample Job Descriptions



White Earth Reservation Tribal Council

P.O. Box 448
White Earth, Minnesota 56591
Tel. (218) 983-3285 ext 5852
Fax (218) 983-4343

CHAIRWOMAN
Erma J. Vizenor

SECRETARY-TREASURER
Tara Mason

DISTRICT I
Steven "Pnaky" Clark

DISTRICT II
Kathy Goodwin

DISTRICT III
Kenneth Bevis

White Earth Reservation Tribal Council Job Announcement

Position: Law Clerk
Location: White Earth
Pay: \$22.29/hr

Benefits: Full

Open: 11-10-14
Close: 11-14-14
Status: Full time

The White Earth Reservation Tribal Council is currently seeking a qualified candidate who is responsible for providing duties such as conducting legal research, preparing bench memos, drafting orders and opinions, proofreading the judge's orders and opinions, verifying citations, communicating with counsel regarding case management and procedural requirements, and assisting the judge during courtroom proceedings.

- Reviews, studies and researches laws, court decisions, documents, opinions, briefs, and related legal authorities.
- Compiles references on laws and decisions necessary for legal determinations.
- Confers with judge concerning legal questions, construction of documents and granting of orders.
- Attends court sessions to hear oral arguments.
- Prepares legal memoranda, statement of issued involved and proposed orders, including appropriate suggestions or recommendations to the judge.
- Prepares jury instructions and verdict forms.
- Performs word processing to provide timely, accurate management of cases and performs other duties and responsibilities as required or assigned.

Knowledge, skills & abilities:

- Knowledge of and the ability to follow and apply the policies and procedures of the White Earth Tribal Council and the judicial department.
- Knowledge of laws, legal codes, court procedures, precedents, government regulations, executive orders, agency rules, and the democratic political process.
- Knowledge of administrative and clerical procedures and systems such as word processing, managing files and records, transcription, designing forms, and other office procedures and terminology.
- Knowledge of relevant equipment, policies, procedures, and strategies to promote effective local, state or national security operations for the protection of people, data, property, and institutions.
- Knowledge of the White Earth Reservation demographics, culture, history and lifestyles.
- Ability to write reports, business correspondence and/or procedure manuals.
- Skill in the operation of a personal computer, including related software such as Microsoft Office (Word, Excel, PowerPoint, Outlook) and skilled in the operation of office equipment, including: copiers, fax machines etc.

Qualifications Required:

- **Graduation from an accredited law school.**
- **Licensed to practice law before the highest court of any State.**
- **Must be able to pass a criminal background check and drug screening.**

Mail Applications to: White Earth Tribal Council
Attention: Personnel
P.O. Box 418
White Earth, MN 56591

Download Applications at: www.whiteearth.com

BEO with Native Preference-a Drug Free Workplace-Tests for alcohol and illegal drug use will be required.

Appendix A: Sample Job Descriptions



PUYALLUP TRIBE OF INDIANS

JOB ANNOUNCEMENT



OPENS: JANUARY 14, 2019 **CLOSES:** FEBRUARY 14, 2019
JOB TITLE: LAW CLERK **DEPARTMENT:** TRIBAL COURT
REPORTS TO: CHIEF JUDGE **HOURS:** FULL TIME – 40 HRS/WK
SALARY: BASED ON COMPENSATION MATRIX + BENEFITS

(THIS POSITION IS GRANT FUNDED)

POSITION SUMMARY:

Under the general direction of the Chief Judge, this position is responsible for researching and analyzing intricate, complex and sensitive legal issues and questions for the Tribal Court Judges.

ESSENTIAL DUTIES AND RESPONSIBILITIES

1. Performs legal research, analysis and writing in such matters as statutes, recorded judicial decisions, legal articles, treaties, constitutions and legal codes.
2. Assists in drafting opinions, concurrences and dissents, orders, calendar notices and decisions.
3. Examines or prepares legal documents such as briefs, pleadings, appeals, and case records and other legal documents.
4. Confers with the judge on pending matters.
5. Observes judicial proceedings, attends conferences with attorneys and judges.
6. Acts as arbitrator and liaison between disputing parties and mediates small claims cases and summarizes information for the Judge.
7. Prepares the courtroom for the day's cases.
8. Assures that all parties involved in the day's proceedings are present.
9. Maintains order in the courtroom at all times during the sessions of the court.
10. Maintains integrity of the jury and insures that no outside person makes any communication while they are deliberating.
11. Escorts jurors and witnesses to and from the courtroom. Tends to the needs of the jury, answers all non-legal questions and provides all possible assistance.
12. Contacts, by telephone, all those required in the court session, such as attorneys and witnesses. Calls jurors, by telephone, to appear for jury duty at the next day's session.
13. Acts as law librarian, keeping and monitoring legal volumes and ensuring legal volumes are up-to-date.
14. Performs other duties as assigned.

SUPERVISORY RESPONSIBILITIES

This job has no supervisory responsibilities.

Law Clerk – Tribal Court
11/07 DRAFT



PUYALLUP TRIBAL COURT



JUDICIAL LAW CLERK CANDIDATE RESEARCH ASSIGNMENT

This assignment has two parts:

Part 1: Please read the below hypothetical, review the relevant law, and prepare a memorandum for the presiding judge that answers the questions following the problem.

The memorandum must not exceed 10 pages in length, double spaced, with references cited in footnotes.

Part 2: Using your research, prepare an overview of the legal procedure regarding the initiation of probate proceedings that could be included in a judge's bench book. By way of example only, a sample bench book can be found at <http://www.tribal-institute.org/download/VAWA+Bench+Book.pdf>.

This overview must not exceed five (5) pages in length, with references cited in footnotes.

HYPOTHETICAL

K.T. (female age 39) and J.T. (male age 36) are half-siblings who owned and operated the T-Dome, a convenience store located within the exterior boundaries of the Puyallup Indian Reservation. K.T. is an enrolled member of the Puyallup Tribe of Indians. J.T. is an enrolled member of the Nisqually Indian Tribe. Their mother, A.T. (female age 60), is also an enrolled member of the Puyallup Tribe. K.T.'s father is deceased. J.T.'s father P.J. (male age 55) is a Nisqually Tribal member, lives on the Nisqually Reservation, and fishes for a living. K.T. and J.T. have no other siblings and were raised by their mother, A.T., although J.T. maintains a relationship with his father P.J. through fishing.

