

A Guide for Tribal Court Law Clerks and Judges



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About the Editorial Board

In order to ensure that this guide accurately reflected the nature of tribal justice systems from across the United States, and was accessible by both tribal judges and law students, an editorial board of tribal judges, former law clerks and current law students assisted the authors. The following are the members of the Editorial Board:

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THE HONORABLE THOMAS W. WEISSMULLER was appointed as Chief Judge of the Mashantucket Pequot Tribal Court in Connecticut in 2005. Chief Judge Weissmuller earned his B.A. from the University of Rhode Island and his J.D. from Washington University School of Law. He is a member of the faculty at the National Judicial College, and serves on the Connecticut Bar Association as a member of the Committee for Liaison with State Government and the Indian Law Committee. Additionally, he is the Region 7NE representative on the National American Indian Court Judges Association Board of Directors, a member of the Advisory Committee

for the National Criminal Justice Association, and serves on the Justice, Law, and Commerce Committees for the United South and Eastern Tribes, Inc. (USET). From 1997 to 2004, Chief Judge Weissmuller presided over a significant expansion of tribal jurisdiction as Washington ceded jurisdiction of the 22,500 acre Tulalip Reservation to the Tulalip Tribes.

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GLOSSARY OF TERMS USED IN THIS GUIDE

The following is a list of terms used by this guide:

“Appellate court” – a court with authority to hear and review appeals from a lower court. Not a trial court or court of first impression.

“Bifurcated court”- a court system in which two or more divisions of a tribal court exist with jurisdiction to hear certain types of cases. The method in which each division uses to hear and decide matters may differ. For example, one division may use ordinary litigation procedures and another use peacemaking or alternative dispute resolution techniques such as mediation.

“Brief”- a written statement prepared by legal counsel arguing a case in court. It contains a summary of the facts of the case, the pertinent laws, and an argument of how the law applies to the facts of the case. *Trial briefs* are prepared and used by legal counsel at trial which contain, among other things, issues to be tried, a synopsis of evidence and witnesses to be presented and case and statutory authority for the position of a party at trial. *Appellate briefs* are filed with an appellate court arguing why the trial court acted correctly or erroneously.

“Chambers” – the private room or office of a judge; any place in which a judge hears motions, signs papers or does other business pertaining to his or her office when not holding a session of court. Business conducted in this place or conversations that occur is said to be done “in chambers.”

“Court clerk”- an officer of the court who files pleadings, motions, judgments, etc., issues process and keeps records of court proceedings.

“Decision”- a determination made by a judge after consideration of facts and law.

“Docket”-a list of all cases pending before the court. Also refers to the brief entries made by court clerks reflecting the successive steps taken in each case.

“Extern”- an unpaid law student who earns academic credit for doing substantive legal work with a court, government agency, private non-profit or public interest institution, or other private sector employer such as a law firm. Externs are required to have a volunteer attorney (Field Supervisor) and a supervising professor (Faculty Supervisor) that manage their legal work and meet with them to enhance the learning experience of the workplace.

“General jurisdiction”-a court’s authority to hear all controversies that may be brought before it, as opposed to *special* or *limited jurisdiction*, which includes only a certain class or type of cases.

“Intern”- an unpaid law student who volunteers to do substantive legal work with a court, government agency, private non-profit or public interest institution, or other private sector employer such as a law firm. Unlike externs, interns do not earn academic credit for their work.

“Intertribal court”- a judicial system that serves two or more American Indian or Alaska Native tribes.

“Judge” - a person who is a duly appointed or elected adjudicator of disputes or a peacemaker serving in a justice system established by an American Indian or Alaska Native tribal government or other American Indian government for the purpose of hearing cases and controversies.

“Indian country”- all land within the limits of any Indian reservation under the jurisdiction of the United States Government, all dependent Indian communities and all Indian allotments. Specifically defined at 25 United States Code §1151.

“Law clerk”- a law student or recent law school graduate who assists a judge with legal research, writing and other duties associated with the judicial office.

“Limited or Special jurisdiction”- authority of a court to hear only particular types of cases, or which can be exercised only under the limitations and circumstances set forth by tribal code provisions or other law.

“Memorandum of law”- a document setting forth the facts of a case, outlining the existing law applicable to the case and applying the law to the facts of the case in order to reach a legal conclusion regarding the outcome of the case.

“Opinion”- a statement, usually written, by a judge or a court of the decision reached with regard to a case tried or argued before it explaining the law as applied to the case and detailing the reasons upon which the decision is based.

“Peacemaking”- a method traditional to some American Indian tribes by which disputes are resolved by the affected persons coming together to talk out the problem and to jointly agree to a resolution. These mediation-like sessions are usually facilitated by a well-respected member of the tribal community.

“Pro Tempore” or “Pro tem”- a Latin phrase best translated into English meaning “for the time being.” Used to describe a person serving as a judge when the usual judge is not available, or when serving for a limited period of time in a special circumstance.

“Tribal court”- an entity established by an American Indian or Alaska Native tribal government whose function is the resolution of disputes and/or the punishment of offense through the application of tribal law. Tribal courts may be established under a tribal constitution or other tribal law. In some instances, other bodies of the tribal government for example, the tribal council, may serve in the function of the tribal court.

“Tribal Healing to Wellness Court”- a special tribal court division or program to which cases involving alcohol and other substance abuse offenders are assigned for intensive supervision and treatment. These courts bring together community healing with the tribal justice process, using a team approach to achieve the physical and spiritual healing of the participant and the well-being of the community.

PART I

(Almost) Everything a Law Clerk in Indian Country Needs to Know

INTRODUCTION

Law clerks have aided federal and state judges for more than a century with legal and administrative assistance. Very few tribal judges however have enjoyed the luxury of a law clerk's services— mostly due to lack of financial resources. With the advent of the National Tribal Court Law Clerk Program, that is about to change. Law students and recent law graduates will be afforded more opportunities than ever to work in a tribal court setting while simultaneously supplying valuable research and legal writing support to tribal judges and justices. In view of the fact that tribal courts differ greatly from their state and federal counterparts, a guide assisting law clerks and judges just about to enter into a clerking relationship was needed. This guide is intended to provide only general information about how to make the most of the many clerkship opportunities that may arise in the more than 200 tribal justice systems across the United States. Law clerks and judges will need to adapt the information contained in this guide to their particular tribal court situation.

This is a two-part guide. The first part is for law students and recent law graduates who are interested in clerkships within Indian country as well as for law students who are about to undertake a tribal court clerkship. It offers advice on how to find the perfect “fit” when seeking a clerkship by taking into consideration several important practical factors. It also provides guidance on the duties and responsibilities of a law clerk, discusses the need for a law clerk to be sensitive to the cultural differences he or she may experience while working in the tribal court and emphasizes the importance of adhering to applicable ethical rules and community norms.

The second part of this guide is for tribal judges, justices, peacemakers and other persons charged with responsibility for resolving disputes within a tribal community. It gives suggestions on how best to work with and mentor a law clerk. Also included are some helpful tips on how to develop an authentic and meaningful

educational experience for the law clerk. Some of the topics covered include: the kinds of writing projects a judge could assign the law clerk, how best to acquaint the law clerk with the tribal community, and how to write an effective letter of recommendation once the clerkship has ended.

This guide does not cover every issue the law clerk or judge will encounter during a clerkship. Rather, it offers a broad overview of what a clerkship should look like and what Indian country has to offer. Each tribal court possesses a unique legal structure and culture that cannot possibly be captured in this guide. It is hoped nonetheless that this guide will become a valuable resource for both law clerks and the tribal judges with whom they will work.

When a clerkship meets both the expectations of the law clerk and the judge, it can be a rich and unique educational experience, can assist the tribal community in meeting its justice needs and can even possibly result in a mentoring relationship between the law clerk and judge that last long after the clerkship ends.

THE GENERAL BENEFITS OF A CLERKSHIP

A clerkship can be one of the best practical educational experiences in a lawyer's life. A clerkship is often viewed as the capstone of one's legal education due to the immense amount of insight a clerk gains by working within the judicial decision-making process and the unparalleled additional training in legal research and writing. The value of a clerkship is substantial and the benefits can last a lifetime.

"Being a judicial law clerk was one of the most amazing experiences of my professional career. Serving a judge prepared me for the bench in many ways. The relationship I enjoyed with 'my' Judge resulted in his being a mentor for me long after I left his bench and until his death. I will always cherish the opportunity I had to build such a close relationship with a sitting judge at the beginning of my career."

Judge J. Matthew Martin
The Cherokee Court

A clerkship will offer opportunities to enhance writing skills, improve research abilities, and add a significant asset to a future legal career. The body of federal Indian law is a vast and complex area that requires a particular set of research skills. American Indian law, particularly tribal law, is not something that can easily be found merely by accessing Westlaw© or Lexis Nexis©. American Indian law is embedded in multiple sources, including: treaties between the United States and American Indian tribes, United States case law, tribal-state compact agreements, tribal constitutions, tribal codes and tribal court opinions. Therefore, researchers must expand their capabilities beyond what is learned in law school to be effective. This can be an extremely challenging, but rewarding task.

Many law firms seek students who have been judicial clerks. Firms benefit greatly from a clerk's unique training and additional practical legal education. There is great advantage in knowing first-hand how the justice system works at large, from the initial filing of a complaint to a post-judgment motion. You will come to possess keen insight regarding the process. This is a valuable asset, as the practice of law is often defined by this process.

“I worked as a law clerk for the Cherokee Nation Supreme Court for 2 1/2 years. It was both valuable and rewarding. It definitely made the job search easier and opened up the door for many opportunities. I sincerely appreciate the Cherokee Nation Supreme Court for allowing me to work as a law clerk where I was able to both learn and gain valuable work experience. It has helped me almost every day in my present job.”

Yonne A. Tiger, Esq.
Tulsa, Oklahoma

In addition to providing an opportunity to apply your legal skills, a tribal court clerkship provides the experience to learn how a tribal courtroom operates. Tribal courtrooms are unique settings where traditional tribal law and custom are often blended with Anglo-American legal principles. The experience promises to heighten cultural sensitivity and make participants aware of how modern Native Americans strive to protect their sovereignty, handle the day-to-day problems of tribal members and work cooperatively with local and state courts and governments.

The courtroom is also a learning place for students to observe other attorneys and lay advocates at practice. A law clerk is often exposed to numerous lawyers' oral and written litigation styles--both good and bad. This allows an inexperienced, soon-to-be practicing attorney to find role models using effective techniques that may be incorporated into future practice. Many law clerks leave their clerkship with many examples of good lawyering to emulate in the future as well as a feeling for what bad lawyering looks like and how to avoid it.

The largest benefit of a clerkship may be gaining insight into the practical workings of a judge's chambers. The relationship between the judge and you is an intensely personal, collaborative one. You will act as a confidant, an advisor, and an assistant who is always by the judge's side to do his or her tasks. Behind the closed door of chambers, a judge will rely on you for feedback on cases, often soliciting your thoughts on the direction the case should take. In return, you will receive an exciting one-on-one education and form a close bond with a respected member of the legal profession and the tribal community. A connection of this type will likely benefit your future legal career because many judges know the reputation of law firms and have collegial relationships with a large number of practicing attorneys. Moreover, you will be providing a genuinely needed service to a tribal court system.

“Clerking in a tribal court provided me opportunities – such as participating in national and regional outreach programs and commenting on proposed legislation – that law clerks in state and federal courts will not experience. Because of the novel and complex issues in Indian law, I can’t think of another avenue for recent law school graduates to influence the evolution of a body of law.”

Jane E. Hunt, Law Clerk
Mashantucket Pequot Tribal Court, 2005-2007

As a law clerk for a tribal court, you will likely be involved in the development of cutting-edge Indian law. American Indian law is a field of continuous growth, with landmark cases being decided every day. The value in understanding how each judge's decision-making and opinion-writing impacts the current law is inestimable. Additionally, your job as a clerk will transcend beyond the courtroom into Indian

country and to America at large, as the opinions that you help write and develop will educate the public about tribal law and tribal values. Ultimately, you will help bridge the gap between those who are unaware of or who misunderstand the nature of modern tribal justice systems and those, like yourself, who have passion for the study of Indian law and an appreciation of tribal values. A clerkship will not only benefit you on a very personal level but also benefit the community at large—creating a win-win situation for Indian country.

