Disenrollment---Patsy McPherson et al v LRBOI Enrollment Commission---(Cases Enjoined)---Case #06090EA / #06099EA / #06100EA / #06101EA

Summary: This matter comes to the Tribal Court after the LRBOI Enrollment Commission conducted file reviews and lowered the blood quantum of an individual, Sara Griffin Baker Frisbie (4/4 to ½). The lowering of her blood quantum affected her descendants (petitioners in the above cases) causing some to have their blood quantum lowered while others were disenrolled.

Decision and Order: The Court ordered the cases be **remanded** back to the Enrollment Commission and return the blood quantum of Ms. Griffin back to 4/4.

Order after Trial---LRBOI v Ryan Champagne---Case # 06131TM (Appealed)

Summary: This case comes to the Tribal Court on a complaint filed against Mr. Champagne alleging that he engaged in the crime of attempted Fraud against the Little River Band of Ottawa Indians.

Decision and Order: The **Court finds** Mr. Champagne **guilty** as charged

Side Note: Sentencing Order signed by December 1, 2006

Court of Appeals---LRBOI v Ryan Champagne---Case # 06178AP

Summary: This case comes to the Court of Appeals on appeal by Mr. Champagne alleging legal arguments on jurisdiction, right to a jury trial, lack of a criminal statute, demand for traditional judges, witness irregularities, and challenges to the Trial Court's findings of fact.

Decision and Order: The Court of Appeals **affirms in its entirety** the order of the Trial Court convicting Mr. Champagne of the crime of attempted fraud.

Order of Disposition---Antoine v Jessica Burger – LRBOI---Case # 06171-GR

Summary: This case is an employment grievance. A hearing was held for the complaint that J. Burger terminated J. Antoine rather than use progressive discipline.

Decision and Order: The Tribal Court affirmed proper action was taken due to testimony and written documentation that the Petitioner acted negligently

Employee Grievance---M Ceplina v G Lewis (Supervisor) and A Patricio—Case #06189GR

Summary: This case is presented to the Employment Division of the Tribal Court by Mr. Ceplina after he received a "write-up" on a Performance Improvement Form. He alluded that the policies were not being filed and wanted the write-up to be taken out of his personnel file.

Decision and Order: The Court **ordered** the **case dismissed** with prejudice

2006 Appellate Cases (already published directly after the case that was appealed.)

M. Samuelson V LRBOI –Enrollment Commission --- #06113AP

Summary: The Commission argues that the Tribal Court erred when it did not "*determine that the presumption provided in Section 4.04 of the Constitution is a rebuttable presumption that is required to be considered in light of all evidence"; "determined the standard of evidence" and "determined that the LRBOI Trial Court does not have jurisdiction to order specific eligibility determinations in enrollment cases*

Decision and Order: This Court affirms the lower court's decision. The lower Court shall remand all cases back to Enrollment Commission where there has been an error of law and the Commission has incorrectly interpreted or applied the enrollment ordinance. Tribal Court remands back to the Enrollment Commission.

James Wabsis, Salli Wabsis & Catherine Wabsis v LRBOI Enrollment Commission — #06144AP

Summary: This matter comes before the Court regarding the second attempted disenrollment of Petitioners/Appellees that have filed a counter-motion for denial stay pending the appeal.

Decision and Order: Dissolves the stay issued back by the Tribal court regarding payment of back benefits. Affirms the stay regarding sanctions; and affirms the denial of stay regarding the order that they remain tribal members who are entitled to all rights, privileges and benefits of tribal membership

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

PATSY ANN MCPHERSON, ET AL,
Petitioners

V.

CASE NUMBERS: 06090EA, 06099EA, 06100EA, 06101EA

LRBOI ENROLLMENT COMMISSION
Respondent

Jane M. Johnson
Attorney for Petitioners
P.O. Box 566
4724 Main Street
Onekama MI 49675

Matthew Robert Chandler
In Pro Per
16 N. Snyder Road
Wellston, MI 49689

Kimberly G. McGrath
Attorney for Respondent
375 River Street
Manistee, MI 49660

ORDER AFTER HEARING ON ENROLLMENT COMMISSION DECISION TO DIS-ENROLL PETITIONERS

The Enrollment Commission conducted file reviews (pursuant to Ordinance # 04-200-01) of petitioner's files and on 12/15/2005 lowered the blood quantum of Sara Griffin Baker Frisbie from 4/4 to 1/2. This affected the descendants of Sara Griffin. Some of the petitioners had their blood quantum lowered, while others were dis-enrolled. Four individual suits were brought before the Little River Band of Ottawa Indians Tribal Court: McPherson et al, Berry, Chandler, and Hall. McPherson, Berry and Hall were consolidated. Chandler was unrepresented by counsel.

The Court looks to the Constitution of the Little River Band of Ottawa Indians first in making any determination or order. The Constitution states in *Eligibility for Membership,* Section 1, § a.: "Is a lineal descendant of a member of the historic Grand River Bands who resided in Manistee, Mason, Wexford, or Lake Counties in the State of Michigan, who was listed on the schedule of Grand River Ottawa in the Durant Roll of 1908 as approved by the Secretary of the Interior on February 18, 1910 or:..."

Sara Griffin is listed on the Durant Roll of 1908. Sarah is identified as being a Grand River Indian. No blood quantum was listed for Sara on the Durant Roll or in the field notes from the roll.

PATSY ANN MCPHER[illegible]N, ET AL,
Petitioners

VI.

CASE NUMBERS: 06090EA, 06099EA, 06100EA, 06101EA

LRBOI ENROLLMENT COMMISSION
Respondent

The Enrollment Ordinance of the Little River Band of Ottawa Indians (#04-200-01) Section 4.04 states that: "Where there is no other information **within the Durant Roll** of 1908, and its **included supplementary information,** indicating blood quantum other than the Tribe or band identified**, the person is presumed to be 4/4 blood quantum** of that Tribe or band identified."

The Commission argued that a role kept by the Mt. Pleasant Indian School listed Sara as being a half-blood for one of the years that she was in attendance. It was also noted that she was listed 4/4 blood quantum for another of the years, and listed simply as "Chippewa" for another. The letter referenced by the Enrollment Commission from Sara's father-in-law Mr. Baker, was ambiguous at best. It did not state with any certainty as to the identity or ethnicity of Sara's father.

This Court cites the recently completed Appellate Opinion regarding LaHaye (Mary Samuelson) v. Enrollment Commission; 06113AP: [Section: IV: Conclusion] "Wherefore, ...that Ephraim LaHaye's children were entitled to the presumption created by 4.04 of the Enrollment Ordinance; **that the Commission could not bring in other extrinsic data to rebut presumption created in 4.04;** ; that the Durant Roll and the 1870 Annuity Payroll are the reference points to membership and the 4.04 presumption flows from these two documents exclusively." (June 24, 2007; for a Unanimous Court.)