K.T. and J.T. share a house on land held in trust within the Puyallup Indian Reservation with K.T.'s son B.T., who is 16 years old and also a member of the Puyallup Tribe of Indians. B.T. attends school at Chief Leschi. He spends his spring break with maternal grandmother A.T. and part of his winter break fishing with P.J. He also works in the storeroom at the T-Dome with his mother and uncle to earn extra money. C.C., B.T.'s father, is listed on B.T.'s birth certificate but his address is unknown, though K.T. observes him playing various machines at the Emerald Queen Casino in Fife.

K.T. and J.T. were killed in a car accident on their way home from the T-Dome. A.T. filed a Petition to Probate an Estate and a Petition for Letters of Administration for both K.T. and J.T. in the Puyallup Tribal Court. A.T. states that neither decedent left a will.

A week before the initial hearing A.T. files a *Motion and Affidavit* for an order to receive B.T.'s per capita payments because he is living with her. She states she filed a petition for guardianship but provides no other information.

1451 E. 31st Street • Tacoma, Washington 98404 • (253) 680-5585

Appendix A: Sample Job Descriptions

Appendix B: Sample Research Assignment

The day before the initial hearing, B.T. and A.T. were sorting through K.T. and J.T.'s house and found envelopes in a desk drawer marked "wills". One envelope contained K.T.'s will, which was typed, signed, and dated by her with J.T. as a witness. The other contained J.T.'s will which was typed, signed and dated by J.T. with K.T. as a witness. Both wills leave the T-Dome and the house to the other sibling and then to B.T. if one sibling predeceases the other. J.T.'s will includes a provision that leaves his fishing gear to P.J. and states "I would like P.J. and Nephew B.T. to keep fishing together because that's the one thing Dad and I could always do without fighting."

In re the estate of K.T. is scheduled for an initial hearing. The file contains A.T.'s petitions to probate estate and for letters of administration, the filing fee receipt, and the *Motion and Affidavit* requesting an order for A.T. to receive B.T.'s per capita payments. There are no other documents in the file.

In re the estate of J.T. is also scheduled for an initial hearing. The file contains A.T.'s petitions to probate estate and for letters of administration and the filing fee receipt. There are no other documents in the file.

The day of the initial hearings, A.T. arrives in court and files copies of the wills. A.T. then asks the Court to appoint her as the administrator and grant her motion for B.T.'s per capita payments. She also asks the Court to change the title to the T-Dome and K.T. and J.T.'s house to reflect her name as B.T.'s guardian.

P.J. appears at the hearing because B.T. called him and tells the judge that he never received notice of the hearing and that J.T. is a Nisqually Tribal member so the Court has no jurisdiction over his probate, and that he intends to file a probate action in Nisqually Tribal Court.

- (1) What documents must the presiding judge review prior to the initial hearing?
- (2) What documents should be in the judge's file?
- (3) What should the judge consider at the initial hearing?
- (4) What findings must the judge make at the initial hearing?
- (5) What orders should the judge issue at the initial hearing?
- (6) What are the Court's next steps after the initial hearing?
- (7) What are the parties' next steps after the initial hearing?

To answer these questions, please refer to the following resources:

<http://www.codepublishing.com/WA/PuyallupTribe/>

<http://www.codepublishing.com/WA/NICS/>

Any other relevant resource that would provide information to the Court and is consistent with Puyallup Tribal law, policy, and culture.

Appendix C: Interview Questions

INTRODUCTION

- Tell me about yourself.¹²⁶
- Why do you want to work for our tribal court?
- Why you have an interest in studying Indian law?

EDUCATIONAL BACKGROUND/WORK EXPERIENCE

- What was your class rank? Do you think your rank is an accurate indication of your abilities?
- Why did you attend your law school?
- Which courses did you like best? Least? Why?
- How do your courses and experiences apply to this clerkship?
- What school and community activities are/were you involved in? Which did you enjoy the most?
- Did you participate in a moot court/journal/clinical program? How did you feel about them?
- What were your past job experiences you had while attending law school? Were they law related?
- What did you like best about law school? Least?
- Describe your most rewarding law school experience.
- Tell me about your volunteer experiences.

EXPERIENCE AND SKILLS INFORMATION

- What is your most recent work experience?
- What qualifications do you have that lead you to believe you will be successful in this clerkship?
- How do you determine or evaluate success?
- How do you spend your spare time? What are your hobbies?
- Why should we hire you?
- How has your law school prepared you to work here?

CAREER GOALS

- Why do you want to be a lawyer?
- What areas of the law interest you most? Why?
- What are you long-term and short-term career goals? When and why did you establish these goals? How are you preparing yourself to achieve them?

¹²⁶ Case & Tompkins, *supra* note 1, at 66.

- What has led you to our tribal court?
- What personal goals are you seeking for in a legal career?
- If you had not chosen a career in law, what would you have done instead?

SELF-ANALYSIS

- What have you learned from some of the jobs you have held?
- Do you believe that you have done the best scholastic work of which you are capable?
- If you could change one thing about yourself, what would it be?
- Are there any types of cases on which you would feel uncomfortable working?
- Could you draft an opinion for a judge even if you did not agree with the outcome?
- Is it an effort for you to be tolerant of persons with a background and interests different from your own? Can you give examples from your own life?
- What two or three accomplishments have given you the most satisfaction? Why?
- What is the greatest obstacle you have had to overcome in your life/career?
- Give me an example of an instance when you were given an assignment under pressure and how you handled it. In retrospect, would you handle it the same way again?
- What do you see as some of the most difficult ethical questions you will have to face as a lawyer?
- Do you prefer working with yourself or with others?
- Do you like routine work and routine hours?
- What do you consider are your greatest strengths and weakness?

KNOWLEDGE OF THE TRIBAL COURT

- What do you know about our tribal court?
- What personal characteristics do you believe to be important for success as a tribal judicial law clerk?
- What are the disadvantages of practicing the type of law you have expressed interest in?

CONCLUSION OR CLOSING

- Is there anything I should know about you that we have not covered?
- Would you like to ask any questions about our tribe in general?

Appendix D: Hiring Checklist

DISCLAIMER: This is a sample document only. The hiring process will be unique for each tribal court, so the person responsible for hiring the judicial law clerk should identify what their organization requires.

STEP ONE – DESIGN THE JUDICIAL LAW CLERK (JLC) POSITION

- Categorize the JLC position.

EMPLOYEE

An average of 30 hours or more per week constitutes full-time employment under the Affordable Care Act for purposes of health care benefits.

EXTERN/INTERN

Review the requirements the college/university has in place for a JLC to be an extern or intern such as whether a licensed attorney must supervise the JLC.

INDEPENDENT CONTRACTOR

Terms of service are established through contract. Review the organization's requirements on hiring independent contractors – in some cases, the tribal court will have complete control over the hiring process, while in others the contract must go through a separate review process before it can be signed.

