



## OLSON BZDOK & HOWARD

www.envlaw.com  
January 28, 2010

Little River Band of Ottawa Indians  
Tribal Court  
Tribal Justice Center  
3031 Domres Road  
Manistee, MI 49660

RE: *Martin v LRBOI, et al.*  
Case N<sup>o</sup>. 09-248-GC  
Our File N<sup>o</sup>. 5744.00

I enclose the following for filing with respect to this matter:

- **Responsive Pleading of the Hon. Angela Sherigan to Verified Complaint for Declaratory and Injunctive Relief; Affirmative Defenses; Motion for Summary Disposition Grounds; Motion for Award of Costs Including Attorneys Fees w/Proof of Service**

An additional copy of this Response is provided for Judge Brott.

Sincerely,

Ruth Ann Liebzeit  
Legal Assistant

Enclosure(s)  
xc w/encl:

Hon. Wilson D. Brott (stamped "Judge's Copy")  
Joseph H. Martin  
David Giampetroni, Esq.  
Client

**TRIBAL COURT  
OF THE  
LITTLE RIVER BAND OF OTTAWA INDIANS**

JOSEPH HENRY MARTIN,

Plaintiff,

v

Case N° 09-248-GC

LITTLE RIVER BAND OF OTTAWA  
INDIANS, LRBOI TRIBAL COUNCIL,  
LRBOI OGEMA LARRY ROMANELLI,  
HON. ANGELA SHERIGAN,

Hon. Wilson D. Brott

Defendants.

---

Joseph H. Martin, Plaintiff, *Pro Se*  
361 1<sup>st</sup> Street  
Manistee, MI 49660  
Telephone: (989) 600-5607

David A. Giampetroni (P69066)  
KANJI & KATZEN, PLLC  
Attorneys for LRBOI, Council & Ogema  
101 North Main St., Suite 555  
Ann Arbor, MI 48104  
Telephone: (734) 769-5400

William Rastetter (P26170), Of Counsel  
OLSON, BZDOK & HOWARD, P.C.  
Attorneys for Hon. Angela Sherigan  
420 East Front Street  
Traverse City, MI 49686  
Telephone: (231) 946-0044

---

**RESPONSIVE PLEADING OF THE HON. ANGELA SHERIGAN  
TO VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**AFFIRMATIVE DEFENSES**

**MOTION FOR SUMMARY DISPOSITION GROUNDS**

**MOTION FOR AWARD OF COSTS INCLUDING ATTORNEYS' FEES**

**PROOF OF SERVICE**

January 28, 2010

Defendant, the Hon. Angela Sherigan, Associate Judge of the Little River Band of Ottawa Indians Tribal Court, by undersigned counsel, submits the following answers, affirmative defenses, summary disposition motion, and motion for award of costs including attorneys' fees in response to the complaint filed in the above-captioned civil action.

### **PRELIMINARY STATEMENT**

Plaintiff's conduct in filing the complaint against the Tribe, Tribal Council, Ogema and Associate Judge violates the Tribal Court Rules, Chapter 2, Ethical Conduct (Section 2.300, Chapter 2 of the Tribal Court Rules). Once the claim(s) asserted in the complaint are dismissed, this Court should examine Plaintiff's behavior, both with respect to the frivolous claim(s) asserted in this case and also in the context of other cases brought by Plaintiff against tribal officials.

In simplest terms, Plaintiff's pattern of behavior amounts to bullying; but the impact has broader implications because the judicial process has been disrupted and there has been a substantial financial burden upon limited tribal resources. Plaintiff's behavior violates Rule 2.306(A), (C)(1)(a), and (E)(1) and/or (3), due to the frivolous claim(s), false statement(s), and because assertions in the complaint and other cases seek to influence judges by means prohibited by law and/or constitute undignified and discourteous conduct toward the tribunal.

