

Prairie Island Mdewakanton Dakota Community Tribal Court

Judges:

Kurt V. BlueDog, Chief Judge
Andrew M. Small, Associate Judge
Steven F. Olson, Associate Judge
Susan L. Allen, Associate Judge
Carrie Blesener, Clerk of Court

**Court Address:**

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CLERK'S NOTICE

Date: October 16, 2002

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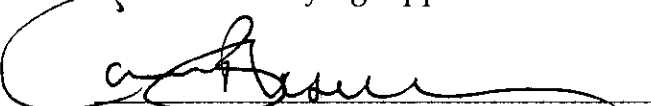
Re:

*In Re the Complaint for Removal of Community Council Member Audrey Kohnen n/k/a
Bennett; Case No. CIV-481-02*

*In Re the Complaint for Removal of Community Council Member Mason Pacini;
Case No. CIV-482-02*

In Re the Complaint for Removal of Community Council Member Alan Childs, Sr.;
Case No. CIV-483-02

An Order Denying Appeals was issued in the above-captioned matters.


Carrie Blesener
Clerk of Court

Filed
On OCT 16 2002
SS

IN THE TRIBAL COURT OF THE
PRAIRIE ISLAND MDEWAKANTON DAKOTA COMMUNITY

PRAIRIE ISLAND INDIAN RESERVATION STATE OF MINNESOTA

In Re the Complaint for Removal of
Community Council Member
Audrey Kohlen,

In Re the Complaint for Removal of
Community Council Member
Mason Pacini, and

In Re the Complaint for Removal of
Community Council Member
Alan Childs, Sr.

Case No. CIV-481-02
Case No. CIV-482-02
Case No. CIV-483-02

ORDER DENYING APPEALS

The Respondents filed identical Notices of Appeal with the Court on October 16, 2002. The Court has fully considered the filings and now enters the following order denying the relief requested.

The 1997 amendment to the Constitution, which replaced the Community Council with the Court as the tribal entity to hear and determine matters of removal from office, does not specifically direct how the Tribal Court should be composed as the designated body. The Tribe's election laws mandate that in a matter so fundamental to the structure of the Community and its government, the Tribal Appellate Court shall hear all matters requesting a new election or disqualification of candidates and the Ordinance requires that the decision of the Tribal Appellate Court shall be final (1999 Election Ordinance, Section 8).

The generic identity of the Tribal Court is defined in Title 1 of the Prairie Island Mdewakanton Dakota Judicial Code as consisting of a Trial Court, a Children's Court and an Appellate Court. On May 17, 2002 the Chief Justice of the Tribal Court appointed himself and Associate Justices Small and Allen to hear and

decide the removal matter before the Court, after determining that a matter of such fundamental import to the structure of the government of the Community should receive the same consideration and acquire the same finality as election challenges and recounts. It is therefore the determination of the Court of Appeals that the pleadings filed by the Respondents in this matter on October 16, 2002, are more properly denominated as petitions for reconsideration rather than Notices of Appeal. Nonetheless, the Appellate Court will give its full consideration to the request for relief contained in what Respondents had denominated as Notices of Appeal.

Perhaps because Respondents believed that an appeal of an appellate decision was available, no supporting papers were filed with the Notices of Appeal. However, the apparent question raised as the first basis for reconsideration is again the jurisdiction of the Court. But the Court's retention of jurisdiction over these proceedings is final. The approval of the 1997 amendment had never been in question either before the Community or before the Court: the only question raised, in what was ultimately determined to be clerical carelessness by the Regional Director's office, was how many elements for removal were extant in the amendment. The Regional Director's letter to the Clerk of Court dated September 22, 2002, while somewhat in-artfully drafted, was clear that the view of the Department of Interior was that the Constitution had placed the jurisdiction over removal matters with the Tribal Court of the Community. This Court had also reached the same conclusion under Tribal law.

Therefore, the remaining matters promoted in the reconsideration requests included within the Notices of Appeal first involved a claim as to whether the Tribal Council had discretion to determine whether the Complaints for Removal (hereafter

referred to as "Petitions") were warranted, prior to immediately forwarding the Petitions to the Tribal Court. However difficult it may be to adjust to a termination of the discretion previously delegated to the Community Council, none exists in the amendment and no argument was presented that it did: only arguments that it should.

The same kind of consideration can be given by the Court to the question raised in the reconsideration requests as to whether 30% of the enrolled voters of the Tribe were determined to be eligible by the *Community Council*: this question was moot before it was even raised. The transmittal Resolution 02-5-13-40 of the Community Council on May 13, 2002, spoke for itself. There were no suggestions, much less claims, regarding any impropriety by the entities which the Tribal Council relied on for verification before it transmitted the Petitions to the Tribal Court.

The second basis for the reconsideration requests appears to question the Court's determination that names could not be removed from the Complaints subsequent to their filing. That question is more properly under the umbrella of the first item of the reconsideration requests regarding the jurisdiction of the Court. There is no written policy, rule, statute or previous court decision that speaks to the propriety of the removal of names after the formal filing of a Petition or Complaint. The Court reviewed the potential damage to the Constitutional amendment, analyzed analogous state court determinations on this matter and determined that such post-filing changes could not properly lie along side the intent of the Constitution's Article VII.

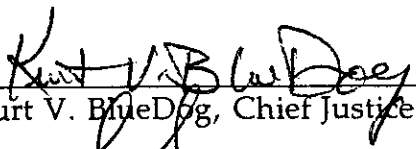
The third basis for the reconsideration requests improperly refers to the Community Council's Resolution No. 88-106 as a "post-enactment interpretive

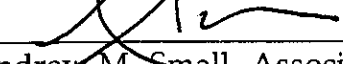
process." It should have referred to Resolution No. 02-06-03 filed with the Court on June 6, 2002. In fact, when the Court reviewed the Community enactment history and found no reference whatsoever to 25 CFR Part 82 in the Constitution and then was provided with a resolution of the current Tribal government, which was issued nearly five years after the constitutional amendment, the Court determined, as most other jurisdictions have, that a "post-enactment interpretive processes" was not helpful in this instance.

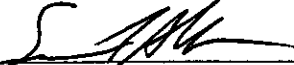
The last basis for the reconsideration requests appears to deal with the Court's decision that possible, but not yet proven, deficiencies in the Complaints could be rendered without merit if Petitioners did not meet their burden of specificity. The Court acknowledged the difficulty of a public trial for removal of an elected official of the Community but placed its faith in the Community's adjudicative process for a full and final resolution of the removal matters. Such is what is required of the Court and those that would come before it for relief.

The Respondents' Notices of Appeal, which the Court has already noted are here treated as petitions for reconsideration, are DENIED and the Appellate Court's Pre-Trial Scheduling Order of October 2, 2002 shall remain as originally ordered.

Dated: October 16, 2002


Kurt V. BlueDog, Chief Justice


Andrew M. Small, Associate Justice


Susan L. Allen, Associate Justice