- Create the job description that focuses on what needs to be done on the job rather than just a listing of skills and years of experience. Identify demonstrated abilities that match what you expect from the JLC.
- Determine compensation using market surveys, externship rules, or other organizational guidelines.

STEP TWO – ADVERTISING THE JUDICIAL LAW CLERK POSITION

- Prepare a job announcement that summarizes the position.

Establish a timeline that includes how long to advertise, the due date for applications, and the hiring deadline. The start date usually depends on the candidate's availability due to school, travel, or other obligations.

- Advertise the job

Your tribal organization may have certain requirements on where the JLC position will be announced and how long it must be advertised.

Cast a wide net if possible – use local colleges and universities to advertise as well as organizations that are known for sharing tribal court-specific positions such as Turtle Talk, the National Native American Bar Association, the National Native American Law Students Association, schools with Indian law programs, the American Indian Law Center, Tribal In-House Counsel Association, regional judicial and Indian law organizations, including state bar associations, and the National American Indian Court Judges Association.

STEP THREE – REVIEW INTERVIEW QUESTIONS AND RESEARCH ASSIGNMENTS

While the position is advertised, review your interview questions and your research assignments, if applicable.

- Interview questions should help you identify the candidate’s understanding of basic principles of tribal justice systems and courts in general.

You might also consider asking questions that identify whether the candidate has researched the tribal community where the court is located.
- Research assignments should help you identify the candidate’s ability to research and apply law to a fact pattern or a judicial process. You want them to be able to find the answer, so provide the resources the candidate should review as part of the assignment. The research assignment can be a more reliable demonstration of skills than a writing sample because it requires the candidates to follow instructions, conduct research and writing relevant to the tribal community, and adhere to deadlines.

STEP FOUR – REVIEW APPLICATIONS

- Before you start reviewing applicants, compile a list of success factors for the job by identifying current and former tribal court personnel who are successful in their roles and noting the similar characteristics, skills, and attributes. For example, the most successful employees in your organization may be strong communicators, respectful, and timely.
- You may also want to form a small review committee composed of court personnel and other judges to discuss how you intend to approach applicants.
- Filter out incomplete applications and late applications. Generally, incomplete applications demonstrate a lack of attention to instructions and late applications demonstrate a lack of attention to deadlines. Circumstances may justify them, however, so use your discretion if either an incomplete or late application comes with an explanation.
- Filter out applications where there is no discernible interest or education in tribal justice systems, Indian law, or tribal law. Some applicants will simply apply for every available job.
- Use the applicants' cover letters to identify their interest in the position. The more tailored the cover letter is to the position, the more interest the applicant may have.
- Use job history to identify the applicant's ability to commit to a position, *i.e.*, did the applicant work beyond a probationary period, stay for the full internship/externship, or have a disproportionate number of jobs over a period that were not time-limited by design (such as job for a school term, a summer, or for a specific project)?
- Use job descriptions to identify the applicant's ability to focus on relevant skills and abilities, *i.e.*, research, write, organize, communicate, apply logic and reason, or exercise discipline and discretion.
- Identify other relevant skills sets from volunteer work, pro bono work, or community organizational work. Many new graduates will have a limited work history but may have an extensive history applying relevant skills to other activities such as non-profit organizations and student government.
- Generally, the candidates better-suited for the JLC position will meet the minimum educational requirements, relevant course work, and relevant skills developed through employment, education, and extracurricular and community activities.

STEP FIVE –SELECT CANDIDATES

- After filtering out the initial round of applications, collect the remaining candidates and determine whether you should conduct a round of interviews.
- Create a scoring sheet that allows you to note the candidates' strengths and weaknesses and compare candidates based on their entire application so far. For example, a candidate with less experience may have a robust educational background.
- For a larger pool of candidates (five or more), you may want to conduct phone or video interviews to narrow the pool down. The interview questions you created should be used here.

Narrow the candidate pool down to four or less candidates during this phase.

- For the smaller pool of candidates, issue the research assignment or request writing samples if you decide not to use a research assignment. Make sure your instructions are clear.
- Review the research assignment or writing samples to evaluate the candidate's research and writing skills.

Some candidates will not complete the research assignment or submit a writing sample. The candidate may have accepted another position or no longer wishes to be considered for the position but has not informed you. Late submissions may come with an explanation, and it will be up to you to decide whether to accept the submission. Pay attention to candidates who have failed to meet the deadlines throughout the application process, even with an explanation.

- Discuss your choices with the committee and determine whether additional information is needed or if you are satisfied with the candidates.
- Schedule interviews. By this time, you should be prepared to conduct in-person interviews if you intend the JLC to work on-site. For JLCs who work remotely, you may want to conduct a video conference instead. You should have a clear idea of their abilities by this point, so use these interviews to get to know the candidates, their work philosophies, and their approach to the work you will assign them.

STEP SIX - DUE DILIGENCE

Due diligence ensures that the final round of candidates have been truthful in their applications.

- Proof of educational requirements – Typically a transcript, diploma, or other document will establish the candidate meets the minimum educational requirement (this is particularly important if a minimum requirement includes graduation from an ABA-accredited law school).
- Proof of preference eligibility – If the organization advertises that Native American preference will be applied, then proof of such eligibility must be provided by the candidate. In some cases, the hiring organization require proof of eligibility directly from organization itself.
- Reference checks – Generally, reference checks are an opportunity to confirm whether the candidate exercised the duties and skills listed in their application. This is also the time to ask about the success factors you gathered previously: whether the candidate demonstrated any of the characteristics, skills, and attributes you identified in your most successful current and former employees.
- Internet checks – For better or worse, the internet is a repository of a candidate's online activities. You can learn about a candidate's cultural fit, personality, passions, skills, and any potentially dangerous beliefs they hold. Information in the public domain, such as applicant's public social media account, public blogs, personal websites, or publications, can be used as a valid method to assess the candidate's organizational, communication or technical skills. Focus on activities that do not fall under any applicable anti-discrimination laws and policies and instead look for items such as hate speech, insults and bullying, illegal drugs, threats of violence, toxic language (particularly when directed to individuals who fall under a class protected by anti-discrimination laws), violent images, and activities that may not reflect the tribal community's values.

If you decide to conduct a social media check, consult with your organization's legal counsel and inform the candidate that part of the due diligence check may include any review of public social media.

STEP SEVEN – HIRING THE JLC

Now that you have had the chance to review the final candidates, identify your top two or three candidates.

