

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

IN THE MATTER OF JUDGE JOHN KERN

No. 2014-2331-CV-CV

Respondent.

PROTECTIVE ORDER AND WITNESS LIST

Procedural Status

On May 19, 2014, the Grand Traverse Band Judicial Commission, consisting of Chief Justice Mary Roberts and Associate Appellate Justices Quintin Walker and Matthew L.M. Fletcher, filed a Statement of Allegations in this matter, *In re Judge John Kern*. In accordance with Grand Traverse Band Court Rule 1.205(B), Respondent filed a request for a hearing and an answer on May 30, 2014. On June 4, 2014, the Judicial Commission filed a Procedural Order.

In that Procedural Order, the Judicial Commission promised to provide a witness list and transcripts from investigatory interviews conducted by the Judicial Commission. On June 4, 2014, Anishnaabek Family Services through its counsel Matthew J. Feil, Tribal Prosecutor, filed a motion for a protective order. We address the motion for a protective order first.

Motion for a Protective Order

The Judicial Commission grants the motion for a protective order. A person from whom discovery is sought may petition for a protective order "to protect a

party or person from annoyance, embarrassment, oppression, or undue burden or expense....” Grand Traverse Band Court Rule 4.302(C). Particularly relevant to this matter, persons subject to adverse legal consequences resulting from the release of materials such as audio tapes should be protected from discovery if good cause is shown. *E.g., Delorge v. Mashantucket Pequot Gaming Commission*, 2 Mash. Rep. 340 (Mashantucket Pequot Tribal Court 1998) (barring from discovery audio tapes, the release of which would subject the potential witness to a lawsuit). Here, several persons interviewed by the Judicial Commission discussed tribal court operations and tribal court employee relationships that ranged further afield than merely the alleged issues involving the Respondent. Continuing working relationships at the tribal court and within the tribal government more generally could be compromised with the release of the audio tapes or the transcripts.

More seriously, Anishinabek Family Services argues that details about Indian child welfare (ICW) cases might be publicly disseminated in violation of tribal code. *See* 10 Grand Traverse Band Tribal Code § 618 (“Regardless of any other law or regulation concerning public hearings or records, any hearing, trial or other proceeding held under this Act shall take place in closed Court. All papers and records, other than the final judgment, are subject to inspection only upon consent of the Court and all parties—or in unique cases, upon the order of the Court upon a showing of good cause.”). As a result of this allegation, the Judicial Commission will not entertain evidence or witnesses related to facts about ICW cases, including names, factual circumstances, and any other details, the release of which might violate tribal code. If details about ICW could be revealed during Respondent’s hearing, the Judicial Commission will either close the public hearing, or suppress the evidence.

Notes prepared by the Judicial Commission Chair are included in this protective order. The Respondent is cautioned to comply with Section 618 and this protective order.

Any prejudice to the Respondent resulting from this protection order is minimal. Respondent may still subpoena witnesses. Respondent also has the benefit of the focused witness list that follows.

Witness List

The witness list is annotated with references to allegations contained in the Statement of Allegations. All witnesses are cautioned to be aware of Section 618 and this protective order.

1. Judge Michael Long

Judge Long will testify as to the following allegations: I(A)(1)-(4) ("Failure to Perform Duties as a Presiding Judge"); I(B)(1)-(2) ("Failure to Adequately Supervise Tribal Court Staff"); I(C)(1) ("Incompetence" – child welfare matters); II(B)(1) ("Abuse of Employee Supervisory Authority"); III(A)-(B) ("Misrepresentations of Staff Training and Competence," "Dishonesty in Providing Excuses for Failure to Appear at April 9, 2014 Hearing").

2. Tribal Prosecutor Matthew Feil

Mr. Feil will testify as to the following allegations: I(A)(2) ("Failure to Perform Duties as a Presiding Judge" – April 9, 2014 Hearing); I(C)(1)-(2) ("Incompetence"); II(A)(1) ("Abuse of Judicial Authority" – failure to hold emergency hearings within 24 hours); II(A)(3) ("Abuse of Judicial Authority" – sentencing persons to jail time without filing charges)

3. Attorney Cameron Fraser

Ms. Fraser will testify as to the following allegations: II(A) (1)-(3) ("Abuse of Judicial Authority")

4. Fred Jacko

Mr. Jacko will testify as to the following allegations: I(B) ("Failure to Adequately Supervise Tribal Court Staff"); II(A)(4) ("Abuse of Judicial Authority" – attorney right to practice in tribal court)

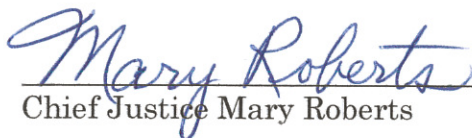
5. Helen Cook and/or Patricia Sparks

Ms. Cook and/or Ms. Sparks will testify as to the following allegation: (I)(C)(1) ("Incompetence" – child welfare matters)

6. Sherri Vezina and/or Mike Teeple

Ms. Vezina and/or Mr. Teeple will testify as to the following allegation: II(B)(2) ("Abuse of Employee Supervisory Authority" – refusal to rehire a terminated tribal court employee that had won an administrative appeal of her termination)

Signed by Chief Justice Mary Roberts, on behalf of the Appellate Justices Quintin Walker and Matthew L.M. Fletcher, Tribal Judiciary (Associate Judge Michael Long recused):


Chief Justice Mary Roberts

6-5-14
Date

GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS
JUDICIAL COMMISSION

Mary Roberts, Tribal Justice
Quinton Walker, Tribal Justice
Matthew Fletcher, Tribal Justice

2605 N. West Bay Shore Drive, Peshawbestown, MI 49682
(231) 534-7050, Main tribalcourt@gtbindians.com

IN THE MATTER OF:
John A. Kern

CASE NO. 2013-2221-CV-CW

I, Dana M. Greensky , being duly sworn, deposes and says that on the date below I sent by:

☒ first class mail, ☐ certified, ☐ restricted, ☒ 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: **PROTECTIVE ORDER AND WITNESS LIST**

To:	Court File	Original
	Hon. Mary Roberts	Email
	Hon. Matthew Fletcher	Email
	Hon. Quinton Walker	305 W. Upright, Charlevoix, MI 49720 (6/6/14)

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

Date: 6/5/14

Dana M. Greensky
Dana M. Greensky, Clerk of the Court