

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

IN RE: Removal Petition of Unit 4 Board Member, Darcy Morrow

Charles Kinnart, Petitioner

vs.

Darcy Morrow, Respondent

ENTERED

11/3/2023 tls

Before: Matthew L.M. Fletcher, Hearing Officer, and JoAnne Cook, David Hawkins, and Kekek Jason Stark, Hearing Board Members

Counsel: Charles Kinnart, Petitioner *in pro per*, and James A. Bias, on behalf of Respondent.

ORDER GRANTING RESPONDENT’S MOTION TO DISMISS

The Hearing Board convened in accordance with Sault Ste. Marie Tribe of Chippewa Indians Tribal Code Chapter 16 and hereby **DISMISSES** Petitioner Charles Kinnart’s petition to remove Respondent Darcy Morrow for violation of Open Meetings Ordinance § 96.110.¹

Procedural and Factual Background

On August 22, 2023, Tribal Registrar Julie M. Salo certified to Tribal Board of Directors Administrator Lona Stewart that Mr. Kinnart’s petition to remove Ms. Dorrow contained 135 signatures, enough signatures to meet the requirements of Article VI, § 3 of the Tribal Constitution to initiate a removal proceeding. The Board of Directors selected this Hearing Board under Removal from Office Ordinance § 16.107.

Following an Initial Hearing held in accordance with § 16.109, Respondent moved to dismiss the petition on its face. Briefly, Respondent’s challenge to the petition had three grounds: (1) failure to provide the Petitioner’s telephone number on the petition forms under § 16.104(2); (2) failure to make financial disclosures

¹ Petitioner also gathered enough signatures to invoke a separate removal proceeding alleging violations of § 96.104, but voluntarily dismissed that petition prior to this panel’s hearing.

under § 16.104(4); and (3) failure to allege sufficient grounds for removal under § 16.110. Petitioner filed an opposition pleading.

The Hearing Officer and Hearing Board convened a hearing on Respondent’s Motion to Dismiss Removal Petition (“Motion to Dismiss”) on October 31, 2023. Nancy Hatch, Brenda Kinnart, and Charles Kinnart testified.

JURISDICTION

Jurisdiction to decide the motion to dismiss is split between the Hearing Officer and the Hearing Board. The Hearing Officer possesses jurisdiction to review the first two grounds for dismissal under § 16.104. The removal code provides in relevant part, “If the *Hearing Officer* determines that a petition . . . does not meet the requirements of §16.104, the *Hearing Officer* shall dismiss the petition.” § 16.108 (emphasis added). The Hearing Board possesses jurisdiction to review the third ground, which was brought under § 16.110. That section states in relevant part, “[T]he *Hearing Board* shall determine whether the petition meets the criteria of §16.105, and whether the violations alleged in the petition would, if true, warrant removal of the accused official from office.” § 16.110(1) (emphasis added). *See also* § 16.110(2) (“In making the determination as to whether the violations alleged in the petition would, if true, warrant removal from office, the *Hearing Board* shall consider the nature of the conduct and the public interest of the Tribe”) (emphasis added).

DISCUSSION

§ 16.104 Grounds for Dismissal – Telephone Number & Financial Disclosure

Hearing Officer Fletcher declines to dismiss the petition for the grounds contained in § 16.104.

The Tribal Constitution broadly allows tribal citizens to initiate removal proceedings upon the collection of 100 votes:

Removal of the tribal chairperson or any member of the board of directors may be initiated by means of filing charges against such person with the board of directors in the form of a petition signed by at least one hundred (100) eligible voters which alleges specific facts

which, if shown to be true, would establish that the official has engaged in conduct which constitutes a violation of this constitution and bylaws or any duly enacted tribal ordinance or resolution.” [Art. VI, § 3 (emphasis added)]

The Board of Directors has qualified that broad power by imposing procedures designed to ensure fairness to the elected official:

The requirement of allegations of specific facts showing a violation of tribal law, contained in Tribal Constitution article VI, section 3, is intended to provide the accused with fair notice of the charges against him or her, to allow for a determination whether the allegations would warrant removal if proven, to safeguard elected officials against spurious accusations, and to inform the accused official of the facts which will be at issue at the hearing. [§ 16.102(3)]

The Board highlighted the seriousness of the allegations required to justify removal, “Removal of officials elected by tribal members is disfavored and is warranted only in serious circumstances.” § 16.102(2).

