

PECHOTA LAW OFFICE

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May 1, 2015

Lower Brule Sioux Tribal Court
PO Box 122
Lower Brule, SD 57548

Re: *Lower Brule Sioux Tribe v. Wright, et al.*
CIV14-12-0119

Dear Clerk:

Enclosed for filing in the above entitled matter are the following original documents:

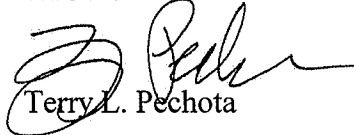
1. Intervenors Amended Application for Temporary/Permanent Injunction, Restraining order, and Further Relief;
2. Motion to Amend Application;
3. Motion for Injunctive Relief.

As noted on the certificate of service, I am emailing and mailing the enclosed documents to Matt Rappold. Please file accordingly.

Should you have any questions, please contact my office. Thank you.

Sincerely,

PECHOTA LAW OFFICE



Terry L. Pechota

TLP/mhbb
Enc.

LOWER BRULE SIOUX TRIBAL COURT)
LOWER BRULE SIOUX TRIBE) ss
LOWER BRULE SIOUX TRIBE JURISDICTION)

IN TRIBAL COURT
CIVIL DIVISION

LOWER BRULE SIOUX TRIBE,

CIV. 14-12-0119

Plaintiff,

vs.

MOTION FOR INJUNCTIVE RELIEF

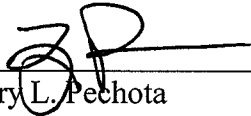
KEVIN WRIGHT, SONNY ZIEGLER
And DESIREE LAROCHE,

Defendants.

Comes now Terry L. Pechota, attorney for intervenors, and moves the Court for an Order granting the injunctive and declaratory relief requested in the Amended Application.

Intervenors move for injunctive and declaratory relief because required to avoid great or irreparable injury to defendants and Tribal members, the actions and conduct of the defendants need to be enjoined, and defendants are acting in violation of the rights of intervenors and others respecting the subject matter of the action.

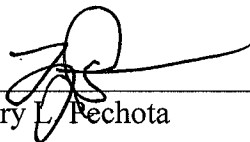
Dated May 1, 2015.



Terry L. Pechota
Attorney for Intervenors
1617 Sheridan Lake Road
Rapid City, S.D. 57702
605-341-4400 office
605-341-0716 fax
tpechota@1868treaty.com

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2015, I caused to be served upon Matt Rappold, Attorney for Defendants, a true and correct copy of the Motion For Injunctive Relief by sending it by mail, first class, postage prepaid, to Rappold Law Office, 816 Sixth Street, Box 873, Rapid City, S.D. 57709, and E-mail it to him at Matt.rappold01@gmail.com



Terry L. Pechota

LOWER BRULE SIOUX TRIBAL COURT)
LOWER BRULE SIOUX TRIBE) ss
LOWER BRULE SIOUX TRIBE JURISDICTION)

IN TRIBAL COURT
CIVIL DIVISION

LOWER BRULE SIOUX TRIBE,

CIV. 14-12-0119

Plaintiff,

vs.

MOTION TO AMEND APPLICATION

KEVIN WRIGHT, SONNY ZIEGLER
And DESIREE LAROCHE,

Defendants.

Comes now Terry L. Pechota, attorney for intervenors, and requests the Court to allow amendment of the Application originally filed. The amended Application is attached hereto and incorporated herein as if specifically set out.

Amendment of pleadings should be allowed with extreme liberality. *Foman v. Davis*, 371 U.S. 178 (1962); *Minneapolis Firefighters' Relief Association v. MEMC Electronic Materials, Inc.*, 641 F3d 1023, 1030 (8th Cir. 2011); *Bryan v. Dupree*, 252 F3d 1161 (11th Cir. 2001); *Pangburn v. Culbertson*, 200 F3d 65, 70 (2nd Cir. 1999). Amendments must be allowed "when justice so requires." E.g., Fed. R. Civ. P. 15 (a). Leave to amend should be granted unless a particular factor shows that amendment would be inappropriate. See, e.g., *Gallop v. Cheney*, 642 F3d 364, 369 (2nd Cir. 2011); *Benson v. St. Joseph Regional Health Center*, 575 F3d 542, 550 (5th Cir. 2009)(court has unlimited discretion to allow amendments prior to final judgment).

