

2010-001738-CV-CV

September 13, 2010

Court Clerk
GTB Tribal Judiciary
2605 N.W. Bayshore Drive
Peshawbestown, MI 49682

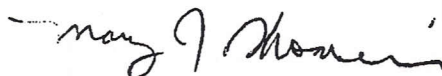
Dear Court Clerk:

Enclosed for filing with the GTB Tribal Judiciary is the following:

1. \$100 filing fee.
2. Complaint for Allegations of Impropriety against the GTB Election Board; along with the SCAO standard Complaint form.
3. Certificate of Service.

Thank you for your consideration.

Sincerely,



Mary J. Shomin
Tribal Member Citizen # 2395

/mjs
Enclosures

cc: Election Board, via Wilson D. Brott, Esq.

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

MARY J. SHOMIN,
Petitioner,

Case No. 2010-1738-CV-CV

By the Tribal Judiciary
Hon. Wenona T. Singel
Hon. Quinton Walker
Hon. Mary Roberts
Hon. Holly K. Thompson

v.

GRAND TRAVERSE BAND OF OTTAWA
AND CHIPPEWA INDIANS' ELECTION BOARD,

Respondent.

Mary J. Shomin, In Pro Per Petitioner
GTB Tribal Citizen # 2395
PO Box 195; 503 E. State Street
Fife Lake, MI 49633
(231) 499-9304

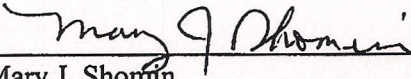
Wilson D. Brott (P51446)
Attorney for Respondent
Brott, Kipley, Settles, Shumar & Brott, PC
421 N. St. Joseph Street, Ste. 203
PO Box 811
Suttons Bay, MI 49682-0811
(231) 313-7448

CERTIFICATE OF SERVICE

I, Mary J. Shomin, hereby affirm that on this day, September 13, 2010, I filed the original "Allegation of Impropriety" with the Tribal Judiciary Tribal Court Clerk; and that I mailed a properly stamped copy of the same to:

Wilson D. Brott, attorney for the Election Board
421 N. St. Joseph Street, Ste. 203
PO Box 811
Suttons Bay, MI 49682-0811

Dated: September 13, 2010



Mary J. Shomin
GTB Tribal Member Citizen # 2395

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 2010-1738-CV-CV
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Court address: GTB Tribal Judiciary, 2605 N.W. Bayshore Drive, Peshawbestown, MI 49682
 Court telephone no. (231) 534-7050

Plaintiff's name(s), address(es), and telephone no(s). Mary J. Shomin PO Box 195; 503 E. State Street Fife Lake, MI 49633 (231) 499-9304
Plaintiff's attorney, bar no., address, and telephone no. In Pro Per

v

Defendant's name(s), address(es), and telephone no(s). GTB Election Board 2605 N.W. Bayshore Drive Peshawbestown, MI 49682 (231) 534-7750 Wilson D. Brott (P51446) Attorney for the Election Board 421 N. St. Joseph Street; Ste 203; PO Box 811 Suttons Bay, MI 49682-0811 (231) 313-7448

SUMMONS NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to file a written answer with the court and serve a copy on the other party or take other lawful action with the court (28 days if you were served by mail or you were served outside this state). (MCR 2.111(C))
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued 09/13/10	This summons expires 12/09/13/10	Court clerk <i>Sherie L. Verina</i>
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*This summons is invalid unless served on or before its expiration date.
This document must be sealed by the seal of the court.

COMPLAINT Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.

Family Division Cases

- There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
- An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.
- The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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General Civil Cases

- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.
- The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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VENUE

Plaintiff(s) residence (include city, township, or village) 503 E. State Street; PO Box 195, Fife Lake, MI 49633	Defendant(s) residence (include city, township, or village) 2605 N.W. Bayshore Drive, Peshawbestown, MI 49682
Place where action arose or business conducted 2605 N.W. Bayshore Drive, Peshawbestown, MI 49682	

09/13/2010

Date

Mary J. Shomin
Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

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

MARY J. SHOMIN,
Petitioner,

Case No.

2010-1738-CV-CV

By the Tribal Judiciary
Hon. Wenona T. Singel
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v.

GRAND TRAVERSE BAND OF OTTAWA
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PO Box 195; 503 E. State Street
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Wilson D. Brott (P51446)
Attorney for Respondent
Brott, Kipley, Settles, Shumar & Brott, PC
421 N. St. Joseph Street, Ste. 203
PO Box 811
Suttons Bay, MI 49682-0811
(231) 313-7448

There is no other pending or resolved civil action arising out of the
same transaction or occurrence as alleged in the complaint.