These cases: McPherson et al: 06090EA; Chandler: 06099EA, Berry: 06100EA; and Hall: 06101EA are remanded back to the Enrollment Commission to return the blood quantum of Sara Griffin to 4/4.

SO ORDERED:

Judge Daniel T. Bailey

7/9/07
Date

CERTIFICATION OF SERVICE

I certify that a copy of this order was placed in the Tribal mail system for sufficient postage to be attached and mailed to the plaintiff and the defendants (or their attorneys) at the addresses on file with the court.

Deborah A. Miller – Court Administrator

7.9.07
Date

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 DOMRES ROAD
MANISTEE, MICHIGAN 49660

THE PEOPLE OF
THE LITTLE RIVER BAND OF
OTTAWA INDIANS

Case No. 06-131-TM

vs.

RYAN L. CHAMPAGNE

OPINION AND JUDGMENT

On June 20, 2006, a Complaint was filed against the Defendant, Ryan L. Champagne, alleging that Defendant engaged in the crime of Attempted Fraud in violation of Tribal Ordinance 03-400-03, Article X §11.02, incorporating MCL 750.92 pursuant to Tribal Ordinance 97-300-01, against the People of the Little River Band of Ottawa Indians. The Complaint states that:

> Through deceit, misrepresentation, and intimidation, the defendant has attempted to coerce the Tribe to reimburse him for damages suffered to his vehicle involved in a two car accident. The defendant reported to his supervisor that neither driver was a fault. The Tribe learned later that the defendant was cited by a state trooper for failure to yield; the citation was upheld after an appeal. Defendant claims that he was on Tribal business; a claim disputed by his supervisor. The defendant threatened legal action; filed a false workers comp claim, lied about insurance companies [sic] opinions that the Tribe was liable; refused to reveal his insurance company; refused to provide access to his vehicle for inspection; claimed the Tribe owed him for the total loss of his vehicle, $3,700.00 according to his "Blue Book" estimate.

Based on the evidence presented, through the testimony of the witnesses and exhibits, the following findings were made:

First, there was no evidence introduced that proved defendant's actions or comments resulted in the intimidation of any person. Moreover, while Defendant may have threatened legal action against the Tribe, this is not unlawful even if it is seen as intimidating.

Second, during the trial the prosecutor indicated that he did not intend to pursue the allegation that Defendant filed a false Workers Compensation claim and it was withdrawn from the Complaint.

Third, it was alleged that Defendant refused to reveal the name of his insurance company and the whereabouts of his truck for inspection. The evidence introduced at trial indicates otherwise. Defendant did inform the Tribe of the whereabouts of his damaged truck, and information regarding his insurance company was on file in the Tribe's employee records. Therefore, these allegations were found to be without merit.

Fourth, the Complaint alleged that Defendant "lied about insurance companies [sic] opinions that the Tribe was liable." However, the prosecution offered no evidence to support this allegation.

Thus, the only portions of the Complaint remaining were the allegations that Defendant falsely reported to his supervisor that neither driver was at fault and that he falsely stated that he was on Tribal business at the time of the accident.

During the course of the trial, the prosecution offered evidence that proved Defendant did make claims that he did not believe the accident was his fault. Specifically, in an email to Robert Keck, Tribal Risk Manager, dated July 18, 2005, or three days following the accident, Defendant wrote:

> I was struck by a jeep/truck while on Red Apple and Maple. I was enroute to a home visit with a client. Both vehicles collided head on. I stopped at the

> intersection then proceeded when we collided. Both drivers agreed that neither seen [sic] the other one and no one was to blame.

The evidence overwhelmingly indicates otherwise. Michigan State Trooper Marble testified that Defendant was cited at the scene of the accident for failure to yield. The citation was upheld on appeal. The accident victim, Holly Joseph, testified that she never said that Defendant was not to blame. In fact, she claimed he ran the stop sign and struck her vehicle broadside. Moreover, while Defendant argued that his denial of fault was the result of a directive from his insurance company not to admit fault,[1] he did indicate that he was aware that he ran the stop sign and had caused the accident.

This fact notwithstanding, the prosecution failed to show how Defendant's initial false assertion that he was not responsible for the accident was relevant to the charge of attempted fraud. There was no evidence introduced that proved Defendant made this assertion so that the Tribe would reimburse him for his loss. As a result, I believe the prosecution proved Defendant lied about his responsibility for causing the accident; however, I gave this fact no weight in determining whether or not Defendant was guilty of the charge against him.

The final issue was the veracity of Defendant's claim that he was on his way to a client's home at the time of the accident. Testimony from a number of witnesses, including Defendant's own testimony, proved that Defendant made this assertion for the purpose of trying to convince the Tribe that it should reimburse him $3,700.00 for the loss of his truck.

Defendant first stated that he was "enroute to a home visit with a client" in his email to Mr. Keck that was sent three days after the accident. William Memberto, Tribal

[1] When the verdict was read, this court reminded Defendant that there is a difference between not admitting fault and denying fault.

Family Services Supervisor, testified that Defendant had home visits listed on his calendar for the date of the accident, July 15, 2005, and that all of them were in the city of Manistee and north of the administration building where Defendant started his fateful drive.

Defendant testified that he left the administration building and, rather than head north, he headed south for a time, and then turned right onto Red Apple. He was headed west on Red Apple when he approached the stop sign at the corner of Red Apple and Maple. Ms. Joseph, the driver of the other vehicle, was headed south on Maple. Witnesses testified that Defendant prematurely proceeded through the stop sign and struck Ms. Joseph's vehicle.

Defendant claimed that, at the time of the accident, he was turning right onto Maple to head back toward town and the home of his client. Thus, it was important to ascertain whether Defendant did, in fact, attempt to turn right onto Maple to head toward the client's home (and was working as he claimed) or was proceeding due west through the intersection, and away from the client's home (and was not working).

Over the course of time, Defendant has offered different explanations about how the accident occurred. First, in his email to Mr. Keck, he stated that he and Ms. Joseph hit "head on." In his Motion to Dismiss Due to Lack of Probable Cause, filed with this court on July 14, 2006, paragraph 14, he alleged:

> Ryan L. Champagne was turning and is demonstrated by severe damage to the driver's side bumper and panels. Ryan L. Champagne did make a wide turn and did not see oncoming traffic coming down the hill and was in an accident where the front driver side bumper and panel collided with the front driver side bumper of the oncoming car. This caused Ryan L. Champagne's truck to swing back and leave a complete damage dent from the beginning of the opposing vehicle to the end. Ryan L. Champagne's vehicle did spin out and ended facing the direction of the South. The opposing car was heading to the North to South and ended up in

that direction.... The accident was caused by Ryan L. Champagne making wide right turn and striking on-coming traffic."

