

LOWER BRULE SIOUX TRIBAL COURT)
LOWER BRULE SIOUX TRIBE) : SS IN TRIBAL COURT
LOWER BRULE SIOUX JURISDICTION)

ORVILLE LANGDEAU JR.,)
 JOHN MCCAULEY,)
 Plaintiff-Intervenors) Civ.# 14-12-0119

vs.)

KEVIN WRIGHT, SONNY ZIEGLER,) **NOTICE OF ENTRY OF**
 AND DESIREE LAROCHE,) **JUDGMENT AND/OR**
 Defendants.) **ORDER**

TO: Terry Pechota and Gary Montana

PLEASE TAKE NOTICE THAT the Lower Brule Sioux Tribal Court has entered a(n **ORDER and CERTIFICATION of APPROPRIATENESS FOR INTERLOCUTORY APPEARL** in the above-entitled matter on the **9th day of July 2015**, by **B.J. Jones**, Lower Brule Sioux Tribal Court Special Judge, A copy of which is attached hereto.

Dated this 13th day of July 2015


 Clerk of Courts

Pechota Law Office
Attn: Terry Pechota
1617 Sheridan Lake Road
Rapid City, SD 57702
Email the Order

Montana & Associates
Attn: Gary Montana
N12923 North Prairie Road
Osseo, WI 54758
Email the Order

CERTIFICATE OF SERVICE

I, Clerk of Courts for the Lower Brule Sioux Tribal Court, do hereby certify that a true and correct copy of the Judgment and the Notice of Entry of **ORDER and CERTIFICATION of APPROPRIATENESS FOR INTERLOCUTORY APPEARL** were served upon the following persons, by first class mail with postage prepaid, on the dated shown below.

Dated this 13th day of July 2015.


 Clerk of Courts

LOWER BRULE SIOUX TRIBAL COURT)
LOWER BRULE SIOUX TRIBE)SS
LOWER BRULE SIOUX TRIBE JURISDICTION) CIVIL DIVISION

ORVILLE LANGDEAU JR.,
JOHN MCCAULEY,
 Plaintiffs-Intervenors

CIV-14-12-0119

vs.

ORDER AND CERTIFICATION
OF APPROPRIATENESS FOR
INTERLOCUTORY APPEAL

KEVIN WRIGHT, SONNY ZIEGLER,
AND DESIREE LAROCHE,
 Defendants.

Hearing was scheduled in this case for the 9th day of June 2015 at 9 AM on the Plaintiffs' motion for preliminary relief on its amended complaint against the Defendants. The Plaintiffs appeared in person and through their attorney, Terry Pechota. The Defendants appeared in person and through their counsel, Gary Montana.

The Defendants orally moved this Court to reconsider its June 30, 2015 order on the quorum and voting issue and also asked that the amended complaint be dismissed for lack of standing and on sovereign immunity grounds. The Court took both under advisement and indicated it wished to hear testimony on the Plaintiffs' request for preliminary relief on the amended complaint. Plaintiff Orville Langdeau Jr. testified and in the course of that testimony the Court indicated that it would be beneficial to the ultimate resolution of this case for the Parties to continue their July 1, 2015 Council meeting, which had been recessed but not adjourned, in order to take a vote on filling the Chairman's position, declared vacant at the July 1, 2015 Council meeting. The Court indicated that the option for filling that seat by special election, as proposed by the

Plaintiffs, did not seem to be within the realm of a judicial order, absent some stipulation from the Parties, because the Constitution states that the vacancy has to be filled by a vote of the Council.

The Council met in good faith and on a motion made to fill the Chairman's vacant seat with Lewis Grassrope two voted in favor of said motion, one voted against and one abstained. Vice-Chair Kevin Wright did not vote because he was acting Chairman for purposes of the July 1, 2015 regular Council meeting. This Court indicated that it was not confident that the Vice-Chair should have been disqualified from voting because even though he was chairing the meeting the Tribal Constitution does not indicate that he becomes the Chairman by default when the Chairman dies. This Court therefore received his vote on the record and he indicated he would vote in favor of Mr. Grassrope.