For the reasons stated, the amendments to the Application should be granted.

Dated May 1, 2015.



Terry L. Pechota

Attorney for Intervenors
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Rapid City, S.D. 57702
605-341-4400 office
605-341-0716 fax
tpechota@1868treaty.com

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2015, I caused to be served upon Matt Rappold, Attorney for Defendants, a true and correct copy of the Motion To Amend and Amended Application by sending it by mail, first class, postage prepaid, to Rappold Law Office, 816 Sixth Street, Box 873, Rapid City, S.D. 57709, and E-mail it to him at Matt.rappold01@gmail.com



Terry L. Pechota

LOWER BRULE SIOUX TRIBAL COURT)
LOWER BRULE SIOUX TRIBE) ss
LOWER BRULE SIOUX TRIBE JURISDICTION)

IN TRIBAL COURT
CIVIL DIVISION

LOWER BRULE SIOUX TRIBE,

CIV. 14-12-0119

Plaintiff,

vs.

KEVIN WRIGHT, SONNY ZIEGLER
And DESIREE LAROCHE,

INTERVENORS AMENDED
APPLICATION FOR
TEMPORARY/PERMANENT
INJUNCTION, RESTRAINING ORDER,
AND FURTHER RELIEF

Defendants.

COMES NOW Intervenors, Orville (Red) Landeau, Jr., and John McCauley, Sr., by and through its undersigned counsel, and hereby amends the Application to this Court for a Temporary Emergency Injunction and/or Restraining Order as well as a Permanent Injunction and/or Restraining Order preventing the Defendants above named from taking any actions as Council Members or as Vice Chairman for the Lower Brule Sioux Tribe for the following reasons:

FIRST CLAIM

1. The Plaintiff and its offices are situated on and within the boundaries of the Lower Brule Sioux Tribal Reservation and its lands and will maintain such offices during the pendency of this action.
2. The Defendants were certified by the Lower Brule Sioux Tribe's Election Board and duly sworn in at the October 2014 Council meeting by the Bureau of Indian Affairs Superintendent, James Two Bulls pursuant to Article IV, Section 7 of the Constitution and Bylaws of the Lower Brule Sioux Tribe (a copy of which is attached to this Application).
3. The Defendants swore to uphold the Oath specified in Article IV, Section 7 of the Constitution of the Lower Brule Sioux.

4. The Constitution of the Lower Brule Sioux Tribe, Article V, Section 5 (b)(4) allows for the removal of a Council Member for malfeasance of office, including gross partiality or oppression. Black's Law Dictionary, Sixth Edition, defines malfeasance in part as "... the doing of an act which person ought not to do at all or the unjust performance of some act which the party had no right or which he had contracted not to do."
5. The above-named Defendants on December 12, 2014, held a meeting in the Lower Brule Sioux Tribal Council Chambers in which there was not a quorum present as specified in Article IV, Section 2 of the Bylaws of the Lower Brule Sioux Tribe. The only Council members present were the above named Defendants.
6. The above-named Defendants did not properly call a special meeting of the Lower Brule Sioux Tribal Council as specified in Article IV, Section 1 of the Bylaws of the Lower Brule Sioux Tribe as only the three above-named Defendants were present.
7. The Bylaws of the Lower Brule Sioux Tribe, Article I, Section 3 requires the presence of the Treasurer, Orville (Red) Langdeau, at all special or regular meetings of the Tribal Council. He was not present.
8. The above-named Defendants violated the sworn Oath by conducting and participating in a meeting purported to be a Lower Brule Sioux Tribal Council meeting with only three members present, without the Treasurer present, and without a proper quorum. Additionally, at this meeting, the above-named Defendants took action by motion and vote to elect a Chairman, Secretary/Treasurer and a Council Member and then taking further action allowing an oath to be sworn by these individuals and further "tribal" business to be conducted with these individuals. A video recording of this gathering has been uploaded to the internet and is accessible through the website YouTube.