Notwithstanding this detailed account, during trial Defendant testified that he had no memory of the accident, but that he believed he may have fallen asleep due to sleep apnea from which he suffered at the time.

In addition to Defendant's testimony, the prosecution called three witnesses who testified about the accident. First, Holly Joseph, the driver of the other vehicle offered testimony regarding how the accident occurred. She stated that she had full memory of the accident, and after hearing her testify, I found her account to be credible. Ms. Joseph testified that as she approached the intersection, she noticed Defendant's truck approaching the stop sign from the west and then, out of her peripheral vision, saw him out of her side window just before he struck her vehicle. She testified that he "T-Boned" her, or hit her broadside as she went through the intersection. Photographs of Ms. Joseph's vehicle that were entered into evidence corroborated this testimony.

Michigan State Police Trooper Marble, who was the officer who responded to the accident, testified that the damage to Ms. Joseph's vehicle was entirely on the side of her vehicle; that none was on the front. Trooper Marble also testified that all of the damage to Defendant's truck was located entirely on the front. This testimony was corroborated by the accident report.

Accident Reconstruction Expert, Gerald Hilborn testified that, based on the information available to him, most likely Ms. Joseph's vehicle was hit broadside, or "T-Boned" when she went through the intersection.

Cumulatively, I found the testimony of these three witnesses and the accompanying exhibits to overwhelmingly prove, beyond any reasonable doubt, that

Defendant was traveling due west through the intersection at the time he broadsided Ms. Joseph's vehicle, and was *not* making a wide right turn onto Maple as he claimed.

Moreover, I found that Defendant's testimony about how the accident occurred to be incredible. In addition to the fact that he had offered multiple explanations, I was not swayed by his claims that he may have fallen asleep while driving. Furthermore, he never made it clear how the possibility of falling asleep supported his defense.

Since I was convinced, beyond a reasonable doubt, that Defendant was heading due west at the time of the accident rather than attempting to turn north as he claimed, and that traveling in that direction actually took him away from the home where he claimed he was headed, I found that he was not being truthful when he made the assertion that he was going to a client's home at the time of the accident.

Therefore, I find that Defendant attempted to obtain money by seeking reimbursement from the Tribe for the loss of his vehicle by intentionally making a false assertion that he was on his way to a client's home at the time of the accident.

Thus, this Court finds the Defendant, Ryan L. Champagne, GUILTY AS CHARGED.

12-1-06
Date

Brenda Jones Quick
Judge Brenda Jones Quick

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 DOMRES ROAD
MANISTEE, MICHIGAN 49660

THE PEOPLE OF
THE LITTLE RIVER BAND OF
OTTAWA INDIANS

Case No. 06-131-TM

vs.

RYAN L. CHAMPAGNE

SENTENCING ORDER

The Defendant, Ryan L. Champagne, having been found guilty of Attempted Fraud in violation of Tribal Ordinance 03-400-03, Article X §11.02, incorporating MCL 750.92 pursuant to Tribal Ordinance 97-300-01, against the People of the Little River Band of Ottawa Indians is sentenced as follows:

1. Defendant shall pay a fine in the amount of $1,200.00, payable on or before December 10, 2006; and
2. Complete fifty (50) hours of community service. Community service may be served in the states of Michigan and/or Wisconsin and shall be limited to:
   a. Service shall be with an organization that serves elders or senior citizens;

b. Service must be primarily for persons other than relatives; any service provided to relatives shall be incidental only.

c. Service must be completed no later than March 1, 2007.

3. Defendant shall provide written proof of completion of community service to the Tribal Court Clerk. Proof of service shall include the name, address and telephone number of the organization where the services were rendered, dates of service, number of hours worked each day, and the signature of a director or supervisor.

Defendant has a right of appeal of the verdict and/or the sentence rendered. Appeals must be filed within 28 days.

December 1, 2006
Date

Brenda Jones Quick
Judge Brenda Jones Quick

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT OF APPEALS

Ryan L. Champagne,
Appellant

Case No. 06-178-AP

On Appeal from:
Case No. 06-131-TM

v.

The People of the Little River Band
of Ottawa Indians,
Respondent

Opinion and Order

Order

The Opinion and Judgment per Judge Brenda Jones Quick and dated December 1, 2006 convicting Hon. Ryan L. Champagne of the crime of attempted fraud is **AFFIRMED** in its entirety.

Opinion

I. Introduction

There are many trickster tales told by the Anishinaabek involving the godlike character Nanabozho. One story relevant to the present matter is a story that is sometimes referred to as "The Duck Dinner." *See, e.g.*, JOHN BORROWS, RECOVERING CANADA: THE RESURGENCE OF INDIGENOUS LAW 47-49 (2002); Charles Kawbawgam, *Nanabozho in a Time of Famine, in* OJIBWA NARRATIVES OF CHARLES AND CHARLOTTE KAWBAWGAM AND JACQUES LEPIQUE, 1893-1895, at 33 (Arthur P. Bourgeios, ed. 1994); Beatrice Blackwood, *Tales of the Chippewa Indians*, 40 FOLKLORE 315, 337-38 (1929). There are many, many versions of this story, but in most versions, Nanabozho is hungry, as usual. After a series of failures in convincing (tricking) the woodpecker and muskrat spirits into being meals, Nanabozho convinces (tricks) several ducks and kills them by decapitating them. He eats his fill, saves the rest for later, and takes a nap. He orders his buttocks to wake him if anyone comes along threatening to steal the rest of his duck dinner. During the night, men approach. Nanabozho's buttocks warn him twice: "Wake up, Nanabozho. Men are coming." KAWBAWGAM, *supra*, at 35. Nanabozho ignores his buttocks and continues to sleep. When he awakens to find the remainder of his food stolen, he is angry. But he does

not blame himself. Instead, he builds up his fire and burns his buttocks as punishment for their failure to warn him. To some extent, the trick has come back to haunt Nanabozho – and in the end, with his short-sightedness, he burns his own body.