Enough is enough. In addition to violating the previously-referenced provisions of the Tribal Court's "Ethical Conduct" rules, Plaintiff's complaint violates MCR 2.114(C), (D)(2) & (3), (E) & (F) and MCR 2.625(A)(2). Sanctions, including an award of attorneys' fees, are warranted in order to cease Plaintiff's abusive behavior and to preserve the decorum of this Honorable Court.

### **ANSWERS TO ALLEGATIONS OF COMPLAINT**

Defendant, the Hon. Angela Sherigan, Associate Judge of the Little River Band of Ottawa Indians Tribal Court (hereinafter referenced as "Defendant Tribal Court Judge"), by undersigned counsel, provides the following answers to the allegations of Plaintiff's complaint dated November 6, 2009 in conformance with MCR 2.111 as authorized by Section 9 (§ 9.01) of the Tribal Court Ordinance (Ordinance #97-300-01):

1. Defendant Tribal Court Judge denies that Plaintiff has stated a cognizable cause of action, because:

- a. The Indian Civil Rights Act does not waive the Tribe's inherent sovereign immunity or provide a potential remedy beyond any remedy that may be available pursuant to Article III, Section 1 of the Constitution;
- b. No violations of the Tribal Court Ordinance occurred; and
- c. Neither the Little River Band of Ottawa Indians ("Tribe"), nor its Tribal Council, nor its Ogema, Larry Romanelli, nor Defendant Tribal Court Judge deprived Plaintiff of equal protection of the laws and/or due process rights.

2. Defendant Tribal Court Judge denies the implicit factual assertions, because it is not true that:

- a. The Defendants engaged in "concerted actions;"
- b. The "outcome of an already decided lawsuit" was "substantially chang[ed];" and
- c. There was a violation of Section 7.03 of the Tribal Court Ordinance.

Defendant Tribal Court Judge further denies the asserted legal conclusions for the reasons stated in paragraph 1, *supra*.

3. Defendant Tribal Court Judge denies that Plaintiff has stated a cognizable cause of action for the reasons stated in paragraph 1, *supra*.

4. Defendant Tribal Court Judge admits that Article VI, Section 8 provides jurisdiction, but denies that the cited case "and its progeny" have any applicability whatsoever to this Court's jurisdiction to hear claims arising under the Constitution. Defendant Tribal Court Judge denies that Plaintiff has stated a cognizable cause of action for the reasons stated in paragraph 1, *supra*.

5. Admitted.

6. Defendant Tribal Court Judge lacks knowledge or information sufficient to form a belief regarding the first sentence. Defendant Tribal Court Judge denies the allegation in the second sentence because, upon information and belief:

- a. The contract had been terminated properly, and

- b. Plaintiff's failure to intervene and/or properly to perfect an appeal from the January 22, 2009 Declaratory Judgment Opinion After Hearing (Exhibit A attached to complaint) resulted in that decision being final and *res judicata*.

7. Admitted.

8. Admitted.

9. Admitted.

10. Defendant Tribal Court Judge admits that 25 U.S.C. § 1302 contains the quoted provision in subsection (8). But Defendant Tribal Court Judge disputes the significance of the Indian Civil Rights Act ("ICRA") to Plaintiff's claims, because the Tribe's Constitution contains a similar guarantee in Section III, Section 1(h) and therefore the ICRA neither provides a cause of action nor waives the Defendants' sovereign immunity.

11. Defendant Tribal Court Judge admits that 25 U.S.C. § 1301 contains the quoted provision in subsection (1).

12. Admitted.

13. Admitted.

14. Defendant Tribal Court Judge lacks knowledge or information sufficient to form a belief regarding this allegation, except to the extent that certain alleged facts may be reflected in the record of Tribal Court Case No. 08-093-GC.

15. Defendant Tribal Court Judge lacks knowledge or information sufficient to form a belief regarding this allegation, except to the extent that certain alleged facts may be reflected in the record of Tribal Court Case No. 08-093-GC.

16. Defendant Tribal Court Judge lacks knowledge or information sufficient to form a belief regarding this allegation, except to the extent that certain alleged facts may be reflected in the record of Tribal Court Case No. 08-093-GC.

