

**Wahr/Tribal Council & Ogema/Election Board #11-099GC**

**Summary:** The issues presented are of first impression and raise a number of important constitutional issues regarding the Membership Meeting. (1) Did the Ogema fail to perform his constitutional duties in Article VII, Section 1(a) 1 of the Constitution? (2) Did the Ogema and/or Election Board fail to perform their Constitutional duties under Article VII, Section 1(a) (3) by declining to conduct a quorum call when asked to do so by tribal Citizens during the time motions were being brought forward for a vote? (3) Did the voting procedures utilized by the Election Board violate the Constitution at Article V11, Section 1 (a) 3 and the Election Board Regulations, Chapter 8, Section 2, V2, and Chapter 8, Section 3 (a) IV, by not ensuring that at least 30% of the registered voters were present at the time votes were taken? Please see order for remaining questions.

**Decision and Order:** The Court declares the following: 1. The Ogema failed to perform his Constitutional duty by allowing the Election Board to "Officiate" substantial portions of the General Membership meeting. 2. That 30% of the registered voters must be in attendance at any Membership Meeting at the time action is taken place. 3. The first action/Motion that the General Membership Meeting took place Spring 2011 General Membership Meeting passes and has the statue of law. All actions after that are null and void.

**Allen v LRBOI --- #11103EA**

**Summary:** The Enrollment Commission held a hearing regarding Ms. Allen's being dully enrolled in two tribes. The enrollment Commission sent her a notice of Disenrollment.

**Decision and Order:** The Court found for the Enrollment Commission that Ms. Allen was enrolled in two tribes at one time.

**Macomb County FOC v Walters --- #11237A**

**Summary:** Macomb County Friend of the Court submitted a Foreign Judgment for Child support to garnish Mr. Walter's per-cap- Appellant/Defendant argues that the provision of his Judgment of Divorce barred his per-cap payments being garnished.

**Decision and Order:** The Court found that per-cap payments are not considered settlement. Further the Court recognize that per-cap distributions can be used to satisfy court order judgments and child support payments. The payments are not part of the divorce for the ex-spouse but for the children.

**SPRAGUE v LRBOI --- #11243GR**

**Summary:** Plaintiff filed a grievance under the Government Employee Relations act of 2005. His case did not fit one of the actions 1. The employee has been terminated or suspended or demoted.

**Decision and Order:** This case is dismissed for lack of jurisdiction.

LITTLE RIVER BAND OF OTTAWA INDIANS  
TRIBAL COURT

In the Matter of:  
2011 SPRING MEMBERSHIP MEETING

Case No. 11-099  
Hon. Angela Sherigan

Petitioners: Scott Wahr  
Tribal Council

Respondents: Tribal Ogema  
Election Board

Interested Parties:

Connie Waitner  
Julia Chapman

Joshua Stone  
Michelle Gibbs  
Charles Stone  
Angela Saylor  
Charles Stone II

DECLARATORY JUDGMENT

This matter was brought to the Court on two (2) separate Petitions for Declaratory Judgment filed by an individual Tribal citizen and the Tribal Council. Proceedings on these Petitions for Declaratory Judgment were consolidated as they both concerned the April 9, 2011 Spring Membership Meeting, and both ask the Court to interpret Article VII, Section 1 (a) of the Constitution. The Respondents in these respective Petitions were the Tribal Ogema and the Election Board. In addition to the Petitioners and Respondents, a number of individual Tribal citizens also appeared as interested parties.

The issues presented by these Petitions are matters of first impression before the Tribal Judiciary which raise a number of important Constitutional issues. The Court is mindful of the fact that, these are significant issues and that this is an historical event for the general membership. In reaching its decision, this Court is also mindful of the fact that the Respondents will likely take future actions to attempt to clarify a number of the procedural matters and this Court should, as a matter of judicial discretion, only address those Constitutional questions which are necessary to the resolution of the issues before the Court.

The Court attempted to facilitate discussion amongst the parties and solicit briefing from the parties, which appropriately frames the issues to assist the Court in reaching its decision. The Court has carefully considered the language contained in the Constitution, the Election Board Regulations, the briefs submitted by the parties, as well as the arguments and positions advanced by the parties, through counsel and other representatives during the course of this case. In all honesty, the Court could have benefited from additional, more focused briefing by the parties, and more time to consider this matter; nevertheless, the Court recognizes that the Fall General Membership Meeting is scheduled to occur in just days that each of the Petitioners, Respondents and all interested parties are looking for guidance from the Courts.