The relevance of this timeless story to the present matter is apparent. The trial court, per Judge Brenda Jones Quick, tried and convicted the defendant and appellant, Hon. Ryan L. Champagne, a tribal member, an appellate justice, and a member of this Court, of the crime of attempted fraud. Justice Champagne's primary job during the relevant period in this case was with the Little River Band of Ottawa Indians. Part of his job responsibilities included leaving the tribal place of business in his personal vehicle to visit clients. While on one of these trips, Justice Champagne took a personal detour and was involved in an accident. The Band and later the trial judge concluded that his claim for reimbursement from the Band was fraudulent. Judge Quick found that Justice Champagne "attempted to obtain money by seeking reimbursement from the Tribe for the loss of his vehicle by intentionally making a false assertion that he was on his way to a client's home at the time of the accident." *People v. Champagne*, Opinion and Judgment at 6, No. 06-131-TM (Little River Band Tribal Court, Dec. 1,

2006) (*Champagne III*). Justice Champagne was neither heading toward the tribal offices nor toward a client's home.

Like Nanabozho, Justice Champagne perpetrated a trick upon the Little River Ottawa community – a trick that has come back to haunt him. It would seem to be a small thing involving a relatively small sum of money, but because the Little River Ottawa people have designated this particular "trick" a criminal act, Justice Champagne has burned himself.

Among the many legal arguments made before this Court at oral argument that will be addressed later in this Opinion and Order, Justice Champagne argues that the tribal customs and traditions of the Ottawa people do not recognize the crime of "attempt." Justice Champagne further appears to argue more generally that the Little River Band statute adopting relevant Michigan state criminal is inconsistent with Anishinaabek traditional tribal law and therefore this Court should not apply it to him. *Cf. LaPorte v. Fletcher*, No. 04142AP, at 9-10 (Little River Band Tribal Court of Appeals 2006) (Champagne, J.) ("It is the custom of the Little River Band of Ottawa Indians to believe that society must be mended to make whole again."). These are laudable and compelling arguments relating to the seeming contradiction between tribal goals to develop a modern and sophisticated legal system based on Anglo-American legal models while

attempting to preserve the cultural distinctiveness of Ottawa culture through the development of tribal law and the preservation of tribal customs and traditions. *See generally* Michael D. Petoskey, *Tribal Courts*, 67 MICHIGAN BAR JOURNAL, May 1988, at 366, 366-69; FRANK POMMERSHEIM, BRAID OF FEATHERS: AMERICAN INDIAN LAW AND CONTEMPORARY TRIBAL LIFE 66-67 (1995). As such, we take these arguments seriously. In other factual and legal circumstances, we *might* be compelled to consider such an argument as dispositive, but this matter does not oblige us to question current tribal law. As Justice Champagne all but admitted at trial and at oral argument, he attempted to procure money that was not owed him by the Little River Band for his own purposes. It is not obvious to this Court that Justice Champagne's failure in his attempt should excuse him from liability. More importantly, Justice Champagne does not and cannot identify an Ottawa custom or tradition that would excuse him for his actions. In fact, it would be a sad day for this community to acknowledge that an action reflecting an intention of an individual to fraudulently procure money from the Band is excused because the word "attempt" does not exist in Anishinaabemowin, as Justice Champagne alleged at oral argument.

As the remainder of this Opinion and Order shows, we have no choice but to AFFIRM the judgment below.

II. Scope of Review

This Court's review of the judgment of the trial judge over matters of fact is extremely limited. Section 5.401(A) of the appellate court rules provides that "[a] finding of fact by a judge shall be sustained unless clearly erroneous." Other than one minor factual question raised at oral argument and discussed below, Justice Champagne has not challenged the findings of fact made by Judge Quick. *See* People's Response to Appellant's Failure to Submit Brief on Appeal (March 11, 2007). As such, this Court's review is limited to the legal arguments made by Justice Champagne at various times during the litigation. We review the trial court's conclusions of law *de novo* in accordance with Section 5.401(E).

III. Discussion

Justice Champagne offered several legal challenges to the complaint filed against him by the Little River Band. Justice Champagne's challenges derive from his pre-trial motions that, respectively, asserted that the complaint should be dismissed for (1) lack of a criminal statute; (2) lack of probable cause; and (3) lack of jurisdiction. On August 21, 2006, the trial court denied the motions to dismiss and filed an Opinion and Order. *See*

People v. Champagne, Opinion and Order, No. 06-131-TM (Little River Band Tribal Court Aug. 21, 2006) (*Champagne I*). Justice Champagne sought review of these motions to dismiss from this Court. We declined to address the merits of the motions at that time. *See Champagne v. People*, Opinion and Order, No. 06-178-AP (Little River Band Tribal Court of Appeals, Oct. 24, 2006) (*Champagne II*). Justice Champagne raised additional legal arguments in his notice of appeal and at oral argument on May 4, 2007.

We address each of these legal arguments in turn.

A. Jurisdiction

As always, we must begin our analysis with jurisdiction, for this Court has no authority without jurisdiction. *See generally* CONST. art. VI, § 8. Justice Champagne asserts that the Little River Band does not have territorial jurisdiction over this matter. We disagree.

The Constitution of the Little River Band of Ottawa Indians provides that "[t]he territory of the Little River Band of Ottawa Indians shall encompass all lands which are now or hereinafter owned or reserved for the Tribe ... and all lands which are now or at a later date owned by the Tribe or held in trust for the Tribe or any member of the Tribe by the United States of

America." CONST. art. I, § 1. The Tribal Council has defined the criminal jurisdiction of this Court to include the territory of the Band and all American Indians. *See* Law and Order – Criminal Offenses – Ordinance §§ 4.02 – 4.03, Ordinance #03-400-03 (last amended July 19, 2006); Criminal Procedures Ordinance § 8.08, Ordinance #03-300-03 (effective Oct. 10, 2003). In other words, this Court has jurisdiction over all crimes committed on both reservation lands and trust lands of the Little River Band. Such lands include the lands upon which the Little River Band's governmental and commercial entities rest.

The Constitution provides that the Band must exercise jurisdiction over the Band's territory, subject to three limitations. Specifically, the Constitution provides that "[t]he Tribe's jurisdiction over its members and territory shall be exercised to the fullest extent consistent with this Constitution, the sovereign powers of the Tribe, and federal law." CONST. art. I, § 2. As to the first limitation, the Constitution mandates that this Court take jurisdiction over criminal matters arising within the territory of the Band that involve tribal members. The Constitution provides that this Court must "adjudicate all ... criminal matters arising within the jurisdiction of the Tribe or to which the Tribe or an enrolled member of the Tribe is a party." CONST. art. VI, § 8(a)(1). *See also* Tribal Court Ordinance § 4.01, Ordinance

#97-300-01 (Aug. 4, 1997). As the trial court correctly concluded, the locus of the crime was the territory of the Little River Band, not the accident location or Justice Champagne's residence. *See People v. Champagne*, Opinion and Order, No. 06-131-TM, at 5-6 (Little River Band Tribal Court Aug. 21, 2006) (*Champagne I*). The act of attempted fraud against the tribal government committed by a tribal member such as Justice Champagne is within this definition of the Band's jurisdiction.