The Court then indicated that it was denying the request for reconsideration of this Court's order of June 30, 2015 finding that the Lower Brule Sioux Tribal Constitution and By-Laws require at a minimum a 2/3's vote of the full Council in favor of the replacement for the vacant Chairman's seat. This Court does note, however, that the language of the By-Law does state that the Council "may" pass motions and resolutions by 2/3's vote of the majority, but the Court interprets this provision in light of the last sentence of that By-Law, which indicates that the Council shall try in every case to vote by consensus or unanimous vote. 2/3's of the majority thus appears to be the minimum vote, although a unanimous vote would be preferable.

However, this Court notes that the Defendants have provided to this Court proof that in the past the Tribal Council has passed ordinances, resolutions and motions by less than a 2/3's vote of the full Council. This proof, which was also attached to the

Defendants' brief on the majority vote issue, is proof that the Tribal Council, in its prior practices and customs, would oftentimes ignore the 2/3's of the full council vote requirement. There is even proof that a vacancy on the Council was filled by a vote of less than 4 council members. Plaintiff Langdeau was on the Council when many of these votes were taken. Therefore, it does appear to this Court that the Tribal Council, including at least Plaintiff Langdeau and the former Chairman, would take action on the Council contrary to the position they take in this litigation.

However, this Court must interpret the Constitution as written because it is the voice of the people of the Tribe and the only reasonable interpretation of that provision is that laid out in the Court's June 30, 2015 order. If former Councils have ignored this provision they will have to answer for their actions if called into question later.

The Court asked the parties to meet and try to resolve this issue by having four of them approve of a replacement for the deceased Chairman. They did meet in good faith, but were only able to effect the action described above. Instead of ordering them to continue to meet, much like a Court can do to a jury, this Court recognized its limitations on forcing elected leaders to take some action, and instead opted to put their vote on the record and allow the Defendants to file an interlocutory appeal on the 2/3's vote issue. The Appellate Court can also determine if this Court is correct in determining whether 4 of the remaining Council must vote for the replacement for the Chairman. This Court also finds that although the Parties acted in Council session as if Defendant Wright could not vote, this is not clear to this Court because only the Chairman is denied the right to vote unless there is a tie. Is Mr. Wright the Chairman? Not clear, although he was certainly

Chairing the meeting in question. This Court therefore got his vote on the record in case the Appellate Court rules that he did have the right to vote.

The Plaintiffs ask that this Court enter a preliminary injunction enjoining any actions of Defendants that purported to remove them from office on December 12, 2014 and also to enjoin any actions to enforce the motions of the Council on May 6, 2015 purporting to terminate the attorneys for the Tribe and to terminate certain employees. For the reasons stated herein this Court continues its preliminary injunction on the removal issue, but denies the request for additional relief because this Court is not confident that the Plaintiffs have made a sufficient showing of this Court's jurisdiction to order further relief.

To grant a preliminary injunction the Plaintiffs must establish irreparable harm, a likelihood of succeeding on the merits, harm to the public and an inadequate remedy at law. The Court has already granted a restraining order preventing the Defendants from removing them from their elected seats without adhering to the Constitution and the Indian Civil Rights Act. As indicated before this Court believes the Defendants are not immune from claims for injunctive relief arising under the Indian Civil Rights Act and a removal of them from their elected positions without due process of law states an ICRA claim.

The Plaintiffs also claim that the Court should declare invalid the actions of the Tribal Council dated May 6, 2015 where the Council ratified the actions of Wright to terminate the tribal attorneys, some employees and to hire additional employees.

Assuming for the sake of argument that the Plaintiffs would have standing to raise these issues- under a theory that their ability to function as a government is compromised by

these actions- this Court does not believe that these claims arise under the ICRA. The Lower Brule Sioux Tribal Constitution and laws do not waive immunity from suits against elected leaders. This Court found a waiver in the ICRA under the Bay Mills case. However, this Court does not find that an elected leader has a property right to claim that a vote that he disagrees with is taking a property right from him. The Court can understand the argument that his vote is a property right that cannot be taken without due process, but the undisputed testimony is that the Plaintiffs opted to leave the meeting on May 6, 2015 instead of casting a vote on the controversial measures ratified that day. Had they voted and their vote was ignored or not counted this may state an ICRA violation. The Court is very hesitant, however, to permit an elected leader to come into Court and ask the Court overturn an action of the Council that he disagrees with, even if there are apparent procedural irregularities.