The first Petition, which was filed by Petitioner 1, Scott Wahr, asks the court to make declaratory determinations on the following:

1. Did the Ogema fail to perform his constitutional duties in Article VII, Section 1(a)1 of the Constitution by turning the membership meeting over to the Election Board?
2. Did the Ogema and/or Election Board fail to perform their Constitutional duties under Article VII, Section 1(a)(3), by declining to conduct a quorum call when asked to do so by Tribal citizens during the time motions were being brought forward for a vote?
3. Did the voting procedures utilized by the Election Board violate the Constitution at Article VII, Section 1 (a)3 and the Election Board Regulations, Chapter 8, Section 2, V2, and Chapter 8, Section 3 (a)IV, by not ensuring that at least 30% of the registered voters were present at the time votes were taken?

The second Petition, filed by Petitioner 2, Tribal Council, asks the court to make declaratory determinations on the following:

1. Did the verification that there were at least thirty percent (30%) of the registered voters of the Tribe present at such Membership Meeting prior to the start of the actual meeting, establish the quorum necessary for the motions and ordinances adopted by the General Membership to have the status of law?
2. Does a quorum of at least thirty percent (30%) of the registered voters of the Tribe present at such Membership Meeting have to be established at every vote of the General Membership for the motions and ordinances adopted to have the status of law?
3. Declare any other relief the Court may feel necessary to give full effect to the provisions of Article VII of the Tribal Constitution.

The Tribal Courts of the Little River Band of Ottawa are courts of general jurisdiction. The jurisdiction of the Tribal Courts is prescribed in Article VI, Section 8(a) of the Constitution, which states:

“The judicial powers of the Little River Band shall extend to all cases and matters in law and equity arising under this Constitution, the laws and ordinances of or applicable to the Little River Band including but not limited to:

...

2. To review ordinances and resolutions of the Tribal Council or General Membership to ensure they are consistent with this Constitution and rule void those ordinances and resolutions deemed inconsistent with this Constitution.”

In addition, Article XI Section 2 (a) further provides that the Little River Band, its Tribal Council members, Tribal Ogema, and other Tribal officials, acting in their official capacities, shall be subject to suit for declaratory or injunctive relief in the Tribal Court system for the purpose of enforcing rights and duties established by this Constitution and by the ordinances and resolutions of the Tribe.

Counsel for the Election Board suggests, if not argues, that this Court is without jurisdiction to review the actions or positions of the Election Board because the Election Board is, or so the Board's counsel argues, acting within the scope of the Election Board's Constitutional authority to oversee voter registration and Tribal Elections. While the Court of Appeals has recognized that Tribal Courts should be careful to intrude upon matters the Constitution vests to the authority of the Election Board, the Court does not believe that insulates all actions from judicial review. The Court of Appeals' decisions have always recognized and affirmed the Judiciary's role in interpreting the Constitution, and protecting the Constitutional rights of the Tribe's members.

#### Petition 1, Question 1

“Did the Ogema fail to perform his constitutional duties in Article VII, Section 1(a)1 of the Constitution by turning the membership meeting over to the Election Board”

Article VII, General Membership Powers, Section 1, General Membership Meetings, (a)1 of the Constitution states “The chairperson for these meetings shall be the Tribal Ogema, who will officiate at these meetings”. This is a constitutional duty placed upon the Ogema. The word “shall” is mandatory and there is nothing in the Constitution that authorizes the Ogema to delegate this duty. It is the Ogema, and the Ogema only that officiates the Membership meetings.

