

In the Tribal Court of the Delaware Tribe of Indians

Caney, Kansas

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Case #: CV-16-001
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Court Clerk: Robbie Hedges

In re:	/	CV-16-001
	/	
Initiative Petition 2016-01	/	
Initiative Petition 2016-02	/	
Initiative Petition 2016-03	/	

ORDER VACATING DOCUMENTS TITLED "NOTICE AND SERVICE OF PETITION TO SET ELECTION DATE" AND SIGNED BY THE COURT CLERK ON 8/2/16 AND GIVING NOTICE OF INTENT TO DISMISS LAW SUIT

The court hereby vacates the documents entitled "Notice and Service of Petition to Set Election Date" signed by Robbie Hedges, the Clerk of the Delaware Tribal Court. On 8/2/16, Ms. Hedges was given a "Petition for Election Date" by Council Member Annette Ketchum and asked to sign the notices, which were later served on members of the Tribal Council. However, a filing fee was not provided to the court and the petition does not comply with the Title 13 of the Tribal Code, the Rules of Civil Procedure.

On March 10, 2014, the Delaware Tribal Council enacted Rules of Civil Procedure to govern how the tribal court hears civil cases. Section 13-208 allows the Court to set our own fee schedule and determine when fees are to be waived. Sometime before 2014, the Delaware Judiciary enacted a fee schedule and determined \$55 was the appropriate charge to initiate lawsuits. On April 15, 2016, the Tribal Judiciary enacted Tribal Court Rules, which include a provision on when the tribal court will waive filing fees. Rule 1.002 defines when fees may be waived:

The Delaware Tribe of Indians and any indigent person is eligible for a waiver or suspension of fees and costs. For the purpose of this rule "fees and costs" applies only to filing fees required by law.

This lawsuit, although filed by a member of the Council, was not filed on behalf of the Tribe nor with an application for a waiver based on indigency. We recognize the Tribal Council and tribal agencies, like the child support department, as having the authority to act on behalf of the Tribe. As the court has found in several recent cases, the Constitution does not give individual members of the Tribal

Council permission to act on behalf of the entire government without an express delegation of authority from the Council. As a result, a filing fee is required.

One of the other concerns with this filing is that it does not comply with the Rules of Civil Procedure. Section 13-205 states what must be included in a pleading to start a lawsuit in this court. We have rejected other pleadings for failure to comply with this section and do so again here.

The petition alleges that Article VI, Section 8 would allow this suit to go forward as written, however that section does not apply to recall petitions. That section of the Constitution states:

If the Tribal Council shall fail to give proper notice of the election, or in case a regular election has not been held, the Tribal Court, upon receipt of a petition signed by at least one hundred (100) registered voters shall call such election and shall give thirty (30) days notice, setting the time and place of the election.

Section 8 references back "the election" described in the first section of the Article and not elections asked for through a recall petition. Article X – entitled "Recall/Removal from Office" alone governs recall petitions, which does not allow for the court to call for an election upon only the filing of a petition.

Accordingly, the court vacates the documents entitled "Notice and Service of Petition to Set Election Date" signed by the Clerk of Court on 8/2/16 and hereby gives notice of its intent to dismiss this lawsuit within 1 weeks unless the proper filing fee is tendered to the court and an amended complaint is filed that complies with the Rules of Civil Procedure.

Dated: August 5, 2016



Assistant Chief Judge Cameron Ann Fraser