9. The Constitution of the Lower Brule Sioux Tribe, Article V, Section 2 and Section 5 (b) (3) and (4) allows for the removal, or the expulsion of any member for improper conduct enumerated in the Code of Ethics which includes malfeasance and/or public conduct so as to question the integrity or endanger the Lower Brule Sioux Tribe or its members.
10. Article V, Section 2 of the Constitution of the Lower Brule Sioux Tribe requires a member be given “a written notice stating the charges against him and the time and place of hearing which shall be at least five days after the date of notice, and the member had a full hearing and reasonable opportunity to present his defense to the charges.”
11. The Defendants’ conduct harms the Plaintiff and its members by undermining the ability to conduct business with others including outside businesses and organizations; creates a hostile and sometimes fearful work environment for employees of Plaintiff; and prevents business being conducted and harms the functioning of the Plaintiff to be able to provide for its members.

SECOND CLAIM

12. Plaintiffs incorporate ¶¶ 1 through 12 as if specifically set forth.
13. At the illegal meeting held on December 12, 2014, defendants removed Michael B. Jandreau, Orville (Red) Landeau, Jr., and John McCauley, Sr., from their positions on the Council and appointed others to take their places.
14. This attempted action under the Lower Brule Sioux Tribe Constitution, Article V, Sections 2 and 5, constitutes gross neglect of duty and improper conduct as enumerated in the Code of Ethics including malfeasance because of gross partiality or oppression exhibited by such behavior.
15. Intervenors by the attempted action of defendants were deprived of their rights under the Lower Brule Sioux Tribal Constitution and 25 USC 1302 (8).
16. Plaintiffs were damaged in a dollar amount to be determined by the Court.

THIRD CLAIM

17. Intervenor incorporate ¶¶ 1 through 16 as if specifically set forth.
18. On or about April 3, 2015, Michael B. Jandreau, Chairman of the Lower Brule Sioux Tribe, died.
19. The Constitution of the Lower Brule Sioux Tribe provides at Article V, Section 1, that upon the death of an elected official, “the Tribal Council shall declare the position vacant and shall appoint a qualified individual to fill the unexpired term.”
20. The Bylaws of the Lower Brule Sioux Tribe at Article IV, Section 2, states that “(n)o business shall be transacted unless a quorum is present. A quorum shall consist of (5) council members.” Moreover, the Bylaws at Article IV, Section 4, provides that “(i)n all instances, resolution, or motions the duly elected councilmen may act by a two third (2/3) majority vote of the full Tribal Council.” A two third (2/3) majority vote requires four (4) votes in favor. Article 1, Section 3 of the Bylaws provides that the Tribal Treasurer “shall be present at all special or regular meetings of the Tribal Council.”
21. The position of Chairman has never been declared vacant.
22. Defendant Kevin Wright has never been appointed by the Tribal Council to the position of Chairman at a duly called meeting with a quorum present by a 2/3 majority vote (4 votes) of the full Council as required.
23. Kevin Wright is acting illegally and unlawfully in exercising the office of Chairman and all actions take by him in that capacity are null and void, including but not limited to requesting on April 29, 2015, Kevin Washburn, Assistant Secretary of the Interior, to suspend transfer of federal monies to the Tribe.

FOURTH CLAIM

24. Intervenor incorporate ¶¶ 1 through 23 as if specifically set forth.
25. On or about April 7, 2015, Kevin Wright, unilaterally and without approval or authority of the Tribal Council because of the absence of the requirements set

forth in ¶ 15, unlawfully terminated the contracts and employment of Tribal attorneys, Tara Adamski and Marshall Matz, and Administrative Officer, Scott Jones.

26. Defendant Wright has engaged in a pattern and practice of employee intimidation and threats of termination if employees do not take action that he wants, none of which have been approved by the Tribal Council acting with a quorum present and the required number of votes. These threats and intimidation have and are being directed towards the Lee Brannan, Tribal manager, and Patricia Lundell and will likely include other employees of the Tribe as time progresses. This pattern and practice violates the Tribal Constitution and rights of the employees under the Lower Brule Sioux Tribe Personnel Management Policies and Procedures. See, e.g., Policies and Procedures, 12.02.01.01 (Directors and Managers terminate) and 12.02.01.02 (Progressive Personnel System).

