UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WISCONSIN

Raymond DePerry
55 North E Street, Apt. 12
Porterville, CA 93257

Plaintiff,

v.

Lawrence Deragon
94120 Little Sand Bay Road
Bayfield, WI 54814

Case No. 12-CV-123

Michael Babineau
14798 Bishop Lane
Bayfield, WI 54814

Jean Defoe
90340 Blueberry Road
Bayfield, WI 54814

Mark Duffy
37015 Pike Road
Bayfield, WI 54814

Desiree Livingston
38305 Bishop Loop Road
Bayfield, WI 54814

Jeffrey Benton
38000 Bishop Lane
Bayfield, WI 54814

Veronica “Ronnie” Wilcox
37400 Pike Road
Bayfield, WI 54814

Defendants.

PLAINTIFF’S BRIEF IN OPPOSITION TO

MOTION TO DISMISS BY ALL DEFENDANTS

NOW COMES the plaintiff by his attorney, Robert A. Kennedy, Jr., and hereby submits this brief, including one page Exhibit "A", in opposition to the Motion to Dismiss designated as document number 25.

INTRODUCTION

The defendants view the termination decision as an intramural affair to which either absolute tribal sovereign immunity or qualified immunity applies. If not immune, without actual racial ill-will toward the plaintiff or tenants there is no federal involvement in this matter that can award monetary relief.

Plaintiff disagrees this was an intramural tribal matter in that there was no meaningful appeal and plaintiff's termination contained defamatory statements to which due process compels a right to address an appeal. While qualified immunity cannot apply because of First Amendment retaliation, plaintiff recognizes this Court requires a federal component to hear the case.

Exactitude requires the unusual facts be evaluated through federal common law for the dual purpose of tribal sovereign immunity and the ambit of 42 USC §1985(3). This case raises novel, and difficult, issues for all concerned. Because Mr. DePerry was fired for enforcing federal civil

rights of a beneficiary determined by race there is a predicate federal factor. Since the right to appeal was denied through the actions of the seven defendants outside the scope of their de facto or de jure authority, defendants lost all sovereign immunity.

STANDARD OF REVIEW

The defendants have moved for dismissal based upon the viability of the complaint, therefore the standard of review is broad. Flying J. Inc. v. City of New Haven, 549 Fd. 3d 538, 542 n1 (7th Cir. 2008).

Plaintiff takes the position the doctrine of tribal immunity, absent a specific federal statute on point, is a creature of the common law power of the U.S. Supreme Court. Agua Caliente Band of Cahvilla Indians v. Superior Court of Sacramento County, 52 Cal. Rptr. 3d 659, 667, 40 Cal. 4th 239, 148 P.38 1126 (2006). Bassett v. Mashantucket Pequot Museum and Research, 221 F. Supp. 2d 271, 280 (D–Conn. 2002).

Against this backdrop the plaintiff will address the key issues.

DID THE MORATORIUM VIOLATE 42 USC §1985(3) PRIOR TO PLAINTIFF'S TERMINATION?

When Rose Gurnoe Soulier and Marvin Defoe voted for the moratorium on March 1, 2010 (FAC Ex. Ep2) they took themselves out of the scope of a tribal legislator. While the legislature votes as one voice and cannot conspire with itself; members who vote outside the scope of authority retain a separate voice and may become conspirators.

It was illegal to vote for a moratorium which restrained NAHASDA. 18 USC §371. Since Donald King satisfied the core requirement of 25 USC §4137(a)(6)(C)(FAC ¶37, 47 Ex D p7-9) the moratorium had the actual effect of impairing health and safety contrary to NAHASDA. 25 USC §4131(a)(1); 25 USC §4132 (5). Not all votes in session are clothed with immunity. Kaahumaro v. County of Maui, 315 F. 3d 1215, 1223 (9th Cir. 2003). The aye votes on March 1, 2010 took them out of legislative immunity.

The moratorium restrains evictions of tenants who, by definition, are a threat to the health and safety of other tenants. (FAC Ex. F P1). The moratorium exceeds legislative authority since a Tribe cannot restrain the operation of federal law. Comstock v. Alabama and Coushatta Indian Tribes, 261 F. 3d 567, 570 (5th Cir. 2001).