At some point during the course of the Spring 2011 General Membership Meeting, the Ogema ceased officiating the meeting and turned all aspects of the meeting over to the Election Board. The Election Board conducted that part of the meeting where motions from the floor were taken, including, presentation of the question, calling for discussion, closing discussion, conducting how and where the vote would occur, and announcing the result of each vote.<sup>1</sup> The Election Board's sole responsibilities are to verify that 30% of the registered voters are present at the meeting and oversee the balloting process and vote counting (verification). In all other respects, the Ogema is Constitutionally mandated to “officiate” and manage the meeting. It is clear that the process for verifying that the requisite 30% quorum of registered voters is “present” as well as the administration of voting to ensure voting takes place by “secret ballot cast a polls established by the Election Board” (required under Article IX, Section 3 of the Constitution), as well as the counting of votes are authorities reserved to the Election Board. It is also equally clear that the coordination of the separate duties of the Ogema and Election Board in connection with votes taken at General Membership Meetings will require close coordination by those entities. The procedures to implement this coordination are currently in place and it is not the Court's role to develop these procedures for Ogema and Election Board. Nevertheless, the Court does not believe the Constitution authorizes the Tribal Ogema to simply abdicate what are described as mandatory duties.

Although the Court finds that the Ogema failed to perform his Constitutional duty by allowing the Election Board to “officiate” substantial portions of the General Membership

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<sup>1</sup> Also during this time, there were other various parts of the meeting that were intermittent, questions were asked of the Ogema regarding the process, and the Ogema stated that those questions should be directed to the Election Board. This combined with the Election Board conducting the process of the meeting when the General Membership took action, all resulted in disorder, confusion, and unnecessary delay.

Meeting, those deficiencies do not necessarily affect the validity of the votes taken by the Membership at that meeting.

Petition 1, Question 2

“Did the Ogema and/or Election Board fail to perform their Constitutional duties under Article VII, Section 1(a)(3), by declining to conduct a quorum call when asked to do so by Tribal citizens during the time motions were being brought forward for a vote?”

The constitutional requirement that 30% of the registered voters be present at the Membership meeting, is a prerequisite for the General Membership to take action. The Constitution is ambiguous as to whether the 30% “quorum” language requires that 30% be “present” at the General Membership Meeting at the time a vote is taken, or whether the 30% quorum need only be established at some point before or during the meeting.

The Election Board asserts that it has authority to adopt regulations which provide that the quorum requirement need only be met at the start of the General Membership meeting and that, once the 30% quorum is confirmed, the Board has no duty to determine if the quorum is present at the time any specific “ordinance” or “motion” is presented for action by the General Membership. As noted before, the Election Board goes further by suggesting that the Election Board’s decision or action in this regard is binding and not subject to challenge by the Ogema or Tribal Council, and not subject to review by the Court. The Court rejects this assertion. The question involves interpreting Article VII, Section 1 of the Constitution.

The Court believes the requirement that 30% of registered voters be present at the General Membership Meeting means that 30% must be “present” at the time any matter is presented for action. This does not mean that 30% of the registered voters must actually cast ballots on the question.

The reservation of authority to the General Membership to adopt binding ordinances and ordinances at General Membership Meetings contained in Article VII, Section 1 is a very important power retained by the Membership. Use of these powers, as well as the other powers reserved to the General Membership in Article VII, provide an important check on the powers of the legislative and executive branches of government. Nevertheless, the Constitution also places significant checks on the General Membership powers by imposing significant quorum requirements (30% registered voter participation) and precluding the General Membership from taking action in various subject areas including making appropriations or overturning decisions of the Tribal Judiciary.

The Courts notes that the 30% quorum requirements contained in the Little River Band Constitution appear to be higher than those found in nearly every other Tribal Nation. Accordingly, the Court finds that the 30% quorum requirement, much like the requirement that 30% of voters actually cast ballots in any initiative or referendum election, is intended to serve as a limitation on the exercise of General Membership Power. These limitations are designed to prevent a small minority of Tribal Members from taking actions which bind the Tribal government by requiring participation in the decision-making process by at least 30% of the registered voters of the Band.

The Election Board's procedures may be reasonably designed to verify that the requisite 30% of registered voters is present before the start of the General Membership Meeting. Even if the Court were to endorse a Regulation which, like Roberts Rules, presumes the continuation of a quorum once established, the Tribal Ogema was obligated to ask the Election Board to verify the continued presence of a quorum of Members, and the Election Board is obligated to take steps to verify the continued presence of a quorum, when requested by any registered voter participating in the General Membership Meeting. Having failed to do so, the results of any vote taken after that fact may be declared invalid.