**COMPLAINT FOR ALLEGATIONS OF IMPROPRIETY AGAINST THE GTB
ELECTION BOARD**

The Petitioner makes the following allegations:

1. Jurisdiction of this Court is proper, pursuant to the Constitution of the Grand Traverse Band of Ottawa and Chippewa Indians, Article V, Section 2 and Article VII, Section 5(c) and Article XII, Section 1.
2. Petitioner's residence, 503 E. State Street, Fife Lake, MI 49633, is within the jurisdictional boundaries of the Grand Traverse Band of Ottawa and Chippewa Indians (herein after, "GTB") as defined in 3 GTBC 303.

3. Respondent is a GTB Constitutional Board authorized pursuant to the GTB Constitution, Article VII, Section 5, et seq., whose primary place of business is 2605 N.W. Bayshore Drive, Peshawbestown, MI 49682.
4. On September 8, 2010, the Election Board conducted a Hearing at the GTB Tribal Council chambers (hereinafter "Hearing") to consider an Election Dispute filed by Doris Winslow and Lora Robert.
5. Petitioner obtained information about this matter and attended this Hearing as a GTB citizen; and pursuant to this Tribal Court's precedent, in *Woods v. GTB Election Board*, Tribal Court Case No. 2010-001630-CV-CV, pg 7 (April 23, 2010)(en banc), as cited in *McClellan v. GTB Election Board*, Tribal Court Case No. 2010-1712-CV-CV, pg 4, Petitioner files this Complaint under "all allegations of impropriety."
6. At the Hearing, it was alleged by Doris Winslow and Lora Robert that Alvin Pedwaydon had illegally campaigned in violation of the GTB Election Board 2010 Regulations.
7. At the Hearing, the Election Board heard sworn testimony from Doris Winslow and Lora Robert that Article XII, Section 1, states: "In carrying out the duties of tribal office, no tribal official, elected or appointed, shall make or participate in making decisions which involve balancing a personal financial interest, other than interests held in common by all tribal members, against the best interests of the Band."
8. At the Hearing, the Election Board heard sworn testimony from Doris Winslow that during a recent Tribal Council Special Session, she was made aware that other members of the Compensation Committee in earlier GTB elections had resigned their position on the Compensation Committee once they declared their candidacy for a GTB Election.
9. At the Hearing, the Election Board heard sworn testimony from Alvin Pedwaydon that he did serve as an appointed member of the GTB Compensation Committee while maintaining his candidacy in the GTB 2010 Election and remained so until September 1, 2010, when the results of the General Election were made known.
10. At the Hearing, the Election Board heard testimony from Alvin Pedwaydon's attorney, James Saffel, that, the Compensation Committee, after receiving a letter from Bill Rastetter, earlier this year (after Mr. Pedwaydon had announced his candidacy), that the Compensation Committee conferred with their attorneys Barry Levine and Sara Brubaker and were advised there was no conflict of interest for Mr. Pedwaydon to remain on the Compensation Committee while he was a GTB candidate.
11. At the Hearing Doris Winslow and Lora Robert requested that the Election Board remove Alvin Pedwaydon from the General Election because he had served as a member of the GTB Compensation Committee during his tenure as a GTB candidate in the 2010 Election in violation of the Conflict of Interest provision of the GTB Constitution, Article XII, Section 1.
12. On September 9, 2010, the Election Board rendered their opinion regarding the

Winslow/Robert Hearing, dismissing it "with prejudice" citing:

a) Petitioners failed to cite and have not alleged or shown how Respondent's service on the Compensation Committee has violated the 2010 Election Regulations;

b) Petitioners have failed to show how Respondent's continued service upon the Compensation Committee would be within the scope of the Election Board's authority under the GTB Constitution or the 2010 Election Regulations;

c) The Election Board cannot find that any violation of the 2010 Election Regulations occurred;

d) There is no provision in the 2010 Election Regulations which addresses the situation presented by the Petitioners;

e) For that reason, even if the Election Board were to find that Respondent's continued service upon the Compensation Committee presented a conflict of interest, *the Election Board does not have jurisdiction or authority to make determinations which do not directly involve the election* (emphasis added) and/or violations of the 2010 Election Regulations.

13. The constitutional powers of the GTB Election Board are derived from the GTB Constitution, Article VII, Section 5, (a) - (g).

14. Within this constitutional authority and power, the Election Board is charged with settling "disputes 'other than allegations of impropriety'..." (see GTB Constitution, Article VII, Section 5 (a)).

15. The Election Board's 2010 Election Regulations cite the GTB Constitution's Conflict of Interest provision, Article XII, Section 2 (a) and (b); however, they failed to incorporate the Article in its entirety, leaving out Section 1, which specifically states,

"In carrying out the duties of tribal office, no tribal official, elected or appointed, shall make or participate in making decisions which involve balancing a personal financial interest, other than interests held in common by all tribal members, against the best interests of the Band."