When Rose Gurnoe Soulier and Marvin Defoe voted for the moratorium they became subject to prospective restraint under Ex Parte Young. Crowel Dunlevy P.C. v. Stidham, 640 F.3d 1140, 1156 (10th Cir. 2011). They were conspirators as long as their actions were subject to restraint. Yet Rose Gurnoe Soulier and Marvin Defoe continued to sustain the moratorium in their capacities as tribal officials. (FAC Ex H p-2). Plaintiff seeks no money damages from them for two reasons. First, Ex Parte Young does not allow monetary relief. Second, these two did not terminate plaintiff.

The actions of Rose Gurnoe Soulier and Marvin Defoe were effective on March 2, 2010 to impute actual injury to the tenants. This injury was the impairment of plaintiff to enforce NAHASDA by keeping the housing development safe from threats to their security from improper tenants. (FAC Ex H p-62).

As conspirators, these two violated 42 USC §1985(3) on March 2, 2010. They conspired to deprive a class of person (tenants) of the equal protection of the laws. (NAHASDA). There is no question anyone who deprives tenants in a housing project of crime prevention is depriving somebody of the equal protection of the laws.

The dispute between the plaintiff and defendants concerns the state of mind of the transgression.

Defendants submit there was no racial ill will on anybody's part. Without bad faith, 42 USC §1985(3) does not apply to the moratorium.

The plaintiff emphasizes the tenants are selected based upon race. 25 USC §4131(b)(6). When Rose Gurnoe Soulier and Marvin Defoe passed the moratorium they did so willfully. The question for the Court is if conspiring and voting for a moratorium detrimental to a class of people is the equivalent of ill will or racial animus.

The effect of the moratorium is sufficient to invoke the statute if Native Americans are within its subject matter. An open question remains if only Negroes were to be protected. Carpenters v. Scott, 463 US 825, 836 (1983). Plaintiff feels the Statute can be applied to any specific group based on race. Goehring v. Wright, 858 F. Supp. 989, 989 (USDC-N.D. Cal 1994).

It is not the subjective element of ill-will in passing the moratorium, but whether the tenants are a member of a class that requires special federal assistance in protecting its civil rights. Id. 998. People are presumed to know the natural and probable consequences of their actions. State v. Ehlenfeldt, 94 Wis. 2d 347, 361 (1980). Passing the moratorium itself is in violation of

18 USC §371 and constitutes intent or willfulness. (Document 12 Ex 1).

The tenants are the beneficiaries of special federal legislation through NAHASDA. Congress specified drug activity is not allowed. There is a housing authority to run the project. As Executive Director, Mr. DePerry must implement 25 USC §4137(a)(6)(C) to protect the right of safe housing. This is a federal statute. This Court should rule a legislative vote is a substitute for ill-will when the result is the same.

Political pressure may be the reason for the moratorium. Sokaogon Chippewa Community v. Babbitt, 929 F. Supp. 1165, 1173 (WD-Wis. 1996). When politics corrupts the legislative process to the point federal requirements are disobeyed and those who attempt to follow them have no recourse to the courts, there is corruption. U.S. v. Wadena, 152 F. 3d 831, 845-846 (8th Cir. 1998). An intramural dispute can still invoke §1985(3), Means v. Wilson, 522 F. 2d 833, 838-842 (8th Cir. 1975).

The legislative votes are a substitute for ill-will, otherwise, an illegal vote can never be redressed. All factual inferences are to be resolved in plaintiff's favor at this stage of the proceeding.

The plaintiff, through the voting record, has established constructive intent. U.S. v. General Electric Co., 670 F. 3d 377, 390 (1st Cir. 2012). (FAC ¶59-63 Ex E p-2; Ex H p-2).

IS THE EFFORT TO TERMINATE PLAINTIFF DERIVATIVE OF THE MORATORIUM?

Once Mr. DePerry opposed the moratorium (FAC Ex F). and sought to carry out his responsibilities under NAHASDA, Rose Gurnoe Soulier and Marvin Defoe wanted him fired. In short, Mr. DePerry was retaliated against for following federal law.

Conspiracies can be derivative. This conspiracy is capable of having derivative conspiracies. In re Enron Corp. Securities, Derivative & "ERISA" Litigation, 490 F. Supp. 2d 784, 826 (USDC-SD TX 2007). The Court must decide if there were two separate conspiracies. Plaintiff says there is the main conspiracy (the moratorium) and the derivative conspiracy (terminating plaintiff). Without the main conspiracy there would be no derivative conspiracy. Since they are related, the Court should rule there was a main conspiracy and a derivative conspiracy.

The defendants dispute 42 USC §1985(3) applies to the derivative conspiracy because only one person is conspired

against and there is no racial animus against plaintiff. This position must be placed in context.

