

**IN THE COURT OF APPEALS  
FOR THE  
LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS**

---

THE LAC VIEUX DESERT BAND OF LAKE  
SUPERIOR CHIPPEWA INDIANS TRIBAL  
COUNCIL, and the MEMBERS OF THE TRIBAL  
COUNCL, JAMES H. WILLIAMS JR.,  
JOETTE PETE-BALDWIN, MICHELLE HAZEN  
ALLEN, MISAABE MCGESHICK,  
TRACY R. PETE, GIIWEGIIZHIGOOKWAY  
MARTIN, ROBERTA L. IVEY, TRYONE  
MCGESHICK, and SHASTA KLINGMAN,  
Each an individual citizen of the Lac Vieux  
Desert Band, a federally-recognized Indian  
Tribe,

Case No. \_\_\_\_\_

Hon. Wilson D. Brott

Petitioners,

v.

THE LAC VIEUX DESERT BAND  
TRIBAL POLICE, and  
THE IRON COUNTY SHERIFF'S  
DEPARTMENT,

Respondents.

\_\_\_\_\_/

**ORDER GRANTING EX PARTE PETITION FOR HABEUS CORPUS**

This matter has come before the Court on the Petitioners' *Emergency Ex Parte Petition for Writ of Habeas Corpus*. The Court has reviewed the Petition and the facts alleged within it. Further this Court *previously issued* an Order Granting Stay and for Release of Tribal Council Members, dated September 9, 2010 and delivered to the Court Clerk on September 9, 2010 (attached hereto) in the related matter of *Pete, et al v. LVD Tribal Council, et al*, Case Nos. 10-CV-79 through 82. Based upon the Petition and this Court's prior rulings, the Court finds that there is good cause to grant the Petition for immediate release of the Petitioners.

**IT IS THEREFORE ORDERED** that the members of the Tribal Council as individuals and citizens of a federally recognized Indian Tribe, listed as:

JAMES H. WILLIAMS (2-26-1968)  
JOETTE PETE-BALDWIN (7-7-1971)  
MICHELLE HAZEN ALLEN (2-10-1973)

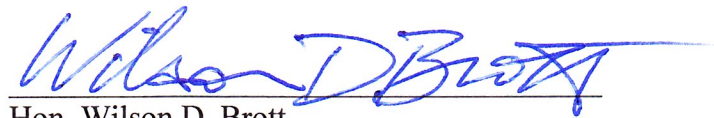
MISAABE MCGESHICK (2-9-1975)  
TRACY R. PETE (6-19-1972)  
GIIWEGIIZHIGOOKWAY MARTIN (6-12-1949)  
ROBERTA L. IVEY (11-10-1968)  
TYRONE MCGESHICK (2-11-1969)  
SHASTA KLINGMAN (6-11-1976)

shall be immediately released from incarceration in the Iron County Jail Complex or any other detention center, correctional facility, whether tribal, state or federal.

**IT IS FURTHER ORDERED** that the LVD Tribal Police is directed to contact the Iron County Sheriff's Department to grant the release of the Petitioners.

**IT IS FURTHER ORDERED** that this order shall remain in effect until further order of this Court.

Dated: 9/11/10 3:19 p.m.



Hon. Wilson D. Brott  
Appellate Judge

**IN THE COURT OF APPEALS  
FOR THE  
LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS**

---

PATRICIA A. PETE,

Plaintiff-Appellee,

Case Nos. 10-CV-79 through 82

v.

Hon. Wilson D. Brott

LAC VIEUX DESERT BAND OF LAKE SUPERIOR  
CHIPPEWA INDIANS TRIBAL COUNCIL and  
CYTHIA WEBB, ROXANNE McGESHICK,  
HELEN SMITH, 2010 LVD ELECTION BOARD,

Defendants-Appellants

\_\_\_\_\_ /

GIIWEGHIIZHIGOOKWAY MARTIN,

Plaintiff- Appellee,

v.

LAC VIEUX DESERT BAND OF LAKE SUPERIOR  
CHIPPEWA INDIANS ELECTION BOARD,

Defendant-Appellant

\_\_\_\_\_ /

JOETTE PETE-BALDWIN,

Plaintiff-Appellee,

v.

LAC VIEUX DESERT BAND OF LAKE SUPERIOR  
CHIPPEWA INDIANS ELECTION BOARD,

Defendant-Appellant

\_\_\_\_\_ /

JAMES WILLIAMS, JR., individually and in his  
official capacity,

Plaintiff-Appellee

v.