As to the second limitation, the Constitution authorizes the Tribal Council "to govern the conduct of members of the Little River Band and other persons within its jurisdiction" through the enactment of ordinances and resolutions. CONST. art. IV, § 7(a)(1). The Little River Band is a sovereign nation capable of exercising the inherent governmental powers that every sovereign retains in accordance with its governing, organic documents. In this instance, the Constitution authorizes the government to exercise criminal jurisdiction over its members. The Tribal Council has adopted a criminal code and authorized a prosecutor to exercise the sovereign powers of the Band to prosecute the criminal code. *See* Tribal Court Ordinance § 8.02, Ordinance #97-300-01 (Aug. 4, 1997). *See also* Law and Order – Criminal Offenses – Ordinance §§ 4.02 – 4.03, Ordinance #03-400.03 (last amended July 19, 2006). As such, the sovereign powers of

the Band as defined by the Constitution and the ordinances of the Tribal Council authorize the prosecution of this matter.

As to the third limitation, federal law, nothing in federal law prohibits the prosecution of Justice Champagne for this crime. Congress reaffirmed the federal recognition of the Little River Band in 1994. *See* Pub. L. 103-324; 25 U.S.C. § 1300k-2(a). In that statute, Congress expressly reaffirmed "[a]ll rights and privileges" of the Band. 25 U.S.C. § 1300k-3(a). Federal law has long recognized the rights and authority of federally recognized Indian tribes to exercise criminal jurisdiction over American Indians for crimes committed within Indian Country. *See, e.g.*, 25 U.S.C. § 1301(2) (recognizing tribal authority "to exercise criminal jurisdiction over all Indians"); *United States v. Lara*, 541 U.S. 193 (2004); *United States v. Wheeler*, 435 U.S. 313 (1978); COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 9.04 (Nell Jessup Newton et al. eds. 2005). In short, the Band possesses ample authority recognized under federal law to prosecute Justice Champagne.

In his pre-trial motion, Justice Champagne argued that the State of Michigan should have exclusive jurisdiction in this matter. At oral argument, Justice Champagne asserted that the federal government should have

exclusive jurisdiction. Justice Champagne is incorrect on both counts. As Judge Quick pointed out:

> Defendant is a member of the Tribe. The allegation against Defendant is that he engaged in criminal conduct against the Tribe. To assume a sovereign other than the Little River Band of Ottawa Indians has jurisdiction over this matter would be tantamount to determining that the Tribe has no power to govern its own affairs. Certainly, the Tribe's right of governance is unquestionable. The Little River Band of Ottawa Indians, through its inherent power to rule itself, does have jurisdiction over this matter.

Champagne I, supra, at 6. Regardless of whether either the State of Michigan or the United States has jurisdiction over this matter,[1] this Court is obligated by the Constitution of the Little River Band and by the ordinances of the Tribal Council to assert jurisdiction.

[1] It is unlikely either the State of Michigan or the United States would exercise jurisdiction over this matter. Judge Quick noted that Michigan state law requires "that a criminal matter that involves fraudulent misrepresentations must be tried where the victim of the crime resides, and not where the defendant made the misrepresentations." *Champagne I, supra*, at 6 (citing Schiff Co. v. Perk Drug Stores, 270 N.W. 738 (Mich. 1936)). *See also* MICH. COMP. L. ANN. §§ 762.2 – 762.3 (noting jurisdiction and venue in criminal cases based on where the criminal act(s) occurred, not the residence of the defendant). Moreover, it unlikely that the federal government would have jurisdiction in this matter as the amount of money involved is insufficient (or barely sufficient) to reach federal requirements – $5,000. *See* 18 U.S.C. § 666(a)(1). *E.g., United States v. Heddon*, 2001 WL 406430 (6th Cir., April 3, 2001).

B. Right to Jury Trial

Justice Champagne was tried by the trial court below without a jury on the basis that the tribal prosecutor declined to seek jail time in this matter. Justice Champagne now asserts that he had the right to be tried by a jury of his peers under the Indian Civil Rights Act (ICRA). Justice Champagne is mistaken.

Persons subject to the criminal jurisdiction of the Band and charged with "an offense punishable by imprisonment" have the right to a six-person jury trial in accordance with tribal law. CONST. art. III, § 1(j) ("The Little River Band in exercising the powers of self-government shall not ... [d]eny to any person accused of an offense *punishable by imprisonment* the right, upon request, to a trial by jury of not less than six (6) persons.") (emphasis added). Assuming without deciding that ICRA applies to the Little River Band, the Constitutional provision here mirrors the provision contained in the Act. *See* 25 U.S.C. § 1302(10) ("No Indian tribe in exercising powers of self-government shall ... deny to any person accused of an offense *punishable by imprisonment* the right, upon request, to a trial by jury of not less than six persons.") (emphasis added). The Tribal Council has determined that where the tribal prosecutor informs the Court and criminal defendants before trial that the People will not seek jail time, no right to a

jury trial attaches. *See* Criminal Procedures Ordinance § 8.02, Ordinance #03-300-03 (effective Oct. 10, 2003). We concur in this assessment about the right to a jury trial. *See* CONST. art. VI, § 8(a)(2). As such, no right to a jury trial ever attached in this matter.

C. Lack of a Criminal Statute

The Little River Band's Tribal Council has both adopted an indigenous criminal code and incorporated provisions of the Michigan state criminal law statutes as a means of exercising its constitutional authority "to govern the conduct of members of the Little River Band...." CONST. art. IV, § 7(a)(1). The Band charged Justice Champagne with attempted fraud in accordance with the Law and Order – Criminal Offenses – Ordinance § 11.02, Ordinance #03-400-03 (last amended July 19, 2006) (criminalizing and defining "fraud") and the Tribal Court Ordinance § 8.02, Ordinance #97-300-01 (Aug. 4, 1997) ("Any matters not covered by the laws or regulations of the Little River Band of Ottawa ... may be decided by the Courts according to the laws of the State of Michigan."). Through the state law incorporation statute, Section 8.02, the Band asserted that Michigan Compiled Laws Section 750.92 also applies to Justice Champagne. Section 750.92 is the State's "attempt" statute and provides, "Any person who shall

attempt to commit an offense prohibited by law, and in such attempt shall do any act towards the commission of such offense, but shall fail in the perpetration, or shall be intercepted or prevented in the execution of the same, when no express provision is made by law for the punishment of such attempt, shall be punished...." The Little River Band's criminal law statute has no parallel provision criminalizing "attempt." Justice Champagne, who attempted to defraud the Band but failed, was charged under this collection of statutes.

