

**LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT**

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LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COUNCIL,
Plaintiff

Case No. 23-105-GC

Honorable Caroline LaPorte

v.

OGEMA LARRY ROMANELLI, and
TRIBAL PROSECUTOR JONATHON
HAUSWIRTH,
Defendants

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ORDER AFTER MOTION AND INJUNCTION HEARING

On June 2, 2023 the Court held a hearing in the above-captioned case. All parties were present via zoom and were represented by counsel. As stated in its previous Order, the Court was set to hear the Motion to Disqualify first.

A. Motion to Disqualify

Having reviewed the motions and responses and having considered the arguments as presented on the record, the Court **DENIED** the Motion to Disqualify. Though the Court stated its reasons on the record, those reasons and additional reasons are restated here:

1. This Judge for the Little River Band of Ottawa Indians was not on the bench during November of 2020 (the time in question). This Judge was seated September 22 of 2021.
2. The Plaintiffs have stated no grounds sworn by affidavit or otherwise verified that would disqualify the entire judiciary or myself.

3. The Plaintiffs filed, with their Complaint, two exhibits of closed meeting minutes. These closed meeting minutes form the basis of the Motion to Disqualify and are part of the record now. What was disclosed in those minutes via Plaintiff's complaint will be read by any judge who hears this case because the Complaint relies on these minutes (supported via affidavit by then Speaker and current Council member, Shannon Crampton) as the basis for removal. By Plaintiff's logic, any Judge who simply reads the complaint would have to disqualify themselves.
4. The Plaintiff's Motion is overly broad and does not provide any specific basis as to why this Judge should disqualify herself. The basis for the Motion is based on assumption and not fact. Judge Sherigan recused herself prior to the Plaintiff filing its Motion to Disqualify.
5. The Court was not persuaded by Plaintiff's argument that due to the nature of legal work and the close proximity in which judges must work with prosecutors, that she should recuse herself. This would require all judges to recuse themselves anytime a prosecutor was before them.

Verified motions are tested by their truthfulness. Here, we have unfounded allegations lobbed against the judiciary in what appears to be an effort to judge shop and one that either way questions the validity of judicial process.

B. Motion to Seal

As the Court ruled from the bench on the Motion to Disqualify, the Court then turned to the Plaintiff's Motion to Seal their Exhibit A and Exhibit B. Both exhibits are closed meeting minutes. The Court was not inclined to grant this Motion as the minutes are the basis of the complaint and were also relied on by the Plaintiff's above-mentioned affidavit. The Plaintiff waived its right to keep those minutes sealed (and Council as a body can release closed meeting minutes to the public at its discretion) when it filed them in this Court. The only person who could really request this court to seal the minutes is factually Mr. Hauswirth, whose rights as an employee could be impacted by the sharing of confidential information. Mr. Hauswirth, through his counsel, has stated no issue with their release. Furthermore, the Plaintiff is essentially requesting the Court to keep something from the general public but also get to discuss it on the record, meaning no one could test the veracity of the statements provided on the record against their documentation.

Regardless, all parties agreed at the Court's request to stipulate what would be redacted. Per the parties' stipulation:

- 1) **Exhibit A** is to be redacted starting on page 1 at "VII. Closed Session" and ending at page 7 at "4. Approval of Employment Contract for Prosecutor and Confirmation of Appointment." The redaction will then continue starting on page 11 at "5. Approval of Engagement Letter" and continuing through the end of Exhibit A.
- 2) **Exhibit B** is to be redacted starting on page 1 at "Meeting began at 11:52 A.M" and ending on page 7 starting at "2. Approval of Employment Contract for Prosecutor and Confirmation of Appointment." The redaction will then continue starting on page 19 of

Exhibit B at “D. Acceptance of Submission from Tribal Entities requiring action in Closed Session” continuing through the end of Exhibit B.

C. Motion for Preliminary Injunction

The Motion for the Preliminary Injunction is **DENIED**.

The Court has adopted a four-part test when considering granting injunctive relief. The party so moving has the burden of proof to show the Court that:

- 1) There will be no harm to the public interest if an injunction issues;
- 2) Whether harm to the movant in the absence of an injunction outweighs the harm to the opposing party if granted;
- 3) That through the strength of the movant’s demonstration, the movant is likely to prevail on the merits; and
- 4) That the movant will suffer irreparable harm/injury if the injunction is not granted.

The factors should be balanced to obtain an equitable result.

First Factor: There will be no harm to the public interest if an injunction issues.

Plaintiff, who asks this Court to enjoin the Prosecutor from performing his job duties during the pendency of this lawsuit, argue that the Prosecutor is “illegally installed” and that the harm resulting from his employment will result in the overturning of Tribal Court convictions and child welfare dispositions. Plaintiff offers absolutely no legal justification or basis for this assertion. They cite no case law. They point to no ordinance, constitutional provision, code, or resolution to persuade the Court as to the merits of their argument.

Actually, the harm to the public is great should the preliminary injunction issue. The argument itself is both harmful and irresponsible. Granting Plaintiff’s request would lend validity to the dangerous idea that this Court’s orders, including convictions for violent offenders and child abusers, be undone due to the Plaintiff’s own failure to raise any issues relating to this lawsuit when Plaintiff became aware of it: over thirty (30) months ago.

Second Factor: Whether harm to the movant in the absence of an injunction outweighs the harm to the opposing party if granted.