CYTHIA WEBB, ROXANNE McGESHICK,  
and HELEN SMITH, individually and in their  
official election capacities,

Defendants-Appellants

---

TRACY R. PETE,

Plaintiff-Appellee,

v.

LAC VIEUX DESERT BAND OF LAKE SUPERIOR  
CHIPPEWA INDIANS ELECTION BOARD,

Defendant-Appellant

---

**ORDER GRANTING STAY AND FOR RELEASE OF TRIBAL COUNCIL MEMBERS**

The Court of Appeals has received an Emergency Application for Stay of Execution of the Opinion and Order Pending Appeal and Notice of Emergency Appeal in the above-captioned matter dated September 8, 2010 filed by Appellant Tribal Council, and an Emergency Application for Stay of Execution filed by Appellant James William, Jr. in this matter on the same date.

The Tribal Court has issued three orders of relevance to the emergency applications, being the Tribal Court's Opinion dated August 19, 2010; the Court Order Regarding Plaintiff's Motion For Stay of Execution, Defendant's Motion to Establish Procedural Guidelines, and Chairman Elect Shively's Motion to Enforce the Court Order, dated August 27, 2010; and the Order Denying Stay of Execution and Order Pending Appeal, dated September 8, 2010.

The Court of Appeals has not received a copy of the September 8, 2010 Order Denying Stay of Execution and Order Pending Appeal issued by the Tribal Court below, but both counsel

for the Tribal Council and for James William, Jr. have indicated in their pleadings that the Tribal Court, Hon. Bradley Dakota presiding, issued an Execution of Judgment and Order which also provided that each Tribal Council member was found to be in contempt of court for failure to comply with the Tribal Court's August 27, 2010 order, and further ordered the arrest of each Tribal Council member. The parties further indicate that said Order requires that the Tribal Council members be held in custody and fined \$250/day (each) until a majority of the Tribal Council pass a resolution to immediately swear in the Tribal Council officers who were duly elected. The order does not address how the Tribal Council is to conduct business while its members remain incarcerated.

Further, both parties allege that the orders issued by the Tribal Court are inconsistent as the Tribal Court's Opinion dated August 19, 2010 required action by the Tribal Council at its regular meeting (which occurs on the second Tuesday of the month), but the subsequent Court Order Regarding Plaintiff's Motion For Stay of Execution, Defendant's Motion to Establish Procedural Guidelines, and Chairman Elect Shively's Motion to Enforce the Court Order, dated August 27, 2010 states that such action should occur on September 7, 2010, which is the first Tuesday of the month.

Both parties further allege that the Tribal Court improperly ordered that the Tribal Council members be incarcerated indefinitely for contempt and that the Court violated their Constitutional due process rights and their rights under the Indian Civil Rights Act, 25 U.S.C. §§ 1301, et seq., by ordering their incarceration without first conducting a hearing concerning whether the contempt occurred, and what remedy should be imposed should contempt be found.

### STAY OF PROCEEDINGS

An appellate court's power to hold an order in abeyance while it assesses the legality of the order has been described as "inherent." *Nken v. Holder*, \_\_\_ U.S. \_\_\_, 129 S.Ct. 1749, 1756, 173 L.Ed.2d 550 (2009) . The authority to hold an order in abeyance pending review allows an appellate court to act responsibly. A reviewing court must bring considered judgment to bear on the matter before it, but that cannot always be done quickly enough to afford relief to the party aggrieved by the order under review. The choice for a reviewing court should not be between justice on the fly or participation in what may be an "idle ceremony." *Nken, supra*, 129 S.Ct. at 1757, citing *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 9, 62 S.Ct. 875, 86 L.Ed. 1229 (1942). The ability to grant interim relief is accordingly not simply "[a]n historic procedure for preserving rights during the pendency of an appeal," *Scripps-Howard, supra*, at 15, 62 S.Ct. 875, but also a means of ensuring that appellate courts can responsibly fulfill their role in the judicial process.

At the same time, a reviewing court may not resolve a conflict between considered review and effective relief by reflexively holding a final order in abeyance pending review. A stay is an "intrusion into the ordinary processes of administration and judicial review," *Virginia Petroleum Jobbers Assn. v. Federal Power Comm'n*, 259 F.2d 921, 925 (C.A.D.C.1958) (*per curiam*), and accordingly "is not a matter of right, even if irreparable injury might otherwise result to the appellant," *Virginian R. Co. v. United States*, 272 U.S. 658, 672, 47 S.Ct., 222, 71

L.Ed. 463 (1926). The parties and the public, while entitled to both careful review and a meaningful decision, are also generally entitled to the prompt execution of orders that have been made final. *Nken, supra*, 129 S.Ct at 1757.