THE TYPES OF TRIBAL COURTS

There are several types of tribal courts that offer clerkships. This section outlines the general characteristics of each court and can be used as a guide to help you decide which may be most interesting. Clerkships are possible at the trial level, the appellate level, and at a broader, inter-tribal level. Remember that tribal court systems vary from highly structured multiple-court systems to very informal single-judge courts operated on a part-time basis. After reading this section, hopefully you will have narrowed down the vast array of clerkship opportunities by identifying one or more courts where you would enjoy working. You will likely have some instinctive reaction of interest- or disinterest- to each of the courts listed below. Be sure to take note of those courts that draw your attention more than others; this information will combine with considerations outlined in the next section to ensure that you choose a court that is appropriate for you.

- **Tribal Trial Courts**

Most tribal trial courts are courts of general jurisdiction with a varied trial docket. In the civil context, tribal trial courts might hear issues ranging from family-related conflicts to environmental law violations. Many tribal trial courts will hear criminal cases, but due to the complex nature of criminal jurisdiction in Indian country, the types of crimes are limited. The federal Indian Civil Rights Act, 25 U.S.C. §1302, limits the penalties a tribal court may impose to less than one year imprisonment and less than a \$5,000 fine. Due to these limitations, major crimes committed on the reservation are not likely to end up in the tribal trial court. However, you might anticipate hearing cases involving non-felony crimes like petty theft or driving under the influence.

Depending upon the size of the tribal court system, there may be more than one judge to hear cases. Such a system might consist of associate judges and one chief judge who split the case-load or who specialize in certain types of cases. For example, one judge might handle all tax disputes while another specializes in tribal criminal law. It is possible that all three judges will sit as a panel to hear each case. Other tribal courts will have only one judge who hears all the cases brought before him or her.

In a trial court setting, you may have multiple responsibilities. At the trial level, you may be called upon to draft a legal memorandum, provide quick research on a particular area of law, or even fill in for another court staff member. For example, you might need to act as a bailiff for the day and swear in a jury or escort parties in and out of the courtroom. A clerkship at this level can be as diverse as the types of cases heard. A clerkship at the trial level provides an opportunity to see the adjudicative process close-up, from the initial filing of a claim, to discovery and evidentiary disputes, to courtroom oral arguments and examination of witnesses, through to the ultimate decision.

“Working as a judicial law clerk for the Chief Judge of the Mashantucket Pequot Tribal Court was a valuable experience for me. Under the supervision and mentoring of the Chief Judge, I strengthened my legal writing skills while drafting court decisions in employment, personal injury (tort), criminal and family law matters. The experience also showed me how tribal employment law matters were managed by the Mashantucket Pequot Gaming Enterprise and how tribal policy and law governed its administrative actions and procedures.”

Grant W. Jonathan, Esq.
Indigenous Environmental Affairs Specialist
U.S. EPA - Region 2

Additionally, the trial level deals most directly with the public. Sometimes you will be required to communicate with the community at large. It would not be surprising at the trial level to receive a phone call from a local reporter wanting an

update on a particular case before your judge. It will be important in this position to know how to confidently field, or deflect, such questions.

Judicial decisions at the trial level may or may not result in written opinions. This will depend upon the court, the presiding judge and the case; meaning that some courts will not publish any decisions and others might only publish opinions that the judges believe to be the most important matters of law. Where a trial judge issues a written opinion, your research and drafting skills will be especially important. Written opinions not only inform the litigants and the community of the tribal court's decision but also lay out the judge's reasoning and conclusions of law. Developing a trial court opinion can be an excellent opportunity for the court to discuss tribal traditions and customs and explain how those traditional elements come to play in the modern tribal justice system. In some instances, the trial court opinion will lay the groundwork for appellate review.

- **Tribal Appellate Courts**

Not every tribe with a tribal judicial system will have an appellate court. Some tribes utilize inter-tribal courts, which function as appellate courts for member tribes and will be discussed in the next section.

Appellate courts usually consist of more than one judge, but single-judge systems do exist. More often, appellate courts may have a panel of judges that will hear the same case, deliberate and jointly arrive at a decision. At the appellate level, you will encounter various topics of law as cases come up for review. The jurisdiction of the court will largely depend upon the tribal constitution (if the tribe has one) and tribal codes. Whether appellate review is available for every case or only upon discretion of the appellate judges will be set by tribal law. In general, the appellate court does not review every stage of the trial process. Most appellate courts hear arguments concerning one specific issue or a few selected issues arising out of a case tried at the lower level. For example, while the trial court will oversee the production of evidence through discovery, an appellate court may only decide whether a particular rule of discovery was in fact violated.

The responsibilities for you at the appellate level may not vary as much as at the

trial level. The appellate court likely does not interact directly with the public or the litigants. The appellate court will ordinarily accept briefing and hear oral arguments from legal counsel (or unrepresented parties) and make decisions based upon these presentations. In some systems, oral argument must be specifically requested from the court; otherwise the decisions are decided only on the written appellate briefs. As an appellate court law clerk, you can expect to research and write frequent memoranda of law, as well as to draft opinions. This experience is more like a continuation of the law school experience due to its reflective and academic nature. The case load may proceed at a somewhat slower pace than the trial level, providing you more time to produce well-researched and carefully written material.

Although there is less interaction with the public and litigants in the appellate court setting, there are still myriad opportunities to develop strong connections. You can still gain, through observation, knowledge of effective oral argument techniques and meet lawyers who display courtroom talent. Additionally, because an appellate court generally consists of a panel of judges, you will be able to witness the collective process and collegial interaction among judges, while participating in the final outcome— a written opinion.

Working in the appellate setting gives you the opportunity to develop a deeper and broader understanding of the legal principles applied by the court. In addition, you will have greater exposure, through review of the trial record, of the entire adjudicative process. Appellate courts offer law clerks a chance to shape the law of the tribal nation. Many tribes do not have a large body of written case law and are constantly adding to the body of existing law. Tribal judges and their law clerks are often presented with new and novel issues—the resolutions of which can impact the future of the tribe in significant ways.

- **Intertribal Court Systems**

Intertribal court systems serve a consortium of Indian tribes within a given region and may provide contract services to additional tribes as well. Tribes that participate in intertribal systems often lack the resources to develop or operate their courts independently. Tribes with fully operational courts may utilize the

human resources at an intertribal system to obtain *pro tem* trial judges or appellate justices on an as-needed basis.

Intertribal court systems may exist in many forms. Most commonly they are state or tribally chartered, non-profit corporations that qualify as Indian entities and are therefore eligible to receive and administer federal funds and trust obligations pursuant to Public Law 93-638, The Indian Self-Determination and Education Assistance Act, 25 U.S.C. §450, et seq.. Entities that meet the Act's criteria are also eligible to receive a wide variety of grants as well as other federal funding assistance.

Examples of intertribal systems include the Inter-tribal Court of Nevada, the Southwest Intertribal Court of Appeals, the California Intertribal Court, the Southern California Intertribal Court, and the Northwest Intertribal Court System, also known as "NICS." Most intertribal court systems house their administrative office in a central location and provide budget and payroll services for court employees who will serve the several member or affiliated tribes. By way of example, NICS serves member and affiliated tribes within Washington State from a central administrative office, and provides contract appellate services for tribes located in Alaska, Washington, Oregon and California. Intertribal court system employees might include judges, prosecutors, probation officers, defense attorneys, staff attorneys, law clerks, court clerks, grant writers, administrators, computer support technicians, accountants, receptionists, bookkeepers, and code writers.

One challenge associated with the use of an intertribal system is that funding sources must be directed *either* at that system *or* the member tribe. This places the system in direct competition with its member tribes. Intertribal systems are not eligible to receive a proportionate amount of money so the natural tendency has been for tribes to move away from intertribal systems as they fully develop their own administrative infrastructure and secure funding sources.

Jurisdiction varies from tribe to tribe within a court system and all systems apply the law of the respective member tribe when convening court for that tribe. Frequently, tribes affiliated with an intertribal system have only courts of limited jurisdiction (for a discussion of limited jurisdiction courts, see below.) This is to say

that some affiliated tribes have laws to govern only fishing and hunting. Others cover employment, gaming, and general criminal jurisdiction. Still others may have a fully developed body of tribal law and the broad authority to function as a court of general jurisdiction. When a tribe fully develops its court and laws, that tribe must usually break away from the intertribal court system because of funding and administrative necessity.

The advantages to you in an intertribal court system may include increased travel and an opportunity to visit more reservations and experience a wider variety of tribal cultures and laws. For example, in one month a clerk serving an intertribal court, which in turn serves ten tribal nations, might assist in writing ten gaming opinions for the ten tribes, applying ten different gaming laws and case precedents. You might travel to ten court rooms on ten reservations to attend the hearings. One disadvantage may be that you may have to work with ten separate part-time judges to accomplish this.

While some intertribal systems employ full-time judges who preside in busy jurisdictions, others do not. You might divide time between several trial judges and several appellate panels from varying jurisdictions. In this situation, you must make a concerted effort to respect and abide by the laws of each jurisdiction so that you do not inadvertently begin to blend concepts from one tribe's law into the body of another's developing case-law. This, in itself, may be an advantage or disadvantage, depending upon the law clerk and his or her aptitude.

A well-managed clerkship within an intertribal system will provide you with valuable experience. In addition to researching and writing trial decisions and appellate opinions, you might participate on a busy criminal or child welfare docket twice each week in one jurisdiction, and then draft an appellate opinion in another. The ability to bounce back and forth between trial and appellate responsibilities might be unique to the intertribal experience. It might therefore prove to be a much broader, and consequently more fulfilling, experience.

The disadvantages associated with an intertribal system mirror the advantages. Travel will be consistent and if this is undesirable, you might pass on the opportunity. In an intertribal system you may not enjoy a close working relationship

with a single judge. Judicial supervision may be a challenge for the system. Frequently, judges and clerks will work together on projects but another member of the staff will supervise you, oversee case assignments, and act as liaison between you and judges. The supervisor will also be responsible for completing necessary paperwork related to your performance. This will involve soliciting the opinions of the judges, which may vary substantially and complicate the performance review process.

Judges will frequently work in locations remote to the intertribal office. On appellate matters they may travel hundreds of miles and even fly to a jurisdiction; hotel stays are not uncommon. You might miss these opportunities because resources are limited. Nonetheless, you will retain the role of a judicial advisor by writing and researching memoranda of law, providing opinions on the direction a case should take, and always being available for the judges' needs.

Intertribal courts are unique and offer you a good opportunity to assess laws developing in Indian country from the perspective of several tribes at once rather than focusing on development in one particular tribe. They also provide you with the opportunity to meet experienced legal professionals across an entire region rather than within a localized area. A clerkship of this type may prove to be a very positive and enjoyable experience. The court system will benefit substantially from your help, which will save considerably on contract judges' time.

- **Tribal Courts of Limited Jurisdiction**

Tribal courts of limited jurisdiction are specialty courts, meaning they only have jurisdiction over one particular topic of law. This can be perfect for you if you know exactly what type of law you desire to practice. For example, if you are looking to practice in the area of gaming law you may consider clerking for a tribe that possesses a gaming disputes court. Clerking for such a court would help prepare you for that area of practice.

Beyond gaming courts, tribes have other courts of limited jurisdiction. Some tribes have established Tribal Healing to Wellness Courts, which function similarly to state Drug Courts. These kinds of courts are culturally sensitive programs that focus on

addressing an offender's substance abuse issues, while incorporating tribal custom and tradition, with the ultimate goal of healing the offender and restoring him or her as a productive member of the tribal community. These courts are typically more informal in nature and the judges have a great deal of personal interaction with the individual offenders. Many of these courts include an interdisciplinary component in which tribal agencies and other individuals from outside the court system meet and discuss the program participant's progress and work together with the judge to oversee the rehabilitative process. These types of courts are relatively new and therefore still undergoing adaptations to meet the individual needs of each tribal community. While there may not be much demand for your services due to the lack of familiar litigation activity in Tribal Healing to Wellness Courts, there may be the opportunity for you to assist a tribal judge who wishes to establish such a court.