Justice Champagne forcefully argues that the lack of an indigenous "attempt" statute excuses his actions. His argument rests on the basis that the Little River Band's choice to incorporate elements of Michigan's criminal code is an abrogation of tribal sovereignty and a violation of tribal customs and traditions. This appears to be a facial attack on the validity of Section 8.02. As Judge Quick noted, however, "It does not diminish a sovereign's power to enact, by incorporation, laws as set forth by another jurisdiction, particularly when it is a matter of convenience. ... Certainly, when the Tribal Council enacted specific laws, it could have done away with Ordinance #97-300-01, Section 8.02. This, it did not do. There, the Ordinance is binding on Defendant." *Champagne I*, *supra*, at 2. Regardless, whether or not the Tribal Council's decision to adopt state law was wise is

irrelevant – the statutes apply to Justice Champagne as a member of the Band. We are bound to apply the law of the Little River Band. *See* Tribal Court Ordinance § 8.01, Ordinance #97-300-01 (Aug. 4, 1997).

At oral argument, Justice Champagne referred this Court to his separate opinion in our 2006 decision in *LaPorte v. Fletcher*, No. 04-142-AP (Little River Band Tribal Court of Appeals 2006) (Champagne, J.). Justice Champagne represented the opinion to mean that the tribal courts should refrain from applying state law, especially where it is inconsistent with tribal customs and traditions. That opinion, the reasoning of which both of the other justices deciding that matter explicitly rejected, has no precedential value to this Court. Moreover, the subject of the separate opinion – whether the losing party to a closely contested civil suit should receive an award of attorney fees – is all but irrelevant to this matter. Finally, the separate opinion – arguing on a general level that tribal law should be used to bring the parties together to make the parties whole – tends to support a view that does not favor Justice Champagne's position in this matter. As noted in the introduction to this opinion, it does no justice to the tribal community to excuse the actions of a presiding appellate justice in attempting (and failing) to defraud the Little River Band.

D. Demand for Traditional Judges

Justice Champagne argues that the trial court incorrectly denied him a trial before "traditional judges." At oral argument, Justice Champagne suggested that his case should have been heard before the Peacemaker's Court or perhaps through a sentencing circle. However, Justice Champagne offers nothing in either the Constitution nor tribal statute or regulation that creates an *entitlement* to be tried before "traditional judges." Without an entitlement guaranteed by tribal law, there is no right. *E.g.*, *Pineiro v. Office of the Director of Regulation*, 1999.NAMG.0000001, at ¶ 19 (Mohegan Gaming Disputes Tribal Court of Appeals 1999), *available at* http://www.tribal-institute.org/opinions/1999.NAMG.0000001.htm ("A person has a legitimate claim of entitlement to a benefit and is entitled to due process protections, if there are rules or mutually explicit understandings that support a claim of entitlement to the benefit."); *Delorge v. Mashantucket Pequot Gaming Commission*, 1997.NAMP.0000038,at ¶ 34 (Mashantucket Pequot Tribal Court 1997), *available at* http://www.tribal-institute.org/opinions/1997.NAMP.0000038.htm ("The entitlement to compensation is based on a finding of a violation of a legal right."). Justice Champagne's claim to a right to a trial before "traditional judges" must fail.

E. Witness Irregularities

The tribal court offers a small stipend to witnesses subpoenaed to appear before the court for trial testimony. In this case, the tribal prosecutor allegedly offered twenty dollars cash to a witness – a man who purchased Justice Champagne's vehicle after the accident – for lunch. Justice Champagne argues that the cash offered to this witness constitutes a bribe. However, Justice Champagne offers no evidence or argument that he has been prejudiced by this action, even assuming it was somehow invalid. This Court finds that the error – if any (and it is doubtful) – is harmless. As one tribal court noted, "Harmless error is error which is trivial, formal, or academic." *In re Welfare of A.S.*, 1996.NACC.000017, at ¶ 26 n. 2 (Colville Confederated Tribes Court of Appeals 1996), *available at* http://www.tribal-institute.org/opinions/1996.NACC.0000017.htm. *See also Fort Peck Assiniboine and Sioux Tribes v. Bull Chief*, 1989.NAFP.0000006, at ¶ 66 (Fort Peck Court of Appeals. 1989), *available at* http://www.tribal-institute.org/opinions/1989.NAFP.0000006.htm (holding that "harmless error" signifies that the defendant's criminal procedure rights were not violated by the error); *Dorchester v. Fort McDowell Yavapai Nation*, 2003.NAFM.0000001, at ¶ 20 (Fort McDowell Yavapai Nation Supreme Court 2003), *available at* http://www.tribal-

institute.org/opinions/2003.NAFM.0000001.htm (holding that appeals based on "harmless error" are insufficient to merit reversal of a criminal conviction).

F. Challenges to the Trial Court's Findings of Fact

Justice Champagne offers no argument in any briefs filed before this Court that the findings of fact made by Judge Quick at trial were clearly erroneous. At oral argument, however, Justice Champagne argues that the Little River Band made an admission on an insurance form that he was, in fact, on company time when he was involved in the accident. Justice Champagne further asserts that his accident was caused by his sleepiness, which in turn derived from his "sleep apnea" condition. We are reluctant to address these arguments, given that the tribal prosecutor could not have prepared a response to these arguments in anticipation of oral argument as they were not briefed. But given that these arguments amount to an attempt to offer additional or supplementary testimony to that which was given at trial, we can dispose of these arguments easily.

In short, Justice Champagne's attempt to reargue the question of fault and causation is fundamentally irrelevant. The trial court did not rely upon the pre-trial statements or the trial testimony about who was at fault in the

accident. Judge Quick wrote, "I believe the prosecution proved Defendant lied about his responsibility for causing the accident; however, *I gave this fact no weight in determining whether or not Defendant was guilty of the charges against him.*" *Champagne III*, *supra*, at 3 (emphasis added). Instead, the trial court relied upon the fact that Justice Champagne misrepresented to his employer about his destination to hold that he was guilty of attempted fraud. *See id.* at 3-6. Judge Quick concluded:

> Cumulatively, I found the testimony of these three witnesses and the accompanying exhibits to overwhelmingly prove, beyond any reasonable doubt, that Defendant was traveling west through the intersection at the time he broadsided Ms. Joseph's vehicle, and was *not* making a wide right turn onto Maple as he claimed.
>
> ...
>
> Since I was convinced, beyond a reasonable doubt, that Defendant was heading due west at the time of the accident rather than attempting to turn north as he claimed, and that traveling in that direction actually took him away from the home where he claimed he was headed, I found that he was not

being truthful when he made the assertion that he was going to a client's home at the time of the accident.