The Court is mindful of the concerns raised by the Election Board that requiring the Election Board to verify that 30% of Members are present each time a motion to take action is made presents administrative difficulties and enables blocks of Members to orchestrate "walking vetoes" by removing members from the Meeting to defeat the quorum requirements. Although the Court is sensitive to these concerns, the Court believes the requirement that 30% of registered voters be "present" is, in fact, intended to ensure that whatever action is taken has the support of sufficiently large number of voters to constitute binding action by the Band. In addition, the Court believes it is more important to preserve the Membership's desire to require the exercise of General Membership Powers in Article VII to be taken with the participation of at least 30% of the registered voters of the Band and that these concerns outweigh any administrative difficulties this may cause the Election Board. This interpretation is also consistent with the participatory, consensus-based decision making traditions in the Little River Band's Community and nearly every other Indian Nation.

Finally, the Court reviewed the Constitutional requirements contained in a number of other Tribe's Constitutions (i.e. Ho Chunk Nation) and finds that, although usually structured or worded differently, all of these Constitutions' section describing quorum requirements for General Membership or General Council actions, require the quorum to be verified at the time each matter to be voted on is placed before the General Membership/Council for a vote. While not binding on this Court, the Courts of the Little River Band have always looked for guidance from the decisions of other Tribal Courts.

Accordingly, the Court interprets that language in Article VII, Section 1 of the Constitution as establishing a quorum requirement which means that if 30% of the registered voters must be physically present at the General Membership Meeting at the time the matter is presented for action. If there is not the 30% requirement, the only vote that can occur is a non-binding advisory vote by show of hands or voice vote.

A quorum call was asked for at least twice, and was either ignored and/or declined by both the Ogema and the Election Board. If at any time, there is no longer 30% present, then action can no longer take place. Therefore, if a quorum call is asked for, it must be addressed.

Petition 1, Question 3

"Did the voting violate the Constitution at Article VII, Section 1 (a)3 and the Election Board Regulations, Chapter 8, Section 2, (a) v. 2, and Chapter 8, Section 3 (a) iv"

Article VII, General Membership Powers, Section 1, General Membership Meetings Section 1 (a) 3 states: “subject to the express limitations contained in this Constitution, motions and ordinances adopted by the General Membership shall have the status of law and be binding on the Tribal Council, Tribal Ogema and Judiciary; provided at least thirty (30%) percent of the registered voters of the Tribe are present at such Membership meeting, as verified by the Election Board”.

The Election Board Regulations, Chapter 8, Section v. (2) states “The certification shall include: (2) the total number of registered voters constitutionally-required (30%) to be in attendance to act upon a Motion and/or Ordinance put before the membership at the meeting.”

The constitutional requirement that 30% of the registered voters are present at such Membership meeting is a prerequisite for any action by the General Membership to take place. That 30% requirement must be present when the action is presented for a vote by the Membership.

Chapter 8, Section 3. Secret Ballot Voting, (a) iv<sup>2</sup>, states: a quorum of the Election Board shall conduct secret ballot voting procedures and shall establish polls if a Motion and/or Ordinance question is developed in the course of Tribal business during the General Membership Meeting., iv. An Election Board member shall pen the language of the Motion and/or Ordinance in a format to permit viewing by the membership for the membership to reference during the vote. This record on this issue was not developed in the proceedings, and any determination is not essential to the Court’s ruling on the primary issues.

#### Petition 2, Question 1

“Did the verification that there were at least thirty percent (30%) of the registered voters of the Tribe present at such Membership Meeting prior to the start of the actual meeting, establish the quorum necessary for the motions and ordinances adopted by the General Membership to have the status of law?”

The official beginning time of the Membership Meeting was 1:00 p.m. Registration for the meeting ended at 12:30 p.m. It was announced that a quorum was met. There are 951 members that are registered to vote. Pursuant to Article VII Section 1 (a) 3, 286 would need to be present to meet the 30% requirement. 292 registered voters registered for the Membership Meeting. Thus, the “counting” of the number of registered voters present was concluded before the meeting officially began. In order to comply with the constitutional requirement of at least 30% of the registered voters be present at such membership meeting, the count cannot close before the meeting begins.

