



## Huron Potawatomi Tribal Court

The Nottawaseppi Huron Band of the Potawatomi

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CASE NO: 11-228TRO		
Nathaniel Spurr	v.	Nottawaseppi Huron Band of the Potawatomi Tribal Council
Nathaniel Spurr Plaintiff In Pro Per 1114 Beaconsfield Avenue Grosse Pointe Park, Michigan 48230-1345		Wilson D. Brott (P51466) Brott, Settles, Shumar & Brott, P.C. Attorney for Defendant 5168 U.S. 31 North, P.O. Box 300 Acme, Michigan 49610 (231) 938-1000

### OPINION AND ORDER

At a session of said Court held in the Courthouse of the Nottawaseppi Huron Band of the Potawatomi Tribal Court on the Pine Creek Reservation on the 2<sup>nd</sup> day of December 2011

#### INTRODUCTION

This matter comes before the Court on Plaintiff's Motion to Stay Removal Proceedings.

#### JURISDICTION

The Nottawaseppi Huron Band of the Potawatomi Tribal Court has jurisdiction over this matter pursuant to Article X. Section 3(b) of the Nottawaseppi Huron Band of the Potawatomi (NHBP)

Constitution:

**Civil Jurisdiction.** The Tribal Court shall have jurisdiction over any action where one party to the action shall be an Indian, or a corporation or entity owned in whole or in substantial part by an Indian or the NHBP; and (1) the cause of the action arises under the Constitution or laws of the NHBP; or (2) an Indian party to the action resides on lands owned by the NHBP or located within the reservation of the NHBP, or the proceeding involves the Indian Child Welfare Act, 25, U.S.C. 1901 – et seq.

The present case involves the request by Plaintiff, a member of the NHBP, with the cause of the action arising under the NHBP Constitution.

#### STATEMENT OF FACTS

Plaintiff is a duly elected member of the NHBP Tribal Council and serves as the Sergeant-at-Arms.

On or about November 1, 2011, Homer Mandoka, NHBP Tribal Chair, advised Plaintiff that he was seeking Plaintiff's removal from the NHBP Tribal Council. A Memorandum was provided to Plaintiff with Plaintiff's resignation requested by November 8, 2011 or Chair Mandoka would initiate removal proceedings. (See Defendant Exhibit B).

Plaintiff did not resign from the NHBP Tribal Council.

On November 17, 2011, the NHBP Tribal Council passed the Nottawaseppi Huron Band of the Potawatomi Indians Resolution No. 11-17-11-06: Resolution Regarding Notice and Procedure of Misconduct Hearing" (Resolution) in a four (4) to one (1) vote with Plaintiff voting in opposition to the Resolution. (See Plaintiff Exhibit A). The Resolution alleged six (6) counts of misconduct and set a removal hearing for 9:00 a.m. on Monday, December 5, 2011 at the Pine Creek Community Center. The Resolution stated that the NHBP Tribal Council would accept a letter of resignation by Plaintiff until 5:00 p.m. on Friday, November 25, 2011.

Defendant served Plaintiff with the Resolution on Tuesday, November 22, 2011.

Plaintiff did not resign from the NHBP Tribal Council.

The parties submitted their witness lists and lists of exhibits on November 28, 2011. Neither Plaintiff nor Defendant submitted all of their exhibits on November 28, 2011. As of the date of the Emergency Hearing before the Court, the parties were still exchanging exhibits.

On November 28, 2011, Attorney Angela Sherigan contacted Defendant's Attorney William Wilson Brott to request a Removal Hearing date after December 26, 2011 as she would be unable to represent Plaintiff until after that date due to illness and other commitments. The NHBP Tribal Council, by and through their attorney, denied this request.

Plaintiff filed a Motion to Stay Removal Proceedings on November 30, 2011. Upon receipt of Plaintiff's Motion, Chief Judge Melissa L. Pope, who was out of the state, scheduled an Emergency Hearing for 2:30 p.m. on Friday, December 2, 2011.

All parties appeared at the Hearing with Chief Judge Pope presiding over the Hearing by phone.

#### **ANALYSIS**

Plaintiff argues that holding the Removal Hearing on Monday, December 5, 2011 violates his due process on several grounds. To determine whether the NHBP Tribal Council has denied due process in these removal proceedings, we must first turn to the NHBP Constitution.