It is apparent that the removal code is largely designed to protect the procedural rights of sitting elected officials. That is certainly a legitimate concern. However, the removal right of tribal citizens is a right guaranteed by the Tribal Constitution, which is a higher source of law than a tribal ordinance.

The Sault Tribe judiciary has highlighted the importance of Anishinaabe law in recent decisions. It behooves the Hearing Officer to similarly invoke those precedents, which state, “Our Anishinaabe teachings of *nibwaakaawin* (wisdom-use of good sense), *zaagi’idiwin* (practice absolute kindness), *minadendmowin*, (respect – act without harm) as well as *ayaangwaamizi[n]* (careful and cautious consideration) must guide this Court’s decision-making.” *Payment v. Election Committee*, No. APP-2022-02, at 4 (Sault Tribe Appellate Court, Dec. 6, 2022); *Hoffman v. Board of Directors*, No. APP-2022-05 (Dec. 7, 2022). In the invocation of these precedents, we must balance these rights in an effort to achieve *mino-bimaadiziwin*.

Anishinaabe law generally favors reaching the merits of a given question rather than avoid them due to procedural faults. In the *Hoffman* case, which involved the application of tribal sovereign immunity that denied a party the opportunity to enforce a constitutional right, the Appellate Court noted that, in typical

circumstances, Anishinaabe people sought to resolve disputes in a healing manner if at all possible:

In the Anishinaabe[] traditional governance structure, tribal customs and usages, both past and evolving, a healing approach was used to resolve tribal disputes. We are advised by our Elders that our Sault Tribe traditions encouraged participatory and consensual resolution of disputes, maximizing the opportunity for airing grievances (i.e. hearing), participation, and resolution in the interests of healing the participants and preventing friction within the tribal community. This Court is further advised that ceremonies provided context to *Anishinaabe-inaakonigewin* (Anishinaabe law) pursuant to the principle of *mino-bimaadiziwin*, as achieved through the implementation of the seven grandfather teachings, by infusing the governance process with life energy and spirit.

Hoffman, supra, at 8-9. The Appellate Court still affirmed dismissal of the claim on the sovereign immunity ground, which it determined offered no room to maneuver. Even so, the *Hoffman* principles counsel in favor of proceeding toward the merits of a given claim rather than dismissing the matter on a procedural technicality. Here, there is no sovereign immunity issue barring the Petitioner from moving forward.

However, the code provides competing procedural requirements designed to protect the procedural fairness rights of siting officials as well. The *Payment* decision invoked *mino-bimaadiziwin* in assessing the procedural rights owed tribal citizens:

As Anishinaabe people, and in carrying out duties delegated from one authority to another, we would be remiss if we did not seek out our Ojibway teachings to inform this Court's due process jurisprudence. Indeed, the notion of due process emanates from the concept of achieving harmony in life, to live in balance with all of creation, otherwise known to the Anishinaabe as *mino-bimaadiziwin*.

Payment, supra, at 4 (citing *Cholewka v. Grand Traverse Band of Ottawa and Chippewa Indians Tribal Council*, No. 2013- 16-AP (Grand Traverse Band of Ottawa and Chippewa Indians App. Ct. 2014)). The Court added that all parties to a dispute must be heard in a respectful manner:

This Court is further informed by our Elders that the Anishinaabe achieve wisdom through their understanding of the “ordinances of creation.” The tenets represented in the rhythm of the earth and all of creation, are utilized in our established systems of governance and can be used to identify the principles of due process. For example, the Anishinaabe are no stranger to respectful listening to the position of all interested persons on any important issue. To be sure, one only need to look to the Seven Grandfather Teachings of the Anishinaabe to understand that Indian nations did not learn “due process” and “fairness” from Anglo–American cultures. (*See e.g., Begay v. Navajo Nation*, 6 Nav. Rptr. 20, 24–25 (Navajo Nation Sup.Ct. 1988) (“The concept of due process was not brought to the Navajo Nation by the Indian Civil Rights Act . . . The Navajo people have an established custom”)).

