

**BEFORE THE TRIBAL JUDICIARY
FOR THE
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS**

THURLOW "SAM" MCCLELLAN,

Petitioner,

Case No. 2010-1712-CV-CV

v.

GRAND TRAVERSE BAND OF OTTAWA
AND CHIPPEWA INDIANS ELECTION BOARD,

Respondent.

*By the Tribal Judiciary En Banc*¹

Hon. Wenona T. Singel

Hon. Quinton Walker

Hon. Mary Roberts

Hon. Holly K. Thompson

_____/

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**DECISION AND ORDER DISMISSING PETITION ALLEGING IMPROPRIETIES ON
THE PART OF THE GRAND TRAVERSE BAND ELECTION BOARD AND DENYING
MOTION TO STAY THE ELECTION SET FOR AUGUST 26, 2010**

On July 30, 2010, Petitioner Thurlow "Sam" McClellan (*hereinafter* "McClellan") filed a **Petition Alleging Improprieties on the Part of the Grand Traverse Band Election Board and Motion to Stay the Election Now Set for August 26, 2010** against the Grand Traverse Band Election Board (*hereinafter* "Election Board"). On August 5, 2010, the Election Board filed an **Answer to Petition Alleging Improprieties on the Part of the Grand Traverse Band Election Board and Motion to Stay the Election Now Set for August 26, 2010 and Affirmative Defenses,**

¹ The position of Chief Judge is currently vacant. Hon. Holly K. Thompson provides her service as Acting Chief Judge/Associate Judge.

and **Respondent Election Board's Brief in Opposition to Petitioner's Motion to Stay General Election**. On August 6, 2010, Petitioner filed **Petitioner's Response to Respondent's Answer Regarding Timeliness**. The Tribal Judiciary *En Banc* having reviewed the Petition and subsequent filings finds as follows.

The Constitution of the Grand Traverse Band of Ottawa and Chippewa Indians, Article VII, Section 5(a) and (c) states, in relevant part:

Section 5. Election Board

- (a) The Tribal Council shall appoint an Election Board, composed of five (5) registered voters of the Grand Traverse Band, to hold elections, certify election results, and settle election disputes other than allegations of impropriety by the Election Board. The decisions of the Election Board shall be final and conclusive on the Grand Traverse Band. . . .
- (c) Allegations of impropriety by the Election Board shall be settled by the Tribal Judiciary.

Under Article VII, 5(a), the Election Board has the sole authority to resolve election disputes other than allegations of impropriety. The intent behind Article VII, 5(a) was to give the Election Board the authority to be the final arbiter of election disputes in most cases. Two Crow v. GTB Election Bd., Grand Traverse Band Tribal Court, Case No. 2008-998-CV-CV, pg. 6 (April 8, 2008), 2008 WL 6191983. The Tribal Judiciary has limited jurisdiction under Article VII, 5(c) to hear cases involving allegations of impropriety by the Election Board. *Id.* This Court has provided guidelines for determining when it will find that the Election Board has acted with impropriety. Specifically, allegations of impropriety must mean "more than just disagreement with a decision made by the Election Board." *Id.* and Derek Bailey v. GTB Election Bd., Grand Traverse Band Tribal Court, Case No. 2008-1031-CV-CV, pg. 12 (August 5, 2008) (en banc), 2008 WL 6196206. To find otherwise would render the decision-making authority of the Election Board meaningless. Two Crow v. GTB Election Bd., Grand Traverse Band Tribal Court, Case No. 2008-998-CV-CV, pg. 6

(April 8, 2008), 2008 WL 6191983. This Court has defined impropriety as: 1) where the Election Board acted in violation of the law or the Board's own election rules, regulations, and procedures; 2) where the Election Board's conduct showed bias or prejudice such that its ability to render a fair decision was compromised or impaired; or 3) where the Election Board failed to carry out its responsibilities with integrity, impartiality, and competence. TwoCrow at 6 and Yannett v. GTB Election Bd., Grand Traverse Band Tribal Court, Case No. 2008-1003-CV-CV, pg. 4 (April 30, 2008), 2008 WL 6191983. The Election Board, pursuant to its authority under Article VII, 5(e), further defined allegations of impropriety within the Regulations as:

- (3) Allegation of Impropriety.
- (a) "Impropriety" Defined. The Tribal Judiciary has defined "impropriety" by the Election Board as, including:
 - (i) Failure by the Election Board to comply with mandated Regulations, policies and procedures in conducting and certifying elections,
 - (ii) Adoption of Regulations, policies or procedures that exceed the Election Board's Constitutional authority or otherwise carrying out its authority in a manner which violates the GTB Constitution,
 - (iii) Failure to maintain the independence of the Election Board by permitting personal prejudice, bias or political pressure to influence or dictate the Election Board in carrying out its Regulations, policies and procedures in conducting and certifying elections.

Grand Traverse Band of Ottawa and Chippewa Indians Tribal Election Board Regulations, 2010.

However, prior to finding that there exists an allegation of impropriety against the Election Board, the Court must find that the deadline for filing a Petition under Article VII, 5(a) and (c) was met by the person bringing the allegations. Woods v. GTB Election Bd., Grand Traverse Band Tribal Court, Case No. 2010-001630-CV-CV, pg. 7 (April 23, 2010) (en banc). Article XIV (3)(c) of the 2010 GTB Tribal Election Board Regulations sets forth the time for filing allegations of impropriety as:

- (c) **Time for Filing Allegations of Impropriety:** All allegations of impropriety by the Election Board, or members of the Election Board, must be raised in a timely manner so that, to the extent practical, the Election Board may have the opportunity to rectify its mistake or make other adjustments, with minimal disruption to the Schedule of Events for the Election. All allegations of impropriety must be filed with the Tribal Judiciary in accordance with any time periods and procedures as may be prescribed by the Tribal Judiciary.