Some tribes use peacemaking courts. This type of court is a forum for resolving conflicts through reliance on tribal values, traditions and customs. Such a court may use core values of respect, humility, compassion, spirituality and honesty in the process of peacemaking to resolve a dispute. Also more informal in nature, a peacemaking court may appear similar in nature to the Anglo-American style mediation process. Peacemakers are typically selected by the community and/or the parties because of the respect they have earned within the tribal community because of their wisdom and knowledge of tribal traditions. By participating in a peacemaking process, the participants may learn more about tribal history, customs, and culture while working to rectify the wrongdoing and restore peace between the parties and to the community as a whole.

Peacemaking courts are unique and structured to individual tribes' needs. Like Tribal Healing to Wellness Courts, there may be little call for your legal research skills, but a peacemaker judge may ask for assistance in drafting a peacemaking agreement for the parties. Nationally, tribes are revisiting their own tribal justice systems and exploring how other tribes, such as the Navajo Nation with its Navajo Nation Peacemaker Court, have modified their systems to draw on guiding principles found in tribal tradition to improve the effectiveness and cultural authenticity of the tribal court process.

These examples of limited jurisdiction courts do not exhaust the types of specialized courts that exist in Indian country, but they do provide a general overview of what you might encounter. Clerking for a specialized court offers a distinct opportunity to become familiar with one particular area of law. It also offers you a situation that possibly may afford more interaction with the parties to the dispute and the community at large due to the informal and personal nature of some of the courts.

THINGS TO CONSIDER BEFORE APPLYING

Once you have studied and considered the best tribal court situation for you, there are several other factors you should think about before submitting a clerkship application. Tribal courts are created to address the problems and fit the needs of individual tribes, thus, each presents a unique environment and a one of a kind experience. It is important that a law student who has spent the last two or three years in an academic environment understand the realities of Indian country and the importance of cultural sensitivity. Taking account of the following factors, combined with information about the various types of tribal courts you want to clerk for, will contribute to the success of your clerkship.

- **Location**

As it is said in the real estate trade, it is all about location, location, location. It is important that a law student desiring to clerk in Indian country determine what kind of locale will best suit his or her lifestyle and needs. A tribal court located on a reservation along the eastern coast of the United States will greatly differ from a tribal court located on a reservation in the West. This distinction is extremely important and could be central to your happiness as a law clerk.

Many tribal courts are located in remote, isolated areas of the United States. Some reservations are large in size and have their own supermarkets, other businesses, housing, and perhaps a casino, while other reservations are small in area with few resources and sometimes are even located within the boundaries of a city. One locale is not better than the other; it simply is a matter of preference.

Location is important because it will often dictate the options offered to a law student looking for a clerkship with a particular tribe. Tribal courts that function with a multi-court system and possess abundant resources will more likely offer a law student the option to live on, or near, the reservation for the summer and to clerk directly on site. Tribal courts that operate once or twice a month and are limited in their resources might offer a clerkship conducted remotely or off-site. A law student in such a court might work largely from home and never be physically present in the tribal courthouse. There is at least one tribe however that allows non-Indians to work on the reservation during the day, but prohibits them from residing there unless they are related to a tribal member. While this is an unusual and rare restriction, learning of such restrictions before you accept a position is critical.

Be sure to take the time to research the geographical location of the tribal courts that interest you. Also be sure to find out what, if any, resources the tribal court is willing to offer, such as pay, lodging, training, child care and the like. These are all important aspects of your clerkship experience.

- **Type of Position Offered**

Although this guide speaks in terms of “clerkships” there are actually several types of positions available for students or law school graduates in tribal courts. In the state and federal court systems, most clerkships are professional jobs.

Unfortunately, most tribal courts lack the necessary funding for a professional law clerk position. Other options exist, however, in the forms of externships and internships which will allow a law student to serve as a tribal court law clerk. You may be asking at this point, “What is the difference between a law clerk and an extern or intern?” The next sections discuss the distinctions between law clerks, externs and interns and why a student might prefer one over the other.

Law Clerkship

A traditional law clerk position is available to recent graduates from law school who are looking for an apprenticeship-type position that will continue their legal thinking and writing education. Clerkships allow new graduates to work with a

variety of areas of law in an environment without the pressures of client service and billing requirements. Typically, a law clerk position lasts for one year and is a paid position. However, some judges may prefer to have a law clerk for two or more years. Year-long or multi-year clerkships are very rare in tribal courts and therefore are highly competitive in Indian country.

Externship

An externship is an opportunity for law students who have not yet received their law degrees and who desire to gain practical experience while continuing to earn law school credit toward graduation. Each law school possesses specific requirements for its externship program and the student is responsible for learning and meeting these requirements. For example, some law schools require that a student extern be supervised by a licensed attorney. Many tribal judges are not licensed attorneys, which may pose a problem. At the University of Colorado Law School however, tribal judges are deemed qualified as externship supervisors — regardless of whether they possess a law degree or have been admitted to practice law.

Due to the fact that an externship earns school credit, the length of a typical position is one or two semesters. There is also the option of undertaking an externship during law school summer or winter recesses. Typically, an extern earns credits according to the number of hours worked. For example, to obtain one credit, a student might have to complete 50 hours of work. The more credits the student desires to earn, the more hours of work the student will have to complete.

One tribal court may not have a heavy enough caseload to allow a student to earn sufficient credit for an externship, in which case, a student might consider the option of clerking for more than one tribal court at a time. For example, a student might clerk for a tribe in northern California for 25 hours for that semester and clerk for another tribe for the remaining 25 hours to earn a credit. Again, this type of arrangement needs to be approved by the student's particular law school.

An externship generally requires the student to document the hours worked and may require the student to keep a time log or journal. Other programs may also

require a legal writing project, or a series of writing projects, to be completed during the externship for review by law school faculty. Each student must review and understand the externship guidelines applicable to his or her law school from the outset.

Internship

Internships are the least formal of the positions described. They are usually available for college or law students, but for the purposes of this guide we are referring to law school students. Generally, an internship is a non-paid position and does not earn a student law school credit. An intern may have a flexible schedule because the work is all voluntary. Internships are excellent ways to explore professional settings and to make important contacts without strict credit requirements. Internships are available both during the school year and during recesses. Students generally need little or no authorization to enter an internship. It is up to you and the judge to design the internship. The time commitment and daily schedule will depend on the judge's needs and the operation of the tribal court.

Externships and internships are valuable experiences that can assist you in determining your direction and in obtaining a paid clerkship position after graduation. No matter the form in which a student assists a judge, the clerkship experience offers practical insight into the process of tribal adjudication, exposure to tribal law, and an occasion to hone your legal writing and researching capabilities.

- **Particulars of Tribal Courts**

A position as a law clerk can be a very personal, collaborative experience that immerses you in procedural and substantive law. A successful clerkship depends to a large extent on a good match between you, the judge and the tribal court. You should research both the judge and the tribal court to which you are applying to best gauge whether the fit will be advantageous.

As discussed earlier, each tribal court will be distinct with regard to the kind of

cases it hears. Each court's jurisdiction may vary. For instance, if you are interested in the area of family law, you might do well to clerk for a tribal court that deals only in domestic relations matters rather than a general jurisdiction court. Potential law clerks who seek exposure to a wide variety of matters should apply to general jurisdiction tribal courts.

Secondly, some tribal courts are more traditional in nature and others mirror the Anglo-American system. Clerking for a more traditional tribal court may entail additional challenges, such as needing to become familiar with a unique set of tribal laws or unwritten traditions and customs. A few tribal courts have a Native language requirement. Some tribal courts may have a need for a bilingual clerk, which, if you are qualified, would set you apart from other law student applicants.

Potential law clerks should try to research the characteristics of the various tribal courts before applying for a clerkship with any particular one. There are several resources available to assist potential applicants, including: the U.S. TRIBAL COURT DIRECTORY (by Mary Jo Brooks Hunter and April Schwartz); the National Tribal Justice Resource Center's Tribal Court directory available in both print and online at www.ntjrc.org and quite a few tribal courts, such as the Ho-Chunk Nation (www.ho-chunknation.com) and the Navajo Nation (www.navajocourts.org) have informational websites. The time spent researching tribal courts and judges before applying for clerkships will greatly enhance the quality of your application and your clerkship experience.

ONCE YOU GET THERE: WHERE DO YOU FIT?

As a new law clerk, whether paid or in an extern or intern role, you will be immersed in a new environment. It will be important to become familiar with structure of chambers, the division of work, and the judge's (or judges') personality as soon as you arrive.

The most critical thought to keep in mind is that the world of any judicial clerkship is based on the judge's needs. Tribal courts reflect their own cultures, rules, norms and ethical considerations. Before you embark on your clerkship, it will benefit you to consider the following paragraphs and develop an inner compass that will guide

you in your work. This section, and the next, provides you with thoughts on the appropriate attitude and awareness that will help to ensure a successful tribal court clerkship experience. You are entering what promises to be, or at least has the potential of being, one of the best educational experiences of your life.

Since time immemorial, Indian nations have been keeping the peace and administering justice in their homelands through the use of their own ancient laws, traditions and customs. Traditionally, most tribes resolved disputes and addressed criminal activity by consensus, not by an adversarial system like the Anglo-American system. While many modern tribal court systems follow indigenous methods of dispute resolution, many of them are formal court institutions with strong similarities to state and federal courts. There is widespread variety in the types of tribal forums and applicable tribal law and procedure. Once you secure a clerkship in a tribal court, you should try to assess what kind of philosophies and structures guide that particular court. You will want as clear a picture as possible about the tribal court's culture, rules and ethics.

A great many tribal courts have established a hybrid or blended system that incorporates tribally-based traditional dispute resolution elements, which are highly effective within Indian communities, and combines them with Anglo-American notions of due process. There are some tribal courts that apply only Anglo-American style rules and other tribal courts that employ primarily tribal tradition and custom in decision-making. No matter the structure and shape of the tribal court, one thing is certain: the clerkship will be affected by the system that the tribal court adheres to and it is very important that you understand the philosophy supporting and informing the tribal justice system. Each tribe will have its own guidelines that you, as a member of the tribal court, will be required to abide by. If you are clerking for a culturally traditional court, these guidelines may be presented in a manual or they may be unwritten guidelines learned through observation and discussion. When clerking for an Anglo-American style tribal court, you will need to learn whether a tribal code, federal law, or state law adopted as tribal law, or a combination of them, governs procedures.

Your clerkship experience will also be affected by the number of judges that you are required to clerk for and your ethical obligations and responsibilities will be

different whether working for one judge or for a panel. Clerking for a panel of judges may mean a greater work load than clerking for one judge. It also may mean dealing with more than one style of adjudication. Each judge is unique in his or her background, philosophy and approach and may have different expectations of you. It may become challenging to write memoranda of law or draft an opinion that appeals to all the different judges.

On the other hand, clerking for just one judge, depending on the context and the caseload, may not provide you with the broad experience you are looking for. Working one-on-one with a judge can be intense and having a good relationship between you and your judge will be critical. Whether working for a panel of judges or just one judge, you will face some challenges and enjoy some opportunities.

A LAW CLERK'S RESPONSIBILITIES

The type of tasks that you will be assigned will be determined by the structure of the tribal court, the duration and formality of the position, your education level, and familiarity with the applicable law of the court and the judge's personality. You will be expected to perform some clerical duties, such as answering phones, assisting the court clerks with the processing of pleadings and orders, and scheduling conferences. Some judges will include more administrative duties, such as maintaining the tribal law library, drafting speeches and lectures for community events, and updating case books. Other courts may be in desperate need of a working set of court forms, or a new version of a form, and it may be your responsibility to draft them. You might also be required to step-in for other court personnel such as the bailiff, court clerk, or a judge's secretary. A law clerk who is ready, willing and able to tackle any tasks assigned will gain the court's appreciation.