Of course if the Appellate Court affirms this Court's assessment of the 2/3's vote issue such a ruling calls into question the legality of the actions taken by the Tribal Council on May 6, 2015. It would be up to the fully-constituted Council, if that ever gets accomplished, to address those actions and either ratify them or deem them invalid. However, the Court does not see those claims arising under ICRA however. This ruling is of course not binding upon any attorney or employee terminated that day to bring any private action they may have, provided of course they could document either a waiver of immunity or an abrogation of that immunity.

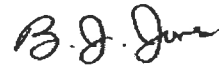
WHEREFORE it is hereby

ORDERED, ADJUDGED, AND DECREED that the Court denies the Defendant's motion for reconsideration of its order of June 30, 2015 on the quorum and

the 2/3's of full Council vote issue, but certifies that this Court's determination of this issue is a final order under the rules of civil procedure that can be appealed right away. In the alternative the Court finds it to be an interlocutory order appropriate for appellate review at this time, and it is further

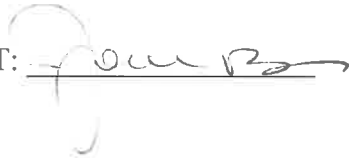
ORDERED, ADJUDGED, AND DECREED that the Court grants a preliminary injunction preventing the Defendants from removing the Plaintiffs from their elected positions or attempting to effectuate the actions they took on December 12, 2014 to remove the Plaintiffs from their positions. The further request for preliminary injunctive relief is DENIED but the Court also certifies that denial as appropriate for interlocutory appeal.

So ordered this 9th day of July 2015.



B.J. Jones
B.J. Jones
Lower Brule Sioux Tribe
Special Judge

ATTEST:



Lower Brule Sioux Tribal Court

Rules of Procedure

Court of Appeals

RULES OF PROCEDURE

LOWER BRULE SIOUX TRIBAL COURT OF APPEALS

Scope of Rules

These Rules govern all appeals to the Lower Brule Sioux Tribal Court of Appeals and shall take effect upon adoption by ordinance of the Lower Brule Sioux Tribal Council. Upon such adoption, these Rules shall govern only those appeals filed thereafter.

Name of Court

Rule 1. This Court shall be referred to in the caption of all pleadings filed with the Clerk of Court as the Lower Brule Sioux Tribal Court of Appeals.

Notice of Appeal

Rule 2. A timely filing of a Notice of Appeal pursuant to Title _____, Chapter _____, Rule _____, (Criminal Actions); Title _____, Chapter _____, Rule _____ (Civil Actions); Title _____, Chapter _____, Section _____ (Termination of Parental Rights) and Title _____, Chapter _____ (other juvenile matters) of the Law and Order Code of the Lower Brule Sioux Tribe (_____ Revision) commences the appellate process. The Notice of Appeal shall be filed with the Clerk of Court of Tribal Court. The Clerk of Court of the Tribal Court shall within two (2) working days transfer a certified copy of such to the Clerk of the Court of Appeals.

Clerk of Court

Rule 3. The Clerk of the Lower Brule Sioux Tribal Court of Appeals shall take an oath of office and shall be bonded. The Clerk shall not practice as an attorney or counselor in any court while she or he continues in office. The office of Clerk of Court shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, unless otherwise ordered by the Court.

The Clerk shall keep a book, known as the docket, and shall enter therein each case. Cases shall be assigned consecutive file numbers. The file number of each case shall be noted on the folio of the docket. A numbered case file shall be created for each case with a case activity sheet appended inside the case folder. All papers filed with the Clerk for each case and all process, orders or judgments shall be entered chronologically on the docket and case activity sheet for that

case. Entries shall be brief, but shall show the date, nature and title of each document entered. The Clerk shall also keep an alphabetical index of cases contained in the docket by Plaintiff and Defendant names, so that the case number can be easily obtained.