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<sup>2</sup> Mr. Wahr’s Petition references Chapter 8, Section 3 (a) iv, yet his Motion to Stay referenced Chapter 8, Section 3 (a) viii. The regulation cited in the Petition was not developed on the record or in pleadings. Section 3 (a) viii states “The Board shall have a ballot box brought into the meeting room and placed in as close proximity to the 2 polls as possible.” The regulation cited in the Motion to Stay was addressed during the proceedings, and it is clear that the polls/voting booths were not in the meeting room as required by the Election Board Regulation Chapter 8, Section 3 (a) vii. However, the Court may only rule on what it is presented with in the Petition for purposes of this declaratory ruling.



In order for any action to be taken by the General Membership, there must be 30% present. One of the most important rights the members and the General Membership have is that of voting. If the meeting is not "open" for Tribal Members to propose motions or ordinances until 2 hours after the "registration" is closed, or the beginning of the meeting, members may choose not to attend until that time. At the Spring 2011 Membership Meeting, those who did not register by the 12:30 deadline, but were at the meeting during the vote, would not be permitted to vote on Motions brought to the floor. In addition, some members left the meeting during the motions, in order to create a "walking veto".

Article IX Section 3 Voting, (a) states: "Any duly enrolled member of the Little River Band of Ottawa, who is at least eighteen (18) years old, and is registered to vote on the date of any given tribal elections shall be eligible to vote in that tribal election. (b) states: "Voting in tribal elections shall be by secret ballot cast at polls established by the Election Board; *Provided however, that the membership may make advisory recommendations at General Membership meetings by voice vote or show of hands concerning matters to be decided by Tribal Council.*" While this does not specifically address the voting at the Membership meeting, it shows that the intent was to allow the registered voters to vote at the General Membership meeting. Members who are present at the General Membership meeting, and are registered voters must be allowed to vote, if they choose to do so, with the least amount of restrictions placed upon this right as to not interfere with that right.

#### Petition 2, Question 2

"Does a quorum of at least thirty percent (30%) of the registered voters of the Tribe present at such Membership Meeting have to be established at every vote of the General Membership for the motions and ordinances adopted to have the status of law?"

The constitutional requirement that 30% of the registered voters be present is a prerequisite to any action to take place from the General Membership at a Membership meeting. Thus, there must be 30% present when the action is taking place.

Once it is established that the requisite 30% is present, it is presumed to continue, while the action is taking place. However, when questioned, there must be a re-count. If the re-count shows that there is no longer 30% of the registered voters in attendance, no further action from the General Membership can continue.

As stated above: The Court believes the requirement that 30% of registered voters be present at the General Membership Meeting means that 30% must be "present" at the time any matter is presented for action. This does not mean that 30% of the registered voters must actually cast ballots on the question.

The reservation of authority to the General Membership to adopt binding ordinances and ordinances at General Membership Meetings contained in Article VII, Section 1 is a very important power retained by the Membership. Use of these powers, as well as the other powers reserved to the General Membership in Article VII, provide an important check on the powers of the legislative and executive branches of government. Nevertheless, the Constitution also places significant checks on the General Membership powers by imposing significant quorum

requirements (30% registered voter participation) and precluding the General Membership from taking action in various subject areas including making appropriations or overturning decisions of the Tribal Judiciary.

The Courts notes that the 30% quorum requirements contained in the Little River Band Constitution appear to be higher than those found in nearly every other Tribal Nation. Accordingly, the Court finds that the 30% quorum requirement, much like the requirement that 30% of voters actually cast ballots in any initiative or referendum election, is intended to serve as a limitation on the exercise of General Membership Power. These limitations are designed to prevent a small minority of Tribal Members from taking actions which bind the Tribal government by requiring participation in the decision-making process by at least 30% of the registered voters of the Band.

Accordingly, the Court interprets that language in Article VII, Section 1 of the Constitution as establishing a quorum requirement which means that if 30% of the registered voters must be physically present at the General Membership Meeting at the time the matter is presented for action.

A quorum call was asked for at least twice, and was either ignored and/or declined by both the Ogema and the Election Board. If at any time, there is no longer 30% present, then action can no longer take place.

The requirement that 30% be present is intended to insure that decisions are not being made by a number less than that. To allow the voting to continue after a question has been raised as to the continuation of the quorum, and to allow actions and voting to continue when less than 30% of the registered voters are present is contrary to the intent of Article VII Section 1 (a) 3.

