

**Appeal of Membership Denial by John Riihimaki, et al. Case #98.07.200.01.01**

**Summary:** Mr. Riihimaki filed a notice of appeal on behalf of the entire family after application for Membership in the Little River Band of Ottawa Indians was denied. The sole issue on appeal was whether the Enrollment Committee or Enrollment Officer erred in rejecting Mr. Riihimaki's application for enrollment or disenrollment. The burden of proof however still remained with Mr. Riihimaki.

**Decision and Order:** The Court **denied** the appeal. The Court found that Mr. Riihimaki did not provide enough convincing evidence to show an error by the Enrollment Officer or the Enrollment Committee to overturn the decision of disenrollment.

**Appeal of Grievance -Final Decision-Waitner v Guenthardt Case #98.95.1001.1.8.3**

**Summary:** Ms. Waitner filed a grievance with the Tribal Court arguing that she was terminated in a discriminatory manner and the cause for her termination did not meet the serious infraction clause of the personnel policies. Both parties provided testimony and evidence in support of their position.

**Decision and Order:** Court upheld the termination and **found** in favor of the Defendant Guenthardt, Tribal Manager

**Appeal of Grievance – Intervention- Waitner v Guenthardt Case #98.97-1001-8.3-1**

**Summary:** Tribal Council motioned the Court to intervene by citing an interest in the interpretation of the Personnel Policies, and interest in the type of relief to be granted, and several Constitutional issues.

**Decision and Order:** The Court **denied** the motion. The Court found the Tribe's Constitution supersedes any Ordinance.

**Opinion and Order – Waitner v Guenthardt Case #98/95-1001-8.3**

**Summary:** At the time of the Waitner v Guenthardt case Attorney William Brooks was retained as Legal Counsel for the Tribe. A third of his salary was given to Mr. Brooks by the Court.

**Decision and Order:** The Court **ordered** that Mr. Brooks may not serve as a representative, legal or otherwise, before this court until such time as he is no longer a staff member of this court.

**Complaint of Improper Conduct - Kequom v Election Board Case #98.200-02.01-000846**

**Summary:** In this case Ms. Kequom alleged several charges. First, the Election Board had acted beyond their authority, by assigning fines and sanctions to her for non-specific violations of sections 5.01 and 5.02 based on hearsay and rumor. Second, the Election Board failed to implement the rules of the election in a uniform manner. Thirdly, the Election Board violated Ms. Kequom's due process rights by the Election Board. Fourthly, the Election Board did not sanction any other candidates who had violated the same rules. She alleged unequal application of the rules by the Election Board.

**Decision and Order:** The Court **finds** the actions of the Election Board to be within the power and scope of the Election Board under Ordinance 98/200-02 and had not acted beyond their authority by assessing sanctions. Court finds the lack of hearing prior to assessing fines to be a violation of (regular) due process. Court also finds any other harm done to Ms. Kequom has been undone by allowing for a second petition and placing her back on the ballot.

The Court **ordered** that the Election Board remain in place and continue to conduct the election. Second, the fines of \$200 assessed to Ms. Kequom be set aside and rescinded with no further fees or fines as requested by the Election Board.

**Complaint of Judicial Ethics Conduct - Kequom v Johnnie Jay Sam II Election Board Case #98.200-02.01-000846**

**Summary:** In this case Ms. Kequom Crampton filed an appeal in opposition to the Trial Court findings in case #98/200-02/01-000846 with regard to improper conduct of the Election Board. However the substance of her appeal was the alleged conflict-of-interest against Johnnie Jay Sam II the Trial Court Judge, not the decision of the Trial Court with respect to the Election Board's improper conduct. The allegation was that he (Judge Sam) could not possibly be unbiased because his sister was one of the candidates for the office of Tribal Ogema. Two separate orders emerged.

**Decision and Order:** Tribal Judiciary deliberated on January 23, 1999. With respect to the ethics complaint, the Judiciary **found** bias was not shown, so the complaint was dismissed (order filed January 26, 1999).

With respect to the ethics complaint and appeal as a whole, the Tribal Judiciary **found** that the Plaintiff presented an ethics complaint not an appeal. Ethics complaint resolved by January 26, 1999 order. The Tribal Judiciary offered a written opinion (Filed February 23, 1999).

1 Little River Band of Ottawa Indians

2 P.O. Box 314

3 Manistee, MI 49660-0314

4  
5 Case Number 98-07/200/01-01

6 Appeal of Membership denial by John Riihimaki, et al.

7  
8 Mr. John Riihimaki of 4683 Coveyville Lane in Phelps Wisconsin (54554) filed NOTICE  
9 OF APPEAL, on behalf of the entire family, upon being notified that application for membership  
10 in the Little River Band of Ottawa Indians had been denied. Such appeal was filed with the  
11 Court of the Little River Band of Ottawa Indians on June 22, 1998. The appeal was filed for the  
12 purpose of bringing the blood quantum [up] based on the findings of Barbara Madison. The  
13 appeal was also based on the fact the family is on the Durant Roll and received an earlier  
14 payment from a docket settlement in early 1980.

15 Appeal was filed in a timely manner under provisions of Tribal Ordinance 97-200-01,  
16 Tribal Enrollment Ordinance, Section 8, Appeal of Enrollment Decisions.

17 97-200-01 § 8.08 states: "The sole issues on appeal will be to determine if the  
18 Enrollment Officer or Enrollment Committee made an error in rejecting the application for  
19 enrollment or in disenrolling the applicant. The burden of proof shall remain with the individual  
20 affected by the decision of the Enrollment Committee".

21 Sixty day extension was granted under § 8.05, written request having been made for the  
22 purpose of the applicant receiving a report from Barbara Madison and to do further research.

23 Hearing in this matter was held on September 26, 1998, Judge Daniel Bailey presiding.  
24 Steve Ray appeared on behalf of John Riihimaki and the entire family. Diane Lonn, Tribal  
25 Registrar appeared as Enrollment Officer and on behalf of the Enrollment Committee. Pursuant  
26 to 97-200-01, § 8.07: "The Tribal Court shall permit all parties to examine the records submitted  
27 on appeal and to provide testimony or other evidence which would support or refute the  
28 application for membership or the continuation of membership."  
29

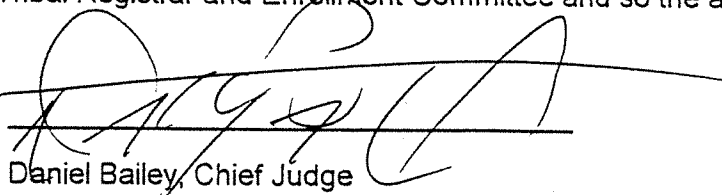
1 Both parties exchanged copies of their records and provided testimony in their own  
2 support.

3 Mr. Ray presented the evidence that their genealogical background was incorrect as  
4 presented in the documents of the Registrar. Citing their family Elders, they stated that there is  
5 some question as to the identity of Mary Mawby's, their Great Grandmother, father and that  
6 documents from the Docket 40K payment indicated a higher blood quantum.

7 Ms. Lonn stated she could not find the connection in the documents to the person  
8 offered as Mary Mawby's father and the family of Mr. Riihimaki. Ms. Lonn also offered a letter  
9 from the Acting Superintendent of the Michigan Agency, Bureau of Indian Affairs, with regard to  
10 P. L. 94-540 (90 Stat. 2503) of October 18, 1976 showing that the determination of blood  
11 quantum under the regulations of 25 CFR, Part 43n, section (g) allowed for proof to the contrary  
12 to lower the blood quantum, and the recommendation that Tribal Standards and not Federal  
13 Regulations be used to determine blood quantum.

14 Judge Bailey offered an additional ten days to the appellants to provide further  
15 convincing evidence of their position, either in person or by fax. On October 6, 1998 a fax was  
16 received in regard to this case. That information was reviewed by Judge Bailey, and pursuant to  
17 97-200-01 § 8.07, Ms. Lonn was allowed to review the information.