17. Defendant Tribal Court Judge lacks knowledge or information sufficient to form a belief regarding this allegation, except to the extent that certain alleged facts may be reflected in the record of Tribal Court Case No. 08-093-GC. Defendant Tribal Court Judge objects to the implicit factual assertions that apparently are an attempt by Plaintiff to relitigate Case No. 08-093-GC, which

is barred by the doctrine of *res judicata* for the reasons stated in paragraph 6, *supra*, and paragraphs 25 and 26, *infra*.

18. Admitted.

19. Admitted.

20. Defendant Tribal Court Judge lacks knowledge or information sufficient to form a belief regarding this allegation, except to the extent that certain alleged facts may be reflected in the record of Tribal Court Case No. 08-093-GC.

21. Defendant Tribal Court Judge admits that a meeting occurred but denies the implication of impropriety. Defendant Tribal Court Judge denies the implicit factual assertion that records should have been made of “transcripts of any conversations and/or records of agreements reached;” in fact, there was no violation of Section 7.03 of the Tribal Court Ordinance. Further, the meeting was authorized by Rule 2.104(A)(6) of the Tribal Court Rules.

22. Defendant Tribal Court Judge admits that an order dated July 16, 2009 was entered. The order attached as Exhibit C to the complaint speaks for itself; Defendant Tribal Court Judge denies the implication of impropriety.

23. Defendant Tribal Court Judge lacks knowledge or information sufficient to form a belief regarding this allegation, except to the extent that certain alleged facts may be reflected in the record of Tribal Court Case No. 08-093-GC.

### **Count I**

24. Defendant Tribal Court Judge reasserts paragraphs 1-23, *supra*.

25. A basic precept of the common law is that a litigant gets only “one bite of the apple.” Upon information and belief, Plaintiff is involved in another litigation involving his former contract with the Tribe. Any claims involving that contract must be litigated in that case. Thus, there is no meritorious basis for Plaintiff’s claim asserted in this case, which therefore is frivolous within the meaning of Rule 2.306(A) of the Tribal Court Rules, Chapter 2, Ethical Conduct (hereinafter the “Tribal Court Rules”).

Defendant Tribal Court Judge denies that Plaintiff's rights were affected, for the reasons stated in paragraph 1, *supra*. Further, the order merely clarified a particular contractual term related to legislative and executive branch powers, and did not address the merits of Plaintiff's contract claim(s) at issue in the other litigation.

26. Again, this allegation is completely frivolous, in that it is a blatant attempt by Plaintiff to litigate issues related to other litigation involving his former contract with the Tribe. Any claims involving that contract must be litigated in that case.

With respect to the assertions of legal conclusions, Defendants are not obligated to respond.

27. Again, this allegation is completely frivolous, in that it is a blatant attempt by Plaintiff to litigate issues related to other litigation involving his former contract with the Tribe. Any claims involving that contract must be litigated in that case. Further, Defendant Tribal Court Judge denies the implication of impropriety, in part for the reasons stated in paragraph 1, *supra*.

28. Defendant Tribal Court Judge denies the implication of impropriety, in part for the reasons stated in paragraphs 1 and 25, *supra*. Further, the meeting was authorized by Rule 2.104(A)(6) of the Tribal Court Rules.

29. The allegations in paragraphs 29-33 continue to be frivolous within the meaning of Rule 2.306(A) of the Tribal Court Rules. Moreover, these allegations continue Plaintiff's pattern of behavior violative of Rule 2.306(E) of the Tribal Court Rules, in that the commencement of this case and assertions made in the complaint seek to influence judge(s) by illegal conduct and/or constitute undignified and/or discourteous conduct toward the tribunal. As stated in paragraphs 1 and 2, *supra*, it simply is not true that the Defendants engaged in concerted action changing the outcome of the other litigation, nor is it true that there were any violations of the ICRA, Section 7.03 of the Tribal Court Ordinance, and/or the Constitution. Further, with respect to Plaintiff's speculation and assertions of legal conclusions, Defendants are not obligated to respond.