Because there are not yet any specific court rules setting forth the time periods and procedures for filing allegations of impropriety against the Election Board, this Court has followed the filing period set forth in Barrientoz which provided that allegations of impropriety were to be filed within five (5) days of certification of the primary election. Barrientoz v. GTB Election Bd., Grand Traverse Band Tribal Court, Case No. 2006-316-CV-CV, pg. 4 (May 12, 2006), 2006 WL 6285478. This precedent was subsequently affirmed and followed by this Court as a guideline for filing allegations of impropriety in Woods v. GTB Election Bd., Grand Traverse Band Tribal Court, Case No. 2010-001630-CV-CV, pg. 7 (April 23, 2010).

In his **Response to Respondent's Answer Regarding Timeliness**, McClellan argues that this case is distinguishable from Barrientoz because Barrientoz involved an allegation of impropriety regarding the certification of the primary election, and this case involves an allegation of impropriety regarding a final determination by the Election Board removing him from the upcoming general election ballot. However, the Court declines to find that this distinction warrants a different deadline for filing a petition alleging impropriety by the Election Board. There is a strong public interest in having election matters filed quickly because of the potential for damage to the election process. Napont v. GTB Election Bd., Grand Traverse Band Tribal Court, Case No. 2007-513-CV-CV, pg. 5 (September 5, 2007) (en banc). In addition, there is a difference in the impact of allegations of

impropriety made before a general election than after where procedural due process considerations and remedies would not be pressured or constrained by a deadline. Barrientoz v. GTB Election Bd. at pg 3. In the absence of specific court rules regarding filings in election matters and given the public interest in having election matters resolved quickly prior to the general election, the Court will continue to find the time period given in Barrientoz as controlling. Therefore, allegations of impropriety against the Election Board should be filed within five days of an election certification or any final determination by the Election Board as dictated by the circumstances from which the allegations of impropriety arose.

Here, the allegations of impropriety filed by McClellan followed a final determination by the Election Board, dated July 20, 2010, as to his removal from the upcoming general election ballot for alleged Election Regulation violations. McClellan filed his Petition on July 30, 2010, ten days after the Election Board determination. In following the precedent cited and further defined above, we find that McClellan's petition was not filed within the five-day time period given for filing allegations of impropriety against the Election Board. Therefore, it is unnecessary for the Court to provide any further analysis of the alleged allegations of impropriety and McClellan's Petition and Motion to Stay must be dismissed for untimeliness.

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FAX No. 2315347051

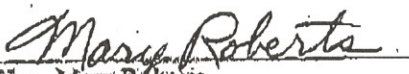
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WHEREFORE, for the reasons stated above, the Tribal Judiciary denies McClellan's Motion to Stay the Election Now Set for August 26, 2010 and dismisses his Petition Alleging Improprieties on the Part of the Grand Traverse Band Election Board.

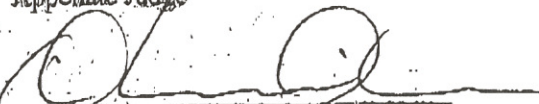
Dated: August 18, 2010


Hon. Weronna T. Singel
Chief Appellate Judge

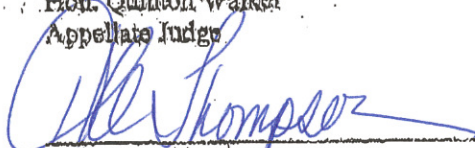
Dated: 8-18-10


Hon. Mary Roberts
Appellate Judge

Dated: 8/19/10


Hon. Quinton Walker
Appellate Judge

Dated: 8/19/10


Hon. Holly K. Thompson
Acting Chief Judge / Associate Judge

GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

TRIBAL COURT

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THURLOW MCCLELLAN,

Plaintiff,

VS.

GTB ELECTION BOARD,

Defendant.

CASE NO. 2010-001712-CV-CV

I, Sherri Lee Vezina, being duly sworn, deposes and says that on the date below I sent by:

[X] first class mail, [] certified, [] restricted, [x] inter-office mail, or [] personal service

addressed to their last known address by placing a copy of the same in the United States Postal Service Mail in Omena, Michigan.

Proof of mailing for: **Decision and Order Dismissing Petition Alleging Improprieties on the Part of the Grand Traverse Band Election Board and Denying Motion to Stay the Election Set for August 26, 2010.**

To:	Court File	Original
	Thurlow McClellan	Sent to his attorney who will serve on him
	Angela Sherigan	Attorney for Plaintiff, Wojnecka & Sherigan PC, 56804 Mound, Shelby
Township, MI 48316 and email	GTB Election Board	Sent to Their Attorney who will serve on them
	Wilson D. Brott	Attorney for Defendants, Brott, Kipley, Settles, Shumar &
Brott, P.C., P.O. Box 811, Suttons Bay, MI 49682-0811 and email		

I declare that the statements above are true to the best of my information, knowledge, and belief.

Date: 8/19/2010

Sherri Lee Vezina

SLV

Sherri Lee Vezina, Clerk of the Court