The original reason for §1985 was to protect Negroes and the Republicans who sought to uphold the rights of Negroes from abuses by the KKK. Carpenters v. Scott, 463 US 825, 836 (1983). Mr. DePerry comes within a different prong of the statute than do the tenants. The tenants are the victims of the moratorium and Mr. DePerry is an official charged with protecting their rights.

The derivative conspiracy imputes the racial purpose to those who are protecting the rights of the tenants. Republicans were protecting the rights of Negroes without Republicans separately being the subject of race based animus, yet both Negroes and Republicans were covered by the statute.

The same situation applies here. Mr. DePerry is similarly situated to the reconstruction Republicans. He need not have a separate racial animus against him, or be a member of the group discriminated against.

The plaintiff contends Congressional intent was to protect the race based group against discrimination, and also protect those who sought to enforce the rights of this group. No separate racial ill-will by the KKK was needed against the Republicans. Indeed, to require a separate

racial animus by the KKK against white Republicans in order to include those Republicans as protected would give the KKK an automatic defense. The KKK would say there is no animus against whites.

It is the derivative basis by which the official guards federal rights that brings Mr. DePerry (as Executive Director) within the ambit of 42 USC §1985(3).

This ambit lapsed with the repeal of the moratorium on April 5, 2010. (FAC ¶43). By then, however, Mr. DePerry had already been fired (FAC Ex I). and his appeal would be rendered meaningless.

DID FIRST AMENDMENT RETALIATION AND AN ARBITRARY AND CAPRICIOUS DECISION OVERCOME QUALIFIED IMMUNITY?

The seven defendants claim qualified immunity. If applicable, the existence of tribal sovereign immunity would become moot. Due to questions of first impression, defendants assert qualified immunity.

While the seven defendants are not chargeable with forecasting the issues at bar; they are certainly held to know about the merits of the two reasons for termination.

One reason is the press releases in Ashland. (FAC Ex F and G). This is one of those situations where

retaliation against free exercise of the First Amendment overcomes qualified immunity. (FAC Ex I p-3).

There are three issues here. Milwaukee Deputy Sheriff's Assn. v. Clark, 574 F. 3d 370, 376 (7th Cir. 2009).

First, the Ashland articles must be written as a private citizen. It was. Id. 377 n.3. The safety of the tenants is also a matter of public concern. Id. 381.

Second, the termination must be motivated by the Ashland articles. The temporal proximity, less than fourteen days, is sufficient. Peterson v. Scott County, 406 F. 3d 515, 525 (8th Cir. 2005).

Third, if there is another reason for termination unrelated to the free speech. The allegations of poor performance (FAC Ex I p-4) do not survive the arbitrary and capricious standard for two reasons.

The temporal inconsistent decisions based upon the same evidence in itself is evidence of arbitrary and capricious decision making. (3 meetings in 8 days). (FAC ¶57-67). Brown v. Blue Cross & Blue Shield of Alabama, 898 F. 2d 1556, 1569 (11th Cir. 1990).

The allegations of poor performance are wholly unsupported by any written evidence whatsoever. All written evidence shows excellent performance. (FAC Ex B

and C). Imposing first time discipline to the maximum degree based upon undocumented allegations and ignoring all written evidence is so selective as to be unreasonable. Holmstrom v. Metropolitan Life Ins., Co., 615 F. 3d 758, 777 (7th Cir. 2010).

Qualified immunity cannot be afforded because the termination decision was arbitrary and capricious for reasons the defendants knew or should have known.

IS THERE A NON-INTRAMURAL RIGHT TO MEANINGFUL APPEAL?

The employment arrangement with plaintiff was based upon annual reviews. (FAC Ex A p 2, 3). The recognition of the legitimacy of an intramural decision often depends upon tribal court oversight. Santa Ynez Band of Mission Indians v. Torres, 262 F. Supp. 2d 1038, 1046-7 (USDC CD Cal. 2002). Here there was none allowed.

Defendants cannot argue Mr. DePerry was a purely at will employee with no right of judicial review. Red Cliff's constitution provides for judicial review. §4.29.1. (FAC ¶25). Mr. DePerry's orientation checklist has a grievance procedure at Provision 16. (FAC Ex A p-3). The Red Cliff Personnel Policies and Procedures Revised: February 1988, at Article XII has a grievance procedure.

(FAC ¶3c). Unfortunately for plaintiff, he was denied all grievance procedures outside of RCHA itself.