This factor has a risk of conflation due to there being two separate defendants, both acting in different capacities and one of them (the Defendant Prosecutor) could suffer individual harm through the loss of employment (while the harm done to the Office of the Prosecutor in general also likely needs to be considered).

Regardless, Plaintiff has failed to demonstrate that it will suffer any harm at all as Tribal Council. By incorporating its interests with that of the general Tribal membership, the Court must also consider whether the harm to the public outweighs the harm to the Defendants. To this, the Court reiterates its analysis from the first factor. The Court cannot stand by the supposition

that because someone is performing a job, that Council has allowed them to perform for over thirty (30) months, and should now be removed somehow, that the work they have performed is now not only invalid, but has to be redone by another yet to be named individual. The budget that has been approved by Tribal Council for the Office of the Prosecutor for the last thirty (30) months, under Tribal Council's argument, would now just be a loss. Furthermore, the Court would have to rehear the cases to be re-brought by a new prosecutor, essentially double paying for the same amount of work (which of course does not consider the work they would already have to be performing on new criminal and child welfare case). Plaintiff's argument is that the Court might have to overturn DUI convictions, child abuse convictions, child sexual assault convictions, to return guns to the hands of violent offenders, or to return abusers to this community. Plaintiff argues this absent any legal support. That is a harm to the public that the Plaintiff's argument cannot and does not survive.

But what is fatal to the Plaintiff's argument is actually just the argument itself. If Mr. Hauswirth is not enjoined, says Plaintiff, all of these convictions *could* be overturned; not *will*. Plaintiff's argument is that if the Court does not appoint a special prosecutor for pending litigation, then those protentional convictions could be tossed; the basis for which is still unclear. Plaintiff argues that the Court should NOW, going forward, appoint a special prosecutor so that pending cases are not impacted. The problem, as Plaintiff writes it, is a future one. In the same vein, Plaintiff wants to argue that the convictions of the past two years will not really be an issue (or at least Council does not address them) so long as the Court enjoins Mr. Hauswirth during the pendency of this suit. Either the prosecutor could prosecute, or he could not. Council wants the Court to enjoin the prosecutor so the following can be true: Mr. Hauswirth prosecuted these cases validly for the past two years, but because he was not a valid prosecutor, he cannot prosecute now. That is a logical fallacy, and appointing a Special Prosecutor now does not help to cure it.

Even though Plaintiff's argument is self-defeating, the Court nevertheless considers the harm to the Defendants. Here, the Court will focus specifically on the Harm to the Defendant Prosecutor, which is great. At the very least, he will lose his job, his income, and his healthcare during the pendency of this suit. Because the Plaintiff has not stated any harms which have not been dispatched by this Court already, the harm to the Defendant outweighs the harms the Plaintiff has raised.

Third Factor: That through the strength of the movant's demonstration, the movant is likely to prevail on the merits.

Movants have not demonstrated a strong likelihood of prevailing on the merits, as they have not cited a legal basis for the need for the preliminary injunction. Specifically, Plaintiff has stated no basis for its assertion that the community will suffer irreparable harm "because the contract is invalid and therefore any case that the Defendant Prosecutor has previously prosecuted could be overturned due to his 'illegal status'."¹ Nor has Plaintiff supported its argument that the Tribal community is "in grave danger because prosecuted criminals could have their convictions and sentences reversed."²

¹ Plaintiffs' Motion for Preliminary Injunction, pg. 2

² *Id.*

Additionally, the Plaintiff did not expressly address the third factor in the four-part test in its Motion for Preliminary Injunction.

Fourth Factor: A demonstration that the movant will suffer irreparable injury if a preliminary injunction is not granted.

Plaintiff cannot in good faith make this argument. The Defendant Prosecutor has been in his position for over thirty (30) months. Tribal Council has approved his budget, has brought him complaints, has paid his salary and so on. There is no need or basis for a preliminary injunction. It is worth noting that as evidenced by the minutes from Plaintiff's exhibits, Plaintiff became aware of this in November of 2020.

Jurisdiction does not jump from individual prosecutor to prosecutor. It sits in the Office of the Prosecutor, awaiting its enforcer. The Tribe pays that person, that person shows up for work, that person is paid health insurance benefits, that person is held accountable to work standards, they hire people for their office, they work with law enforcement, they bring cases on behalf of the Tribe. It is not Mr. Hauswirth's Office. It is the Little River Band of Ottawa Indians' Office of the Prosecutor.

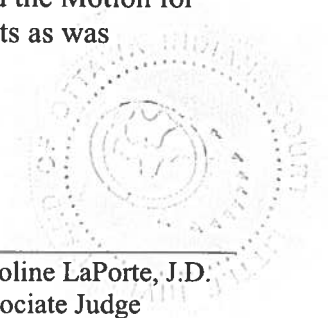
Conclusion

For the reasons stated above, the Motion to Disqualify, the Motion to Seal, and the Motion for the Preliminary Injunction is DENIED. The Court Clerk will redact the Exhibits as was stipulated to by the parties on the record in open Court.

6/16/2023
Date

DocuSigned by:
Caroline LaPorte
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Caroline LaPorte, J.D.
Associate Judge



CERTIFICATION OF SERVICE

I certify that a copy of this document was emailed to all parties and/or their attorneys via email on the below date.

6-19-23
Date

Spring Medacco
Court Clerk/Administrator