As for the legal work that you can anticipate, the biggest deciding factor will be the type of court you chose for your clerkship. At the trial level, you might draft court orders, supervise the handling of evidence, and research and write memoranda of law. At the appellate level, you might hear oral arguments, perform legal research, write memoranda of law and assist in drafting opinions. If you clerk for a court of limited jurisdiction, the tasks may not include research and writing at all, but rather

you might have a more informal relationship with litigants and help them through the judicial process. For example, in a Tribal Healing to Wellness court that adheres to a culturally traditional method of healing, one of your responsibilities might be to educate a defendant on available programs that provide support for drug or alcohol dependent persons.

The field of American Indian law is constantly changing and anyone working with tribes should stay abreast of new important rulings and legislative actions being made across the United States. Some judges will want you to create an overview, or update an existing summary, of the relevant cases or enactments expected to affect Indian country. You may even be asked to assist a tribal judge to prepare a speech or presentation that the judge will present at a local or national conference.

Every law clerk is responsible for helping his or her supervising judge maintain an efficient court docket. This may mean that you work for a judge who has you do a wide variety of tasks during the day (not all legal in nature) and also expects you to take some court-related work home each night. Or, you might work for a judge who discourages taking work home but would rather you spend time in civic work and in getting to know the tribal and local communities better.

Furthermore, judges are very busy people and have many functions to attend beyond normal day-to-day court proceedings. If the judge is heavily involved in community affairs, there may be meetings and functions that you will be required to attend in the stead of the judge. Your job will be to act as a representative for the judge and the tribal court and this kind of responsibility will require a great deal of discretion, diplomacy and social and cultural sensitivity. It is quite possible that you will be required to attend social events, both casual and formal in nature, with a judge. Remember that the law clerk is typically the judge's closest ally in the courthouse and it could be important that both you and the judge attend together to certain gatherings to demonstrate this relationship to the community.

It is also important to remember that even at the end of the clerkship; you have responsibilities to the tribal court and to the judge. Even though the clerkship may be finished, you may still be bound to certain codes of conduct or need to finish up a pending case. In some courts, it may be your responsibility to find your

replacement to take over the reins when you have completed your clerkship. Regardless of your specific responsibilities, the ultimate impact of your involvement can be highly significant. A conscientious law clerk has the opportunity to have a lasting impact on the development of tribal law through his or her relationships and responsibilities in the tribal justice system.

“My clerkship for the Chief Judge of the Mashantucket Pequot Tribal Court was a learning experience and a chance to develop a professional relationship that I have continued to benefit from.

Tribal courts are as varied as the tribes they represent and no one understands that or can convey that better than tribal judges and their staff.

I have continued to practice Indian law and it is a small field. Clerking for a tribal court helps you develop a core understanding and helps in building your professional reputation.”

Christopher Schneider, Esq.
Lander, Wyoming

DEVELOPING RELATIONSHIPS

Although it may seem like common sense, the relationships developed by you with the judge and court staff members are extremely important. Keep in mind that the atmosphere in many tribal courts is egalitarian. It is of critical importance therefore for you to be a team player, respectful, professional, yet humble with all persons in the courthouse. At the same time, you must not forget to give the judge the respect due him or her; address your judge as “Judge [Last Name]” and “Your Honor” until asked to do differently. Your conduct during the clerkship will affect the impression you leave and your chances for a good recommendation. The judge has a great deal of influence in the community and is someone you may want to remain in contact with for your entire legal career.

Your relationship with the judge, or judges, will fail if you do not build an open and effective line of communication within the cultural norms of the tribe. This means that, as a law clerk, you should feel comfortable going to your judge for advice and direction on certain matters, while simultaneously knowing which questions are best suited to ask another person, rather than the judge. For example, you would

certainly want to discuss with the judge problems you are encountering with legal research but you probably would not want to ask him or her where the postage stamps are kept.

As a law clerk, you should try to gain a clear picture of what the judge expects from you early on. You will want to know what kind of writing style the judge prefers, if she desires a formal and lawyerly style or prefers plain language. As a law clerk you should try to anticipate the judge's needs and assess where your help will be put to the best use. Not only should you anticipate the judge's individual needs, you can also try to anticipate the needs of the tribal court as a whole. You should be able to work with the court docket effectively and schedule your work so that the system operates in a timely manner while still producing quality legal work. You may find you have ideas for improving some processes, which, if offered respectfully, may be much appreciated.

You must also maintain a positive attitude towards court staff. The court clerk is someone that you will want to form a positive relationship with. Often the court clerk has been working in the tribal court for a long period of time and knows the system and the judge much better than a short-term law clerk can. The court clerk can be a great conduit between you and the judge. The court clerk might control the judge's calendar, which means he or she will be your ally in drafting your schedule for conferences, motion return dates, trials, and even vacations.

Other court employees, like the court reporter, bailiff, and other law clerks are important people to build alliances with. They will be your source for finding and maintaining case files, performing courtroom duties, and for general inside information on the inner workings of the tribal court system. If you work alongside other law clerks and court staff for other judges, then take the opportunity to get to know them. This can be beneficial, especially when judges are working together on a case decision and the opinion writing is a group effort.

It should be noted that law clerks working remotely may have less opportunity to forge such relationships. Although communication may be limited to the phone and email, do not be afraid to express yourself and show interest in your judge. Be sure to take the time to find a good opportunity to chat with your judge. Perhaps your

judge wants a daily email update on your progress or maybe your judge will contact you once a week to get a lengthy update on your projects. Your judge may feel more comfortable talking over the phone rather than discussing pending cases through email or your judge may prefer email because it fits in with his or her busy day. These are all small yet important details that will be important for you to determine. As long as you are putting in a solid effort, your relationship with your supervising judge should blossom—even if you never meet in person.

As a tribal court law clerk, you will have a chance to serve the justice needs of a community, to relieve the burden on the tribal judge and possibly the court staff, and assist in the development of the tribal justice system as a whole. The judge and court staff will be important professional (and personal) assets for you. Hopefully the benefits of your clerkship will be long-lasting, and will be reflected in a special bond with your judge as your lifelong mentor. For additional advice on how to work with your supervising judge, you may want to read the National Association of Legal Professionals (NALP) publication, *Working with a Mentor. 50 Practical Strategies for Success* by Ida O. Abbott, Esq. (www.nalp.org).

CULTURAL CONSIDERATIONS

Even if a tribal court mirrors the Anglo-American system and does not apply traditional methods in an obvious manner in its adjudication practices, there are always going to be cultural considerations to take into account when working in a tribal court. The most important practice to incorporate into your clerkship is to listen and observe at every opportunity with a humble attitude. You should think of your clerkship in Indian country in somewhat the same way you would think of taking a job in a foreign country. Always remember that tribes are sovereign nations with their own rules, customs, and traditions.

A critical aspect of cross-cultural interaction is the attitude one projects. Arrogance is not an admirable trait. This is especially true in a law student from another culture who behaves as if he or she writes better or knows the law better than the tribal court staff does, just because he or she went to law school. In Indian country, many of the judges are non-law trained officials. While it is quite possible that your judge never went to law school and earned his or her position through on-the-job

training; it is also quite possible that your judge was hand-picked by the tribe due to his or her knowledge of tribal customs and traditions. Your judge, no matter his or her formal education, is most likely an expert on the tribe's culture and law, and consequently you should show great respect.

You should also be aware of other unique aspects of working in Indian country. For example, you might need to become accustomed to the concept of what is sometimes referred to as "Indian time." The Anglo-American system is very rigid and structured around people meeting at exact times. If a state court proceeding is scheduled to start at 8:00 a.m., an attorney had better be to the courthouse by 8:00 a.m. or face the negative consequences! This is not always true in Indian country. A proceeding might be scheduled for 8:00 a.m., but it may not start until all necessary persons are present (whether they are parties to the suit or not). You must be patient, but still show up on time.

Also, tribal courts may close their doors for reasons that are not common to the Anglo-American system. For example, a tribal court may postpone a day's session of hearings due to a death in the community, or to observe a special tribal day that is not necessarily a federal holiday. These things will not become clear until you work or live in the tribal community, but you can go into the environment with sensitivity and respect, ready to learn.

Cultural sensitivity extends outside of the courthouse. If you live in Indian country during your clerkship you will need a respectful relationship with the community. Your propriety upon the reservation is just as important as your attitude in the tribal courtroom. Many Indian reservations are "dry" reservations, which prohibit on-reservation sales or consumption of alcohol. Due to the fact that alcohol abuse has had a devastating effect upon many tribal communities, you would be wise to be cautious even when engaging in permissible social drinking. There may also be prohibitions against photography both within the courtroom and on the reservation. Be sure to make respectful inquiries about behavioral boundaries in the tribal community.

It might take some time for you to earn trust within the courtroom and in the community. Your goal should be to develop open relationships, but remember that

you cannot force them and bonds may not happen overnight or at all. As long as you are gracious and humble in your surroundings, you should have a good experience. Your judge and the court staff are great resources and can provide you with guidance and direction in these matters.

ETHICAL DUTIES

Lawyers are bound by particular rules of ethics. These rules ensure that a lawyer is acting honestly and with loyalty towards his or her clients and is providing competent representation. Even though you may not be working for a particular client, clerkships are bound by similar ethical rules. Maintaining your loyalty to your judge is critical. Integrity and discretion are key attributes of a successful law clerk. Tribal judges are held to the highest of ethical standards. Judicial law clerks are held to the same standards. A good rule of thumb is that if the judge himself or herself would be ethically prohibited from engaging in particular conduct or conversations so are you.

There might be a special code of ethics, or even a court employee handbook, that applies to your judicial system and you will benefit from finding out the acceptable codes of conduct as early as possible. There are several resources regarding applicable rules of ethics that you should read on your own and become familiar with prior to your clerkship. At the very start of your clerkship, you will want to ask your judge about the existence of any particular standards of conduct applicable to your court, including tribal codes of ethics or professional responsibility, tribal rules of judicial conduct, tribal rules governing tribal court employee conduct or even general tribal government employee handbooks. Most tribal courts possess narrowly tailored guidelines concerning your ethical duties and conduct and you will want to familiarize yourself with the rules.

Even if the tribal court or tribe does not possess formal written rules, it does not mean you are free from standards. If the tribal court has not formally adopted rules of conduct then you might wish to review the Federal Judicial Center's publication, [Maintaining the Public Trust: Ethics for Federal Judicial Law Clerks](https://lawclerks.ao.uscourts.gov/ethics_for_lawclerks.pdf) (https://lawclerks.ao.uscourts.gov/ethics_for_lawclerks.pdf) to help develop a compass for your behavior.

Throughout your entire career as a lawyer, the rules of guarding confidentiality and prohibiting conflicts of interest will apply. In the judiciary, these rules arise in different contexts but are no less binding. As a law clerk, you must comply with these rules. For example, you will always want to be cautious about conversation related to your work. You never know who may be listening in the hallway, elevator or even at the next restaurant table. They could be litigants, attorneys, jurors, witnesses, and even family members or friends of the parties involved. The same is true for your conversations with the law clerks, judges, and staff of other chambers. Your judge must be able to rely on your absolute discretion about cases, opinions, debates and procedures in his or her chambers.

The same discretion applies to your own notes and work product, as this protects the integrity of and respect for the tribal court. On the subject of papers, you should never bring the original documents home with you- use “courtesy copies” provided by the attorneys for this purpose or make your own copies. Your worst nightmare is to take originals home and lose them or have your new puppy gnaw on them.

If you are working remotely for a judge, the issue of ethics might be complicated. Be sure to develop an email privacy policy (like the need for a disclaimer of confidentiality on each email sent or using only first names within emails). Additionally, talk to your judge about the use of web-casting or video conferences. You would not want to host such a meeting from your dining room table where the rest of your family is able to hear the details of a particular case. If you do have files at home, your judge may request that you keep them in a secure place where only you are able to access the information. Or, if you send files over the internet you may need additional software to ensure privacy and complete deletion once the clerkship has ended. Your duties of confidentiality with regard to your clerkship are life-long. You can never divulge the deliberative and draft work with which you were involved.