The plaintiff cannot be denied the right to appeal, and the defendants retain qualified immunity. Cleavinger v. Saxner, 474 US 193, 204-5 (1985). Only tribal immunity is a complete defense. Tribal immunity cannot be predicated upon this being an intramural termination for intramural reasons only.

The termination notice reached the Ashland press on March 28, 2010. (FAC Ex N). The publication quoted the termination decision, to-wit:

"These are examples of a pattern of behavior and performances which Board members have mentioned have accumulated finally to be damaging to the Housing Authority and to his capacity to be trusted and act effectively."

This is defamatory per se.

The Dictionary of Occupational Job Titles (Exhibit A) at Code 188.177-110 recognizes Mr. DePerry's occupation as a profession. Defamation per se occurs when a publication attributes the inability to carry on one's profession. Celle v. Filipino Reporter Enterprises, Inc., 209 F. 3d 163, 189 (2nd Cir. 2000). Van-go Transport Co., Inc. v. New York City Board of Education, 971 F. Supp. 90, 98 (USDC-E.D. N.Y. 1997).

Even as a public figure, there is defamation if a false statement is published with knowledge it is wrong or reckless disregard for the truth. Garrison v. Louisiana, 379 US 64, 78 (1964). The difference between the personnel file and the defamatory statement is night and day. Malice can be found when there is serious doubt as to the truth. Dalbec v. Gentleman's Companion Inc., 828 F. 2d 921, 927 (2nd Cir. 1987). Ignoring a source of information which proves the statement false is evidence of reckless disregard. Babb v. Minder, 806 F. 2d 741, 756 (7th Cir. 1987).

The very fact the seven defendants refused to terminate Mr. DePerry twice is evidence of substantial doubt about the Ashland statement. (FAC ¶ 58, 61).Access to the performance reviews imputes constructive knowledge thereof to the seven defendants. (FAC Ex Ba and C). While evidence of subjective intent is not available, the circumstances and documents all show Mr. DePerry a competent administrator. Publishing the opposite conclusion based upon no written evidence is reckless disregard for the personnel file. The personal file and the working relationship provided actual or constructive knowledge he had the capacity to be trusted and act effectively.

The significance of defamation per se is greater than mandatory nominal damages. Goldwater v. Ginzburg, 414 F. 2d 324 (2nd Cir. 1969). Termination for a reason that is defamatory requires an opportunity to clear one's name. Cox v. Roskelly, 359 F. 3d 1105, 1110 (9th Cir. 2004).

The decision of March 26, 2010 was published in Ashland, at least in part, on March 28, 2010. (FAC Ex J). Mr. DePerry filed his appeal March 30, 2010. Mr. DePerry was entitled to a name clearing hearing because the publication occurred before the notice of appeal. McMath v. City of Gary, 976 F. 2d 1026, 1035 (7th Cir. 1992).

This right is based not only upon intramural standards, but the due process right of all Americans to clear their name. Codd v. Velger, 429 US 624, 627 (1977).

The right to a name clearing hearing in response to the March 30, 2010 notice of appeal is more than an intramural matter. The publication occurred in Ashland. The defamation is related to the professional field of Housing Management Officer in Government Service. (FAC ¶1).The employer is not limited to tribal housing authorities, but could include employment for Federal, State or local governments as well. (Exhibit A).

Mr. DePerry was the person who provided the termination letter to the Ashland press. Since the press

had made Mr. DePerry a public figure through preexisting press coverage, the plaintiff should not be considered as solely responsible for disseminating the termination notice.

Defendants appear to argue there is no right to appeal a termination decision when that decision is entirely intramural. Tribal immunity is related to federal common law on undecided points. When there is a right to appeal as of March 30, 2010 under Red Cliff law, can the law be changed ex post facto to remove that right of appeal?

This is a point of first impression. At common law the writ of certiorari existed in England. Hartranft v. Mullowny, 247 US 295, 299-300 (1918). When a court has general jurisdiction, the common law writ of certiorari exists as part of general common law jurisdiction and supervisory control over inferior tribunals. Id. p.299. Indeed, judicial review of administrative actions can be had through common law certiorari, and the ability of judicial review thereof does not depend on legislative permission. Thomas v. Chicago Park Dist., 227 F. 3d 921, 926 (7th Cir. 2000).

There is a common law assumption the termination is subject to judicial review in the Tribal court through a proceeding at least as broad as common law certiorari. The

standard of review is arbitrary and capricious. The termination decision of March 26, 2010 represents a termination order that is based upon a pre-termination hearing.