- Internally discuss and agree on job offer specifics for the candidate.
- Contact the top candidate to discuss a job offer.
- The candidate may want to negotiate compensation, start dates, attendance expectations (in person, remote, or a combination), and schedule.
- If the candidate does not accept the job offer, contact the next candidate.
- This candidate may also want to negotiate the specifics.
- If you are not able to successfully hire a candidate, you may need to start the hiring process again.
- Once a candidate has verbally accepted the offer, make sure the final offer is committed to writing and obtain the candidate's written acceptance. The final offer must include the job title, nature of position (employee, extern/intern, independent contractor), compensation, number of hours, and start date. If your organization provides moving assistance, include that information and any other documents the new JLC needs to know about joining your organization.
- Contact the remaining candidates and inform them that the position has been filled. You may wish to send a personalized note if you want to build a relationship with the candidate for the future.

STEP EIGHT - ONBOARDING

Establish an onboarding schedule. The schedule ensures that the workplace is prepared for the JLC and the JLC has completed all new hire/extern/intern/contractor paperwork. It also helps prevent the last-minute dash to provide access to the resources the JLC needs to perform their duties. The schedule should also take into account any mandatory orientation or other meetings the tribal organization may require the JLC to attend.

WORKSPACE

If in person, will the JLC have a dedicated workspace such as a cubicle, office, or shared workspace?

If remote, will the JLC spend any time onsite, or will they work remotely for the duration of their clerkship?

EQUIPMENT AND SUPPLIES

Generally, the JLC will need a computer workstation and access to a scanner and printer.

The workspace may also need general office supplies such as note pads, post-its, pens, calendar, folders, binders, and a whiteboard.

ACCESS TO TECHNOLOGY

In addition to a computer and printer, the JLC may need access to the organization's network to access shared folders, shared documents, and software.

The JLC may also need access to Adobe Acrobat, Microsoft Office, and the internet for research.

The JLC may need access to legal research database such as Westlaw if available.

It is important for the JLC to have access to the court's case management software, such as FullCourt or Odyssey.

Will the JLC have an organizational email address or will they use their personal email for correspondence?

ACCESS TO COURT RECORDS

The JLC must have access to the court's case records.

The JLC may also need access to the court's forms and prior orders issued by the court.

HIRING DAY

For employees, the JLC should complete any required forms such as an I-9, benefits enrollment, and W-2.

For externships/internships, contact the educational institution and complete the appropriate paperwork, if needed.

For independent contractors, have the JLC complete a W-9 before they start working.

STEP NINE - WELCOME

INTRODUCTIONS AND SITE TOUR

Send out a welcome message introducing the JLC to the rest of the court and to other professionals who interact with the court.

If working onsite, guide the JLC through the court and introduce them to their colleagues in the court and individuals who interact with the court, such as prosecutors, social workers, public defenders, and probation officers.

ASSIGNMENTS

Prior to the JLC's start date, compile two or three initial assignments. These assignments should be prioritized if they are time-sensitive.

Review the assignments with the JLC and give them an opportunity to ask questions and collect additional information.

Appendix E: Project or Assignment Checklist

CLERKSHIP ASSIGNMENT CHECKLIST

- ☐ Date Assigned:

- ☐ Assignment Title:

- ☐ Final Due Date/Deadline:

- ☐ Interim Deadlines *(Is there an estimate for how much time should be spent on this project? At what point should check-ins occur? (After initial research, after x number of hours, after first draft):*

- ☐ Format Requested (memo/draft pleading; hard copy/email):

- ☐ If there is a sample available of the expectation of the final draft, has it been sent to the clerk?
 - ☐ Yes
 - ☐ No
- ☐ File Name and Location:

- ☐ Any existing research or preliminary information the clerk should review before starting this project? Any suggested primary/secondary research tools?

- ☐ How will this information/document be used?

- ☐ Who is the intended audience?

Appendix F: Sample Performance Evaluation

Employee Name: _____ Supervisor Name: _____

Employee Title: _____ Date of Evaluation: _____

GENERAL INSTRUCTIONS

Performance management is a continuously shared communication process focusing on the individual development of each employee. It is a cycle with expectations communicated at the beginning of the year and a formal evaluation of the employee's performance at the end of the year. However, ongoing communication and coaching are the key components of the process.

Carefully evaluate the employee's work performance in relation to the key job responsibilities and performance standards of the job. Assign points for each rating within the scale and write that number in the corresponding rating area. Points will be totaled and averaged for an overall performance score. Indicate N/A if not applicable and do not count in the overall score.

There shall be at least a formal year-end performance evaluation meeting. The employee's performance of key job responsibilities will be evaluated based on the rating categories listed below.

The first pages of this form are intended to be kept for use by the supervisor and/or employee.

PERFORMANCE RATINGS

(3) Exceeds Expectations: Performance consistently exceeds documented expectations and measurements. The employee consistently does work going far beyond what is expected in terms such as quantity, quality, timeliness, cost, and customer satisfaction. Performance that "Exceeds Expectations" is due to the effort and skills of the employee. Performance is consistently characterized by exceptionally high quality work that requires little or no improvements or corrections. An employee at this level repeatedly makes exceptional or unique contributions to the organization that are above the requirements of his/her duties and responsibilities. An employee performing at this level should be readily recognized by their organization as an outstanding contributor to the organization's mission.

(2) Meets Expectations: Performance consistently meets and occasionally exceeds the defined job expectations and measurements. The employee performs according to expectations. The employee does the job at the level expected for this position and consistently meets what is expected in terms such as quantity, quality, timeliness, cost, and customer satisfaction. The performance is due to the employee's own effort and skills. An employee performing at this level is dependable and makes valuable contributions to the organization. His/her judgments are sound, and he/she demonstrates knowledge and mastery of duties and responsibilities. Most employees should meet expectations in a functional, performing work unit.

(1) Does Not Meet Expectations: Performance does not meet job expectations and measurements and supervisory attempts to encourage performance improvement are unsuccessful. The employee is performing the job at an unacceptable level in terms such as quantity, quality, timeliness, cost, and customer satisfaction, and performance improvement counseling by the manager/supervisor has not resulted in adequate employee performance improvement. Managers/supervisors are required to continue addressing performance issues with an employee with this rating level, documenting management efforts to encourage acceptable performance, and documenting subsequent results on a Performance Improvement Plan. Performance counseling sessions should be guided by next-level management and/or HR, and may result in disciplinary consequences for the employee who fails to demonstrate improvement.

PERFORMANCE FACTORS

Please supply supportive details or comments for each factor.

1. Work Quality

Rating ()

The accuracy, thoroughness, and acceptability of work performed.

2. Productivity Rating

Rating ()

The extent to which the employee efficiently produces volume of work in a specified period of time.