Id. at 5-6 (emphasis in original). As noted by the tribal prosecutor at oral argument and by Judge Quick at trial, Justice Champagne's claims about "sleep apnea" do not support his defense to the claim that he attempted to deceive his employer about his destination at the time of the accident. *See id.* at 6. In short, nothing compels this Court to find that Judge Quick's findings of fact were clearly erroneous.

Conclusion

This Court is aware of the gravity of a criminal case involving a sitting appellate justice as a defendant. It is a sad day for the Little River Band Ottawa community and to this Court to be forced to sit in judgment of one of its own, but we are obligated to do so. At oral argument, Justice Champagne raised the possibility that his prosecution was "political." We have no doubt that Justice Champagne's assertion is true, but not in the way he means it. As one of the leaders of the community – *ogemuk* – Justice Champagne was held – and should be held – to a higher standard of conduct. *See generally* CONST. art. VI, § 2(a); art. VI, §§ 6(b)(1)-(2). As to Justice Champagne's claim that he was singled out by other leaders of this

community, we have no competence or authority to make judgments as to the sound discretion of the tribal prosecutor to initiate a criminal proceeding.

For the above reasons, we AFFIRM the judgment of the trial court.

IT IS SO ORDERED.

Justice Rosemary Edmondson	Date
Justice Matthew L.M. Fletcher	Date
Justice Kathryn Kraus	6-05-07 Date

community, we have no competence or authority to make judgments as to the sound discretion of the tribal prosecutor to initiate a criminal proceeding.

For the above reasons, we AFFIRM the judgment of the trial court.

IT IS SO ORDERED.

Rosemary Edmondson — 6-6-07

Justice Rosemary Edmondson — Date

Justice Matthew L.M. Fletcher — Date

Justice Kathryn Kraus — Date

community, we have no competence or authority to make judgments as to the sound discretion of the tribal prosecutor to initiate a criminal proceeding.

For the above reasons, we AFFIRM the judgment of the trial court.

IT IS SO ORDERED.

Justice Rosemary Edmondson — Date

Justice Matthew L.M. Fletcher — 6/1/07 Date

Justice Kathryn Kraus — Date

RECEIVED
BY | DATE 6.11.07

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
231-398-3406
Fax: 231-398-3404

In the matter of:
Administrative Employment Dispute by Juanita Antoine
v.
Jessica Burger and,
Little River Band of Ottawa Indians,

Administrative Case Number: 06171 GR

Date of Hearing: September 5, 2006 Honorable Ronald Douglas

ODER OF DISPOSITION
FOLLOWING ADMINISTRATIVE REVIEW HEARING

Findings:

Based on the testimony and documents presented the Court finds that:

There is jurisdiction under the Tribal Code and Personnel Policies over this hearing and this employment matter as an administrative hearing as an employment grievance by Juanita Antoine against Jessica Burger.
The documents presented to the court by the Petitioner were reviewed and admitted to the record although not presented two days before the hearing.
The action was claimed as egregious due to the total situation where there was a failure to attend training and causing damage to a leased vehicle as the tribe is responsible for damages and where the training is of a complicated and technical matter involving federal disability benefits.
The immediate step of terminating the employee rather than using progressive discipline was claimed by the Respondent as appropriate due to these policy violations, plus a false payroll statement that the employee attended all training sessions.
The facts were agreed to by both parties except that the Petitioner claimed that there was some damage to the vehicle when received, but that there was no knowledge of a requirement to report the damage although she admitted signing the notice slip and attending work sessions where these responsibilities were allegedly discussed, and she denied damaging the vehicle.

The testimony showed that there were employees responsible for cleaning and inspecting the leased vehicles and keeping the keys as well as keeping a log of mileage so that unauthorized and unreported travel was not probable.
The testimony and written documents further indicated that the Petitioner was ill, but that her illness was not probably so extensive to prevent her judgment in failing to call in to her supervisor nor to excuse her completing a time sheet reporting that she had attended the session that she admitted missing.
There was no dispute that there had not been any earlier discipline or reports of improper employment conduct.
There was no evidence or credible testimony presented by the Petitioner to excuse her failure to report the damage nor to excuse the incorrect time report.
The testimony and the documents in the record failed to show any personal bias by the Petitioner's supervisor that could have affected the discipline choice.
It appears that the Petitioner acted negligently rather than with intention to commit fraud, but there was no evidence presented to indicate that her supervisor's decision for termination of employment was inappropriate or to excuse the violations.

IT IS ORDERED:

The supervisor's discipline clearly appeared to be based on extensive evidence that was not persuasively contradicted in the hearing nor in the record.
The decision that this was an egregious violation of policies excusing the need for progressive discipline was also supported by the record and uncontradicted.
While there was an allegation of personal bias, there was no credible testimony or documents in the record to show this applied.
The supervisor's action is clearly supported by the record and the action taken to fire the employee without progressive discipline is affirmed as proper.
The Petition to set aside the discipline is denied and the matter is dismissed.

Date September 7, 2006

Ronald B Douglas

Hon. Ronald Douglas

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

Michael Ceplina,
Petitioner
322 ½ 5th Avenue
Manistee, MI 49660

v. Case Number: 06189GR

Gary Lewis, Supervisor,
Andrew Patricio, Respondents

Daniel Green
LRBOI General Counsel
385 River Street
Manistee, MI 49660

ORDER AFTER HEARING ON MOTION FOR SUMMARY DISPOSITION

A hearing on "Motion for Summary Disposition" was held on October 9, 2006.

The petitioner, Ceplina, filed his request for a review/decision by the Tribal Court on September 18, 2006. Petitioner was disputing an administrative "write-up" on a *Performance Improvement Form.* He was asking the court to review the process in the personnel manual. He alluded that the policies were not correctly followed and wanted the write-up to be taken out of his personnel file.

The Tribes' Attorney, Daniel Green, presented a motion for a summary disposition in this matter. He presented a "Memorandum in Support of Motion for Summary Disposition" for filing at the same time. A hearing on the motion was set for October 9th.

Opposing sides were asked to state their arguments. Mr. Ceplina cited two related grievance cases from 2005, where the petitioner and respondent did come to a mutual agreement to remove write-ups from the personnel file. This case was prior to the Employment Ordinances passed in August of 2005.