18 **IT IS THE FINDING OF THIS COURT** that the applicant in this case has not provided  
19 convincing evidence of error by the Tribal Registrar / Enrollment Officer to overturn the decision  
20 of the Tribal Registrar and Enrollment Committee and so the appeal is hereby **denied**.

21  
22   
23 Daniel Bailey, Chief Judge

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28  
29  
10/6/98  
Date

CERTIFICATION OF MAILING

Jonnie J Sam II, hereby affirms that this decision was sent by regular mail or delivered to the persons listed at the addresses shown on this date:

Mr. John Riihimaki	Diane Lonn	Little River Band of Ottawa Indians
4683 Coveyville Lane	P O Box 314	Enrollment Committee
Phelps WI 54554	Manistee MI 49660	P O Box 314
		Manistee MI 49660

William Brooks  
Tribal Attorney  
P O Box 314  
Manistee MI 49660

OCT 08 1998



Date Jonnie J. Sam II, Court Administrator

1 Little River Band of Ottawa Indians

2 P.O. Box 314

3 Manistee, MI 49660-0314

4 Waitner, Melissa

98/95-1001-1-8.3

5 Aggrieved party,

Appeal of Grievance

6 Vs.

FINAL DECISION

7 Guenthardt, Robert

8 Tribal Manager

9 On June 23, 1998 Tribal Manager Robert Guenthardt asked for the resignation of Melissa Waitner in a  
10 letter stating several reasons. Ms. Wainer then responded to the letter. She then sought relief from the  
11 Tribal Council for her dismissal.

12 On July 31, 1998 Melissa Waitner filed a grievance with the Tribal Court. In her documents she  
13 claimed that the Tribal Manager, Robert Guenthardt, "terminated my employment without regard to the  
14 Tribal Council adopted Personnel Policy". Ms Waitner's filing argued she was terminated in a  
15 discriminatory manner and the cause for her termination did not meet the serious infraction clause of the  
16 personnel policies. Ms. Waitner's filing included several supporting documents. She sought the relief of  
17 being reinstated to her position with the Little River Band of Ottawa Indians administrative staff.

18 Tribal Manager Robert Guenthardt filed a response to the lengthy document(s) on August 5<sup>th</sup>, 1998. In  
19 Mr. Guenthardt 's response he sought to limit the issues before the Court to: 1. Review of Grievance  
20 dated June 24 based on several arguments, 2. That the termination did not violate Tribal personnel  
21 policy, 3. Ms. Waitner was afforded opportunity to tell her side of the story.

22 Preliminary hearing for this issue was held on October 10, 1998 at 10 AM before Chief Judge Daniel  
23 Bailey. Several issues were heard, including a possible conflict of interest as William Brooks had  
24 prepared the Tribal Manager's Response for Robert Guenthardt. William Brooks was allowed to speak  
25 about the issue on behalf of the Tribal Council. Judge Bailey asked for several issues to be defined and  
26 cleared up: 1. Program guidelines as given to Ms. Waitner for operation of the Housing Improvement  
27 Program, 2. Evidence from the personnel policies of "at will employment" status and its understanding by  
28 the employees, 3. Quarterly audit of the program, 4. Document showing Ms. Waitner's being placed in  
29 charge of this program and information provided to her and training received. William Brooks offered to

1 brief the Court on the definition of "Employment at Will", the other parties agreed to provide the  
2 remainder of the information. William Brooks stated that the Tribal Council sought to explain their  
3 meanings in regard to the Personnel Policies at issue. Judge Bailey agreed to hear the Council members  
4 and discuss with them that information, as Mr. Brooks had stated their position during the hearing. Mr.  
5 Brooks' agreed to the arrangement of the meeting and both parties agreed not to attend this meeting.  
6 Two Court Orders were entered over the objection of William Brooks, closing personnel files and  
7 preventing deletions on the Tribal computers while a document search was conducted.

8 Trial Hearing for this matter was scheduled for September 21, 1998 to accommodate the parties.

9 On August 14, 1998 Mr. Brooks filed, on the Tribal Council's behalf, a 'Request for Clarification' in  
10 regard to the meeting / hearing the Court believed was requested by the Council. The request sought to  
11 have the Court define who would need to address the Court and what they would be asked. The  
12 requested date for the hearing was September 14, 1998.

13 On September 4, 1998 Mr. Brooks filed a 'Motion to Intervene' on behalf of the Tribal Council for  
14 several reasons. Type of relief, Constitutional questions and the need to define the policies.

15 Trial Hearing was rescheduled for October 3, 1998, due to a conflict of schedule with Judge Bailey.

16 It was rescheduled to October 10, 1998 due to a conflict with Mr. Brooks' schedule. Motions Hearing  
17 was scheduled prior to the Trial Hearing.

18 On October 10, 1998, Judge Bailey began the Hearing on Motions by issuing the Opinion of the Court  
19 that since William Brooks receives part of his pay from the Court, and as the Court is separate from the  
20 Council, he is a staff member of the Court and thus can not represent a party before the Court. Mr.  
21 Brooks disagreed, characterizing the payments coming out of the Court's as merely being an accounting  
22 practice and not representing the true state of his position as Tribal Council Attorney. Judge Bailey found  
23 further that Mr. Brooks had represented the Court to the Council, and so ruled that Mr. Brooks as a  
24 member of Court staff may not in the future represent parties to the Court, until such time as he is no  
25 longer receives payment from the Court's budget.

26 Mr. Brooks was allowed to argue on behalf of the Tribal Council's Motion to Intervene as there was an  
27 expectation he would do so by the Tribal Council. Judge Bailey asked if the Council would intervene in  
28 every time where law was to be interpreted, and Mr. Brooks responded every time. Judge Bailey  
29

1 asserted the superior position of the Constitution, the separation of powers in the Constitution, and the  
2 roles of governmental bodies based on this separation in denying the motion.

3 Hearing was held following Motions Hearing. Judge Bailey asked that both parties make a statement.  
4 Ms. Waitner began by stating that the issue was much larger than getting her job back, the issue now  
5 effects all the other employees of the Tribe. She continued to say the system at work doesn't work. She  
6 stated she knew about the "at will" status, but that they employees deserve better. The three things she  
7 based her case on were: 1. Robert Guenthardt was the person delegated to understand and enforce the  
8 personnel policy. To understand the programs, their guidelines and how they operate. He was ultimately  
9 responsible for the program. 2. Others made similar mistakes within this program, and they are still  
10 employed. It is wrong for everything to come to her. 3. The termination letter was not factually accurate,  
11 and includes some allegations that are false. She also restated the relief sought as merely reinstatement  
12 with the same status she had, no monetary damages or relief. Although she stated she did not believe  
13 the salary issue would be a new allocation as it was part of the year's budget already.

14 Mr. Guenthardt commented that he felt Ms. Waitner did not administer her program according to the  
15 guidelines provided. He had asked for reports and trusted her responses. Maybe she neglected or got in  
16 a hurry but the Tribe still has some consequences. He closed by stating he had done what he thought  
17 was best for the Tribe based on the information he had.