While working in the tribal court, you might have to restrict the habits of your outside life while clerking. For example, if you take a clerkship in a United States federal court, your personal political involvement must be limited. This might be

true for tribal courts as well. Certain tribal courts that hear cases involving the tribe's gaming enterprise may prohibit tribal judges and, by extension, law clerks, from gambling at tribal facilities to avoid the appearance of impropriety. It would be difficult for a plaintiff to have confidence in the impartiality of the court if the judge or his or her law clerk wins a jackpot from the very entity that is being sued. Your judge might restrict your socializing (including drinking of alcohol) with the larger tribal community to avoid any appearance of impropriety. You are a representative of the tribal court 24 hours a day during your clerkship and must be mindful to rise to that responsibility. Also, you may not be able to work on files connected with a law firm in which you have a possible offer of employment pending.

Know what the ethical rules are in regard to cultural matters. It may be custom or tribal tradition to give a gift as a way of welcoming you or showing gratitude for your assistance, but this may be problematic if the gift is from a person who is a party in a suit pending before the tribal court. You may be offered the opportunity to sit in on tribal council meetings, which is an honor, but depending upon the structure of the tribal government or the cases present before your judge, this may pose a possible ethical concern regarding prohibited out-of-court communications about the case or risk the tribal court's appearance of impartiality and independence.

A law clerk is considered to be an officer of the court with a responsibility to maintain the integrity and decorum of the proceedings. You may have a duty in your position to inform the presiding judge if you have reason to believe that a defendant, litigant, witness, juror, attorney or courtroom spectator is under the influence of drugs or alcohol. This may be particularly relevant if you are clerking in a trial-level court. It would be prudent to discuss the possibility of this situation with your judge at the outset of your relationship and obtain direction from the judge as to whether and how such information about possible intoxication should be communicated.

As a representative of the tribal court, you must be aware of the ethical implications of your conduct and always clear questions with your judge prior to acting. As stated earlier, your integrity and discretion will be the key to the success of not just

your clerkship, but your entire legal career and the tribal court that you serve.

RESEARCH TIPS AND HELPFUL WEBSITES

American Indian law is a growing area, as many of the more than 560 federally recognized tribes and Alaska Native Villages actively exercise their sovereignty and self-governance and develop their economies. Researching in the field of Indian law can be challenging due to the fact that the majority of decisions are not memorialized in written opinions. Additionally, few primary or secondary resources are published or distributed to the public. The few available public tribal law resources are primarily accessible on the Internet. Locating the right sources can require patience, creativity and tenacity. The following categories are just some of the places you would want to look. Judges should be able to tell you what resources they believe are the best, and in some circumstances those might be tribal elders or other persons steeped in knowledge of oral or traditional law. Remember to exhaust all possible avenues and be creative in your efforts to gain information.

The critical first issue is discovering your tribe's choice of law rules. Many tribal courts apply tribal law first, and, if no relevant tribal law exists, will adopt federal law in the relevant circuit and, in the absence of federal law, may look to state law as persuasive guidance. Some tribes may direct the tribal court to look to the law and opinions of other tribes. Always begin your research and legal analysis with a clear understanding of the applicable law.

- **Tribal Resources**

Most Indian tribes have enacted tribal constitutions, as well as codes and ordinances. However, unlike many state and federal codes, these documents often are not published for the public in print or electronically. Many tribes are, however, working to make their codes and laws available to the public; and, in fact, that is one of the goals of the National Tribal Court Law Clerk Program.

There are a few key tribal resources to rely on for tribal legal research. A good first resource to review is the tribal constitution. This is not always possible because some tribes choose to keep their constitutions and codes private and do not

condone distribution of tribal documents to the public. If a tribal constitution is available, this will be helpful in providing you with a view of the overall structure of the tribal government. More than likely, the tribe will also possess tribal codes or tribal ordinances. If possible, you will want to obtain a hard copy of these laws because they will be critical to your legal analysis. It would be difficult to determine if a tribal member violated a gaming law provision without having read the corresponding code. Your tribal court may also have published court opinions. This is most often true if you are working at the appellate level, but may not hold true if you are working in a tribal trial court or a tribal court of limited jurisdiction. While some tribal courts issue written opinions, unfortunately they are not always collected or organized for easy reference. It may be a worthwhile project for you during your clerkship to collect and index these opinions.

Some court opinions, from a variety of tribes, are selected for publication in the *INDIAN LAW REPORTER*. Each annual volume contains and broadly indexes approximately twenty-five tribal courts' opinions. The National Indian Law Library (discussed in more detail below) has published a Cumulative Index to Tribal Court Opinions in the *INDIAN LAW REPORTER*. These can be very helpful in understanding what other tribes across the nation are deciding on certain topics of law. For example, your judge may be presented with a matter of first impression dealing with mineral leases and might encourage you to find opinions from other tribal courts that have dealt with a similar issue.

Furthermore, some tribes enter into intergovernmental agreements which create compacts between Indian tribes, between the tribe and the state, or between the tribe and the federal government. These agreements typically govern specific topics like taxation, gaming, education, Indian child welfare, and water rights and can provide the legal principles applicable in those areas.

Another key resource is tribal members themselves if appropriate. There may be a particular tribal member who is thought of as the expert on a subject, as a governing tribal tradition, and you will want to consult this person. This might be a difficult task to accomplish, and certainly not one familiar from law school, but it may be necessary if you want to provide the best legal analysis possible for your tribal court judge. This is definitely a subject that you will want to explore with

your judge prior to acting.

Some of these resources may be housed in the tribal court facility. Many courthouses host a library, or at the very minimum, judges are likely to possess written legal resources within his or her chambers. This is the first, and most obvious, place to look for information. However, if you can't access any books or the tribal court library, (for example, if you are working remotely), there are some helpful websites which post tribal law and select tribal court opinions. These are explained in the next section.

- **Tribal Law Publishers and Websites**

Several entities and associated websites provide publish or provide access to tribal law. Each provides a unique range of materials and you should take the time to become familiar with a few of their databases. Some websites may be considered more authoritative than others, so be sure to ask your judge which Internet resources he or she approves for legal research prior to writing your memorandum or opinion.

- ***National Indian Law Library***

One of the best and most comprehensive sources of legal materials is the National Indian Law Library, otherwise known as NILL. NILL, the research arm of the Native American Rights Fund (NARF) in Boulder, Colorado, has amassed the largest library collection of tribal codes and constitutions in the United States. The library has approximately 250 codes and 480 constitutions from different tribes. The website for NILL is www.narf.org and you will need to click on the “Library and Resources” link at the top of the page.

NILL provides three ways to access the tribal codes and constitutions content. These are through the library's Internet catalog, accessing the “Tribal Law Gateway,” and browsing NILL's digital collection. The Tribal Law Gateway provides an A-Z list of all federally recognized tribes and the availability of print and electronic codes and constitutions. (See www.narf.org/nill/triballaw/az.htm; Tribal Law Gateway is at: www.narf.org/nill/triballaw/index.htm .) NILL has digitized in full text more than

70 tribal constitutions and 60 tribal codes. (See www.narf.org/nill/triballaw/onlinedocs.htm .) In addition, the table of contents of all the codes in NILL's collection is viewable via the internet. You will need to request the codes that have not yet been digitized from NILL's law librarians. NILL coordinates with the University of Oklahoma's on the Native American Constitution and Law Digitization Project, which has innumerable treaties, ancient laws, and tribal codes found at <http://thorpe.ou.edu/>.

- ***The Tribal Court Clearinghouse***

The Tribal Law and Policy Institute is a Native American owned and operated non-profit corporation created to deliver education and research to the public. Its website, The Tribal Court Clearinghouse, offers a wealth of information, ranging from published tribal laws and court opinions to relevant federal laws that affect Indian country. The website also provides for other links to available tribal court funding opportunities and additional Internet resources. You can find the Tribal Court Clearinghouse site at www.tribal-institute.org.

- ***National Tribal Justice Resource Center and Versuslaw***

The National Tribal Justice Resource Center, a technical assistance project of the National American Indian Court Judges Association, also collects and posts a great deal of tribal law in electronic form. On their website, www.ntjrc.org, you can find tribal codes and constitutions, as well as published tribal court opinions. Another point of interest for you is that the Resource Center hosts programs and services that are offered to all tribal justice system personnel- whether working with formalized tribal courts or with tradition-based tribal forums. Its website also provides information on tribal justice happenings across Indian country.

The Versuslaw site, www.versuslaw.com , provides access to similar tribal court content as the www.ntjrc.org database. Some researchers prefer the Versuslaw resource as it provides a more powerful search engine and easier navigation. Versuslaw is free to all law students if they sign up. It is also free for tribal court judges whose courts submit their written decisions and opinions for publication on the Versuslaw site. The Versuslaw service is also available for a small, reasonable

fee to all others.

- ***National Congress of American Indians***

The National Congress of American Indians (“NCAI”) is an organization that strives to build unity among tribal governments. NCAI monitors all federal policy that might affect Indian nations and coordinates efforts to inform federal decision-makers who have potential to influence tribal government interests. On NCAI’s website, www.ncai.org, you can find a research center that provides data and analysis that are pertinent to public policy decisions. The NCAI website hosts the largest collection of tribal intergovernmental agreements and a great tool for all people interested in Indian law and policy development.

- **Other Helpful Resources**

The list of resources above is not exhaustive by any means. There are several other resources that you can use for research. For example, if you wanted information on current events happening in Indian country, you could read one of the many on-line newspapers such as *Indian Country Today* (www.indiancountry.com). You can also read blogs, like those found on *Indianz.com* (www.indianz.com), but keep in mind that this kind of site can present a biased view and is not considered authoritative.

There are other, more commonly available electronic databases that cover a portion of Indian law. Westlaw[®], Lexis Nexis[®], and Versuslaw[®] are examples. These websites contain all federal Indian law decisions, handed down by various United States federal courts and the Supreme Court, as well as, some tribal law decisions. These websites require paid subscriptions. Versuslaw is an economical, fee-based service, and offers robust searching capabilities. Versuslaw will allow tribal judges and tribal court staff free access to its services if the tribal court contributes its written judicial opinions for publication on the site. Westlaw and Lexis are much more expensive services but they do provide some additional coverage on tribal court opinions.

If you are having problems in the area of research, several people may provide you some direction. There are a few law schools that host American Indian Law clinics,

such as the University of Colorado Law School, where other law students are working on current legal issues in Indian communities. Student attorneys working in the clinics may have creative ideas on how to find difficult information. The NILL has wonderful specialized law librarians who are eager to help the public with their Indian law research. Don't hesitate to email or call others who work in the field.

PART II

A Judge's Guide to How to Best Work with a Law Clerk

This section is designed to assist tribal judges and justices to learn how best to work with and utilize a law clerk. It is well known that resources are limited in many tribal justice systems and chances are that this may be the first time the court system has had an opportunity to add a law clerk to its staff. Once the law clerk arrives, several questions and concerns may arise for the judge: Will I spend more time training this law clerk than it is worth? What if the new law clerk annoys me more than helps me? What if my tribal community does not like the law clerk? What kind of writing assignments does the law clerk expect? What if I want the law clerk to do clerical tasks, like filing papers, occasionally? Is the law clerk expecting to be paid? What goes into a letter of recommendation?

These questions all capture valid concerns. Rest assured that the clerkship experience often proves as valuable for the judge as it is for the law clerk. Many judges and justices in the United States court systems will confirm that law clerks are valuable assets to their judiciaries. In addition to the daily assistance a law clerk can provide, the unique relationship between you and your clerk is one that most judges value. Many law clerks become life-long colleagues with their mentor-judges.

Selecting a law clerk should be a carefully considered decision. You must spend a sufficient amount of time on the selection process to ensure that an appropriate person is chosen. Not only must you be comfortable with the selection, but the court staff with whom the law clerk will interact must feel at ease with the person selected as well. Mentoring a law clerk will come naturally and easily to you if you enjoy working with him or her and respect your clerk's abilities. As a respected person in the legal and tribal communities, you are a key role model for your law clerk.

