

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



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CLERK'S NOTICE

Date: November 7, 2002

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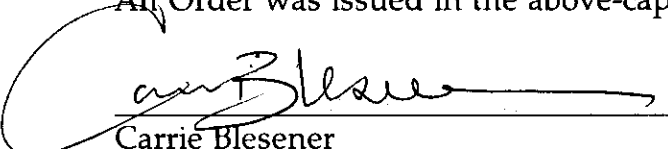
Re:

*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 was issued in the above-captioned matters.


Carrie Blesener
Clerk of Court

Filed On NOV 7 2002

IN THE TRIBAL COURT OF THE
PRAIRIE ISLAND MDEWAKANTON DAKOTA COMMUNITY

CR

PRAIRIE ISLAND INDIAN RESERVATION

STATE OF MINNESOTA

In Re the Complaint for Removal of
Community Council Member
Audrey Kohnen n/k/a Bennett,

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

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

ORDER

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

At the Pre-Trial Conference held on this matter on September 30, 2001, the Court was fully prepared to move forward expeditiously with hearings on the submitted complaints for removal. The parties, and in particular, Respondents, insisted that a full round of discovery was absolutely necessary in order to properly prepare for the hearings. Based upon the positions put forth by the parties the Court issued an Order dated October 1, 2002 which set out the parameters of the discovery process and set dates for the three respective hearings. That Order provided that responses to discovery shall be served seven days after service of the discovery request. Petitioner timely responded to the discovery requests submitted by Respondents. Respondents have failed and/or refused to similarly respond to Petitioners' discovery requests.

On November 5, 2002, the Court was served Petitioners Second Notice of Motion and Motion to Compel Discovery, requesting that the Court issue an order to compel Respondents to produce all requested documents by November 6, 2002; to continue the trials of the three individual Respondents and to award appropriate

costs and fees incurred for bringing the motion. Respondents, on November 6, 2002, submitted their opposition to the second Notice of Motion and Motion to Compel Discovery and to an extension of time. Respondents' brief extensively addresses the matter of issuance of subpoenas, a topic not at issue in this case, and concludes by recommending that the discovery issues should be referred to the Tribal Council.

The Court is disturbed by the position put forth on behalf of Respondents. After insisting upon and then presumably receiving the benefits of their discovery requests, Respondents flaunt the Court process and Court Order by indicating on October 15, 2002 as to each and every request that "Discovery is continuing and responsive documents will be provided if they become available."

It seems that if counsel for Respondents was troubled by the scope and/or substance of the discovery requests, the proper course of action would have been to first work with opposing counsel to attempt to narrow them. If that failed, the proper court procedure would have been to request by motion that the Court issue a protective order pursuant to Rule 14(e) of the Rules of Civil Procedure; all of which should have been commenced and hopefully resolved by no later than the October 30, 2002 discovery deadline.

The Court is not persuaded by Respondents' recent assertion that the discovery issues should be referred to the Tribal Council. The Tribe's Constitution clearly places the removal process in the hands of this Court. The Court is inclined to move the hearings forward as originally contemplated. The Court, though, is concerned that to the greatest extent possible, no party should receive more benefit than the other party of any discovery that has thus far taken place.

IT IS THEREFORE ORDERED THAT:

1. The dates set by the Court's October 1, 2002, Order for the respective hearings shall remain unchanged, unless by agreement of the parties, with one exception. The Mason Pacini hearing, which was scheduled for November 19, 2002 at 9:30 a.m., due to a conflict that has arisen on the Court's calendar, will be moved to **November 20, 2002 at 9:30 a.m.**;
2. The pre-trial submission requirements detailed in the Court's October 2, 2002 Order shall remain the same as to substance, however, as to the first hearing, November 13, 2002, the parties shall have until Monday, November 11, 2002 at 5:00 p.m. to submit the said papers; as to the second hearing, November 20, 2002, the said papers shall be due by 5:00 p.m. on Monday, November 18, 2002, and as to the third hearing on November 26, 2002, the said papers shall be filed by 5:00 p.m. on Monday, November 25, 2002;
3. The parties at the same time that they file the above-mentioned pre-trial submissions for the first hearing, by 5:00 p.m. Monday, November 11, 2002, shall additionally file with the Court a copy of any and all discovery and discovery responses to include a transcript of any deposition proceedings; and
4. The Court will issue an Order by 5:00 p.m. Tuesday, November 12, 2002, in which it will detail, which, if any, discovery information will be allowed to be utilized as a part of the hearing proceedings.

Dated: November 7, 2002


Kurt V. BlueDog, Chief Judge