18 Judge Bailey asked if either party had anything further. Neither did.

19 Judge Bailey then handed out the minutes of a Staff Meeting dated July 8, 1997 and referenced a portion  
20 on "at will employment", also indicating Ms. Waitner's attendance. Judge Bailey also referenced the  
21 Authorization and Understanding Statement, again referencing the portion "at the will of the Tribe" and  
22 the signature as being Melissa (Nummerdor) Waitner's. Judge Bailey then remarked on the comments of  
23 Ms. Waitner which included "yes we have an at will employee clause in the policy". The questions Judge  
24 Bailey had were:

25 Did Robert Guenthardt, Tribal Manager, have the ability to fire you [Ms. Waitner] ? Yes he did.

26 Did the policy state there was an at will employee clause? Yes, it did.

27 Did Melissa [Waitner] know the definition of an at will employee, what it is? Yes she did.

28 Did Melissa [Waitner] know she was in fact an at will employee? You signed it. [Understanding] Yes you  
29 did.



1 So I have no other choice, at this time, other than to **find for Robert Guenthardt, Tribal Manager.**

2 However,

3 Court has ascertained there are two versions of the Personnel Policies in use at the offices right now,  
4 and this can only lead to confusion, therefore:

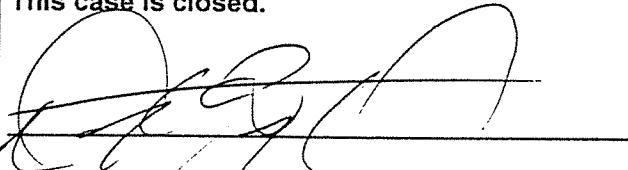
5 IT IS Ordered that two staff, not from the court, be assigned to create one correct copy based on the  
6 minutes of the Tribal Council on or before October 23, 1998. Further it is ordered that the staff be given  
7 time to read the corrected copy on October 26, 1998 and sign a document saying they have read them  
8 prior to anyone receiving a paycheck.

9 The Court also found that staff responsibilities were not well defined, and this should be corrected so,  
10 IT IS Ordered that the Manager will provide a document each staff person with a document describing  
11 any program or position, and provide the information necessary for an understanding of that position.

12 Staff members will then provide the Manager with a document that indicates they understand their  
13 assigned responsibilities.

14 The Court also suggests that a Grievance form be prepared for future use, that there be a table of  
15 organization to show who is in charge when the Manager is not available, and that all directives of the  
16 Manager be written down with a copy made to prevent this type of case from developing again.

17 **This case is closed.**


18   
19 \_\_\_\_\_  
20 Daniel Bailey, Chief Judge

21  
22 Certification of Delivery

23  
24 I certify that copies of this Final Decision were delivered, or placed in the mail, to:

25  
26 Robert Guenthardt      Melissa Waitner      William Brooks      Charles Fisher  
27 Tribal Manager      Aggrieved Party      Tribal Attorney      Tribal Council  
28 P O Box 314      5450 Pine Creek Rd      P O Box 314      P O Box 314  
29 Manistee MI 49660      Manistee MI 49660      Manistee MI 49660      Manistee MI 49660

1 Kathy Berentsen  
2 Tribal Council  
3 710 E. Lake Mitchell Dr.  
4 Cadillac MI 49601-9602

5  
6 By:  on: 10/15/98  
7 Court Administrator Date

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1 Little River Band of Ottawa Indians

2 P.O. Box 314

3 Manistee, MI 49660-0314

4 Waitner, Melissa

5 Aggreived,

6 vs.

7 Guenthardt, Robert

8 Tribal Manager

Case #98/97-1001-8.3-1 Appeal of Grievance

In RE: Motion by Tribal Council to Intervene

9 On the 4<sup>th</sup> of September, 1998, the Tribal Council of the Little River Band of Ottawa Indians filed  
10 MOTION to INTREVENE in this case. Their motion cites an interest in the interpretation of the Personnel  
11 Policies, an interest in the type of relief to be granted, and several Constitutional issues. It is those  
12 issues that the Court addresses the motion.

13 REASONING

14 The Constitution of the Little River Band of Ottawa Indians, as adopted by vote of the members in  
15 election held on May 27, 1998 and as approved by the Secretary of the Interior on July 10, 1998 and so  
16 becoming effective on that date pursuant to Article XV of the Constitution establishes a separation of  
17 powers between the three branches of government.

18 Article IV, section 1 provides that "the legislative powers of the Little River Band shall be invested in the  
19 Tribal Council". The powers invested are those of making policy by the passing of laws, ordinances and  
20 policies of the Little River Band of Ottawa Indians. The Personnel Policy before the Court today is indeed  
21 one such policy, but within the scope of passing the laws, ordinances and policies is not the power of  
22 interpretation of those policies. Once passed by Council these documents may only be re-addressed or  
23 amended by the Council according to issues that arise in the other branches of government.

24 Article V, section 1 provides that "The executive powers of the Little River Band shall be invested in the  
25 Tribal Ogema". The executive branch is where the laws and policies are first interpreted. How they are  
26 applied by the executive branch of Ogema and other agencies of the executive branch relies on the  
27 clarity of the law as passed and the interpretation of the law by this branch. {An example of this in  
28 practice elsewhere is the speed limit, some officers enforce, and thus cite, once over at all, other officers  
29 have a "window of allowance" that they utilize based on their own experience and interpretation.}

1 Article VI, section 1 provides "The judicial power of the Little River Band shall be invested in a Tribal  
2 judiciary, which shall consist of the Tribal Court, a Court of Appeals, and such inferior courts as the  
3 Tribal Council may from time to time ordain and establish". This is the branch that defines the policies  
4 and laws, based on the questions raised by citizens and from the enforcement of those laws. Differences  
5 of opinion about the laws and policies between the Legislative and Executive are defined in the Courts.

6 Article VI section 9 provides "The Tribal Judiciary shall be independent from the legislative and executive  
7 functions of the tribal government and no person exercising powers of the legislative or executive  
8 functions shall exercise powers properly belonging to the judicial branch of government; ". This is clearly  
9 an attempt to separate the powers of government. It is only the Judicial branch that is to adjudicate: "to  
10 settle finally " (Black's Law Dictionary, 6<sup>th</sup> Ed. Pg. 26) the meanings of the laws of the Tribe.

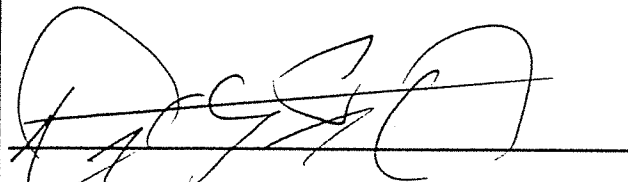
11 From the Constitution, the highest law of the Tribe, comes the separation of the powers of Legislative,  
12 Executive and Judicial. No law passed by the Tribal Council may supercede the Constitutional  
13 provisions. In fact the Tribal Court, under Article VI, section 8 (a) 2 is granted the power to review the  
14 laws and policies to ensure "they are consistent with this Constitution and rule void those ordinances and  
15 resolutions inconsistent with this Constitution".

16 The second concern is that of the Tribal Council becoming a "super administrator" itself. The policy  
17 before the Court was amended by the Tribal Council on April 13, 1997, the amending specifically to the  
18 section on grievances is of interest to the Court. In the minutes of that meeting the following exchange  
19 took place between Council Member Charles Fisher and Chris Holz presenting the recommended  
20 changes. "Chuck asked about page 2, the steps to take a grievance to a higher level. He asked if the  
21 Council would be included in the steps or procedure. Chris said no, it would follow in line to the Tribal  
22 Manager or Personnel Director, then to the Ogema or Chairperson, then to Tribal Court. Moved by  
23 Steve, seconded by Bill M, all in favor 7, 0 opposed. Motion carried." [Attachment 1] This is an indication,  
24 and a statement that the Tribal Council accepted a diminished role in the administration of the Tribe's  
25 governmental staff. This is consistent with the separation of powers contained in the (then) future  
26 Constitution.

## 27 DECISION

28 The Tribe's Constitution supercedes any Ordinance, even if the ordinance attempts to say different, and  
29 the doctrine of separation of powers is one of the foundations of the Constitution. This Court must act in

1 order to first uphold the Constitution, uphold the guarantee of the Separation of Powers in the  
2 Constitution of the Little River Band of Ottawa Indians, assure the Constitutional provisions are  
3 protected. It must act to avoid setting a dangerous, and in view of that separation, improper precedent of  
4 Council intervention every time a law is adjudicated to "explain what is meant" by the law, defining the  
5 law for the Court, clearly a function reserved solely to the Court by the Constitution. The Court  
6 understands its role and responsibilities. For these reasons, the Tribal Council Motion to Intervene in this  
7 case is **DENIED**.