30. The allegations in paragraphs 29-33 continue to be frivolous within the meaning of Rule 2.306(A) of the Tribal Court Rules. Moreover, these allegations continue Plaintiff's pattern of behavior violative of Rule 2.306(E) of the Tribal Court Rules, in that the commencement of this

case and assertions made in the complaint seek to influence judge(s) by illegal conduct and/or constitute undignified and/or discourteous conduct toward the tribunal. As stated in paragraphs 1 and 2, *supra*, it simply is not true that the Defendants engaged in concerted action changing the outcome of the other litigation, nor is it true that there were any violations of the ICRA, Section 7.03 of the Tribal Court Ordinance, and/or the Constitution. Further, with respect to Plaintiff's speculation and assertions of legal conclusions, Defendants are not obligated to respond.

31. The allegations in paragraphs 29-33 continue to be frivolous within the meaning of Rule 2.306(A) of the Tribal Court Rules. Moreover, these allegations continue Plaintiff's pattern of behavior violative of Rule 2.306(E) of the Tribal Court Rules, in that the commencement of this case and assertions made in the complaint seek to influence judge(s) by illegal conduct and/or constitute undignified and/or discourteous conduct toward the tribunal. As stated in paragraphs 1 and 2, *supra*, it simply is not true that the Defendants engaged in concerted action changing the outcome of the other litigation, nor is it true that there were any violations of the ICRA, Section 7.03 of the Tribal Court Ordinance, and/or the Constitution. Further, with respect to Plaintiff's speculation and assertions of legal conclusions, Defendants are not obligated to respond.

32. The allegations in paragraphs 29-33 continue to be frivolous within the meaning of Rule 2.306(A) of the Tribal Court Rules. Moreover, these allegations continue Plaintiff's pattern of behavior violative of Rule 2.306(E) of the Tribal Court Rules, in that the commencement of this case and assertions made in the complaint seek to influence judge(s) by illegal conduct and/or constitute undignified and/or discourteous conduct toward the tribunal. As stated in paragraphs 1 and 2, *supra*, it simply is not true that the Defendants engaged in concerted action changing the outcome of the other litigation, nor is it true that there were any violations of the ICRA, Section 7.03 of the Tribal Court Ordinance, and/or the Constitution. Further, with respect to Plaintiff's speculation and assertions of legal conclusions, Defendants are not obligated to respond.

33. The allegations in paragraphs 29-33 continue to be frivolous within the meaning of Rule 2.306(A) of the Tribal Court Rules. Moreover, these allegations continue Plaintiff's pattern of behavior violative of Rule 2.306(E) of the Tribal Court Rules, in that the commencement of this case and assertions made in the complaint seek to influence judge(s) by illegal conduct and/or



constitute undignified and/or discourteous conduct toward the tribunal. As stated in paragraphs 1 and 2, *supra*, it simply is not true that the Defendants engaged in concerted action changing the outcome of the other litigation, nor is it true that there were any violations of the ICRA, Section 7.03 of the Tribal Court Ordinance, and/or the Constitution. Further, with respect to Plaintiff's speculation and assertions of legal conclusions, Defendants are not obligated to respond.