Law clerks become an integral part of the tribal court staff, and if oriented and mentored adequately, can provide invaluable service. This person should assist you

in maintaining an organized and efficient chambers and assist with handling the caseload in a timely manner. In turn, you are assisting the law clerk, soon to be a practicing attorney, to hone his or her legal writing and analytical skills. The following sections contain general tips for judges on how to best work with a law clerk. They are brief and designed to create a skeletal framework to help develop a solid working relationship. The information is meant to help create an effective, beneficial experience for yourself and your clerk, and hopefully lay the foundation for a lasting professional association.

DEVELOPING OPEN LINES OF COMMUNICATION

Having an open door policy is essential to the success of a judicial clerkship. You should ensure that your clerk feels comfortable coming to you for advice and guidance. You and your clerk should engage in open and free discussion of the cases and projects before you. As much as possible, allow the new law clerk to freely express him or herself and to test his or her legal reasoning. Though some of your law clerk's theories may reflect inexperience or overzealousness, this opportunity to engage with you is an important learning opportunity for your law clerk. The law clerk should be made fully aware of his or her responsibilities to the tribal court. Your law clerk is going to turn to you as his or her supervising judge for help with any problems he or she is encountering and you should be fully prepared and willing to provide guidance. Conversely, you can rely on a law clerk as a trusted advisor and consult with him or her on the most important issues before the court. If all goes well, the law clerk will become a loyal, valuable staff member who will strive to impress you with his or her abilities.

“My law clerk contributed significant tribal court case law research for my work with the Turtle Mountain Band of Chippewa Court of Appeals. They were able to parse through hundreds of pages of precedent that I simply didn't have time to do, strengthening the opinions and the legitimacy of the court.”

Justice Matthew L.M. Fletcher
Director, Michigan State University Indigenous Law Center

Early on in the clerkship, you should provide a clear and specific picture of what is expected from the law clerk. Start with the basics: working hours, dress codes, office spaces and available facilities, introductions to court personnel and outlining daily or weekly routines. Secondly, define the tasks you want the law clerk to perform. The better you define your expectations, the more smoothly you and law clerk will work together. For example, you or a member of your court staff should carefully explain the expectations for maintaining the docket. Perhaps it is necessary, due to limited tribal court staffing as is often the case, for the law clerk to handle some ministerial tasks for the court or to fill in for another staff member at times. This means that you need to show the law clerk how, and when, to handle clerical tasks like taking incoming telephone calls, managing mail, photocopying or serving as court bailiff.

An important aspect of open communication is frequent feedback to your law clerk, on his or her work habits and work product. Only when your expectations are clear and the law clerk knows whether he or she is falling short, and how, can both the work product and the relationship strengthen over time. Do not forget to balance constructive criticism with positive feedback.

Law clerks need clear training on their ethical duties to the court and information on how to seek guidance from within the system. This is particularly true if there are several judges or justices working in the system. Discussing the applicable ethical and cultural considerations that the law clerk should be mindful of while working in the tribal court should be one of the first things you do in the clerkship period.

“While serving as a state court judge, my law clerks were invaluable. Without them, most courts cannot keep their dockets under control. It was most helpful to be able to talk with someone with a common unbiased interest. Clerks should be thorough and willing to challenge attorneys and yes, even their boss.”

Judge David Peterson
Pokagon Band of Potawatomi Tribal Court

To learn more about how to work effectively with a law clerk and to develop a useful mentoring relationship, see the National Association of Legal Professionals (NALP) publication, *Being an Effective Mentor: 101 Practical Strategies for Success* by Ida O. Abbott, Esq. (www.nalp.org). Within a short time of joining the tribal court, the law clerk should be able to identify and respond to your needs if strong lines of communication are established. The objective of bringing in a law clerk is to free up your time through reliance on another who can research, write and analyze according to your standards and preferences.

IDENTIFYING A PREFERRED WRITING STYLE

The majority of work that a law clerk does usually consists of legal research and writing. A law clerk might write memoranda of law, draft orders or opinions, or undertake to produce a detailed analysis of current Indian law issues. The way you communicate your expectations for a clerk's writing is very important.

Most beginning law clerks, both current law students and recent graduates, have only been exposed to an academic, legalistic form of writing. This style may be acceptable in a formal setting but can be unwelcome in less formal tribal courts. For example, the use of such words as "henceforth" and "heretofore" might fit well in an appellate piece but may not be suitable for a written decision that will be distributed and read by unrepresented litigants or the tribal community at large. Early on in the clerkship, you should work closely with the law clerk to mutually adopt an acceptable writing style for each assigned project.

In the beginning of the clerkship, you must take time to check the law clerk's citations, references and accuracy. You should be sure to clarify for the clerk whether your court uses a particular citation style or format. It is particularly important to mention the abbreviations used for your own prior published decisions and opinions as they are often not widely known to law students. With early and careful guidance, a law clerk can adapt to your writing style and learn to write with precision using correct citations and references. It is a large part of your role as mentor to help a law clerk to hone his or her legal writing and analytical skills, as well as to provide the clerk with a broad introduction to tribal law and

procedure. The back and forth editing process between you and your law clerk, while occasionally time-consuming, will usually result in an excellent product and mutual learning. The discussions that the pair has about both substance and style can be both informative and invigorating.

Often your job can be a lonely one. One of the best aspects of a clerkship is the freedom you have to speak freely and in confidence with the law clerk about the often very difficult decisions you must make. Most judges welcome the feedback that they get from their law clerks and quickly come to trust the law clerk's insight and judgment.

It is wonderful to have a knowledgeable law clerk with who I can candidly discuss sticky issues in my cases. Often, a law clerk's questions prompts me to reexamine my logic or reasoning in important ways. A wonderful side benefit of those clerkship experiences is the warm lasting collegial professional relationships I have with my former law clerks--who are now my colleagues.

Justice Jill E. Tompkins
President, Eastern Tribal Court Judges Association

HOW YOU CAN HELP YOUR LAW CLERK HANDLE CHALLENGES

As a mentor, you should be prepared to help your law clerk work through challenging situations. Even something as basic as getting to know one's way around the courthouse or government buildings can be daunting tasks to a new arrival. Taking time to proactively think about what challenges a law clerk might face will help you to ease some of your law clerk's potential discomfort and get the relationship off to a good start.

First, your law clerk likely will face initial struggles in determining where he or she "fits" in the tribal court system. This may be a struggle for you as well, especially if this is the first time the tribal court has utilized a law clerk. This challenge can include things like helping the law clerk understand the tribal court structure and philosophy, the law clerk's responsibilities and the code of conduct the law clerk is expected to follow. It is advantageous for the judge to give these questions careful thought before the clerk arrives so that you can fully and clearly explain the role the

law clerk is expected to play and how you hope that the law clerk does so.

Most law clerks are new to legal practice and courtrooms. Additionally, many law students are unfamiliar with the specifics of tribal law. Good clerk candidates will have a general understanding of tribal justice systems, but it is unlikely that a new law clerk will have any in-depth knowledge of a particular tribal court. A law student who has taken the time to research the particular tribal court's governing law and published decisions, if any, prior to applying for the clerkship should receive particular consideration. Due to the fact that so many tribes do not publish their tribal laws or court opinions, it will be your prime responsibility to provide the new law clerk with access to these materials.

Second, your law clerk may encounter challenges when researching federal Indian law and tribal law. Conducting research in this field differs from research in other legal subject areas. The majority of tribal court opinions cannot be found in national publications or in a searchable electronic format. Thus, researching may demand patience and tenacity. Many tribal judges have experienced challenges of this nature in their own work. A judge who remembers his or her early researching frustrations will be in a better position to aid the new law clerk. Developing a checklist of resources for the law clerk and taking time to familiarize the law clerk with the tribal law library and tribal court written decisions, are ways in which you can assist the law clerk. Whatever aid you give to the law clerk will help ensure sound and efficient research.

Third, your law clerk may experience difficulty understanding or relating to your tribal community. This challenge can have many facets. Although all persons seeking to work as a tribal court law clerk should be prepared to demonstrate cultural respect and sensitivity, not all will be culturally competent concerning a particular tribal community. Tribal judges are leaders in the tribal communities in which they serve and you can be instrumental in guiding your law clerk in community and cultural matters. You should make a concerted effort to make the law clerk feel welcome on the reservation and in the community. The law clerk should be introduced to tribal leaders and other significant people in the community, particularly tribal employees who the clerk may need to interact with. You should make it clear to the community that the law clerk should be seen and

treated as a representative of both yourself and of the tribal court.

A law clerk should be made immediately aware of any limitations or boundaries on his or her behavior that may differ from non-Indian or non-tribal communities. A law clerk could, for example, find him or herself working for a tribe that operates a public gaming facility yet the tribe believes that its own employees should not engage in gambling at that facility. If a law clerk is not aware of this belief, it might create embarrassment for all involved. The law clerk will need assistance from you to become familiarized with the traditions, customs, beliefs and norms that are important in the tribal community.

“We have had the opportunity to have had three law clerks in the past assist the judges. The value of the clerk was recognizing that Tribal Courts are unique, and learning from a book does not measure up to actually being in the judicial system.”

Chief Judge Elaine Newton
Southern Ute Tribal Court

Lastly, if a law clerk works from a remote location, you as the supervising tribal judge may face additional challenges. The logistics of working remotely can be stressful. You may be responsible for handling an important case with a looming deadline and not be able to reach the law clerk in a timely fashion due to his or her law school class schedule. Or, the law clerk may be working on a tribal court-related project, get stuck, and not be able to reach you immediately because you are on the bench. There may be timing issues when your regular schedule gets disrupted or the clerk’s other responsibilities intrude. Taking some time up front to foresee problems like these and come up with a plan for addressing them will alleviate much of the possible disruption and delay.

Proactively addressing possible challenges a law clerk may face and developing a plan to remedy those difficulties will make the judge-law clerk working relationship stronger and more efficient. Your valuable help in circumventing obstacles will contribute to the clerkship’s success. Above all it must be remembered that the clerkship experience is designed to be positive for both you and the law clerk.

TIPS FOR DEVELOPING PROJECTS FOR YOUR LAW CLERK

Many law clerks come to work for courts as externs. Externships are much like a full-time post-graduation judicial clerkship, but the clerk is still in law school and earning school credit for the work with the tribal judge. Thus, an extern may need to complete a legal writing project of some kind. Even clerks who do not have to submit writing projects to school faculty still expect to enhance their writing skills through practice during a clerkship. Law clerks working as externs or interns may bring with them specific guidelines from their schools for their required writing projects. Recent graduates may wish to use completed pieces of writing (with identifying personal information redacted if necessary) in their job applications. It will be helpful for you to have a few projects in mind, apart from written court opinions, prior to the law clerk's arrival.

All projects and tasks assigned to the law clerk should be helpful to you and the tribal court; you should spend time cataloguing ideas for projects that are begging to be done but stay at the bottom of the pile of work due to higher priorities. A few examples of writing projects follow. The law clerk could research and provide the tribal judiciary with an update on recent relevant developments nationally in Indian law. Perhaps the tribal court would like to undertake a new initiative, such as incorporating peacemaking into the court's processes or establishing a Tribal Healing to Wellness Court. The law clerk could research the tribal court's jurisdiction, the court's authority to undertake the initiative, and forecast possible legal challenges to the initiative as preparation for the new project. The law clerk could also provide assistance in drafting parts of the new project's grant funding application or developing new court protocols for the initiative's implementation. The tribal judiciary or the tribal bar may want to conduct a continuing legal education seminar on some topic of tribal law and the law clerk could draft the written training materials. The resulting products could help you and supply the law clerk with a writing sample.

Whatever the assigned project might be, you should try to ensure that it requires in-depth legal research, analysis and writing. Most externships require the student to work with a faculty advisor from the law school. If you are having difficulty

designing an appropriate writing project for the student, the faculty supervisor may be able to suggest past work that has met the requirements for awarding credit.

TIPS FOR WRITING YOUR LAW CLERK AN EFFECTIVE REFERENCE LETTER

It is important to keep the end in mind. Most clerkships are successful and end with a close mentor-mentee relationship between the judge and law clerk. Thus, many clerks will ask their supervising judge to write a letter of recommendation or agree to be contacted by phone in support of employment applications.