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11 Daniel Bailey, Chief Judge

10/10/98

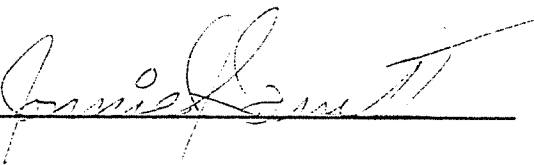
Date

12 Little River Band of Ottawa Indians  
13 Tribal Court

14  
15 A copy of this ruling on motion was delivered to or mailed to:

16 Charles Fisher	Kathy Berentsen	Robert Guenthardt	Melissa Waitner
17 Tribal Council	Tribal Council	Tribal Manager	Aggrieved Party
18 P O Box 314	710 E. Lake Mitchell Dr. P O Box 314	5450 Pine Creek Rd	
19 Manistee MI 49660	Cadillac MI 49601-9602 Manistee MI 49660	Manistee MI 49660	

20  
21 William Brooks  
22 P O Box 314  
23 Tribal Attorney  
24 Manistee MI 49660

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26  
27 



## Little River Band of Ottawa Indians

PO Box 314

Manistee MI 49660-0314

(616) 723-8288

### LITTLE RIVER BAND OF OTTAWA INDIANS TRIBAL COUNCIL MEETING MINUTES APRIL 13, 1997

#### I. GENERAL BUSINESS

A. CALL TO ORDER. The meeting was called to order at the 411 River Street office by Tribal chair, Robert Guenthardt, at 12:05 p.m.

B. ROLL CALL. Roll call was done by Kathy Berentsen. Present: Robert Guenthardt, Kathy Berentsen, Steve Parsons, Chuck Fisher, Bill Memberto, and Kim Kequom.

C. ADOPTION OF AGENDA. Bill B. had an addition under Old Business, letter C. Resolution to Authorize Execution of Revised Construction Management and Development Agreement. No other additions or deletions were made. Moved by Bill M., to accept the agenda, seconded by Kathy, all in favor (6), (0) opposed. Motion carried.

D. ADOPTION OF MINUTES. Kathy asked about page 3, B., under Old Business. She said that it talks about planning a meeting about the judgment fund. She thought we were going to do the four areas like the Constitution did and in there it only states one meeting in Manistee and one in Muskegon. Kathy wanted to know if that was correct. Bill B. said that it will be discussed at the membership meeting as a first step to go from there. Kathy also said that on page 7, the last sentence prior to Concluding Business, regarding the votes for the Council member appointed last month, there were three votes for Kim and one for Janine. Moved by Kathy, to accept the minutes with changes, seconded by Kim, all in favor (6), (0) opposed. Motion carried.

E. FINANCIAL REPORT. Chris said we received our first interest statement on our checking account and in approximately six weeks, we've had our money savings of \$4,204.00. Chris mentioned that last month we talked about funding for the pow wow and with this money, we should have no problem. He stated

that we did close on the Forest Clinic and we should move our entire staff to that location as soon as possible. Our credit with the bank on the Forest Clinic requires us to only pay interest on the first year. Chris said that our interest payments are going to be \$750.00-\$800.00 per month. We will be receiving \$500.00 per month from the medical lab downstairs so our net cost is about \$250.00 per month which is less than what we now pay for just the Health office (where Steve, Denise, Andrea, and Barb are located). Chris said we will be doing some remodeling at the Forest Clinic, in particular the sprinkler system. Right now we have no idea what that will cost. We also want to remodel the main lobby area. Moved by Steve, to accept the financial report, seconded by Bill M., all in favor (6), (0) opposed. Motion carried.

F. STAFF REPORTS. Kathy said that she likes the breakdown on Barb Thompson's report. Bob recommended that the reports be typed because they look better and everyone has access to a typewriter or computer. Moved by Bill M., to accept the staff reports, seconded by Steve, all in favor (6), (0) opposed. Motion carried.

G. INTRODUCTION OF GUESTS. Present: Elaine Porter, Daniel Ward, Joan Spalding, Jim Compeau, Janine Szpliet, Percy Compeau, Bob Compeau, Bob Hardenburgh, Carol Bennett, Mickey Wahr, Don Koon, Lavern Oren, Katie Glocheski, Dave Schultz, John Koon, Jonnie Sam, Mike Szpliet, June Sam, and Connie Waitner. Staff Present: Diane Lonn, Jay Sam, Chris Holz, and Tammy Carter. Attorney Present: Bill Brooks.

## II. OLD BUSINESS

A. TRIBAL COUNCIL APPOINTMENT. It was mentioned that an Elder would be a nice addition to the Tribal Council. Kathy then read a letter written to Bob from the Elders Committee recommending Don Koon to the Council. Bob read off the list of eligible applicants. These included Don Koon, Janine Szpliet, Bill Willis, Jim Compeau, Connie Waitner, Jerry Guenthardt, and Bob Hardenburgh. Kathy nominated Don because of the Elders' recommendation. Moved by Kathy, to appoint Don Koon to the Tribal Council, seconded by Chuck, all in favor (6), (0) opposed. Motion carried.

B. COMMITTEE PROCEDURE POLICY. Kathy asked if the committees are going to fill out both of the work plan sheets or have we decided which one we are going to use. Bill B. said he's not sure because Mark has been working with Helen Ann on this. Kathy asked who is going to decide on the present committees who goes and who stays. Bob said he didn't know. Bill B. said he suspects it will be a gradual process. Bill M. expressed his concern of how long before the policy takes effect and who is working on it. He also suggested that there be a work plan on this at the next meeting. Bill B. mentioned that each

committee chair should be there too. Bill M. said he would like the Management Team to come up with a work plan for the next meeting. Chuck said that on page 4, D., Section 3, the first line, he suggests that the word "Chairman" be placed in front of the word "Secretary." On page 5, Section 6, C., Chuck would like some clarification on that section. Moved by Bill M., to adopt the Committee Procedure Policy, seconded by Kim, all in favor (7), (0) opposed. Motion carried.

C. RESOLUTION TO AUTHORIZE EXECUTION OF REVISED CONSTRUCTION MANAGEMENT AND DEVELOPMENT MANAGEMENT AGREEMENT. Bill B. said that a couple of months ago the Council passed a resolution allowing Bob to execute the Management agreement. There were a couple of issues that still needed to be resolved. Since then, the attorneys for North American Gaming had one of their associates take the agreements to one of the compliance people at the National Indian Gaming Commission to talk about what is covered in those agreements. Based on the conversation, there were a number of changes that were recommended and some additional language but it doesn't change the substance of the agreement. It will be necessary though in order to get the agreement approved. There were also some additional provisions. Bill B. said that Tom Celani will be coming up here on April 21, 1997 with the revised Development Agreement and Management Agreement and they will be executed then. Moved by Steve, to pass Resolution #97-0413-01, Authorizing Tribal Chairman to Execute the Revised Construction Development Agreement and Management Agreement with North American Gaming Company and Agreeing to Limited Waiver of Tribal Sovereign Immunity in Such Agreements, seconded by Bill M., all in favor (7), (0) opposed. Motion carried.

### III. NEW BUSINESS

A. CORRECTIONS TO MAY 2, 1996 TRIBAL ROLL THAT WAS SUBMITTED TO THE BIA. Diane said that the Bureau of Indian Affairs sent her a list of corrections she had to make; such changes were in addresses, names, and birthdays. She has made all of the corrections. The corrections went back to the May 2, 1996 roll. She said that anyone signed up before May 2, 1996 will be able to vote for the Tribal Council. Moved by Bill M., to pass Resolution #97-0413-02, Authorizing Submission of Corrected Tribal Roll to the Secretary of the Interior, seconded by Chuck, all in favor (7), (0) opposed. Motion carried.