The Clerk shall prepare, under the direction of the Court, a calendar of cases awaiting argument. Preference shall be given to criminal or juvenile court appeals.

Immediately upon the entry of an order or judgment, the Clerk shall serve notice of entry by certified mail upon each party to the proceeding with a copy of any opinion respecting the order or judgment and shall note the date of mailing on the case activity sheet for that case including a copy of all cover letters in the file. Service on a party represented by an attorney or counselor of record shall be made on the attorney or counselor. Certified mail return receipts shall be stapled to the copy of the document mailed with such when returned by the postal service.

The Clerk shall have custody of the records and papers of the Court. She or he shall not permit any original record or paper to be taken from her or his custody except as authorized by order of the Court. Original records transmitted from the Tribal Court shall be returned to that court upon disposition of the case appeal. The Clerk shall preserve copies of all briefs and other documents filed.

Counselors and Attorneys

Rule 4. Any counselor or professional attorney qualified to practice before the Lower Brule Sioux Tribal Court shall be eligible for admission to the bar of the Lower Brule Sioux Tribal Court of Appeals. An applicant shall file with the Clerk of the Court of appeals, on a form prescribed by the Clerk, an application for admission containing her or his personal statement showing eligibility for membership. At the foot of the application, the applicant shall take and subscribe to the following oath or affirmation:

I, _____, do solemnly swear that I will demean myself as an attorney and counselor of this Court uprights and according to law; and I will support the Constitution and Bylaws, Treaties and Laws of the Lower Brule Sioux Tribe.

Thereafter, upon written or oral motion of a member of the bar of this Court, or upon the Court's own motion, the Court will act upon the application.

This Court of Appeals may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any counselor or attorney who practices before it for failure to comply with these rules or violation of the above oath or affirmation or for conduct unbecoming a member of the bar of the court. Disciplinary action may consist of either suspension or disbarment.

All attorneys or counselors admitted to the bar of this Court shall be issued a written certificate by the Clerk of Court.

Contents of Notice of Appeal

Rule 5. A Notice of Appeal shall contain the following information:

1. The name and address and phone number (if applicable) of the party taking the appeal and their counselor or attorney of record (if represented).
2. The date and title of the Tribal Court order or judgment from which the appeal is taken.
3. The names, addresses and phone numbers (if applicable) of all other parties to the Tribal Court action and their counselors or attorneys of record.
4. An itemization of all assignments of error or legal or factual issues desired to be considered in the appeal.
5. A Certificate of Service indicating service of the Notice of Appeal upon all opposing parties and the date and manner of such service.

Designation of Record

Rule 6. The party taking the appeal shall also file with the Clerk of Court of this Court a Designation of Record indicating all pleadings and papers filed with the Tribal Court which will constitute the record on appeal. Such Designation shall be filed with the Notice of Appeal with a Certificate of Service indicating service of such upon all opposing parties and the date and manner of such service. Such Designation shall include the date, time and portion of any Tribal Court hearing which the appellant believes must be transcribed for purposes of the appeal.

The Respondent shall have ten (10) days after service of

the Designation of Record upon her or him to file a Respondent's Statement of Issues and Designation of Record indicating any additional issues, record documents or transcripts which the Respondent would like included in the appeal.

Copies of the Designation of Appeal and Respondent's Statement of Issues and Designation of Record shall be served upon the Clerk of Court of the Tribal Court who shall within the time allowed by Title _____, Chapter _____, Rule _____ and Title _____, Chapter _____, Rule _____, transmit only those portions of the record indicated by the parties. The Tribal Clerk shall include a table of contents indicating the names and dates of all documents included chronologically.

Contents and Form of Briefs

Rule 7. All briefs shall be served and filed in accordance with appropriate portions of the Law and Order Code of the Lower Brule Sioux Tribe (_____ Revision).