It is alleged that a quorum call was asked for before the start of the votes by Scott Wahr to the Ogema, as stated by Mr. Wahr in Court. The Court has reviewed the tape of the Membership Meeting and it is clear that Mr. Wahr questioned the quorum after the first vote was conducted and the Election Board declined to recount the number of registered voters present. This failure to determine if there was still a quorum makes the actual number of registered voters physically present inconclusive. When a registered voter asks for a quorum call, it must be answered. If 30% of the registered voters are not physically present, then no action from the General Membership can continue.

The first motion passes<sup>3</sup>, and has the status of law. All actions/motions taken after that are null and void, and do not have the status of law.

THEREFORE, the Court declares as follows:


1. That the Ogema failed to perform his Constitutional duty by allowing the Election Board to "officiate" substantial portions of the General Membership Meeting, The Ogema cannot delegate his constitutional duty to officiate the Membership Meeting.

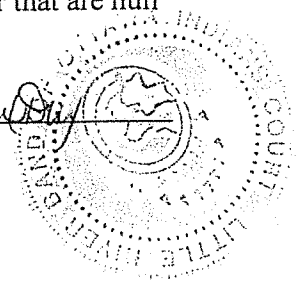
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<sup>3</sup> The Court is not stating whether or not the Motion itself is valid, as that is not before the court.

2. That 30% of the registered voters must be in attendance at any Membership meeting, at the time action is to take place as a prerequisite to that action taking place. If at any time, that 30% requirement is lost, no further action can take place.
3. The first action/Motion that the General Membership took at the Spring 2011 General Membership meeting passes and has the status of law. All actions after that are null and void.

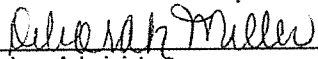
Dated: October 11, 2011

  
Hon. Angela Sherigan



CERTIFICATION OF SERVICE

I certify that a copy of this order was placed in the outgoing Tribal mail to be taken to the Manistee branch of the US Post office today to be sent by regular US mail to Petitioner and Respondent or their attorneys (and any other interested parties) to the addresses on file with the court.

  
Clerk or Administrator

10-11-11  
Date

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

ELAINE ALLEN,  
PLAINTIFF

V.

CASE NUMBER: 11103EA

LITTLE RIVER BAND OF OTTAWA INDIANS  
ENROLLMENT COMMISSION,  
DEFENDANT

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Elaine Allen  
In Pro Per  
2321 County Line Road  
Atlanta Georgia 30331

Damian Fisher  
Attorney for the Enrollment Commission  
375 River Street  
Manistee, Michigan 49660

ORDER AFTER HEARING

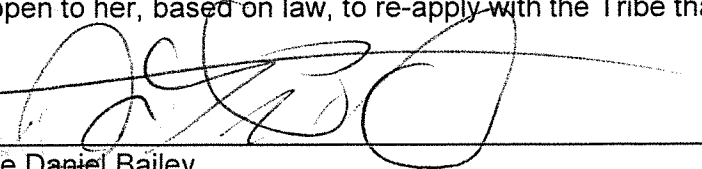
At a hearing held on July 18, 2011, Damian Fisher, Attorney for the Enrollment Commission was present and Ms. Allen appeared via the telephone. Testimony was placed on record.

The Little River Band Enrollment Commission held a hearing on October 12, 2010 in regard to Ms. Allen being dually enrolled in this Tribe and the Little Traverse Bay Band. On March 16, 2011, the Enrollment Commission sent her a notice of Disenrollment.

There was a hearing date scheduled by the Little Traverse Bay Band in regard to disenrollment procedures. It was scheduled for December 5, 2010 She was identified by that Tribe for being dually enrolled. We have no further documentation that says she was or was not dis-enrolled after the hearing at the Little Traverse Bay Band.

IT IS ORDERED:

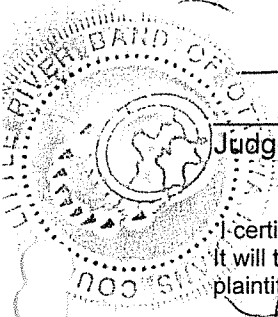

The Court finds for the Defendant Enrollment Commission. There is no disputing that the Plaintiff was enrolled in two Tribes at one time. She may pursue whatever avenues are open to her, based on law, to re-apply with the Tribe that she most identifies with.