B. PROPOSED GRIEVANCE PROCEDURE POLICY CHANGES. Kim said that under 8.2 Grievance Defined, where it says, "The employee must show how the grievance directly affects him/her", the beginning of that is vague and would like some clarification there. Bob asked Chris if 8.2 could be re-worded. Chris explained why things were worded the way they were. Chuck asked about 8.3,



A. He wanted to make sure he understood that the employee has 10 working days after an incident to file a grievance. Chuck also asked about page 2, the steps to take a grievance to a higher level. He asked if the Council would be included in one of those steps. Chris said no, it would follow in line to the Tribal Manager or Personnel Director, then to the Tribal Ogema or Chairperson, then to the Tribal Court. Moved by Steve, to approve the proposed Grievance Procedure with changes, seconded by Bill M., all in favor (7), (0) opposed. Motion carried.

C. TITLES ON RESOLUTIONS. Bob said that this is already being worked on and it is a good idea.

D. MEMBERSHIP MEETING. Bob said he would like to meet with the Elders before the meeting to come up with a disbursement plan. Bob Hardenburgh asked if we are having a meeting down state instead of all of them up here. Discussion was lead on how meetings could be split and how other Tribes handle their meetings. Bill M. said he would like to see at the membership meeting some information on the target area of our Health services. It was suggested that all of the committees set up tables to answer questions like the last time. It was asked if we could get a P.A. system this time since it's so hard to hear in the hall. Bob said we will also talk about the docket money. He also said he will try to get North American Gaming to give an update on the casino. Bill B. brought up that there should be an update on the draft election rules. Someone mentioned there should also be a Constitution update as well.

E. EAGLE FEATHER DISTRIBUTION. Jay said he talked to the U.S. Fish and Wildlife and they said the only way to obtain any eagle feathers/parts is to have a proper permit. The application process calls for the person who wishes to have eagle feathers/parts to inform the repository so they can send them an application kit. The person then fills it out and sends it to the Bureau of Indian Affairs, who then sends it to Diane who certifies that they are a tribal member and sends it back to the BIA. Then the BIA sends it back to the applicant who then takes it to a tribal religious leader to sign that the feathers/parts will be used in an approved religious function. Jay said he came up with a system we can use to process the applications we currently have in the office. With no action alternative, we can say that the applications in effect will be denied because we have no sign-off by a tribal religious leader. The next proposed method is to have applicants fill out a form similar to one they already fill out stating what they want to use the feathers/parts for and have someone to sign-off stating that the applicant won't trade, sell, barter, or give the feathers/parts away. It would put something in the way of the Tribe being responsible if that person broke the law. Bob said he feels that if we had one religious leader, they may be imposing on other religions we have within the Tribe and therefore, isn't a good idea. Bob said he wouldn't have a problem signing-off as the Chairperson as long as the

person doesn't break the law. Jay said right now we have three applications. Moved by Bill M., to have our Tribal Chairperson to sign-off on applications for eagle feathers/parts to the repository, seconded by Steve, all in favor (7), (0) opposed. Motion carried.

F. FOREST CLINIC BUILDING UPDATE. Discussion was lead on the remodeling of the offices and the wiring of the computers and phone system. Chris then explained how we came about to buy the building for those who were unaware of the process. Chris said we are hoping for a target date to be in there by May 15, 1997. Bill M. talked about the issue of our health services opening up to people on Medicaid/Medicare to keep the doctor busy. It was discussed about having transportation available to tribal members who need to go to a doctor and cannot drive themselves there.

#### IV. CONCLUDING BUSINESS

A. MEMBERSHIP COMMENTS/PUBLIC COMMENTS. It was asked when anything would be done on the appointment of the Gaming Commission. Kathy said that Bill Willis and Connie Waitner were working on this. Connie said that there are five people interested in this and they plan on having another meeting regarding the Gaming Commission soon.

B. NEXT MEETING. Kathy said that the next meeting is on May 11, 1997, Mother's Day. Since the next meeting is on Mother's Day, it was decided to reschedule the meeting for May 18, 1997 before the membership meeting at 10:00 a.m.

C. ADJOURNMENT. Moved by Don, to adjourn the meeting at 2:20 p.m., seconded by Bill M., all in favor (7), (0) opposed. Motion carried.

D. CLOSED SESSION. The Tribal Council then went into closed session by consensus.

4/16/97--vc

1 Little River Band of Ottawa Indians

2 P.O. Box 314

3 Manistee, MI 49660-0314

4 IN RE: Waitner v Guenthardt; 98/95-1001-1-8.3

OPINION AND ORDER

5 RE: WILLIAM J. BROOKS, Practice before Little  
6 River Band of Ottawa Indians Courts

7  
8 **FINDINGS**

9 1. The Constitution of the Little River Band of Ottawa Indians, as adopted by vote of the members in  
10 election held on May 27, 1998 and as approved by the Secretary of the Interior on July 10, 1998 and so  
11 becoming effective on that date pursuant to Article XV of the Constitution establishes a separation of  
12 powers between the three branches of government.

13 Article IV, section 1 provides that "the legislative powers of the Little River Band shall be invested in the  
14 Tribal Council".

15 Article V, section 1 provides that "The executive powers of the Little River Band shall be invested in the  
16 Tribal Ogema".

17 Article VI, section 1 provides "The judicial power of the Little River Band shall be invested in a Tribal  
18 judiciary, which shall consist of the Tribal Court, a Court of Appeals, and such inferior courts as the  
19 Tribal Council may from time to time ordain and establish".

20 Article VI section 9 provides "The Tribal Judiciary shall be independent from the legislative and executive  
21 functions of the tribal government and no person exercising powers of the legislative or executive  
22 functions shall exercise powers properly belonging to the judicial branch of government;".

23 This separation is further evident in Tribal Ordinance 97-300-01. Passed by the Tribal Council on August  
24 4, 1998, prior to the Constitutional election, it contains the same language in section 11 Judicial  
25 Independence, and so prepared the way for the Constitutional separation.

26 2. Tribal Ordinance 97-300-01 section 5, Powers of the Tribal Court, § 5.01.8 also establishes the  
27 independent nature of the Tribal Court Budget: "To prepare and present to the Tribal Chairperson and  
28 Tribal Council a budget requesting an appropriation of funds to permit the Tribal Courts to employ  
29 personnel or to retain by contract such independent contractors, professional services and whatever

1 other services may be necessary to carry out the dictates of this Ordinance and all other Ordinances  
2 creating lower courts of limited jurisdiction". Section 3, Duties and Powers of the Chief Judge, section  
3 3.01.5 [Chief Judge shall] "Represent the Tribal Judiciary in its relations with other courts, other  
4 agencies, the Tribal Council...". The Job Description of the Tribal Court Administrator lists under duties,  
5 part B, Fiscal Management, "1. Prepare budget for the Tribal Court (with the aid of staff/judges)". Due to  
6 the lack of Judicial appointments, the Tribal Court Administrator assisted by Mr. William Brooks prepared  
7 and presented the Court Budget for 1998 to the Controller and Chairperson. The attached documents  
8 (attachment 1) show that a portion of his wages or salary was included in the budgeted appropriation  
9 request, but show they were added by either Mr. Brooks or the Council. It is also noted that the staff  
10 assignments in the Holz memo showing program/staff assignments [included] lists Mr. Brooks as "court  
11 services 1/3" pending approval of budget by Tribal Council (budget was approved and is current budget).  
12 Mr. Brooks also represented the Court to the Council during a budgetary discussion (See attachment 2-  
13 Memo from Bill Brooks to Tribal Judiciary) held during a 'Council Retreat'.  
14 3. The budgetary reports for the Tribal Court show William Brooks under salary and wages receiving part  
15 of his gross pay (Attachment 3 ). Mr. Brooks has also accessed the travel budget, and the Court has paid  
16 for filing fees and bar association dues (See attachment 4).  
17 During a discussion of the budget at the September 19 Judicial Conference, the status of Mr. Brooks was  
18 discussed. The Judiciary held that this salary arrangement would cause no problem - unless Mr. Brooks  
19 represented someone in court. As a court employee or staff member it would be improper to act as legal  
20 representative. The appearance of improper advantage would be the same as there existing an improper  
21 advantage and so he (Brooks) could not represent someone, anymore than any of the Judiciary or the  
22 Tribal Court Administrator can.