16. Timeliness for filing allegations of impropriety have a set precedent by this Court in previous GTB election cases to be within five (5) days of certification; certification of this General Election is set for September 14, 2010.

17. Petitioner, as a GTB citizen, was made aware through a public Hearing of the Election Dispute and the subsequent Election Board determination, with this filing of allegations of impropriety, is timely filed within the five (5) days provided by Tribal Court precedent.

18. Title 1, Chapter 4 of the Grand Traverse Band Code, defines the purpose and power of the GTB Compensation Committee; a Committee created by Tribal Member Referendum on March 25, 1998.

19. The purpose of the GTB Compensation Committee is to set the salaries and benefits of the GTB Tribal Councilors.
20. The GTB Compensation Committee is bound by the constitutional standard defined in the Tribal Councilors Salary Ordinance, made pursuant to and in harmony with the GTB Constitution, Article XII, Section 1, which encompasses an ethical criteria addressing "Conflicts of Interest" that prohibits those appointed or elected GTB officials from participating in making decisions that involve personal financial interests.
21. At the Hearing, Alvin Pedwaydon provided sworn testimony that during the time he served on the Compensation Committee, as an appointed member, he had also announced and remained a candidate of the GTB 2010 Election.
22. At the Hearing, Alvin Pedwaydon provided sworn testimony that during the time he served on the Compensation Committee, as an appointed member, he participated in making decisions about the Tribal Council salaries twice within one year: once in August 2009 and once in March 2010.
23. At the Hearing, an Election Board member, Betty Gibbs, questioned Mr. Pedwaydon about these two salary determinations and commented that this could be construed as a campaign tactic to garner votes.
24. Alvin Pedwaydon's acknowledgement at the Hearing that the Compensation Committee made salary decisions twice in within one year, was made after his announcement of being a GTB candidate in the 2010 Election.
25. The Compensation Committee was created by a Referendum of the GTB tribal members on March 25, 1998, for the purpose of determining Tribal Councilors' "salaries, allowances and benefits;" and formed for the sole purpose of taking Tribal Councilors out of the process of determining their own salaries, benefits and allowances pursuant to the Conflict of Interest provision of the GTB Constitution, Article XII, Section 1.
26. The Compensation Committee is charged with meeting on an annual basis to set the salaries for Tribal Councilors.
27. As a Tribal Council candidate Mr. Pedwaydon should not have been making decisions about his potential future salary, which is adverse to the GTB Constitution, Article XII, Section 1.
28. The Election Board is granted full constitutional power to address any election dispute aside from allegations of impropriety.
29. The Election Board is the only constitutional entity that can address and resolve, with full discretion, the complaints and concerns set forth regarding the specific evidence provided that conflicts of interest are constitutionally defined in Article XII, *Sections 1* (emphasis added) and Section 2 (a) and (b).

30. The Election Board failed to incorporate Article XII, Section 1 into its 2010 GTB Election Regulations.

31. The Election Board is charged with the utmost constitutionally authorized duty of ensuring elections are conducted in a fair and ethical manner and that the Election Board's policies are not unconstitutional.

32. The Election Board, by omitting a critical constitutional provision, has failed the GTB electorate by not properly addressing an ethical and constitutional prohibition regarding a 2010 GTB candidate; and had this been properly addressed by the Election Board, the only constitutionally charged entity of GTB that could address this matter, the 2010 GTB election would have had an entirely different outcome.

33. Petitioner does not file this matter lightly and in fact is greatly distressed in finding out as a GTB citizen that the Election Board failed to consider the entire constitutional provision regarding conflicts of interest in rendering its decision regarding GTB candidate, Alvin Pedwaydon, when they had full authority to amend their regulations and incorporate an important, legal, constitutional provision in order to make a properly authorized and lawful decision.

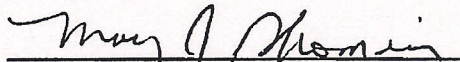
WHEREFORE, Petitioner's respectful prayer for relief is as follows:

1. Declare that the GTB Election Board's determination of September 9, 2010, is in violation of GTB Constitution Article XII, Section 1, and therefore that decision must be reversed by this Honorable Court (see Tribal Judiciary's Opinion, *Bailey v. GTB Election Board*, Case No. 2008-1031-CV-CV).

2. Stay the certification of the GTB 2010 General Election, pursuant to past precedent, so this court can address these allegations of impropriety and render an opinion in accordance with the laws and constitution of the Grand Traverse Band of Ottawa and Chippewa Indians regarding the issues presented in relation to the GTB 2010 Election.

Respectfully submitted:

Dated:


Mary J. Shomin
GTB Tribal Member Citizen, # 2395

9-13-10
September 13, 2010