

Idaho State Bar  
Indian Law Section  
October 2, 2020  
Meeting Minutes

The meeting was called to order by Julie Kane at 12:06 p.m. MT. Julie Kane introduced the people who joined the Zoom call. She asked for a motion/second to approve the previous meeting's agenda from Sept. 4, 2020. Carmel McCurdy made the motion to approve the minutes and Haydon Brandow seconded the motion. The motion was approved.

There was a brief discussion about the need for volunteers to become officers for the Indian Law Section. Then, there was a brief discussion about potential dates for a ½ day Indian Law CLE, perhaps in January, after the holidays.

Julie Kane then introduced Natasha Anderson, Staff Attorney for the Nez Perce Tribe Office of Legal Counsel, the in-house legal office for the Tribe. The topic of Natasha's presentation was "All things COVID-19". Natasha followed her power point (posted on the ISB section website) talked about the Nez Perce tribal government, whom she represents. She stated that there are 5 entities within the tribal structure: Government; Law & Justice; Nimiipuu Health; Housing Authority; and Enterprises, including offices/businesses in Oregon and Washington.

Because of the Tribe being a sovereign government and having offices on and off-reservation, the legal office had to pay attention to the guidelines and regulations issued by all of those jurisdictions, including the federal government and the tribe itself. She talked about federal laws passed to address COVID-19, including laws dealing with more flexible work leave because of the Pandemic. There is silence as to whether the Family First Coronavirus Response Act (FFCRA)(dealing with Employer Paid Leave), even applied to tribal governments as employers.

The FFCRA being silent on applicability could mean different things for Tribes, depending on which Circuit Court has jurisdiction over them. The Circuit Courts are split on whether laws that are of "general applicability" or silent as to whether they apply to Tribes. Courts have held that general federal laws apply to Tribes unless there is some evidence that Congress intended tribes to be exempted, if the laws infringe on a treaty right, or if they touch on "exclusive rights of self-governance in purely intramural matters. Only the 8<sup>th</sup> and 10<sup>th</sup> Circuits have found that silent federal laws do not apply to Tribes.

She made the larger point that any decision of the federal government has impacted and influenced Indian Tribes, including the Nez Perce. Regarding the tribal government, their concerns during the pandemic were to try to keep people employed, even if they couldn't work in the regular workplace. The Tribe issued its own Stay at Home Order, which impacted tribal election for which an emergency code amendment had to be adopted to allow for mail-in voting.

Issues that arose included: whether an employee was essential or non-essential; how school and daycare closures impacted employees; re-configuration of physical workspace; ability of some employees to work from home; obtaining PPE; and dealing with isolations and quarantines while maintain services to the community. There were also high-risk employees who had special needs during the pandemic, so accommodations had to be addressed to assist those employees with maintaining their employment.

Another issue was convincing employees who felt fine, but were quarantined, to stay home and not risk spread of the virus to others. The Tribe's Human Resources Manual had to be amended to allow work from home, and forms had to be drafted that would allow employees to claim extra paid emergency leave for covid-related issues. There were issues related to confidentiality of employees who were quarantining/isolating, and there were managers who wanted to prohibit employees from traveling or conducting other activities while off-work, thus exposing themselves and their co-workers to covid.

Natasha talked about mental health and the need for everyone to take time for themselves to get some respite from the demands of work with covid overlapping that work every day. She encouraged employers to continue practicing those CDC recommended actions from the beginning, which is, staying home if you are sick, masking up in public places, washing hands often and keeping your work space and shared space clean.

There was some discussion about what to do about employees who claim they have covid or were required to quarantine, but offered no proof. How do you require them to prove it. Natasha explained that it may be difficult, but in her small community, it was pretty well-known who had covid. The Tribe also had an emergency leave claim form that stated that if it was found that they were not truthful in filling out the form, the paid leave could be withdrawn, or other disciplinary action could be taken.

The discussion ended right at 1:00 p.m. and Kane adjourned the meeting. She asked attendees to contact Dayna Ferrero to let her know they were on the call, in order to get credit for the CLE.