In writing a letter of reference, think about what you, as an employer, would like to know about a prospective employee. Letters should certainly highlight the clerk's research and writing skills. An effective approach is for you to mention a particular challenge that the law clerk faced during the term and how the clerk persevered and successfully overcame the hurdle. Of course, it is always good to discuss the clerk's ability to meet deadlines, work independently, take direction when necessary, maintain objectivity in matters, and to discern between necessary and unnecessary questions to ask a supervisor. If you came to trust the law clerk's reasoning and judgment in legal matters, that should be included in the letter.

In addition to his or her future capabilities as a lawyer, you should also consider mentioning the law clerk's character. It will be very important to a future legal employer to know whether the clerk handled him or herself in an ethical and professional manner. It is also worth noting whether the law clerk was a "team player" and what kind of collegial relationships the clerk was able to form with other judges and court staff. It may also be relevant to mention that the law clerk demonstrated cultural sensitivity and was respectful of tribal traditions, customs and norms of behavior. These are just a few examples of what a judge might consider including in a letter of reference.

In making recommendations and considering a law clerk's use of written tasks that you assign for future job applications, consider your confidentiality obligations. Identifying names and features should be removed from any court documents that the law clerk drafted and is planning on distributing to non-parties. Some judges may prefer not to put a recommendation in writing, but, rather, may suggest that

the clerk provide the judge's name and phone number as an available reference and accept calls if and when they come.

There may be that unusual situation when a law clerk does not deserve a letter of recommendation at all. You may simply have nothing positive to say about the law clerk if you were to write a letter. This situation can be very uncomfortable but if the law clerk truly does not deserve a positive letter, you should not write one. You can break the news by saying something like, "I don't think I'm the best person to be a reference for you at this time. Have you thought of someone else you can use?" Hopefully, if you have made a careful choice up front, you will never find yourself in this situation.

CONCLUSION

It could be said that behind every great judge is a great law clerk. While this may not be universally true, it is safe to say that by and large good law clerks greatly enhance a judge's performance. The clerkship is an intensely collaborative relationship that can survive long after the term is over. Unlike the federal and state judiciaries, tribal court judges have not often enjoyed the benefits clerkships can provide them. Tribal court judges can now obtain valuable assistance through the National Tribal Court Law Clerk Program. The Program's website, www.triballawclerkships.org, contains information about how a tribal judge can obtain a law clerk's services, as well as, a searchable database for law students to locate available tribal court clerkships.

Law school classes can be highly abstract and divorced from the actual practice of law. No place is that more true than in the study of federal Indian law and tribal law. By creating opportunities for law students and recent law graduates to work within the tribal court system, more knowledge about the important work of tribal judges and courts will be distributed. In turn, these clerks can assist in the development of tribal jurisprudence. We hope that this guide will assist tribal court judges to attract and work with high quality law clerks and that prospective law clerks interested in working in tribal courts will be aided by the advice we have provided. It is our hope that in the near future, many mutually beneficial tribal court clerkships will flourish throughout Indian country.

APPENDIX A – SAMPLE LAW CLERK EXTERNSHIP POSITION POSTING

Tribal Court Law Clerk Externship Opportunity

Name of Tribal Court:	The Tribal Court
Location of Tribal Court	Indian Reservation, Colorado
Name of Supervising Judge:	Chief Judge John Blackhawk
Type of Position:	Externship (for law school credit only)
Description of Position:	<p>For a period of one semester or over law school summer recess, the law clerk is required to:</p> <ul style="list-style-type: none"> • Review all legal pleadings, motions, briefs, transcripts and recordings. • Draft bench memoranda and memoranda of decision and orders for pending Tribal Court cases. • Attend hearings as requested by the tribal court judges. • Prepare special projects such as summarizing and indexing judicial decisions, proctoring the tribal bar examination, developing proposed amendments to the tribal rules of procedure and updating tribal library materials as necessary.
Qualifications required:	<p>Successful applicant will have completed at least the first year of law school. Completion of at least one law school course on federal American Indian law preferred. Applicants will be considered on such criteria as academic standing, law review or journal experience, moot court, or other significant research or writing experience in the field of American Indian law, prior employment or tribal community work.</p>

Period of Position:	One law school semester or law school summer recess.
To apply:	Submit a cover letter (addressed to Chief Judge John Blackhawk), résumé, official law school transcript, two letters of recommendation and a brief legal writing sample. Applications are accepted via U.S. mail, fax or e-mail.
Contact person:	Jane Little Bird, Clerk/Administrator The Tribal Court P.O. Box 5555 Indian Reservation, CO 80500 Phone: (303) 888-2626 - Fax: (303) 888-2627 Email: jane.littlebird@tribalcourt.org
Closing Date:	February 15, 20XX

APPENDIX B – INTERVIEWING TIPS FOR PROSPECTIVE LAW CLERKS**General Overview**

Your résumé and cover letter have gotten your foot in the door, and now you have an actual interview! For many law students, the interview is the great unknown and is probably the most anxiety-producing aspect of the law clerkship search process. Because individual judges vary so much, it is difficult to predict how an interview will unfold. Interviews differ in style and format depending on the interviewer and the applicant.

During the interviews you will want to project the image of:

- Being poised and self-confident.
- Liking hard work.
- Being respectful and culturally sensitive.
- Being a fast learner.
- Being adaptable to new situations.
- Having good judgment, being trustworthy.
- Having direction - knowing where you want to go.
- Feeling that the opportunity to grow is more important than high compensation.
- Understanding the importance of tribal sovereignty and the tribal court's role in preserving it.
- Being personable and easy to work with and get along with.

Preparation is the Key

Careful preparation will enable you to be more confident and to present yourself as an attractive potential law clerk. Remember that successful interviewing takes practice, patience, poise and a sense of humor.

- **Research the tribe, tribal government, tribal court and the tribal judge as much as possible.**
- **Be able to articulate the reason you want to clerk for this tribal court.** Be able to explain with specifics why you want to work with the particular court or judge.
- **Know your résumé like the back of your hand.** This includes your undergraduate thesis and the name of your supervisor from three summers ago.
- **Do a mock interview.** Interviewing is a skill that improves every time you do it. Practice makes perfect.
- **Dress professionally.** Always err on the side of more professional attire.
- **Arrive 5-10 minutes early.** If your interview is by telephone, be ready and waiting 5-10 minutes ahead of the call time.
- **Bring extra copies of your materials.**
- **Be conscious of body language.** If the judge offers you his or her hand make sure you have a firm, but not crushing, handshake. Sit a bit forward with your shoulders back and try not to appear stiff or uncomfortable. You want to project confidence and interest. Maintain eye contact and be sure to smile.

- **Speak clearly.** Enunciate clearly and try not to speak too quickly. Avoid fillers such as “um.” Answer questions clearly, speak in declarative sentences and be as direct as possible.
- **Listen to the questions and be sure to answer them.** Avoid digressing from an answer since you will soon forget the question. Be responsive and honest when fielding questions.
- **Ask intelligent, pertinent questions.** These questions should relate to the tribal court and to the clerkship. Prepare these questions before your interview.
- **Before your interview, create several succinct bullet points about your skills and experiences. Do not leave the interview until they have all been covered.** This may require that you tactfully inject some of this important information during the course of the interview.
- **Be ready to discuss your Indian law background.** Be ready to discuss law school courses or work experiences that have contributed to your knowledge and interest in Indian law.
- **Be prepared to talk about grades.** Discuss them honestly and realistically and then move on to specific accomplishments that demonstrate your skills.
- **Be aware of the 80/20 Rule.** You should be talking 80% of the time, listening 20% of the time. Otherwise, you may not be getting all of your points across.
- **Be yourself.** It is important that your personality shows through. You have already impressed the interviewer with your credentials; now it is your opportunity to establish a personal rapport with the interviewer. Show genuine enthusiasm.
- **Turn off your cell phone!**

What Are Tribal Judges Looking for in a Candidate?

There are several questions that tribal judges are trying to answer while they interview you:

- Is this person truly interested in tribal law and tribal courts?
- Will this person be sensitive to the differences between federal and state courts and tribal courts?
- Will the court staff and the community be comfortable with this person?
- Could I work closely, under stressful circumstances, with this person?
- Will I end up re-doing this person's work product or will it be done right the first time?
- Will this person keep confidences?
- Will this person be reliable and efficient?

These questions highlight several key traits that tribal judges look for:

- **Competency** - Not just in terms of your grades, but in how you articulate your thoughts, your level of self-confidence, maturity, and your overall presentation.
- **Judgment** - Judges want to hear how you make your decisions and get a better understanding of your thought processes. If you show a strong pattern of solid decisions in the past, it hopefully means that you will not become a liability for them in the future.

- **Personality** – It is important to develop a good rapport with the judge as soon as possible. They want to make sure that you are the type of person who can get along with the court staff and the tribal community. They look for people with leadership skills, adaptability, a sense of humor, well-rounded interests, knowledge of tribal culture, etc.
- **Interest** – They are looking to see how interested you are in their tribal court and the practice of tribal law. The questions you ask and the extent of your research are good indicators of your level of interest and enthusiasm.

You must convey all of these qualities during an interview and give specific examples of how you have achieved success or overcome obstacles. Make yourself memorable and do not leave an interview without making sure that they know more about you than just what is on your résumé.

The interview should be a conversation, during which you demonstrate your self-confidence, your communication skills and your personality. Do not assume that the interviewer will ask all the right questions to uncover all your good qualities. You may have to actively try to work in all the information you want them to know. You can accomplish this by answering a question and then enthusiastically discussing your accomplishments and illustrating your point with examples. Interviewers tend to remember candidates who enliven their responses with specific references to their personal experiences.

Your goal is to persuade the judge that you are an outstanding candidate. Convey a confident, professional image, highlighting your relevant skills and achievements. You should try to avoid being overbearing or pushy however. Responses that are thoughtful, articulate, concise, relevant and reflective of what is really important to you as an individual will be the most convincing.

Sample Interview Questions

To be well prepared, you should prepare answers to the following questions. Preparation might include actually verbalizing the answers in a practice interview

situation. In most instances, **your answer is less important than the attitude you project!** Be friendly, confident, and organized. The judge is assessing your intelligence and clarity of expression, as well as personality attributes which make you compatible with his or her judicial colleagues and court staff members.

Following is a breakdown of the typical pattern an interview takes and some of the questions you can expect.

Introduction

- Tell me about yourself. (Resist the temptation to reiterate what is on your résumé. Start with why you are there – why do you want to work for that tribal court or judge and then outline what your background and skills are that makes you a strong candidate.)
- Why do you wish to work in our tribal court?
- Tell me something that is not covered on your résumé.
- Why did you decide to study American Indian law?

Educational Background/Work Experience

- How do you rank in your class academically?
Do you think this is an accurate indication of your abilities?
- Why did you decide to attend your law school?
- In which courses did you get your best grades? Worst grades? Why?
- Which courses did you like best? Least? Why?
- How do your courses and experiences apply to the clerkship for which you are applying?

- Describe all the school and community activities in which you have participated. Which ones did you enjoy the most?
- Did you participate in the moot court/journal/clinical programs? Explain your experience and feelings about them.
- Describe the job experiences you have had in the time you were in law school. How many of them were law-related? Part-time or volunteer?
- What do you like best about law school? Least?
- Tell me about your volunteer experiences.
- Can we get recommendations from previous employers? How would they describe you?

Experience and Skills Information

- Describe 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?
- Describe your most rewarding law school experience.
- What qualifications do you have that lead you to believe you will be successful in the law?

- How has your law school prepared you to work here?

Career Goals

- Why do you wish to be a lawyer?
- In which areas of the law are you most interested? Why?
- What are your long-range and short-range career goals and objectives, when and why did you establish these goals and how are you preparing yourself to achieve these goals?
- What has led you to this tribal court?
- What personal goals are you seeking through a career in law? What specific goals, other than those related to your occupation, have you established for yourself for the next ten years?
- Suppose you hadn't chosen law - what would be your second choice?
- How did you come to choose law as a career?