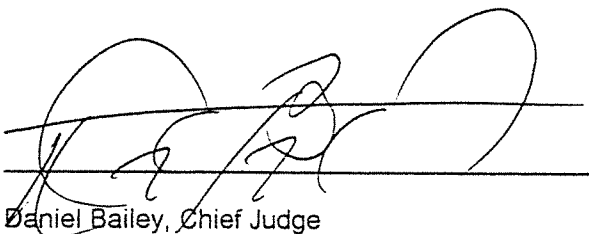
### 23 **OPINION**

24 It is the opinion of this Court that William Brooks is a staff member of the Court. Further, there is  
25 evidence that Mr. Brooks' scope of work is executive in nature, in view that recently the Council modified  
26 the budgets to "move" or remove Mr. Brooks from the Indian Child Welfare program in order to access  
27 other resources and as he is compensated from the budgets of different programs. In order to insure the  
28 fairness and equality of a hearing before this Court and prevent even the appearance of impropriety it is  
29

1 not allowable for staff to represent any parties in a hearing before this Court. The codes of ethical  
2 behavior for most, if not all, courts reflect this standard, including this one.

3  
4 **THEREFORE IT IS AN ORDER OF THIS COURT** that WILLIAM BROOKS may not serve as a  
5 representative, legal or otherwise, before this court until such time as he is no longer a staff member of  
6 this court.

7  
8 **ORDERED** by my signature on this date:

9  
10  
11   
12 \_\_\_\_\_  
13 Daniel Bailey, Chief Judge

10/10/98  
\_\_\_\_\_  
Date

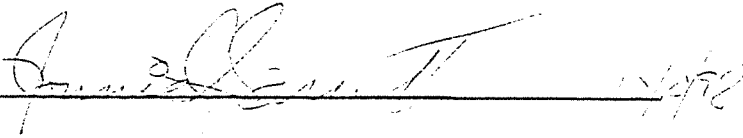
14 Little River Band of Ottawa Indians Tribal Court

15  
16 **CERTIFICATION OF SERVICE**

17 The above order was made in open court, and copies were delivered to or placed in the regular mail to:

18 William J. Brooks	Melissa Waitner	Robert Guenthardt	Charles Fisher
19 Tribal Attorney	Aggrieved party	Tribal Manager	Tribal Council
20 P O Box 314	5450 Pine Creek Rd	P O Box 314	PO Box 314
21 Manistee MI 49660	Manistee MI 49660	Manistee MI 49660	Manistee MI 49660

22  
23 Kathy Berentsen  
24 Tribal Council  
25 710 E. Lake Mitchell Dr.  
26 Cadillac MI 49601-9602

27  
28 By   
29 \_\_\_\_\_

1 Little River Band of Ottawa Indians

2 P.O. Box 314

3 Manistee, MI 49660-0314

4 Kequom, Kimberly A.

5 Plaintiff,

98/200-02/01-000846

6 vs.

Complaint of Improper Conduct

7 Election Board, Little River Band of Ottawa Indians

Summary and Decision

8 Defendant

9 On November 4, 1998, Complaint was filed by Kimberly A. Kequom charging the Election Board of the  
10 Little River Band of Ottawa Indians with Improper Conduct. The Election Board responded on November  
11 9, 1998. Hearing was set for November 19, 1998 at 6 PM in the Little River Band of Ottawa Indians  
12 Community Center with Associate Judge Jonnie Sam II presiding.

13 Complaint of Plaintiff

14 Ms. Kequom charged that the Election board had acted beyond their authority, by assigning fines and  
15 sanctions to her for non-specific violations of sections 5.01 and 5.02 based on hearsay and rumor. Ms  
16 Kequom also charged the Election Board failed to implement the rules of the election in a uniform  
17 manner. Further Ms Kequom argued that the Ordinance [Tribal Ordinance 98-200-02] only allows the  
18 Election Board to sanction candidates under section 5.07 [Reports on Campaign Finances and  
19 Activities]. Ms Kequom charged violations of her due process rights by the election Board. Ms Kequom  
20 also charged that the Election Board did not sanction any other candidates who have violated the rules  
21 in not filing portions of the information requested by the Election Board in the Candidate's packet, an  
22 unequal application of the rules by the Election Board.

23 Response of Defendant

24 In the response of the Election Board to the complaint, the Board referred to the clauses of the  
25 Ordinance that were violated [Sections 5.01 and 5.02] as being specific so as to define the violation.  
26 They further pointed out that Ms. Kequom had advance knowledge of the Ordinance and rules as a  
27 member of the Tribal Council, the body passing the Ordinance and reviewing the rules. The Election  
28 Board also denied acting on rumor and innuendo by showing the written complaint the board received.  
29 The Election Board assert they have the power to investigate under 98/200-02 Section 5.08 (b) following

1 receipt of the written complaint. Further the Election Board argued that in filing her complaint Ms Kequom  
2 failed to follow the requirements of 98/200-02 Section 3.03(b) regarding removal in that Ms Kequom was  
3 neither specific in whom she wished removed nor dates and particulars of conduct. The Election Board  
4 claimed that Ms Kequom became a candidate when she filed and so came under the rules. Defendant  
5 further asserted that their action fell with the scope of the Election Ordinance [98/200-01] based on  
6 referencing several sections, including promulgation of rules and procedures in phases [4.01].

#### 7 Arguments

8 Ms Kequom did not deny the violations, she argued that the Election Board had no authority to sanction  
9 or investigate her as she was not a candidate at the time of the violations. Due to her non-candidate  
10 status the rules did not apply to her until she had filed on November 16<sup>th</sup>, and the Election Board  
11 declared her a candidate. Further, Ms. Kequom argued the spirit behind the declaration was to specify  
12 which district a person is going to run, it does not qualify candidacy, it is only an intention, which is  
13 another argument for the rules not applying to her until the Election Board qualifies her. Also, there was  
14 a lack of specification of the behavior or violation in the charges as presented to Ms Kequom. The brief  
15 description of a candidate and elated information was required with the declaration according to Number  
16 6 of the candidacy rules and no one was sanctioned. The lack of a hearing prior to the sanctions being  
17 placed on her violated her due process rights and admitted their error in the response they provided.  
18 Post sanction hearing was refused due to having filed with the Court already. The Election Board's  
19 statement that they are doing the best of their ability, but haven't received the training and they don't  
20 know what they're doing they shouldn't be sitting on the Election Board. The rules and amendments  
21 made were all done after Ms Kequom was denied candidacy and these issues came up. The schedule of  
22 fines happened after the fact, Ms Kequom had been fined before the schedule was made. Ms Kequom  
23 asserted that only her petition was certified, no one else's, and only she was disqualified. From what Ms  
24 Kequom understands, Chuck Fisher also had his petition signed in the Tribal buildings, by Debra Davis,  
25 but received no sanction. Also, Robert Hardenburgh placed campaign materials with a staff member at a  
26 non-Tribal event but on the same table as official documents and information from the Tribe. This would  
27 be a violation of the same ordinance, this also speaks to the integrity of the Election process.