#### **AFFIRMATIVE DEFENSES**

34. Defendant Tribal Court Judge reasserts paragraphs 1-33, *supra*.
35. Plaintiff lacks standing to assert claims related to and/or arising out of other litigation to which he was not a party.
36. The claim(s) asserted in Plaintiff's complaint is/are barred by the doctrines of *res judicata* and/or collateral estoppel.
37. The claim(s) asserted in Plaintiff's complaint is/are precluded by sovereign immunity.
38. The claim(s) asserted in Plaintiff's complaint is/are precluded by the doctrine of judicial immunity with respect to Defendant Tribal Court Judge.
39. Because the rights guaranteed by Article III of the Constitution are coextensive with the rights enumerated in the ICRA (25 U.S.C. § 1302), the ICRA does not provide a remedy beyond any remedy that may be available under tribal law.
40. The ICRA does not waive or otherwise affect the Tribe's inherent sovereign immunity.
41. Plaintiff lacks standing to assert claims purported to be on behalf of tribal members or the general public.
42. Plaintiff's claim(s) asserted in this litigation is/are barred by the "election of remedies" doctrine.
43. Equitable relief sought in Plaintiff's complaint is barred by equitable doctrines including "clean hands" and violations of Rules 2.306(A) and 2.306(E) of the Tribal Court Rules.

### MOTION FOR SUMMARY DISPOSITION GROUNDS

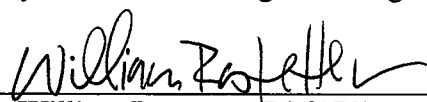
44. Defendant Tribal Court Judge reasserts paragraphs 1-43, *supra*.
45. This Court lacks jurisdiction of the person of Defendant Tribal Court Judge, due to the doctrine of judicial immunity, *see* MCR 2.116(C)(1) and (D)(1).
46. The service of process was insufficient, *see* MCR 2.116(C)(3) and (D)(1).
47. Other civil action between Plaintiff and other named Defendants involves the same contract claim and therefore precludes this civil action, *see* MCR 2.116(C)(6) and (D)(2).
48. Plaintiff's claim is barred because of prior judgment and/or immunity granted by law, *see* MCR 2.116(C)(7) and (D)(2).
49. Defendant Tribal Court Judge reasserts the grounds and arguments set forth in the "Tribe's Motion to Dismiss and/or for Summary Disposition and Memorandum of Law In Support" filed January 8, 2010.
50. For the grounds stated in paragraphs 45-49, *supra*, the complaint against Defendant Tribal Court Judge should be dismissed pursuant to MCR 2.116(B). Defendant Tribal Court Judge reserves the right to file a motion asserting these grounds with supporting brief consistent with the scheduling order to be determined by this Honorable Court.

### MOTION FOR AWARD OF COSTS INCLUDING ATTORNEYS' FEES

51. Defendant Tribal Court Judge reasserts paragraphs 1-50, *supra*.
52. Pursuant to Rules 2.306(A) & (E) of the Tribal Court Rules, MCR 2.114(C), (D)(2) & (3), (E) & (F), and MCR 2.625(A)(2) and/or equivalent Tribal Court Rules or tribal ordinance, Defendant Tribal Court Judge moves for sanctions against Plaintiff and an award of costs, including attorneys' fees.

Date: January 28, 2010

OLSON, BZDOK & HOWARD, P.C.  
Attorneys for the Hon. Angela Sherigan

By:   
William Rastetter (P26170)  
Of Counsel

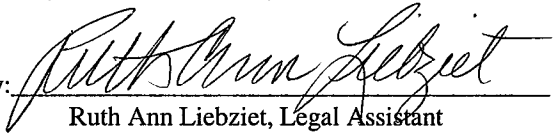
**PROOF OF SERVICE**

On the date below, I sent by first class mail a copy of this **Responsive Pleading of the Hon. Angela Sherigan to Verified Complaint for Declaratory and Injunctive Relief; Affirmative Defenses; Motion for Summary Disposition Grounds; Motion for Award of Costs Including Attorneys' Fees** to the Plaintiff and to the counsel of record for other party Defendants, at their business address(es) as set forth in the caption and disclosed by the pleadings filed in this matter.

The statements above are true to the best of my knowledge, information and belief.

OLSON, BZDOK & HOWARD, P.C.

Date: January 28, 2010

By:   
Ruth Ann Liebzeit, Legal Assistant

G:\WPFILES\RAL\LRBO\IPleadings\5744.00 01-28-10 Hon. Sherigan's Answer to Compl, Affirm Def, MSD, Mot Costs.wpd