The memorandum by the respondent's attorney correctly states the basis for dismissal of this case. The Tribal Court does not have jurisdiction in this matter according to the Employment Ordinances, (#05-600-01 and #05-300-04.) "6.01 *Authority.* The scope of authority of the Employment Division to issue decisions shall be limited as set for in this Article. a. *Grievance Matters.* Only written disciplinary actions regarding demotions, suspensions, and termination, may be appealed." The petitioner was not demoted, suspended, or terminated.

IT IS ORDERED this case be dismissed with prejudice.

Judge Daniel Bailey

10/10/06
Date

Michael Ceplina,
Petitioner
322 ½ 5th Avenue
Manistee, MI 49660

v. Case Number: 06189GR

Gary Lewis, Supervisor,
Andrew Patricio, Respondents

CERTIFICATION OF SERVICE

I certify that a copy of this order was placed in the Tribal mail system for sufficient postage to be attached and mailed to the plaintiff and the defendants (or their attorneys) at the addresses on file with the court.

Deborah A. Miller – Court Administrator

10.11.06
Date

TRIBAL COURT OF APPEALS
LITTLE RIVER BAND OF OTTAWA INDIANS

JAMES E. WABSIS, SALLI R. WABSIS
and CATHERINE WABSIS,
Petitioners-Appellees,
v.

Case No. 06-144-AP

LITTLE RIVER BAND OF OTTAWA
INDIANS – ENROLLMENT COMMISSION,
Respondent-Appellant.

Appearances: Damian Fisher for the Respondent-Appellant and Jana M. Berger for the Petitioners-Appellees.

Before: Michael Petoskey, Chief Justice; Stella Gibson, Associate Justice and Ryan L. Champagne, Associate Justice.

By: Michael Petoskey, Chief Justice, for a unanimous Court.

I. Introduction

This matter comes to this Court following an appeal by the Respondent-Appellant, Enrollment Commission of the Little River Band of Ottawa Indians (Commission), of the Tribal Court's decision regarding the second attempted disenrollment of Petitioners-Appellees, James E. Wabsis, Salli R. Wabsis, and Catherine Wabsis.

The Commission has filed a motion for a **full and complete stay** of the underlying Tribal Court order following its hearing on the merits and entry of a **partial stay**. The Petitioners-Appellees have filed a **counter-motion for denial of stay** pending the appeal.

II. Brief Factual Background

1. The Tribal Court entered its *Order of Dismissal of Disenrollment Order. and For Sanctions* on June 22, 2006 after a hearing. See *Case No 05-175-EA.*

2. The Commission filed *Notice of Appeal* on July 11, 2006 of the Tribal Court's decision in this second attempt to disenroll Petitioners-Appellees.

3. Concurrently with the filing of its appeal, the Commission requested from the Tribal Court a full and complete stay of the order pending its appeal.

4. The Tribal Court entered a partial stay on July 17, 2006.

5. Subsequently, the Commission has asked this Court for a full and complete stay because the Tribal Court denied a part of its request for a full and complete stay and the Petitioners-Appellees have asked for the denial of any stay.

6. This Court conducted a motion hearing on the competing motions on September 7, 2006.

III. Legal Analysis

There are two motions before this Court. One party asks for a full and complete stay of a Tribal Court order and the other party asks for a denial of any stay of that order.

The legal standard for the stay of any proceeding by this Court is: (1) **only** if the purposes of justice require it **and** (2) irreversible harm will occur if the stay is not granted. See *Little River Band of Ottawa Indians Court Rules* 5.311.

There are three (3) components to the requested stay/denial of stay for this Courts consideration: (1) back benefits, (2) sanctions and (3) current membership status and entitlement to current rights, privileges and benefits. Each of these will be considered in turn applying the legal standard cited above:

(1) Back Benefits: The Tribal Court stayed its earlier order regarding back benefits because it found that there could be "potential" harm if back benefits are paid out. **However, the correct legal test is "irreversible harm"**, along with the "purposes of justice" requirement. Thus, the Tribal Court erred and the Commission has not carried its burden of demonstrating to this Court that there would be any irreversible harm if these Petitioners-Appellees, who have been Tribal Members for a number of years, receive any of the back benefits that they are entitled to receive. Thus, this component of the Tribal Court's stay is dissolved.

(2) Sanctions: The Tribal Court correctly stayed this portion of its June 22, 2006 Order because both legal requirements for issuing a stay are present. Irreversible harm will occur if the consideration of sanctions is not stayed until this Court hears the pending appeal. The Commission views the Tribal Court judge as "a rogue judge" and argues that it is trying to carry out its constitutional duties while trying to comply with the orders of the Tribal courts. On the other, it is clear that the Tribal Court judge is frustrated by the failure of the Commission to follow its orders on the continuing membership status of Petitioners-Appellees. It is obvious that it is the Commission that appears to be "rogue" to the judge because he has ordered the consideration of sanctions. This Court must bring further clarity to these issues and consideration of sanctions absent clarity is premature.

The Commission argues that this Court must carry out its constitutional duty of interpreting the memberships provisions of the Tribal Constitution. This

Court will do so in the appropriate proceeding. This is not that proceeding because the only matters ripe for this Court's consideration are the competing motions for a complete and full stay and for the denial of any stay.

The Tribal Court correctly stayed its order for the consideration of sanctions against the Commission. The purposes of justice require a stay and irreversible harm would occur if the stay were not continued.

(3) Current Membership: The Tribal Court denied the Commission's request for a stay of the Tribal Court's order that Petitioners-Appellees remain tribal members. The Commission's request for a stay from this Court is denied because they have failed to carry their burden of demonstrating irreversible harm. Petitioners-Appellees have been Tribal Members for a number of years and remaining so for the time to resolve the pending appeal is not irreversible.

IV. Order

FOR ALL OF THE FOREGOING, THIS COURT:

(1) DISSOLVES THE STAY ISSUED BY THE TRIBAL COURT REGARDING PAYMENT OF BACK BENEFITS TO PETITIONERS-APPELLEES;

(2) AFFIRMS THE STAY REGARDING SANCTIONS; AND

(3) AFFIRMS THE DENIAL OF A STAY REGARDING THE ORDER THAT PETITIONERS-APPELLEES REMAIN TRIBAL MEMBERS WHO ARE ENTITLED TO ALL THE RIGHTS, PRIVILEGES AND BENEFITS OF TRIBAL MEMBERSHIP.

IT IS SO ORDERED, this 18th day of September 2006.

MICHAEL PETOSKEY
CHIEF JUSTICE