The NHBP Tribal Constitution specifies the requirements for removal of an officer of the NHBP Tribal Council in Article IV, Section 4 as follows:

Removal from office. Conduct unbecoming a tribal council members (sic.), which shall include the unexcused absence from three consecutive tribal council meetings, shall be grounds for the removal of the council member from office by a majority vote of the remaining council members. The members shall have the right to appeal the decision of the Tribal Council to the general membership at the next scheduled meeting.

The NHBP Tribal Council has followed the requirements of the NHBP Constitution by listing the allegations for removal in the Resolution with the Resolution passing by majority vote of the remaining

Tribal Council members. As the other requirements of this Constitutional provision involve the appeal of a removal decision by Tribal Council, it is not pertinent in this analysis.

The NHBP has gone beyond the Constitutional requirements for removal in the NHBP Tribal Council By-Laws, adopted on March 25, 2008 and amended on October 7, 2010. The process for removing a member of the NHBP Tribal Council is stated in Article II, Section 9 of the By-Laws and provides in pertinent:

**a. Grounds for Removal**

Any member of the Tribal Council may be removed from office by majority vote of the Tribal Council for conduct unbecoming a Tribal Council member, which shall include the following reasons:

- 1) Willful and persistent failure to perform the duties of office or other misconduct reflecting on the dignity and integrity of the Tribal Council or the Tribe;
- 2) Conviction, guilty plea, or no contest plea to any crime involving theft or fraud, any crime involving or a sex offense, or any felony or other crime for which the person was sentenced to a prison term of one (1) year or longer while in office;
- 3) Unexcused absence from three (3) consecutive regular meetings of the Tribal Council; or
- 4) Any form of dishonest act against the Tribe or Community.

**b.** The Council member shall be personally served with written notice of the grounds upon which his/her removal is sought at least ten (10) days before the meeting at which the Tribal Council will consider his/her removal. The hearing shall be open to tribal membership. The Tribal Council member subject to removal shall be granted due process, including the right to legal representation at his/her own cost.

In the present case, both parties admit that Plaintiff was served with the Resolution within ten (10) days of the date scheduled for the Removal Hearing. As such, Tribal Council has complied with the notice requirement.

The Resolution states in pertinent part that the Removal Hearing "shall be open only to all enrolled citizens of the Nottawaseppi Huron Band of the Potawatomi Indians". (See Plaintiff Exhibit A). Plaintiff contends that holding the Removal Hearing on a day and at a time that is not the usual date and time for Tribal Council meetings denies him due process. However, the date and time for special Tribal Council meetings is not specified in the Constitution or the Tribal Council By-Laws. As such, the

meeting being open to all tribal members is sufficient to satisfy the requirements of the Constitution and the By-Laws.

Plaintiff argues that he is being denied due process because his preferred attorney is not available until after December 26, 2011. The Tribal Council By-Laws provide that a tribal council member whose removal is being sought has "the right to legal representation at his/her own cost". The By-Laws do not guarantee the right to a specific attorney, only the right to an attorney. The fact that Plaintiff's preferred attorney is not available does not deny him the right to retain other counsel. Plaintiff had the option of retaining another attorney and, as of the date of this proceeding, has chosen not to do so.

Plaintiff also argues that he is being denied due process because he did not receive all Respondent's exhibits pursuant to the Resolution. While it is unfortunate that Tribal did not fully comply with the Resolution, this was not mandated by the Constitution or the By-Laws.

#### CONCLUSION

The NHBP Tribal Council has complied with all Constitutional requirements and all relevant portions of the NHBP Tribal Council By-Laws in the removal proceedings against Plaintiff. As such, a decision on the merits of a temporary restraining order is not required by the NHBP Constitution. The Tribal Court declines to substitute the Court's judgment for the voice of the people, as expressed in the Constitution.

#### ORDER

For the reasons set forth in this Opinion and Order, Plaintiff's Motion to Stay Removal Proceedings is hereby **DENIED**.

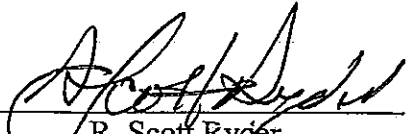
12-16-2011  
Date

Melissa L. Pope  
Melissa L. Pope, Chief Judge

**CERTIFICATE OF MAILING**

I certify that on this day I mailed a copy of the *Opinion and Order* by first-class mail to the parties, or their attorneys, at the addresses listed below.

12/20/2011  
Date

  
\_\_\_\_\_  
R. Scott Ryder  
Tribal Court Administrator