

IN THE TRIBAL COURT OF THE CONFEDERATED SALISH AND
KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, PABLO, MONTANA

IN RE THE MATTER OF:	*	CAUSE NO. <u>AP-CM001-92</u>
	*	
ROBERTA BUFTON,	*	ORDER DISMISSING APPEAL
Appellant.	*	

This matter comes before the Court on a Notice of Appeal filed by Appellant Roberta Bufton, by and through counsel of record Darrell Worm.

The Court will take notice that the Notice of Appeal was filed timely. The Appellant filed a Motion to Extend Time to Order Transcript of Proceedings. An Order granting the Motion for an additional 30 days was signed on March 3rd, 1993 by Chief Judge Moran.

The Court has not received a request for the Court transcript on this matter or a brief in support of the Notice of Appeal.

The ultimate sanction of dismissal rests in the sound discretion of the Court in light of all the circumstances. See Moore's Federal Practice, paragraph 203.12, "Effect of Failure to Take Further Steps After Filing Notice of Appeal," (1993). Failure to file a timely brief is culpable and will not be excused. See Stotler and Co. v. Able, 837 F.2d 1425, 1427 (7th Cir. 1988). Failure of an appellant to comply with appeal requirements by filing briefs in the appellate court is in itself sufficient to justify dismissal of the appeal. See Stevens v. Security Pacific National Bank, 538 F.2d 1387, 1389 (9th Cir. 1976).

Appellant's brief was due April 30, 1993. At no time did appellant request an extension of filing time. In view of these

council actions. The law controlling this question is Ordinance 36B, the Tribal Law and Order Code, promulgated by the Tribal Council pursuant to Article VI, Section 1(1) of the Constitution of the Confederated Salish and Kootenai Tribes.

Pursuant to Ordinance 36B, the Tribal Council unequivocally "vested" the "judicial power" of the Tribes "in the Tribal Court."¹⁵ Therein, the Tribal Council granted civil jurisdiction to the Tribal Court over "all suits," and authorized the Tribal Court to exercise such jurisdiction to the "fullest extent possible."¹⁶ Further, Ordinance 36B authorizes the Tribal Court to exercise subject matter and personal jurisdiction to the "fullest extent possible not inconsistent with federal law." The grant expressly provides for tribal court jurisdiction over "[a]ll persons found within the Reservation."¹⁷ "Persons" is broadly defined as an "individual, organization, corporation, governmental subdivision or agency..."¹⁸

Here, the grant of civil jurisdiction to the Tribal Court over "all suits" with authority to exercise personal and subject matter

¹⁵ Ordinance 36B, Ch. I, §1.

¹⁶ Ch. II, §§1-2(a). Ordinance 36B further provides that the Tribal Court "shall have jurisdiction over all offenses enumerated in the Code of Tribal Offenses committed by any person within the exterior boundaries of the Flathead Reservation to the extent not inconsistent with federal law." Ch. I, §2(1)(a). Chapter one further authorizes the Tribal Court to exercise criminal jurisdiction "to the fullest extent possible." Ch. I, §2(1)(b).

¹⁷ Ch. II, §2(a)(1).

¹⁸ Ch. II, §2(b).

considerations and in the interests of the orderly administration of justice the APPEAL IS DISMISSED.

SO ORDERED this 26 day of MAY, 1993.



A handwritten signature in cursive script, appearing to read "Wm. Joseph Moran", written over a horizontal line.

WM. JOSEPH MORAN
Tribal Court Chief Judge

jurisdiction to the "fullest extent possible" constitutes a generalized grant of subject matter jurisdiction over all civil cases and controversies. The grant carves out no exceptions regarding cases and controversies involving the Tribal Council. Accordingly, we hold that when the Tribal Council enacted Ordinance 36B, it created the Tribal Court as a court of general jurisdiction, and that it thereby vested the Tribal Court with the power of judicial review to hear suits to determine the lawfulness of acts of the Tribal Council and tribal officials. Significantly, there is no federal or tribal law which limits the Tribal Court's authority so as to defeat tribal court jurisdiction in this case. We therefore further hold that as a court of general jurisdiction, the Tribal Court possesses the necessary subject matter jurisdiction to hear this case, and to issue the TRO in question.

Ordinance 36B makes no exception with respect to tribal court jurisdiction over suits involving the Tribal Council or tribal officials. The Council takes the position that a tribal member, in this case Judge Moran, who disapproves of the Council's actions must seek a remedy through the ballot box. In effect, the Council claims that it is somehow vested with absolute discretion in certain areas of legislative and executive functions, and that the judiciary improperly intrudes into the legislative or executive sphere if it hears a case concerning one or both of these areas. This precise argument has been considered and rejected by other tribal courts.

"While the ballot box is one way a tribal member can express

disapproval of a legislator's actions, it is not a means by which the legality of a particular action can be adjudged." *Menominee Indian Tribe ex rel. The Menominee Indian Tribal Legislature v. Menominee Indian Tribal Court*, 20 ILR 6066, 6068 (Men. Tr. Sup. Ct., 1993). Interpretation and application of the law to determine the legality of a particular act is the "heart of the judicial function." *Id.* Among the most important functions of courts are constitutional interpretation and the closely connected power of determining whether laws and acts of the legislature comport with the provisions of the constitution. Courts were created to serve these purposes. See 16 Am. Jur. 2d *Constitutional Law* §308 (1979); see also, *Marbury v. Madison*, 1 Cranch 137, 5 U.S. 137 (1803). The Tribal Court of the Confederated Salish and Kootenai Tribes is no exception.

Though the CS&KT Constitution clearly vests the Tribal Council with the power to make and administer laws, Ordinance 36B, authorized by the Constitution, just as clearly vests the Tribal Court with the power to determine if a particular action comports with "the applicable laws, Ordinances, custom and usages of the Confederated Salish and Kootenai Tribes."¹⁹ This power necessarily carries with it the authority to declare actions illegal under CS&KT tribal law. The CS&KT Constitution and By-Laws expressly and unambiguously hold the Council accountable under CS&KT tribal law. For example, Article VI of the Constitution imposes the following limitations and restrictions on the Tribal Council:

¹⁹ See Ordinance 36B, Ch. II, §3, footnote 14, *supra*.

CERTIFICATE OF SERVICE

I, Susie Loughlin, Chief Clerk of Court do hereby certify that I have caused a true and correct copy of said ORDER DISMISSING APPEAL on this 26th day of MAY 1993 to the parties first named at the addresses shown by depositing said in the U.S. Mail, postage prepaid at Pablo, Montana or by hand-delivering on this date stated below:

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MAJEL BIRD
TRIBAL PROSECUTOR

MAY 27, 1993
Date

Susie Loughlin
Chief Clerk of Court