Should the Court decide plaintiff is entitled to a name clearing hearing after March 26, 2010 there is no question there is a justiciable controversy. Should a name clearing hearing be denied, the pre-termination hearing of March 25, 2010 still represents a justiciable controversy that results in a decision capable of common law certiorari review. Cleveland Board of Education v. Loudermill, 470 US 532, 542-543 (1985)

DID THE PLAINTIFF RECEIVE A MEANINGFUL APPEAL?

The plaintiff filed an appeal on March 30, 2010. (FAC Ex J). When he did, he was entitled to pursue tribal remedies. Those remedies were governed by three documents: Constitution §4.29.1; (FAC ¶25). Orientation Checklist provision 16; (FAC ¶29). and Personnel Manual Article XII. (FAC ¶30). None of these would be followed according to their original intent.

On April 9, 2010 the Personnel Manager set a hearing before the Personnel Selection Committee. (FAC Ex K). Four days later RCHA substituted itself as the hearing

panel and prevented access to Tribal Court. (FAC Ex L). This position represented a retroactive change in policy without notice, and was arbitrary and capricious. Kosty v. Lewis, 319 F. 2d 744, 749 (D.C. Cir. 1963).

Three days later the same seven RCHA commissioners considered the appeal of March 30, 2010. (FAC ¶72). This was not a de novo hearing. (FAC ¶73).

This was not a meaningful appeal under Red Cliff rules that existed as of March 30, 2010 because judicial review was denied.

The plaintiff also resorts to his liberty interest available nationally. Strasburger v. Board of Ed., Hardin County, 143 F. 3d 351, 356 (7th Cir. 1998).

The plaintiff either acquired the right to a hearing to challenge the defamation of March 26, 2010, or judicial review through common law certiorari. The defendants provided neither.

DID THE SEVEN DEFENDANTS ACT PALPABLY OUTSIDE THEIR AUTHROITY IN HEARING THIS APPEAL?

Tribal sovereign immunity is lost when an official acts manifestly on palpably outside of the scope of authority. Bassett v. Mashantucket Pequot Museum and Research, 221 F. Supp. 2d 271, 280 (D-Conn. 2002). De jure

or de facto officials, however, generally retain their immunity. The seven defendants cannot substitute themselves for Red Cliff's judiciary.

The seven defendants accepted the responsibility to impartially consider the appeal of March 30, 2010. This acceptance, although after April 5, 2010, is retroactive to March 30, 2010. In re Triangle Chemicals, Inc., 697 F. 2d 1280, 1288 (5th Cir. 1983).

Plaintiff sought reinstatement retroactive to March 26, 2010. Plaintiff needs to show the seven defendants are deemed to have usurped the position as a review panel between March 30, 2010 and April 5, 2010.

The seven defendants have a structural conflict of interest because they defamed the plaintiff and now are reviewing their own decision. (FAC ¶72). This violates the appearance of due process. Goldberg v. Kelly, 397 U.S. 254, 271 (1970).

RCHA never organized itself to provide for a review of its personnel decisions. This is confirmed by reliance on the Personnel Manual in terminating plaintiff, (FAC Ex F p3-4) and the assumption on April 9, 2010 by the Personnel Manager (and everyone else) the appeal would have nothing to do with RCHA. (FAC Ex K).

When the seven defendants accepted the responsibility to decide the appeal, they simultaneously accepted jurisdiction retroactive to March 30, 2010 and did purport to act as a review panel retroactive to March 30, 2010. (FAC ¶78-80).

This is significant. There cannot be a retroactive de facto or de jure adjudicative official to a time where that office did not exist. Norton v. Shelby County, 118 US 425, 441 (1886).

A usurper is someone who purports to act and occupy an office that does not exist. Norton v. Shelby County, 118 US 425, 441 (1886). The defendants are usurpers because they claim an office prior to the office coming into existence. The earliest record of RCHA now acting as a separate appeals body is April 13, 2010. (FAC Ex L). The defendants are also usurpers because they are disqualified from reviewing their own decision. (FAC ¶79 (c), 72).

All these actions are palpably outside any colorable authority to act as RCHA Commissioners. Simply put, there is no authority of record to allow the defendants to hold two incompatible offices – commissioner and appeals officer, that is not acting de novo.

The seven defendants have no tribal sovereign immunity for their actions as a review panel. Without a valid

appointment preceding the notice of appeal, they are not de jure or de facto. Ryder v. US, 515 US 177, 188 (1995). Without de jure or de facto status there is no palpable or colorable claim to authority as a judge.