FIFTH CLAIM

27. Intervenors incorporate ¶¶ 1 through 26 as if specifically set out.
28. Defendant Wright unilaterally and without approval or authority of the Tribal Council because of the absence of requirements set forth in ¶ 15, unlawfully hired political supporters, including Robbie Her Many Horses, Travis LaRoche, and Emily Flute, and in all likelihood this pattern and practice will continue into the future. In addition, Wright appears to have hired Tribal attorneys without required Council approval.
29. The Lower Brule Sioux Tribe Personnel Management Policies and Procedures, at 07.03.01 through 07.03.04 sets out the process to hire employees. 07.03.04 states clearly that “(t)he final selection of all regular employees shall remain the prerogative of the tribal council.”
30. The action of defendant Wright in hiring employees in the manner described violates the Constitution and laws of the Lower Brule Sioux Tribe.

SIXTH CLAIM

31. Intervenor incorporate ¶¶ 1 through 30 as if specifically set out.
32. The Court on February 13, 2015, in its Preliminary Orders And Continued Temporary Restraining Order “ORDERED, ADJUDGED, AND DECREED that the Defendants and intervenors as well as their agents and assigns are further temporarily restrained from taking any actions to hold Special or General meetings of the Council without a quorum... .”
33. The Third, Fourth, and Fifth Claim violate the February 13, 2015, Order of this Court.

IRREPARABLE INJURY

34. The action and conduct of defendant, Kevin Wright, concurred in and supported by defendants, Sonny Ziegler and Desiree LaRoche, is and will continue to cause irreparable injury and harm to the Lower Brule Sioux Tribe and its members. Unilateral action taken without approval of Lower Brule Sioux Tribal Council and in violation of the Constitution seriously threatens the proper functioning of Tribal government, federal funding to which the Tribe and its people are entitled, termination of Tribal employees resulting in low morale, and the unauthorized hiring of new employees and contractors adversely affecting the Tribal budgets.

WHEREFORE, Plaintiff prays the Court enter its Order as follows:

- (a) assume jurisdiction over this cause and set the matter down for a prompt hearing and granted equitable and legal relief as justified in the premises.
- (b) grant to plaintiff and intervenors an Order preventing each of the Defendants from taking any taking any action on behalf of the Lower Brule Sioux Tribe without

approval of the Tribal Council acting with a quorum present and four (4) votes in favor.


- (c) enter an Order prohibiting Kevin Wright from acting as Tribal Chairman or designating himself as such without appointment to that position by the Tribal Council.
- (d) Declare invalid all actions taken by defendants in violation of the Tribal Constitution, including both the termination and hiring of Tribal employees and contractors and direction to Federal agencies to suspend payments of Federal monies on which the operation of the Tribe depends.
- (e) Declare that defendants' actions are violation of the existing Order of this Court and prohibit any further action that violates the Constitution and Bylaws of the Lower Brule Sioux Tribe.
- (f) Enter an Order awarding damages to intervenors in such amount as supported by the facts and law.
- (g) granting such other and further relief as the Court deems just and equitable in the circumstances;


DATED this the 1 day of May, 2015.

VERIFICATION

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF BRULE)

Orville (Red) Landeau, Jr., and John McCauley, Sr., after being first duly sworn upon their oath, state that they have read the Amended Application and that the contents thereof are true to the best of their knowledge, information, and belief.


Orville (Red) Landeau, Jr.


John McCauley, Sr.

Subscribed and sworn to before me on this 1 day of May, 2015, by persons known or proved to be Orville (Red) Landeau, Jr., and John McCauley, Sr.

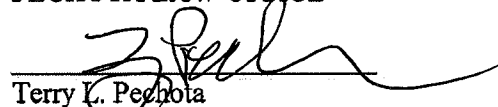


Notary Public



My commission expires: 12/16/2016

PECHOTA LAW OFFICE


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