Self-Analysis

- What have you learned from some of the jobs you have held?
- Do you believe 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 particular 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 some examples of when you have had to do this?
- 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 in the same way again?
- What do you see as some of the most difficult ethical questions you will have to face as a lawyer? How would you respond to them?
- Do you prefer working with others or by yourself?
- Do you like routine work and routine hours?
- What do you consider your greatest strengths? Weaknesses?

Knowledge of the Tribal Court

- What do you know about us?
- What are your ideas concerning salary?

- What personal characteristics do you believe are necessary for success as a law clerk?
- If you were entirely free to do so, which cases that the tribal court hears would you chose to work on?
- What are the disadvantages of practicing the type of law in which you have expressed interest?

Conclusion or Closing

- Is there anything I should be aware of about yourself, which we have not covered?
- Would you like to ask any questions about our tribe in general?

The interview is normally terminated by the interviewer. As the interview comes to a close, tell the judge that you have enjoyed speaking with him/her, that you appreciated her/his time and the opportunity to meet, and that you are looking forward to hearing from him/her.

Questions You Should Be Asking

Solid preparation for any interview also dictates that you formulate some questions for the interviewer. You should ask these with honesty and sincerity and show real interest in hearing the answers.

- How is the tribal government organized? Where does the tribal court fit in?
- Is the tribal court a constitutionally-created court?
- Does the tribal court apply any other jurisdiction's law or rules in addition to tribal law and rules?
- How does the legal department relate to the tribal court?

- How soon can I expect to hear from you if an offer is to be made?
- How is your clerkship program structured?
- How many law clerks do you plan to hire?
- How much is a law clerk expected to work independently?
- What type of projects/assignments do law clerks receive?
- Does the tribal court anticipate starting any new projects or programs?
- Does the tribal court publish its written opinions?
- Is there a chance for involvement in hearings? Conferences?
- What type of evaluation/feedback process do you have?
- If I am going to be working remotely, how do you expect to communicate with each other? By email? Or telephone?
- If I am to be working at the tribal court, will I be able to find housing nearby?
- Are there any special cultural considerations that I should be aware of when working for the tribal court?

After the Interview

Thank You Letters

Immediately following each interview, you should take time to jot down notes summarizing your conversation with the judge or other interviewer. Send a thank you letter to the interviewer as soon as possible.

Follow Up

If you have not heard from a judge you interviewed with, be sure to follow up with him or her within a couple of weeks to reiterate your interest and to see if the judge needs any additional information from you. Remember that tribal court dockets can

get very busy so be mindful of this when you follow up with the judge.

Getting an Offer

When you receive an offer, reply immediately. Thank them for their expression of confidence in you and the fine opportunity presented. Indicate that you are extremely interested and will notify them of your decision as soon as you have completed the interviewing process. Then, make your decision as soon as possible in fairness to the judge and to other candidates.

APPENDIX C – INTERVIEWING TIPS FOR TRIBAL JUDGES

It is critical to the success of your experience with your law clerk that you be able to develop a relationship built on good rapport and trust in your law clerk's abilities and judgment. For that reason, the interviewing process is crucial. Once you have narrowed down the field of candidates to those you believe have the potential to be a good law clerk for you and for your tribal court, you will want to interview the finalists. If finances allow, an in-person interview is best, but a carefully prepared telephone interview can be informative as well. The following are a few suggested questions for the law clerk candidate:

Introduction

- Tell me about yourself.
- Why do you wish to work in our tribal court?
- Tell me something that is not covered on your résumé.
- Why did you decide to study American Indian law?

Educational Background/Work Experience

- How do you rank in your class academically?
Do you think this is an accurate indication of your abilities?
- Why did you decide to attend your law school?
- In which courses did you get your best grades? Worst grades? Why?
- Which courses did you like best? Least? Why?
- How do your courses and experiences apply to the clerkship for which you are applying?

- Describe the school and community activities in which you have participated. Which ones did you enjoy the most?
- Did you participate in the moot court/journal/clinical programs? Explain your experience and feelings about them.
- Describe the job experiences you have had in the time you were in law school. How many of them were law-related? Part-time or volunteer?
- What do you like best about law school? Least?
- Tell me about your volunteer experiences.
- Can we get recommendations from previous employers? How would they describe you?

Experience and Skills Information

- Describe 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?
- Describe your most rewarding law school experience.
- What qualifications do you have that lead you to believe you will be successful in the law?

- How has your law school prepared you to work here?

Career Goals

- Why do you wish to be a lawyer?
- In which areas of the law are you most interested? Why?
- What are your long-range and short-range career goals and objectives, when and why did you establish these goals and how are you preparing yourself to achieve these goals?
- What has led you to our tribal court?
- What personal goals are you seeking through a career in law? What specific goals, other than those related to your occupation, have you established for yourself for the next ten years?
- How did you come to choose law as a career?
- Suppose you hadn't chosen law - what would be your second choice?

Self-Analysis

- What have you learned from some of the jobs you have held?
- Do you believe 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 particular 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 me some examples in your 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 in the same way again?
- What do you see as some of the most difficult ethical questions you will have to face as a lawyer? How would you respond to them?
- Do you prefer working with others or by yourself?
- Do you like routine work and routine hours?
- What do you consider your greatest strengths? Weaknesses?

Knowledge of the Tribal Court

- What do you know about us?
- What are your ideas concerning salary?

- What personal characteristics do you believe are necessary for success as a law clerk?
- If you were entirely free to do so, which cases that the tribal court hears would you chose to work on?
- What are the disadvantages of practicing the type of law in which you have expressed interest?

Conclusion or Closing

- Is there anything I should be aware of about yourself, which we have not covered?
- Would you like to ask any questions about our tribe in general?

At the end of the interview, be sure to thank the candidate for his or her time and interest in the clerkship. If you wish to request any additional information, references or writing samples from the candidate, do so it at this point. Let the candidate know when you think you will have a decision and how you will go about notifying the candidate.

APPENDIX D – SAMPLE SUPERVISING JUDGE’S EXTERNSHIP LETTER**THE TRIBAL COURT**

P.O. Box 5555

The Indian Reservation, Colorado

John Blackhawk, Chief Judge
Nancy Smith, Associate Judge
Jane Little Bird, Clerk/Administrator

[Date]

Assistant Dean of Students and Professional Programs
University of Colorado Law School
326G Wolf Law Building
Boulder, CO 80309-0401

Re: <Model Student>’s Tribal Court Externship

Dear Assistant Dean:

This letter confirms that I will supervise <Model Student> during her summer externship at the Tribal Court. She will work 150 hours over the course of the summer to earn 3 credits. The precise dates and times she works are flexible and may change according to our respective needs.

During her externship, <Model Student> will spend the bulk of her time performing legal research, writing memoranda and briefs, and assisting in the drafting of judicial orders. She will have exposure to a variety of legal issues, both criminal and civil. Court Clerk/Administrator Jane Doe, Associate Judge Nancy Smith and I will provide her with appropriate training, guidance, and feedback so that she can confidently handle her assigned tasks.

We look forward to working with <Model Student> and feel certain that she will gain practical legal skills in addition to an understanding of tribal law, court rules and procedures. Please feel free to contact me at (333) 555-2222 if you have any questions. I will remain available to assist you in any way throughout the course of the summer. Thank you for your time and consideration.

Sincerely,

John Blackhawk
Chief Judge

APPENDIX E – SAMPLE STUDENT EXTERNSHIP REPORT

STUDENT EXTERNSHIP REPORT

Please return ALL completed forms to:

Associate Director for Public Sector & Externships
Office of Career Development, University of Colorado Law School
401 UCB, Boulder, CO 80309-0401

Student:

Date/Semester of Externship:

Credit Hours:

Sponsoring Court/Agency/Organization:

Field Supervisor (Judge):

Faculty Supervisor:

Please provide answers to the below questions:

- 1. Describe the type of work you performed.**
- 2. What were the best aspects of your externship?**
- 3. What were the worst aspects of your externship?**
- 4. Would you recommend this externship to other students? Why or why not?**
- 5. What specifically would you change about the externship experience in order to make it a more personally beneficial experience?**

APPENDIX F – SAMPLE EXIT INTERVIEW QUESTIONS FOR TRIBAL JUDGES

In order to ensure a successful clerkship for both you and the law clerk, it may be helpful to have a meeting once the clerkship is underway to gauge the clerk's progress and comfort working in the tribal court. Additionally, an exit interview with the law clerk at the end of the clerkship is an excellent way to gather feedback to improve your and your next law clerk's experience. The following questions can guide discussion during and at the end of a clerkship:

1. What legal skills have you been learning from this clerkship that you think will aid you professionally or in the practice of law in the future?
2. What has been the most challenging part of your clerkship? Please explain.
3. How has your clerkship exposed you to emerging issues of tribal and federal Indian law?
4. How has your clerkship exposed you to issues of legal professionalism confronting tribal bar members and tribal judges? Please explain.
5. What legal skills have you identified that you need to work on the most and how do you plan on improving in this area?
6. Have critiques of your work been provided to you in a meaningful and timely manner? If so, what do you consider the most helpful aspect of this feedback? If not, what do you suggest would be a better way of delivering and receiving feedback?
7. Has this experience brought you any closer to determining what you would ultimately like to do in your career? If so, what about this experience helped you to make this determination?
8. Do you have any suggestions for us on how this clerkship could be improved for the next law clerk?

APPENDIX F – THE NATIONAL TRIBAL COURT LAW CLERK PROGRAM**The National Tribal Court Law Clerk Program**

The National Tribal Court Law Clerk Program provides law students and recent law graduates with direct experience working in a tribal court setting while supplying research and legal writing support to tribal judges and justices. For the first time, tribal courts will benefit from a program, similar to that enjoyed by federal and state judiciaries, which facilitates the placement of law students in tribal justice systems.

The Program, housed at the University of Colorado Law School, is a collaborative effort between the Law School's American Indian Law Program, the National American Indian Court Judges Association ("NAICJA"), and the National Native American Law Students Association ("NNALSA"). The program has received the support of the American Bar Association's Tribal Courts Council and received initial funding through a grant from the University of Colorado's Institute for Ethical and Civic Engagement.

The Program has established an on-line national database of tribal court law clerk opportunities. The database found at: <http://www.triballawclerkships.org> contains information about the available clerkships, the kinds of assistance sought by the tribal judge, the desired qualifications of an applicant and whether the clerkship is a paid position or one that may be undertaken for law school credit. The Program facilitates matching law students with available tribal court placements. Individual law students who are earning law school credit for their clerkship will also need to coordinate with their own schools to ensure they are meeting the individual school's requirements.

Each tribal court judge will set his or her requirements for the clerkship. Applicants for clerkships need only follow the listed requirements and those of any law school externship program if applicable.

The Program requests that each tribal judge who wishes to participate in the Program agree to the following:

- Be willing to teach, support and closely supervise the law clerk so that he or she has a rich valuable learning experience.
- The judge must assist the student in meeting law school course requirements if the student is clerking for the judge as part of an externship.
- Utilize the *Guide for Tribal Court Law Clerks and Judges* to assist the law clerk in fulfilling his or her responsibilities in a professional, competent, ethical and culturally-sensitive manner.
- Consider allowing any non-confidential judicial opinions generated through the clerkship to be published on-line on the National Tribal Justice Resource Center's free searchable database of tribal court opinions at:
www.ntjrc.org/legal/opfolder.

Jill E. Tompkins, Clinical Professor of Law and Director of the University of Colorado American Indian Law Clinic and an experienced tribal court trial judge and appellate justice, oversees the Program. The Program will provide no-cost guidance, advice and support to all participants as needed. For more information, contact:

American Indian Law Clinic
University of Colorado Law School
404 UCB
Boulder, CO 80309-0404
Phone: (303) 492-0966
Email: jill.tompkins@colorado.edu

APPENDIX G – SELECTED BIBLIOGRAPHY AND RECOMMENDED READING

Cochran, Rebecca A., *Judicial Externships: Clinic Inside the Courthouse*, (1995).

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