

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

Lorrie Miner,)	CASE NUMBER: 1:08-cv-105
)	
Plaintiff,)	MEMORANDUM OF LAW IN RESPONSE
)	TO PLAINTIFF'S CONSOLIDATED
vs.)	MEMORANDUM DATED
)	JANUARY 2, 2009.
Standing Rock Sioux Tribe and Standing)	
Rock Sioux Tribal Court,)	
)	
Defendants.)	

Judge Miner, in her responsive brief, misses the point. The issue of *federal* subject matter jurisdiction is the only issue before this Court.

At page 5 of her brief, Judge Miner appears to assert that this Court may take federal question jurisdiction in this case, under the Declaratory Judgment Act, 28 U.S.C. § 2201. This begs the question, as the Act permits a declaratory judgment only if a federal question exists under federal law. In pertinent part, § 2201 reads (emphasis added):

In a case of actual controversy *within its jurisdiction* ... any court of the United States ... may declare the rights and other legal relations of any interested party seeking such declaration

The federal *statute* alleged as the basis for jurisdiction, in Judge Miner's allegation 5, is the Indian Civil Rights Act, 28 U.S.C. §1331, and the *case* authority, also alleged in allegation 5, is *Santa Clara Pueblo*, both addressed in our moving brief. Judge Miner's only response, at page 7, is "... the Supreme Court held that the federal court does not have jurisdiction to hear ICRA claims absent a *habeas* request" End of argument.

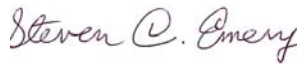
Judge Miner's Memorandum is devoted to arguing two points, neither pertinent to this Court's subject matter jurisdiction, both obviously true, and neither one in contention. She argues

(section I, pp. 5-9) that this Court has subject matter jurisdiction to determine the Tribal Court's jurisdiction and it clearly does.

She argues (section II, pp. 9-21) that the Tribal Court had subject matter jurisdiction to hear her case and it did, and it ruled against her.

She does not provide this Court any authority suggesting *Santa Clara Pueblo* is not controlling in this case (and clearly concedes the point by alleging it as authority in her Complaint). Therefore, this Court cannot entertain Judge Miner's action and must dismiss it with prejudice.¹ Wherefore, defendants pray that the Court will dismiss the case at bar and grant the defendants such other and further relief as the Court finds just and proper in the circumstances.

Respectfully submitted,



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¹ Plaintiff must inform the Court of the basis of its jurisdiction in her pleadings. Plaintiff has utterly failed to meet the requirements of F.R.Civ.Pro. Rule 8(1) which instructs plaintiff to enunciate in her Complaint "a short and plain statement of the grounds upon which the court's jurisdiction depends."

CERTIFICATE OF SERVICE

I, Steven C. Emery, do hereby certify that on the 19th day of January, 2009, I caused copies of the foregoing Memorandum of Law in Response to Plaintiff's Consolidated Memorandum Dated January 2, 2009, together with the exhibits thereto, if any, to be served upon:

Jonathan P. Sanstead
Tiffany L. Johnson
Pearce & Durick
314 East Thayer Avenue
Bismarck, ND 58502-0400
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by either electronic service, or by depositing copies of the same in envelopes securely sealed and with first class postage fully prepaid thereon in the United States Mail at Fort Yates, North Dakota 58538, and addressed to the above-named persons at the foregoing address, the same being the last-known addresses of those persons.

Dated: Standing Rock Indian Reservation, this 19th day of January, 2009.

By: Steven C. Emery
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