Appendix G: Sample Self Performance Evaluation

This form is to be completed at the end of the Judicial Clerkship.

Name:

Date:

Please answer each question as completely as possible. Include details and examples to highlight accomplishments or areas of concern.

| REVIEW QUESTIONS | RESPONSES/COMMENTS |
|--|--------------------|
| What has gone well so far during this clerkship and is continuing to go well? Identify your key accomplishments and impacts. (This of your primary contributions, deliverables, or ways that others have expressed support for your efforts). | |
| In what areas could you grow and develop? (If you were your own mentor, what suggestions/ performance measures would you give yourself for the future and how would you define success?) | |
| Is there anything the judge and/ or court staff can do to help you improve your performance and/ or job satisfaction? (e.g., additional training, resources, sharing information/job knowledge, clearer communication, etc.) | |
| Are there any improvements the clerkship program should institute for future judicial law clerks? | |

This evaluation is based on my own goals, objectives, and performance. It represents my best judgment of the evaluation period.

Clerk Signature/Date

Judge Signature/Date

Appendix H: Exit Interview Questions

SAMPLE I

EMPLOYEE
MANAGER
START DATE

TITLE
DEPARTMENT
END DATE

We want to provide an opportunity for you to comment on your experience with the Court and to recommend any changes you feel appropriate. Please complete this form as preparation for our discussion.

1. Were your initial objectives for joining the Court met? Please elaborate on how they were met or how they may have changed.
2. What aspects of your job were the most satisfying?
3. Were the duties and demands of this job described accurately during the interview process?
4. Recommend any changes you would like to suggest which you feel would benefit:
 - A. the Court
 - B. your Supervisor
 - C. future Judicial Clerks
5. What kind of feedback did you receive and how frequently? Was the feedback productive?
6. Is there a point of uncertainty or disagreement that you've been unable to settle that you would like to discuss?
7. Was your compensation (including non-monetary compensation) sufficient in recognizing your performance? Why or why not?
8. Would you consider returning to the Court if a position were available in the future? Why or why not?
9. Any additional comments are welcome.

SAMPLE 2

1. Why were you interested in this clerkship?
2. Did you find the tasks involved were relevant to your law school experience?
3. How would you describe the supervisor and mentor experience?
4. Did you understand what was expected of you?
5. Describe some of the most satisfying responsibilities/tasks you were involved in?
6. What did you like most about your clerkship?
7. Are there any suggestions you may have for improvements with the clerkship program?

Appendix I: Sample Confidentiality Statement

Duty of Confidentiality

- (1) A judicial employee should avoid making public comment on the merits of a pending or impending action. This prohibition does not extend to public statements made in the course of official duties or to the explanation of court procedures.
- (2) A judicial employee should not use for personal gain any confidential information received in the course of official duties.
- (3) A judicial employee should never disclose any confidential information received in the course of official duties except as required in the performance of such duties.

A former judicial employee should observe the same restriction on disclosure of confidential information that applies to a current judicial employee, except as modified by the appointing authority. This general restriction on use or disclosure of confidential information does not prevent, nor should it discourage, an employee or former employee from reporting or disclosing misconduct, including sexual or other forms of harassment, by a judge, supervisor, or other person.

Confidentiality Agreement

I, _____, hereby agree to maintain as confidential any and all communications and information about cases before the [Name of court] that occur as a result of my work with the [Name of court]. I understand that I am never to reveal any information acquired in the course of my employment unless I obtain prior written permission from the [authorizing judge]. I understand that if I disclose any confidential information without permission then I may be subject to discipline up to and including termination from employment. Finally, I understand that this duty of confidentiality extends beyond my employment with [Name of court].

Appendix J: Sample Rules of Ethics

SAMPLE I:

1. Integrity and Independence of Court Personnel. Court personnel should uphold the integrity and independence of the judiciary and of the court personnel's office in that an independent and honorable judiciary is indispensable to justice in the tribal community. Therefore, court personnel should observe and impart to other court personnel high standards of conduct so that the integrity and the independence of the judiciary may be preserved and so that the court personnel's office may reflect a devotion to serving the public. These provisions should be construed and applied to further these objectives. The standards of this section shall not affect or preclude other standards which may be promulgated by the Court.
2. Impropriety and the Appearance of Impropriety. Court personnel should not engage in any activity which would put into question the propriety of conduct in carrying out the duties of the office, including but not limited to the following:
 - A. Court personnel should not allow family, social, or other relationships to influence official conduct or judgment. Court personnel shall not lend the prestige of their office to advance the interests of themselves or others, nor should court personnel convey, or others be permitted to convey, the impression that they are in a special position to influence the court personnel;
 - B. Court personnel, as well as family member(s) who reside in the same household as the court personnel, should not accept a gift, bequest, favor, or loan from any person whose interests have come, or are likely to come, before said court personnel or from any other person under circumstances which might reasonably be regarded as influencing the performances of the duties of the office;
 - C. Court personnel should abstain from public comment about pending or impending court proceedings and should require similar abstention on the part of other court personnel. Court personnel should never disclose to any person any confidential information received in the course of official business, nor should such information be employed for personal gain;
 - D. Court personnel should avoid favoritism, unfairness, or nepotism in connection with the hiring, discharge, or treatment of subordinate court staff;
 - E. Court personnel should never influence or attempt to influence the assignment of cases, or perform any discretionary or ministerial function of the Court in a biased manner, which improperly favors any litigant or attorney or other representative, nor imply that such court personnel is in a position to do so; and/or
 - F. Court personnel should not practice law in the same jurisdiction where they are a court employee.

3. Performance of Duties Impartially and Diligently. The official duties of court personnel take precedence over all activities. The official duties include all the duties of the court personnel's respective office as prescribed by law or by order of the tribal court. In the performance of these duties, the following standards apply:
 - A. Court personnel should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the tribal judiciary and the respective court personnel's office; and
 - B. Court personnel should be faithful to the highest standard of the profession and maintain professional competence in it. Also, court personnel should be patient, dignified, courteous, and fair to all persons whom they have contact with in an official capacity such as litigants, jurors, witnesses, lawyers, lay advocates and others, and should require similar conduct from subordinate staff and others subject to their direction and control.
4. Improvement of the Legal System and the Administration of Justice. Court personnel, subject to the proper performance of official duties, may engage in the following quasi-official activities:
 - A. Court personnel may speak, write, lecture, teach and participate in other activities concerning court management, the legal system, and the administration of justice; and
 - B. Court personnel may promote the development of professional organizations and foster the interchange of technical information and experience with others in the profession. Court personnel should be available to the public-at-large for speaking engagements and public appearances designed to enhance the public's knowledge of the operation of the tribal court system.
5. Continuing Educational Activities. Court personnel, regardless of their education and experience prior to being appointed or elected as court personnel, should seek further legal and pertinent non-legal education designed to improve their performance as court personnel.