The brief of the appellant shall contain:

1. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes or other authorities cited, with references to the pages of the brief where they are cited.
2. A statement of issues presented for review.
3. A statement of the case, indicating the nature of the case, the course of proceedings in Tribal Court, and its disposition in Tribal Court.
4. An argument, which shall contain the contentions of the Appellant with respect to the issues presented, the reasons therefore, with citations to the authorities, statutes and parts of the record relied upon.
5. A short conclusion stating the precise relief sought.
6. A request for oral argument, if argument is desired, after the conclusion, stating the reasons why argument is needed and why the Court should not decide the matter based on the briefs and record. The Court may on its own motion grant oral argument pursuant to Chapter _____, Rule _____ of the Lower Brule Sioux Tribal Law and Order Code (_____ Revision).

The brief of the Respondent shall conform to the requirements outlined above for Appellant's brief.

The Appellant shall be entitled to file a reply brief within ten (10) days subsequent to service of Respondent's brief.

All briefs filed with this Court shall be limited to twenty-five (25) pages, exclusive of pages containing the table of contents, tables of citations, and any addendum included as exhibits, unless otherwise ordered by the Court. All briefs shall be submitted on 8-1/2" x 11" paper only and shall be typed and double spaced. Consecutive sheets shall be attached at the left margin.

Appellant's brief shall be served and filed with a blue cover; Respondent's brief shall be served and filed with a red cover; Reply briefs shall be served and filed with a gray cover.

Amicus Curiae briefs, which may be filed with leave of court, shall be served and filed after leave is granted with green covers. Amicus Curiae briefs shall conform to the requirements of Appellant's brief.

Scheduling Orders by the Clerk of Court

Rule 8. The Clerk of this Court shall have discretion to enter orders on behalf of this Court in procedural matters, including but not limited to:

- (A) Transmittal of records of the Tribal Court Clerk of Court to the Court of Appeals.
- (B) Preparation of transcripts.
- (C) Briefing schedules.
- (D) Scheduling of oral arguments and other hearings.
- (E) Extensions of briefing schedules.

Oral Arguments

Rule 9. In all cases where oral argument is granted, Appellants and Respondents shall each be limited to thirty (30) minutes each to present their case, unless otherwise ordered by the Court. The Appellant is entitled to open and conclude argument, allocating his or her time accordingly.

Motions

Rule 10. All motions to the Court of Appeals shall be considered

and decided upon the motion and any accompanying memoranda. Oral argument on any motion shall not be allowed unless requested by the court. The original and three (3) copies of all motions shall be filed with the Clerk. All motions shall be submitted on 8-1/2" x 11" paper, and shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. Any party may file a response in opposition to a motion within seven (7) days after service of the motion, unless otherwise ordered by the Court. Motions for procedural orders may be acted upon at any time by the Court without awaiting a response thereto.

A motion for a stay filed with the Court of Appeals shall not be considered unless the moving party or parties certifies that a motion for stay was denied by the Tribal Court, except motions authorized by Title _____, Rule _____ of the Law and Order Code of the Tribe. All motions for stay shall include attached thereto a copy of the Tribal Court Order, decision, judgment, decree or opinion concerning the similar motion made in that Court.

Summary Disposition

Rule 11. The parties may, at any time, file a motion for summary disposition, i.e., summary affirmance or summary reversal. Such a motion shall have attached thereto any relevant pleadings filed in the Tribal Court together with a written memorandum in support thereof. The Respondent must file a motion to dismiss for lack of jurisdiction within fifteen (15) days after the Notice of Appeal is filed unless leave to file such motion is otherwise granted by the court. Such motion shall conform to Rule 10.

Expedited Procedure

Rule 12. The court for good cause shown on the motion of any party, or on its own motion, may advance any case to be heard and may accelerate the briefing schedule so as to ensure that at a minimum, opening briefs will be filed prior to the date scheduled for oral argument.

Ex Parte Communication

Rule 13. There shall be no ex parte communication between any judge of the Appellate Court and any counselor or attorney of record, or other interested party, in regards to any case on appeal. Conferences may be scheduled with the judges or a judge when appropriate, through the Clerk of Court after all counselors, attorneys or interested parties have been given notice and an opportunity to appear.