Instead of directing the conduct of a particular actor, a stay operates upon the judicial proceeding itself. It does so either by halting or postponing some portion of the proceeding, or by temporarily divesting an order of enforceability. See Black's, *supra*, at 1413 (6<sup>th</sup> ed.1990) (defining "stay" as "a suspension of the case or some designated proceedings within it"). *Nken, supra*, 129 S.Ct at 1757.

The traditional stay factors contemplate individualized judgments in each case". *Id.*, at 1760-61. The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion. *Id.*, at 1761. The Court generally considers four factors when evaluating a motion to stay "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.*

Weighing the above factors without much information is difficult, at best. This Court has limited information before it at this time. This Court was not present during the proceedings below, and has not had an opportunity to fully review those proceedings. However, given what the Court has been apprised of in the filings so far, the Tribal Court's action of incarcerating each of the Tribal Council members without a hearing appears at this time to be a harsh means of enforcing the Court's order, and self-perpetuating in that it would seem impossible for the Tribal Council to obtain a quorum to conduct any sort of business while incarcerated. Therefore, based upon what has been presented at this point, the Court is convinced that a stay should be issued at least until the Court has had the opportunity to hear from all parties to this action as to whether a stay should continue.

### CONTEMPT OF COURT

While Courts have many options available to it to enforce its orders, it must also ensure that parties are given notice and an opportunity to be heard, particularly when it is considering allegations of contempt which have occurred outside the presence of the Court. Whether criminal or civil contempt, in all cases of indirect contempt (i.e. contempt that does not occur in the Court's immediate view and presence), proper notice of the contempt charges, a reasonable opportunity to prepare a defense or explanation, and the opportunity to testify and call witnesses are basic procedural due process requirements. See *In re Contempt of Robertson (Davilla v Fischer Corp)*, 209 Mich. App. 433, 438 (1995). Such contempt should not be punished summarily (i.e., without a hearing), but only after proof of the facts charged has been made by affidavit or other method and opportunity has been given to defend. It appears that no notice or opportunity to defend was given to the Tribal Council members of their potential incarceration in this case for contempt of court prior to the order being issued for their incarceration. Therefore, given the limited evidence before the Court at this time, this Court will order that the contempt

sanctions be lifted pending a hearing to determine whether a stay of the orders issued by the Tribal Court should continue.

### CONCLUSION

For the reasons stated above, given the limited information provided to the Court at this time, the Court believes a stay should be issued pending the receipt of more information at a hearing to be scheduled by the Court of Appeals. Further, as the incarceration of the Tribal Council members occurred without a hearing and without any opportunity to be heard, the request for a stay of the September 8, 2010 order is further granted, and any Tribal Councilors currently in custody shall be released immediately.

### THEREFORE, IT IS HEREBY ORDERED:

1. That enforcement of the Tribal Court's Opinion dated August 19, 2010, the Court Order Regarding Plaintiff's Motion For Stay of Execution, Defendant's Motion to Establish Procedural Guidelines, and Chairman Elect Shively's Motion to Enforce the Court Order, dated August 27, 2010, and the Order Denying Stay of Execution and Order Pending Appeal, dated September 8, 2010, are each stayed pending a hearing before this Court as to whether the stay should continue.
2. That any bench warrants issued pursuant to Order Denying Stay of Execution and Order Pending Appeal, dated September 8, 2010, shall be immediately recalled, and each Tribal Council member of the Lac Vieux Desert Band of Lake Superior Chippewa Indians who has been incarcerated pursuant to said order or any bench warrants issued therefrom, shall be immediately released from custody, whether they are being held at the Iron County Jail Complex or any other jail or prison facility, said Tribal Council members being:
  - a. James H. Williams, Jr. (2-26-1968)
  - b. Joette Pete-Baldwin (7-7-1971)
  - c. Michelle Hazen Allen (2-10-1973)
  - d. Misaabe McGeshick (2-9-1975)
  - e. Tracy R. Pete (6-19-1972)
  - f. Giiwegiizhigookway Martin (6-12-1949)
  - g. Reberta L. Ivey (11-10-1968)
  - h. Tyrone McGeshick (2-11-1969)
  - i. Shasta Klingman (6-11-1976)
3. That this matter shall be set for a hearing before the Court of Appeals as to whether or not the stay issued in this matter should be continued. Notice of that hearing will be provided to the parties by the Court and will be scheduled as soon as reasonably possible.

Dated: 9/9/10

Wilson D. Brott  
Hon. Wilson D. Brott  
Appellate Judge