SAMPLE 2 (MORE DETAILED AND COMPREHENSIVE):

Canon 1. A law clerk should uphold the integrity and independence of the judiciary.

An independent and honorable judiciary is indispensable to justice in our society. A law clerk should observe and participate in establishing, maintaining and enforcing high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2. A law clerk should avoid impropriety and the appearance of impropriety in all of the law clerk's activities.

- A. A law clerk should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. A law clerk should not allow family, social, or other relationships to influence the law clerk's judicially related conduct or judgment. A law clerk should not lend the prestige of the office to

advance the private interest of others; nor should a law clerk convey or permit others to convey the impression that they are in a special position to influence the law clerk.

- C. Law clerks must avoid talking with attorneys about cases before the court. A law clerk must never communicate to the attorneys on a pending case the law clerk's opinion or attitude toward the issues pending before the judge. Moreover, once the decision is announced or opinion issued, the law clerk must avoid comment on it or disclosure of the extent of their involvement with it. However, this rule does not prevent a law clerk from providing as a writing sample to prospective employers copies of an opinion or order issued by the court in which the law clerk serves or had served, provided the law clerk performed substantial drafting and researching work in connection with the opinion or order, and provided further that the authoring judge gives their permission for such use. This rule also does not prevent a law clerk from providing as a writing sample to prospective employers memoranda of law addressing legal issues prepared for the judge for whom the law clerk is employed, provided the judge gives their permission for such use. If engaged in conversation by an attorney about a pending matter, the law clerk should strive to terminate the conversation as quickly as politely possible. The law clerk should avoid even informal contact with attorneys with respect to a matter pending before the Court.

A law clerk must not give advice to attorneys on matters of substantive or procedural law, and must not do minor research tasks for attorneys.

Law clerks should be particularly careful to see that all attorneys are treated equally and not be tempted to provide a special favor for a law school colleague or an old friend.

Canon 3. A law clerk should perform the duties of the office impartially and diligently.

The duties of a law clerk take precedence over all of the law clerk's other activities. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

- 1) A law clerk should be faithful to the law and maintain professional competence in it. A law clerk should not be swayed by partisan interests, public clamor, or fear of criticism.
- 2) A law clerk should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, and others with whom the law clerk deals in the law clerk's official capacity.
- 3) All persons who are legally interested in a proceeding, or their lawyers have, full right to be heard according to law; but, except as authorized by law, a law clerk should neither initiate nor consider ex parte or other communications with such persons concerning a pending or impending proceeding.

B. Administrative Responsibilities.

- 1) A law clerk should diligently discharge the law clerk's administrative responsibilities and maintain professional competence in judicial administration. Each law clerk must read and be familiar with both the Rules of Professional Conduct and the Code of Judicial Conduct.
- 2) Two important duties owed by the law clerk to the judge are loyalty and confidentiality. The

law clerk enjoys a unique relationship with a judge that combines the best of employer-employee, teacher-student and lawyer-lawyer. While the law clerk must be aware of the proper respect due a judge, the law clerk should not fear expressing a contrary opinion when personal opinions are asked. The law clerk is always an assistant to the judge, who has the ultimate authority and responsibility in deciding a case. Without sacrificing intellectual honesty, the law clerk must accept the decision of the judge as if it were the law clerk's own.

3) The law clerk owes the judge the duty of confidentiality concerning everything that occurs in the process of decision-making and all statements or events that do not occur in open court or in open conference with attorneys present. This duty extends beyond the term of clerkship; and, after leaving the service of a court, the law clerk must use extreme caution in public or private comments about a judge or the court so as not to cause a loss of confidence in the judicial process or system. The law clerk should not reveal the process that the court employed in arriving at a particular decision or court policy that is not readily apparent from the decision or policy itself.

C. Disqualification.

1) A law clerk should disclose the basis of any possible disqualification in a proceeding in which the law clerk's impartiality might reasonably be questioned to the judge the law clerk serves. If, based on such disclosure, the judge agrees that the law clerk's impartiality cannot reasonably be questioned, the law clerk may participate in the case. Without limiting the obligation to these instances, the law clerk should make this disclosure in any instance with respect to a proceeding where:

- a. the law clerk has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
- b. the law clerk served as lawyer in the matter in controversy, or a lawyer with whom the law clerk previously practiced law served during that association as a lawyer concerning the matter, or the law clerk or that lawyer has been a material witness concerning it;
- c. the law clerk knows that they, individually or as a fiduciary, or the law clerk's spouse or minor child residing in the law clerk's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
- d. the law clerk or the law clerk's spouse, or a person within the fourth degree of relationship to either of them, or the spouse of such a person:
 - (1) is a party to the proceeding or an officer, director or trustee of a party;
 - (2) is acting as a lawyer in the proceeding;
 - (3) is known by the law clerk to have an interest that could be substantially affected by the outcome of the proceeding;

- (4) is to the law clerk's knowledge likely to be a material witness in the proceeding.
- 2) A law clerk should keep informed about the law clerk's personal and fiduciary financial interests, and should make a reasonable effort to keep informed about the personal financial interests of the law clerk's spouse and minor children residing in the law clerk's household.
- 3) For the purposes of this section:
- a. the degree of relationship is calculated according to the civil law system;
 - b. "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
 - c. "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:
 - (1) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the law clerk participates in the management of the fund;
 - (2) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
 - (3) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
 - (4) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.
- 4) During the course of a clerkship, each law clerk will no doubt be looking for employment to follow employment with the court. To avoid embarrassment to interested parties, as well as potential conflicts of interest, the following guidelines apply:
- a. When interviewing, the law clerk must carefully avoid even the most indirect discussion of cases pending before the court.
 - b. The law clerk need not be recused from participation in a case involving a law firm to which an inquiry for employment is pending. If serious or active negotiations are underway, however, the law clerk should so inform the judge, and volunteer to withdraw from the case.
 - c. After the end of the clerkship, the law clerk must maintain the confidentiality of the court. Discussions of a particular judge or case should be avoided. The former law clerk must also avoid conflicts of interest by not working on cases that the law clerk participated in during the clerkship.

Canon 4. A law clerk may engage in activities to improve the law, the legal system, and the administration of justice.

A law clerk may engage in law-related activities if in doing so the law clerk does not cast doubt on the law clerk's capacity to participate fully and impartially in performing the law clerk's assigned duties.

Canon 5. A law clerk should regulate extra-judicial activities to minimize the risk of conflict with law clerk duties.