  
\_\_\_\_\_  
Judge Daniel Bailey

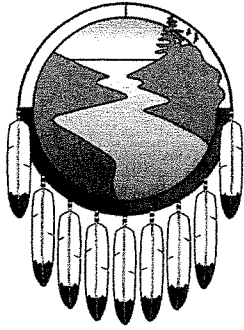
7/19/11  
Date

CERTIFICATION OF SERVICE

I certify that a copy of this order was placed in the Tribal mail system for sufficient postage to be attached. It will then be taken to the Manistee Branch of the United States Post Office and mailed to the plaintiff/petitioner and the defendant/respondent (or their attorneys) at the addresses on file with the court.

  
  
\_\_\_\_\_  
Court Clerk/Administrator

7/20/11  
Date



**Little River Band of Ottawa Indians  
Tribal Court of Appeals  
3031 Domres Road  
Manistee Michigan 49660  
231-398-3406  
Fax: 231-398-3404**

**MACOMB COUNTY FRIEND OF THE COURT,**  
Appellee-Plaintiff,

v.

**EDWARD WALTERS,**  
Appellants-Defendant.

Appellate Case Number: 11237AP

Chief Justice Melissa L. Pope  
Associate Justice Martha Kase  
Associate Justice Berni Carlson

For the Appellee-Plaintiff:  
Macomb County Friend of the Court  
Attn: Pamela Hinchliffe  
40 North Main Street, Sixth Floor  
Mt. Clemens, Michigan 48045

For Appellant-Defendant:  
Edward Walters  
In Pro Per  
45276 Green Valley Drive, # 105  
Clinton Township, Michigan 48038

**ORDER AND OPINION**

At a session of said Court held in the Courthouse of the Little River Band of Ottawa Indians on the Little River Band of Ottawa Indians Reservation on the 24<sup>th</sup> day of February 2012;

PRESENT:       Honorable Melissa L. Pope  
                  Honorable Martha Kase  
                  Honorable Berni Carlson

**INTRODUCTION**

On March 11, 2011, the Macomb County Friend of the Court submitted a Foreign Judgment for payment of Appellant-Defendant's per capita payments for a child support arrearage in the amount of twenty-

eight thousand, three hundred thirteen dollars and sixty-nine cents (\$28,313.69) as of December 31, 2011.

Appellant-Defendant filed written objections within the twenty-one (21) days of Notice of Foreign Judgment for support being registered. The Trial Court scheduled the matter for Hearing. The Hearing was held on May 2, 2011 with both parties appearing. Appellant-Defendant argued that a provision in his Judgment of Divorce prohibited the taking of per capita payments for child support.

The Trial Court entered an Order After Hearing on May 2, 2011 holding that the provision did not prohibit the taking of per capita payments.

Appellant-Defendant submitted a Leave to Appeal, having missed the deadline for appeal. The Court of Appeals granted the Leave to Appeal.

The Trial Court entered an Order for Stay on December 8, 2011.

Both parties submitted briefs and appeared via phone for oral arguments on February 24, 2012.

#### **OPINION AND ORDER**

Appellant-Defendant argues that the following provision in his Judgment of Divorce prohibits the taking of his per capita payments from the Little River Band of Ottawa Indians:

The Defendant shall receive as his sole property any settlement he receives as a result of his American Indian heritage, free and clear of any claim on the part of the Plaintiff.

The Trial Court held:

The Court finds that per capita payments are *not* considered a settlement. The U.S. government was sued by the Tribe(s) for land that was rightfully theirs. They were granted a judgment; which was divided evenly between Tribal members as a settlement to the lawsuit. (Emphasis in original Order).

Pursuant to the Little River Band of Ottawa Indians Regulations, Section 5.401(H), the Standard of Review for a matter within the Tribal Court's discretion is whether the Trial Court exercised its discretionary authority and applied the appropriate legal standard to the facts. The Court of Appeals holds that it did.

The Trial Court references the lawsuit that was in process when the Judgment of Divorce was drafted as the settlement anticipated in the provision in the Judgment of Divorce. While Appellant-Defendant argues that the intention was for any future benefits, the Trial Court was within its discretion to read the provision within the historical context of a pending lawsuit.