1 The Election Board called three witnesses. Diane Angeline Lonn, Tribal Registrar, testified to the method  
2 of choosing to verify a petition's signatures, dates and addresses. Ms Lonn also testified that the only  
3 other way to investigate anything else, a complaint had to come in and she had to be directed by the  
4 Election Board to do so. Ms Lonn did verify the other petitions as to signatures, dates and addresses.  
5 Ms Lonn testified there were no other complaints made against the other candidates, if there had been  
6 she would have investigated further. Ms Kequom asked if her second petition had any complaints filed.  
7 Ms Lonn stated there was not, but that names and addresses that were not in the computer were verified.  
8 Asked why inquiry was made as to where a signature occurred, Ms Lonn stated the signatures and  
9 addresses needed verification as they didn't corresponded with the computer. She was unaware she had  
10 asked where a person had signed. Ms Kequom referred to Rachel Dielman. Ms Lonn responded that the  
11 address was not the same as registered and she questioned why. Ms Lonn explained that there were at  
12 least six examples of addresses being different, and one with a different last name as the official  
13 computer files. Ms Lonn said she did the same for any address that was different. Carol Bennett testified  
14 that contrary to the amendment she had not spoken to Brenda Hyma about her candidacy or the  
15 elections. Further Ms Bennett said the Election Board had never told her they would tell her what district  
16 she was running for. Under cross examination she stated she had not spoken about the election, not that  
17 she was aware of or remembered. Robert Hardenburgh testified that he did leave election material with  
18 the employee, but that it was on his lunch hour, from 12:00 - 12:30 and so not on employee time. Under  
19 cross examination Mr. Hardenburgh stated he left the material there between 1PM and 5PM, although  
20 the employee was not there when he returned. The Election Board stated that they can only act on  
21 complaints that are filed, if no one filed a complaint they can't act. There were no other complaints, just  
22 the one that was brought to them.

### 23 Closing Arguments

#### 24 Plaintiff

25 Ms Kequom argued that ignorance is no excuse, its not a defense. The inexperience and lack of training  
26 and by putting blame on to others does not excuse improper conduct. They admitted an error in their  
27 response. Admitting a mistake and blaming time constraints and the lack of formal training admits that  
28 the Election Board's action was improper. The holding of the hearing on November 4<sup>th</sup> was a sign of the  
29 Election Board covering their tracks. Because of all the things presented, the declaration of candidacy,



1 because of the lack of ability to understand their responsibility and the way they are to perform and  
2 uniformly apply the rules, they should be removed as the Election Board. Ms Kequom argued the idea  
3 that filing the declaration of candidacy makes one a candidate is wrong it only shows the intention of  
4 running. Declaring herself President of Ogema does not make her the President of Ogema. Just because  
5 I filled out their forms and it was not verified by Diane Lonn does not complete my declaration of  
6 candidacy.

7 Defendant

8 Closing Arguments

9 Election Board (Patricia Ruitter) argued that the form itself says you declare yourself a candidate, so  
10 when she handed this in, she was a candidate. As far as covering our tracks, we felt we were doing it  
11 right by setting the fine, telling her she was disqualified and then setting a date for her to come and tell  
12 us what she had to say about being disqualified. She declined to do that. Also we have given her a  
13 second chance to redo the candidacy rules again. She got the rules while on the Council, and in her  
14 packet, what else were we supposed to do?

15 Reasoning

16 The issue is the Election Board taking action on Ms Kequom's petition and the complaint about it when  
17 they were not allowed to because she was not a candidate. Referring to the definition of candidate in the  
18 Election Ordinance (98/200-02) we find "Candidate means a person who has filed any document(s)  
19 necessary to declare such person's candidacy for an elected position on the Tribal Council representing  
20 one of three Council Districts or for the Office of Tribal Ogema". There is no requirement for the Election  
21 Board to certify or verify the declaration. Also, Section 5.01, "**No campaigning shall take place in any  
22 of the Tribal Offices, Tribal Buildings or any Tribal Enterprises**" {Emphasis added} is not candidate  
23 specific and in fact applies to all persons. The definition of Campaigning "means active participation in  
24 regular, organized efforts to solicit support for the election of,..." must include petitioning for candidacy.  
25 No purer act of support solicitation exists. Ms. Kequom's assertion of immunity from the rules based on  
26 not being a candidate is incorrect, especially in regard to violations of Section 5.01.  
27 The Election Board did fail to provide due process in assessing the fines and sanctions without hearing.  
28 They have used a lack of training or advice as explanation of a procedural problem. The lack of a fee  
29 schedule in the Ordinance would make it very hard to assign fines for violations other than campaign

1 finance violations, which are in the Ordinance. That didn't mean they could not. Again referring to the  
2 Election Ordinance, Section 5.08 (b) "Any decisions or orders of the election Board **imposing any**  
3 **injunctive relief or any other sanction** {emphasis added} shall be in writing, which summarizes the  
4 grounds for such decision or order, and that the decision may be appealed to the tribal Court." That in  
5 itself states that they have the power to fine for any infraction they see. They have the power to assess  
6 any sanction or penalty for violations of the ordinance. The fact that there were no guidelines for  
7 sanctions included in the Ordinance itself does not mean none were intended. A schedule or statement  
8 of the penalties available could, and perhaps, should have been prepared by the Election Board prior to  
9 any violations being sanctioned, but it is the feeling of the Court that the existence of such a listing would  
10 not have mattered in this case. Ms Kequom's defense of her behavior was not one of innocence, but  
11 rather one of her 'position' as non-candidate meaning the rules did not apply.

12 The Election Ordinance did empower the Election Board to create rules, regulations and procedures to  
13 handle issues such as this very issue[98/200-02, Section 4.01]. The Ordinance allows them to do it in  
14 phases [98/200-02, Section 4.01] to establish a rule or regulation to cover the issue, but that does not  
15 necessarily give them the power to enforce those rules retroactively. That a certain behavior is a  
16 violation of the Ordinance, but that there is no specific rule explaining sanctions should not be construed  
17 as a permit to violate the ordinance.

18 Ms Kequom states "I also understand other petitioners violated similar candidacy rules as well as a rule  
19 that specifically mandates petitioners to submit a brief description and reasons why a person is running  
20 for office by October 16, 1998, deadline."{Complaint} Here Ms Kequom is asking for sanctions on  
21 unnamed others for ill defined violations, yet she claims harm from the same behavior. "The Election  
22 Board based its conclusions and decisions on unconfirmed allegations."{Complaint}. Again, the lack of  
23 procedural understanding rather than the lack of a true procedure seems to be at work. The election  
24 Board acted on information and complaint they received in writing, and investigated the complaint. The  
25 aforementioned hearing allowing Ms Kequom to question the witnesses should have been held. It was  
26 not, but clearly the witnesses spoke to the existence of a violation with the Election Board.

27 Much has been made of the lack of training, of procedural understanding by the Election Board. The  
28 Board maintains they were promised assistance by the Tribal Council, assistance that never developed.

29 Ms Kequom argues that is reason to remove, an admission of guilt. Yet her complaint is not filed properly

1 under 98/200-02 section 3.03 (b). It is not specific as to who behaved improperly (it is assumed the entire  
2 Board) or how it impacted the election process.

3 That Ms Kequom had an advantage over other candidates, even over the Election Board with regard to  
4 this Ordinance is a fact. The Tribal Council had to pass this Ordinance, and she is on that Council and  
5 so saw the ordinance before the Election Board.

6 That the Ms Kequom had her petition signed in the offices and buildings is fact, and not disputed.

7 That the Election Board did not afford a recognized form of due process is also a fact, and not disputed.

8 Ms Kequom has received opportunity to resubmit a petition during an extension, granted in part due to  
9 this issue. She may yet appear on the ballot through this second petition.

10 Findings and Decision

11 The Court finds the actions of the Election Board to be within the power and scope of the Election Board  
12 under Ordinance 98/200-02. They have not acted beyond their authority, they have the authority to  
13 sanction for violations of the Election Ordinance 98/ 200-02.

14 The Court also finds the lack of hearing prior to assessing fines to be a violation of (regular) due  
15 process, and removes the fines so assessed as relief of this violation of due process even though not  
16 asked to do so. [Allowed under M.C.R. 2.601]

17 The Court further finds, any other harm done to Ms Kequom has been undone by allowing for a second  
18 petition, which would allow Ms Kequom to be placed on the ballot.