A. Other Activities.

- A law clerk may write, lecture, teach, and speak on legal as well as non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such activities do not detract from the dignity of the office or interfere with the performance of the law clerk's duties.

B. Civic and Charitable Activities.

- A law clerk may participate in civic and charitable activities that do not reflect adversely upon the law clerk's impartiality or interfere with the performance of the law clerk's law clerk duties. A law clerk may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members.

C. Financial Activities.

- 1) A law clerk should refrain from financial and business dealings that tend to reflect adversely on the law clerk's impartiality, interfere with the proper performance of the law clerk's duties, exploit the law clerk's position, or involve the law clerk in frequent transactions with lawyers or persons likely to come before the court in which the law clerk serves.
- 2) Subject to the requirements of subsection (1), a law clerk may hold and manage investments, including real estate, and engage in other remunerative activity subject to the approval of the law clerk's judge.
- 3) Neither a law clerk nor a member of the law clerk's family residing in the law clerk's household should accept a gift, bequest, favor, or loan from anyone except as follows:
 - a. a law clerk or a member of the law clerk's family residing in the law clerk's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not law clerks; or a scholarship or fellowship awarded on the same terms applied to other applicants;
 - b. a law clerk or a member of the law clerk's family residing in the law clerk's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the court where the law clerk serves.

- 4) For the purposes of this section “member of the law clerk’s family residing in the law clerk’s household” means any relative of a law clerk by blood or marriage, or a person treated by a law clerk as a member of his family, who resides in the law clerk’s household.
- 5) A law clerk is not required by this Code to disclose the law clerk’s income, debts, or investments.
- 6) Information acquired by a law clerk in the law clerk’s law clerk duties should not be used or disclosed by the law clerk in financial dealings or for any other purpose not related to the law clerk’s duties.

D. Fiduciary Activities.

A law clerk should not serve as an executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of the law clerk’s family, and then only if such service will not interfere with the proper performance of the law clerk’s duties. “Member of the law clerk’s family” includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the law clerk maintains a close familial relationship. As a family fiduciary a law clerk is subject to the following restrictions:

- 1) A law clerk should not serve if it is likely that as a fiduciary the law clerk will be engaged in proceedings that would ordinarily come before the court where the law clerk serves, or if the estate, trust, or ward becomes involved in adversary proceedings in the court in which the law clerk serves or one under its appellate jurisdiction.
- 2) While acting as a fiduciary, a law clerk is subject to the same restrictions on financial activities that apply to the law clerk in the law clerk’s personal capacity.

E. Arbitration.

A law clerk should not act as an arbitrator or mediator in the same jurisdiction where they are employed.

F. Practice of Law.

A law clerk should not practice law in the same jurisdiction absent advance approval from the court of the scope and nature of such practice.

G. Extra-Judicial Appointments.

A law clerk should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice without the approval of the Court.

Canon 6. A law clerk should refrain from inappropriate political activity.

A. Political Conduct in General.

- 1) A law clerk should not:
 - a. act as a leader or hold any office in a political organization;

- b. make speeches for a political organization or candidate or publicly endorse a candidate for public office;
 - c. solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions.
- 2) A law clerk should resign upon becoming a candidate either in a party primary or in a general election for a non-judicial office, except that a law clerk may continue to hold office while being a candidate for election to or serving as a delegate in a State constitutional convention, if the law clerk is otherwise permitted to do so.
- 3) A law clerk should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

Canon 7. Compliance.

A person to whom this Code becomes applicable should arrange their affairs as soon as reasonably possible to comply with it or receive a waiver from the Court. This Code shall apply to all full- or part-time law clerks or interns in all courts. Violations shall be brought before the Court which shall have jurisdiction over any complaints arising under this Code. A law clerk should initially refer any ethical questions under this Code to the justice to whom the law clerk is regularly assigned. In the event that in a rare instance the law clerk feels dissatisfied with the decision of the justice, the law clerk may solicit the opinion of all of the justices on the court which the law clerk is serving. Such recourse to the justices shall be used with circumspection and without the divulging of such procedure to any persons except to the justices on the court which the law clerk duly is serving. Nothing in this Code shall limit any court from having any further and additional requirements for employment as a law clerk so long as they are not less restrictive than this Code.

Appendix K: Recruiting Resources

TURTLE TALK

<https://turtletalk.blog/indian-law-job-announcements>

TRIBAL IN-HOUSE COUNSEL ASSOCIATION

<https://tica.wildapricot.org/Job-Announcements>

NATIONAL NATIVE AMERICAN LAW STUDENTS ASSOCIATION

<https://www.nationalnalsa.org/career>

NATIONAL NATIVE AMERICAN BAR ASSOCIATION

<https://www.nativeamericanbar.org/job-postings-2>

STATE NATIVE AMERICAN BAR ASSOCIATIONS

California Indian Law Association

<https://www.calindianlaw.org/job-announcements.html>

INDIAN LAW SECTIONS OR LISTSERVS

Alaska State Bar Alaska Native Law Section

<https://alaskabar.org/sections-committees/section-webpages/alaska-native-law>

Nebraska State Bar Indian Law Section Listserv

Email: NEBAR-indianlaw@ConnectedCommunity.org

Oklahoma State Bar Indian Law Section

<https://www.okbar.org/sections>

Oregon State Bar Indian Law Section

<https://indianlaw.osbar.org/>

Spokane County (WA) Indian Law Section

<https://www.spokanebar.org/sections/indian-law-section>

State Bar of New Mexico Indian Law Section

<https://www.sbnm.org/Leadership/Sections/Indian-Law>

LAW SCHOOL'S JOB PORTAL

Arizona State University College of Law, Indian Legal Program

<https://newsletters.asucollegeoflaw.com/ilp/category/jobs>

Colorado Law School

<https://lawweb.colorado.edu/law/careers/files/IndianLawCareerGuide.pdf>

<https://www.colorado.edu/law/careers/how-hire-colorado-law-students-and-graduates>

NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION

Email: info@naicja.org

AMERICAN INDIAN LAW CENTER

<https://www.aile-inc.org/plsi/judicial-clerkship>

Appendix L: Sample Contract

APPENDIX L: SAMPLE CONTRACT

AGREEMENT FOR PROFESSIONAL SERVICES

THE PARTIES TO THIS AGREEMENT are the [Court, Address] (hereinafter "Court") and [Clerk Name, Address] (hereinafter "Contractor").

I. PURPOSE OF AGREEMENT

Court and Contractor enter into this Agreement for the purpose of having Contractor provide judicial law clerk services as requested. The Court and Contractor agree to perform their respective scope of work and responsibilities as set forth in this Agreement.