Further, the Little River Band of Ottawa Indians has recognized that per capita distributions can be used to satisfy court ordered judgments and child support obligations. Section 8.07 of Resolution # 08-0123-20 states:

**Attachment or Garnishment of Per Capita Distributions.** Per capita distributions may be withheld to satisfy any court ordered judgment obtained by the Tribe against the qualified tribal member or to satisfy court ordered child support obligations. Any amount remaining after satisfaction of the court ordered judgment or child support obligation shall be distributed to the qualified tribal members in accordance with the provisions of this RAP.

As such, it is clear that the Trial Court reached the correct conclusion.

This Court of Appeals reminds Appellant-Defendant that these monies are not for his former spouse – they are for his children. To properly care for a child, parents must fulfill the everyday needs of the child. This includes housing, heat, electricity, food, clothes, medical care, school supplies and so much more. All of these basic necessities require money. The per capita distributions will help provide these basic necessities to Appellant-Defendant's children, including reducing the substantial arrearage that resulted in one parent shouldering that responsibility alone. Taking care of our children is one of the most important values of the Little River Band of Ottawa Indians, if not the most important value held. Fulfilling the basic responsibility of providing for these children will be steps on the path to living up to this traditionally held value.

**CONCLUSION**

The Order After Hearing entered by the Honorable Daniel Bailey on May 2, 2011, ordering the payment of per capita distributions to Appellee-Plaintiff, is hereby **AFFIRMED**. The Order for Stay, entered on December 8, 2011, is hereby **DISMISSED**.

**IT IS SO ORDERED.**

3.15.12  
Date

Melissa L. Pope  
Melissa L. Pope, Chief Justice

3-15-12  
Date

Martha Kase  
Martha Kase, Associate Justice

3-15-2012  
Date

Berni Carlson Associate Appellate Ct Judge  
Berni Carlson, Associate Justice

**CERTIFICATION OF SERVICE**

I certify that I placed a copy of this order in the Tribal mail system to have adequate postage attached and taken to the Manistee Post Office on this date for mailing to the parties and/or the attorneys for the parties as listed.

3.16.12  
Date

Deborah Miller  
Court Administrator Deborah Miller



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

MICHAEL SPRAGUE,  
PLAINTIFF

V.

CASE NUMBER: 11243GR

LITTLE RIVER BAND OF OTTAWA INDIANS  
HR DIRECTOR ALAN STONE, MUSCHIGON  
CONSTRUCTION COMPANY LLC, DAVE COREY  
AND JIM MEDACO,  
DEFENDANTS

---

Michael Sprague  
1012 Ramsdell  
Manistee MI 49660

ORDER AFTER HEARING ON GRIEVANCE

A hearing was held on October 10, 2011, by motion of the Plaintiff. The Personnel Policy of the Tribe gives aggrieved employees another avenue to pursue when their complaints/grievances are not addressed in a manner they find acceptable.

After taking testimony from the Plaintiff, from Dan Green (Attorney for the Executive Branch); from Alan Stone, (Director of Human Resources); from Dave Corey and from James Medaco; it has been determined that the Tribal Court has no jurisdiction in this matter.

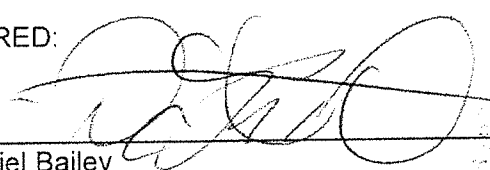
The Government Employment Relations Act of 2005, Ordinance #05-600-01, (Article IV. Employment Relations (b.) gives the Tribal Court the ability to adjudicate when the employee "is aggrieved only by one or more of the following actions:

1. The employee has been terminated without just cause;
2. The employee has been suspended without just cause;
3. The employee has been demoted without just cause...."

There is no right to appeal to Tribal Court if (Article IV. c.) "A person separated from any department due to curtailment of funds or reduction in staff as authorized in a program budget or budget modification approved by Tribal Council;..."

There are some other issues brought forth by the Plaintiff that may fall under the Fair Employment doctrine or the Whistleblowers Act. This case is dismissed for lack of jurisdiction.

SO ORDERED:

  
\_\_\_\_\_  
Judge Daniel Bailey

  
10/10/11  
\_\_\_\_\_  
Date