Palpable or colorable authority can either be express or implied. The three day interval between April 13, 2010 and April 16, 2010 does not lend itself to any governmental action authorizing the formation of an ad hoc review panel and appointing the seven defendants to so act. (FAC Ex L). Without any formality whatsoever, there is no express authority to act as a judicial official. Ryder v. US, supra.

There is no implied authority for RCHA to usurp this position. There is no implied authority to disregard the common law remedy of certiorari, by preventing judicial review through Tribal Court. Marbury v. Madison, 5 US 137, 163 (1803).

With no actual or implied authority to act, the seven defendants are mere usurpers and not protected by tribal sovereign immunity.

DID THE DEFENDANTS VIOLATE 28 USC §1343(a)(2) IN CONJUNCTION WITH A 42 USC §1985(3) VIOLATION BETWEEN MARCH 30, 2010 AND APRIL 5, 2010?

The seven defendants damaged the plaintiff by occupying the position of a hearing panel. An impartial panel would have reached the inescapable conclusion Mr. DePerry must be reinstated. (FAC ¶75). Plaintiff is damaged because the defendants chose to hear the case themselves rather than obtain a neutral third party. Plaintiff is damaged because he was deprived of an impartial name clearing hearing, or tribal judicial reinstatement review hearing. (FAC ¶103).

Liability attaches to the defendants for purpose of 28 USC §1343(a)(2) because they had the power to refuse to act as a hearing panel but still did so. The defendants should have disqualified themselves and allowed a neutral party to make the decision.

The defendants violated the common law prohibition on retroactively and without notice to the litigants acting as an appeals court of their own trial court decision. Case v. Hoffman, 100 Wis. 314, 356 (1898).

The seven defendants should have known they could not decide their own appeal and should have disqualified themselves. (FAC ¶91-95). Failure to disqualify furthered

the derivative conspiracy. The defendants violated 28 USC §1343(a)(2) during the interval of March 30, 2010 through April 5, 2010 by replacing a different system of appeal. This is not like substituting judges in the same system. Here systems themselves were substituted. This substitution relates back to March 30, 2010.

To summarize: the letter of April 13, 2010 (FAC Ex L) substitutes one grievance system (Personnel Selection Committee FAC Ex 4 and judicial review FAC ¶25) for another grievance system (RCHA). This substitution is intended to be retroactive. "Further, the review indicates it has been the intent of the Housing Board operations as a separate entity to handle its own personnel matters." (FAC Ex L). (Emphasis added).

The grievance system available through RCHA at (FAC Ex L) substitutes one RCHA grievance system for the previous grievance system at (FAC Ex A p-3). The difference between the two is the availability of judicial review. The common law certiorari is implied at (FAC Ex A p-3) and FAC ¶25); but is now prohibited: ". . . including the Tribal Court . . ." (FAC Ex L).

Any doubt about the intent to substitute the original grievance procedures at (FAC Ex A p-3) is dispelled by the role of Tribal Council.

Initially, grievances were to: "Appeal decision within 10 working days to Tribal Council if needed." (FAC Ex A p-3). Now, ". . . the Tribe has indicated the RCHA has not been granted the authority to refer personnel appeals to the Tribal Council," (FAC Ex M). This ex post facto substitution of grievance procedures places responsibility on the seven defendants for having retroactively deprived the plaintiff at least the common law right to certiorari review.

WAS THE RIGHT TO A JUDICIAL REVIEW

FIRST DENIED AFTER APRIL 5, 2010?

The defendants denied the plaintiff the right to judicial review during two intervals: March 30, 2010 through April 5, 2010; and April 6, 2010 through April 27, 2010. Only the first interval implicates 28 USC §1343(a)(2) liability. There is no question the first interval invokes federal jurisdiction.

These intervals are not divisible as the actions concerning the appeal all relate back to March 30, 2010. This would be consistent with common law principles of administration that allow nunc pro tunc orders. In re Triangle Chemicals, Inc., 697 F. 2d 1280, 1288 (5th Cir. 1983).

CONCLUSION

All seven defendants lost tribal sovereign immunity when relating back their review powers to a time that office did not exist. Denial of judicial review furthered the conspiracy against him and prevented him from getting his job back because the defendants were biased. This case deserves to remain in Federal Court.

Dated this 19th day of June, 2012.

/s/ Robert A. Kennedy, Jr.
Robert A. Kennedy, Jr.
Attorney for Plaintiff
State Bar No.: 1009177
Kennedy Law Office
209 East Madison Street
Crandon, WI 54520
(715) 478-3386