II. TERM

This agreement shall commence upon the signing of this document by the parties to this agreement, and/or the authorized representatives of said parties, and shall cover the period from the date of signature through [end date]; however, either party may terminate this agreement by serving twenty (20) days written notice on the other party.

III. INDEPENDENT CONTRACTOR STATUS

The express intention of the parties is that Contractor is an Independent Contractor and not an employee, agent, joint venture or partner of the Court. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employee and employer between Contractor and the Court.

IV. SCOPE OF WORK

Contractor will provide the following services:

[Position description can be referenced here or cut and pasted here]

V. RESPONSIBILITIES OF COURT

The Court will provide administrative support in securing documentation and help facilitate communication with others assisting on a project.

VI. COMPENSATION

A. Professional services

The Court agrees to compensate Contractor for professional services rendered in the manner and at the rate set forth below:

1. [Compensation goes here]
2. [Expense reimbursement, if applicable can go here]
3. [Other compensable terms go here]

B. Payment

Payment for services under this contract will be paid monthly upon receipt of an Invoice from Contractor and shall be remitted no later than within thirty (30) following the date of the invoice.

In the event that the scope of work changes significantly requiring an increase in hours or responsibilities, Contractor and the Court will agree on the changes in payment in writing in advance.

VII. TAX RESPONSIBILITIES

Both parties acknowledge that Contractor is not an employee for federal or state tax purposes. Both parties acknowledge that the Court shall not assist with any federal or state income tax withholdings or make any tax contributions on behalf of Contractor.

VIII. TERMINATION

Either party may terminate this Agreement by giving twenty (20) days written notice. Notice shall be sufficiently given if it is delivered by hand or postage pre-paid to the address of the parties set forth in the first paragraph of this Agreement. Contractor shall be compensated for all work performed up to the termination date of this Agreement within forty-five (45) days of said termination.

IX. WAIVER

Any waiver by any party with regard to any of its rights hereunder shall be in writing and shall not constitute or act as a waiver to future rights, which such party might have.

X. WORK PRODUCT

All work products produced or created as a result of this Contract shall become the exclusive property of the Court. All rights arising from the performance of this Contract, including copyrights, patent rights, knowhow, trade secrets and other intellectual property rights, shall be the property of the Court. Any license to use such rights shall be determined separately through consultation with the Court.

XI. CONFIDENTIALITY

The Contractor shall protect and preserve the confidentiality of all communications, whether written or oral, with the Court related to any work or services rendered pursuant to this Contract. The Contractor's obligation under this provision shall survive termination or expiration of this Contract for a period of three (3) years.

XII. CONFLICT OF INTEREST

The Contractor affirms that the Contractor has no interest presently and shall not acquire any interest, direct or indirect, in the future which would conflict in any manner with the performance of the services required under this Contract.

XIII. INDEMNIFICATION

The Contractor agrees to indemnify and hold harmless the [Court, Tribe Name], and any of its departments or offices, and all of its officers, directors, agents, contractors, volunteers, and employees, from any and all claims of losses, costs, damages, expenses or liabilities, including, but not limited to, injury, death and/or damage to property, which may arise from the Contractor's performance of this Contract.

XIV. ATTORNEYS FEES

In the event the Court must pursue legal action against the Contractor for breach of contract, failure to perform, default or enforcement of the Contract terms or any other legal cause of action, the Court shall be entitled to collect reasonable attorney's fees and costs.

XV. SCOPE OF CONTRACT

This Contract constitutes the entire agreement between the parties and supersedes any prior oral or written communication(s).

XVI. FORCE MAJEURE

In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to the Court, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify the Court of any other changes in conditions or the occurrence of any event that interferes or threatens to interfere with its performance of this Contract. On receipt of the notice required under this Section, the Court shall take such action as, in its sole discretion, it considers to be appropriate or necessary considering the circumstances, including but not limited to granting the Contractor a reasonable extension of time in which to perform its obligations under this Contract.

XVII. GOVERNING LAW AND VENUE.

A. This Contract shall be performed within the applicable laws, regulations, guidelines, and practices of the [Tribe Name]. The Contractor agrees this Contract shall be governed by the laws of the [Tribe], federal laws, and the laws of [other jurisdiction], in that order, in all matters of construction, validity, performance, and enforcement, as those laws apply to contracts executed, delivered and performed solely within the jurisdiction of the [Tribe]. The Contractor is solely responsible for keeping themselves fully informed of and faithfully observing all laws, ordinances, and regulations of the [Tribe].

B. The Contractor hereby expressly submits to and consents to the exclusive personal jurisdiction of the [Tribe] Courts and waives an objection thereof.

XVIII. SOVEREIGN IMMUNITY

Nothing in this Contract shall be construed as a waiver of the [Tribe] sovereign immunity.

XIX. OTHER PROVISIONS

- A. If any term or other provision of this Contract is determined by a court of competent jurisdiction to be unconstitutional, invalid, or unenforceable, the [Tribe] shall have the exclusive right to either deem this Contract null and void or determine such term or provision be deemed deleted from this Contract. If the [Tribe] deems the provision to be deleted from this Contract, all remaining provisions shall remain in full force and effect, and the parties shall negotiate in good faith to modify or amend this Contract so as to reflect the original intent of the parties.
- B. The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this Contract, and that the decision of whether or not to seek the advice of counsel with respect to this Contract is a decision which is the sole responsibility of each of the parties hereto. In the event of ambiguity in any of the terms of this Contract, it shall not be construed for or against any party on the basis that such party did or did not author the same.

- C. The headings in this Contract have been used for administrative convenience only, and shall not be used in interpreting or construing the meaning of any provision in this Contract.
- D. This Contract may be executed by the parties in counterparts. All counterparts together shall constitute one document binding on all parties. The execution pages may be combined with the other pages of this Contract to form what is deemed and treated as a single original agreement showing execution by all parties. An electronically transmitted signature of a party is binding on the signing party, and delivery of this Contract by electronic means constitutes delivery of this Contract for all purposes and is thus binding on the party sending the electronic transmission.
- E. The provisions of this Contract concerning confidentiality, representations and warranties, intellectual and other property rights, work product ownership, right to audit, indemnification, insurance, dispute resolution and this subsection regarding survival, shall survive any termination or expiration of this Contract.
- F. The individuals, by their signature below, represent and warrant they hold complete legal authority to execute this Contract and be bound by the terms of this Contract.

IN WITNESS WHEREOF, the parties to this Contract agree to its terms and sign below.

THE TRIBAL COURT GUIDE TO JUDICIAL CLERKSHIPS

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