19 THEREFOR, IT IS THE DECISION and ORDERS of this Court that:


20 The Election Board shall remain in place and continue to conduct the Election,

21 The fines of \$200.00 assessed Kimberly Kequom be set aside and rescinded with no further fees or fines  
22 assessed as requested by the Election Board,

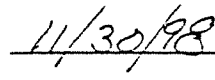
23 And Kimberly Kequom's \$43 for background check be held until her candidacy from the second petition  
24 is further defined as she states no knowledge of that status here.

25 Appeal may be filed within fourteen (14) days of this decision.

26 It is so ordered by

27   
28 Jonnie J. Sam II, Associate Judge

on



Date

Certificate of Service

1  
2 I, Mary Oleńczak, certify that a copy of this decision was placed in the regular mail  
3 by me on the date below to:

4 Kimberly Kequom	Patricia Ruitter	Charles Fisher
5 11028 Radcliff Dr.	P O Box 1071	P O Box 314
6 Allendale MI 49401	Baldwin MI 49304-1071	Manistee MI 49660-0314

7  
8 Mary Oleńczak 12/1/98  
9 Signed - Date

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1 Little River Band of Ottawa Indians

2 P.O. Box 314

3 Manistee, MI 49660-0314

4 In Re: 98/200-02/01

ORDER TO CONTINUE ELECTION

8 ORDER

9 BY ORDER OF THE COURT, upon conclusion of hearing in regard to a complaint of unethical  
10 conduct and finding no evidence of unethical conduct, the Run off Election for Tribal Ogema  
11 shall continue under the Election Board.

12 FURTHER IT IS ORDERED that the results of the Election held in November/December 1998  
13 and certified by the Board are the true results and final.

14 IT IS SO ORDERED,

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16 \_\_\_\_\_  
17 Chief Judge Daniel Bailey

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Date

**TRIBAL JUDICIARY  
OF THE  
LITTLE RIVER BAND OF OTTAWA INDIANS**

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KIMBERLY (KEQUOM) CRAMPTON,  
Plaintiff,

v.

Case No. 98/200-02-01.000846

JONNIE J. SAM II, Associate Judge,  
Respondent.

Judicial Ethics Complaint

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**OPINION OF TRIBAL JUDICIARY**

This matter comes before the Tribal Judiciary, sitting *en blanc*, to consider Plaintiff's complaint against Associate Judge Jonnie J. Sam II. Two members of the Judiciary did not participate in the deliberations and decision in this matter. Appellate Justice Brenda Hyma entered a recusal because she is the sister of the Plaintiff. Additionally, Judge Sam II was the Respondent and therefore did not participate other than as Respondent. The Judiciary announced its decision in this ethics matter immediately after its deliberations on January 23, 1999. Its written ORDER was filed on January 26, 1999.

A threshold issue for the Judiciary in its consideration of this matter regarded the filing, which called itself an "appeal", while its substance involved a conflict-of-interest allegation against the trial court judge. The allegation was that he could not possibly be unbiased because his sister was one of the candidates for office of Tribal Omega. Bias was not shown, so the complaint was dismissed. Whether a matter is an appeal or a judicial ethics complaint is of great consequence because the two differ in two primary respects. First, an ethics complaint is heard by the entire

Tribal Judiciary sitting *en blanc*, while an appeal is heard only by the Appellate Court. Second, an ethics complaint is heard *de novo* by the Judiciary, while an appeal is based upon the record established at the trial court level. The filing of an appeal must state: (1) which portion(s) of the trial court's decision appellant wishes to appeal, (2) the precise basis (grounds) for each portion of the decision appealed, and (3) the relief requested of the Appellate Court on each portion appealed. Thus, the procedure to be employed by the courts of the Tribe depend on the kind of action pending before them.

Plaintiff in the instant matter presented a ethics complaint, not an appeal. Thus, the matter was heard before the Judiciary as a whole. The decision announced from the bench on January 23, 1999 and the subsequent entry of the written order takes care of that ethics complaint.

Beyond the judicial ethics complaint that is at the heart of the instant matter, there are a number of additional matters that have caused confusion as the election dispute worked its way through the system. The Judiciary recognizes that it must exercise its power with restraint, giving deference to the various roles, functions and responsibilities that appropriately belong to others. Mindful of this principle of restraint, the Tribal Judiciary has cautiously decided that it should respectfully provide guidance to minimize the potential for similar confusion in future elections. The Tribal Judiciary has reached this conclusion that it ought to provide direction because it understands that the community looks to it for resolution of outstanding questions. More importantly, however, the Judiciary recognizes that it has a responsibility to the tribal community to clarify the standards for access to court system. Understanding the standards will increase the ability of tribal members to effectively present their claim(s) while ensuring preservation of community resources by increasing judicial efficiency. Given the political nature of elections, they

can be the source of numerous intra-tribal disputes. It can not be doubted that community stability will be enhanced by minimizing the potential for such election conflict and by developing a judicial system that will provide effective resolution of such disputes.

The terms "*election dispute*", "*election challenge*" and "*impropriety*" as used in this election have caused confusion. These terms are not defined in the First Election Ordinance nor in the Tribal Election Rules and Regulations. This observation is not made to point out that either of those enactments are defective, but to suggest where some fine-tuning might be appropriate based on "lessons learned" and the principle of continuous improvement. After all, this was the Tribe's very first election under its newly-adopted constitution. The Judiciary sees the three above-mentioned terms as completely different from each other, even though the Election Board Rules and Regulations, Article XII, use the Terms "election disputes" and "election challenges" interchangeably. Probably so because the resolution of both disputes and challenges are by the Election Board under the authority delegated it by the people. *See Tribal Constitution, Article IX, Section 4(a)*. However, distinguishing the two from each other should help those involved distinguish among appropriate remedies.

The Judiciary offers the following:

- (1) An "*election challenge*" is a direct **challenge to the results or outcome** of an election itself. The object of the challenge is to affect the outcome of an election. Election challenges are resolved by the Election Board under the authority delegated to it by the Tribal Constitution.
- (2) An "*election dispute*" is any election dispute **other than that which challenges the outcome of an election**. The object of an election dispute is to affect how a



tribal election is conducted as the election process moves forward. Elections disputes must be raised in a timely manner so that adjustments may be made by the Election Board prior to the actual balloting and posting of election results. The Election Board must have an opportunity to rectify any mistakes it has made. Disputes not timely raised may be deemed to be waived. Election disputes are also resolved by the Election Board under the authority delegated to it by the Tribal Constitution.

- (3) **“Impropriety” means something other than mere disagreement with the decisions of the Election Board.** It is conduct or behavior which violates standards of ethics. This distinction is significant because allegations of impropriety by the Election Board are resolved by the Tribal Judiciary. Although this term is not expressly defined, it is given meaning by the Ethical Standards provision of the First Election Ordinance (Ordinance 98-22-02). *See Section 3.09.* Perhaps clearly linking this provision with the provisions regarding impropriety will avoid future confusion.

As one can readily see, the Judiciary views the three instances above as completely different each from the other. How each term is used has consequences. Careful use will provide clarity and eliminate confusion for everyone.

The following are the Court’s interpretations:

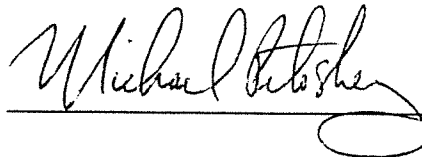
- (1) Many might question the amendment of election rules and regulations after they have been published. That kind of action can be interpreted as a “changing of rules after the game has started”. Regardless of the wisdom and need for making

amendments, express authority should be published in election ordinance(s) and/or the rules and regulations published by the Election Board.

- (2) The hearing of election disputes and challenges must proceed on the record even if the person who files the complaint does not appear at the hearing. The Election Board should consider what is presented to it by the written complaint. On the record means that the hearing is recorded on tape. The recording is the record of how the issue(s) raised by the complaint are addressed by the Election Board.

2/23/99

DATED



Michael Petoskey  
Appellate Court Justice  
signing for the entire  
Little River Band Tribal Judiciary