Indeed, this Court is called upon to consider the last time its members participated in a talking circle – we think of the order of the circle as it exists in our traditional ways, the importance of the talking stick or eagle feather as the object that enables respectful discussion as well as demands respectful listening. We also think of expected outcomes and finality of the decisions made that result from the open, honest and respectful discussion. It could be said that the application of the Ojibway talking circle principles speak to the essence of due process – a governmental respect for all individuals subject to its authority. Like other Indian communities, this respect can be pragmatically translated in legal proceedings to mean notice and the opportunity to be heard when the deprivation of property or liberty is at stake. (*Zephier v. Walters*, No. 15A06 (Cheyenne River Sioux Tribal Ct. of App. 2017).

This lengthy passage initially suggests that the tribunal should take every effort to allow the parties to address the disputes on the merits, but also cautions in favor of “governmental respect for all individuals.” *Payment, supra*, at 5.

The Tribal Constitution creates a plain right of tribal citizens to invoke the recall process upon the collection of 100 signatures. The removal code establishes minimum baseline procedural protections to ensure that sitting elected officials subject to removal are afford respect in that removal process.

In the traditional Anishinaabe governance structure, each of the clans, through individual representation, selected *ogimaag* (chiefs or leaders) to implement the Bands governance system and to represent the interests of the clan at the national council. As a result, the traditional form of governance, or sovereignty for the Anishinaabe is defined by the concept *gaa-ezhi-ogimaawaadizid* (to act in a way that recognizes those I am responsible for). *Hoffman, supra*, at 8. Therefore, this Hearing Board recognizes the role of the tribal citizenry in choosing their *ogimaag* (chiefs, leaders), through their *doodem* (clan) responsibilities as a fundamental component of traditional Anishinaabe governance in accordance with the principle of *inawendiwin* (reciprocal relationships). These connective reciprocal relationships contributed to the overall social organization and governance of the Anishinaabe, enabled inter-community cooperation and political coordination as well as the advancement of leadership in fulfillment of the principle of *mino-bimaadiziwin*. In addition, the traditional law principle of sovereignty, as expressed through the concept *gaa-ezhi-ogimaawaadizi* is applicable in determining how the Board of Directors, as *ogimaag* (tribal leaders), must act in a way of recognizing the rights of the people, which includes the protection of their right to removal.

Turning now to the two § 16.104 challenges, the Hearing Officer respectfully denies both challenges to the face of the petition.

A. Telephone Number

The first challenge involves a requirement that the petition include a telephone number for the petitioner's sponsor:

A removal petition shall have a principal sponsor, who shall act as the petitioner for purposes of any hearing held on the petition. The principal sponsor shall be a qualified and registered voter of the Tribe. *The name of the principal sponsor shall appear on each page of the petition along with their mailing address and telephone number.* The principal sponsor is responsible to oversee the initiation of the circulated petition and for compliance with the provisions of this Chapter. Along with the petition the principal sponsor shall submit a statement signed under penalty of perjury that to the best of his or her knowledge and belief each page of the petition was circulated by a qualified circulator and complies with the provisions of sub. (3). [§ 16.104(2) (emphasis added)]

Respondent points to the petition form and notes that there is no phone number. The following screenshots contain the relevant information about the petition and a representative of each completed form:

REMOVAL PETITION TO REMOVE: DARCY MORROW

Principal sponsor/petitioner: Charles Kinnart Qualified circulator: Charles Kinnart *OK*

STATEMENT OF FACTS

Grounds for removal/ Tribal Ordinance violated: Open Meetings Act 96.110, which reads:

“Recordation of Board Meeting. Audio or video recording or photography is permitted at Board of Directors meetings only with the prior permission of the Chairperson or the Board”

At the July 11, 2023 Meeting of the Sault Tribe Board of Directors (while seated as a Member of the Tribal Board) Darcy Morrow violated the Tribal Open Meetings Act by video recording another Member of the Tribal Board of Directors without the consent of the Board Member recorded and without prior permission from the Chairperson of Tribal Board of Directors. When confronted with her violation, Darcy Morrow shamelessly admitted doing so which serves as conclusive evidence to her violation of the Open Meetings Act. Per the Tribal Removal Code, violations of the Tribal Open Meetings Act are grounds for removal from office.

* * *

[listing of signatories, their contact information, and their signatures omitted]

* * *

CERTIFICATION of Qualified Circulator

I certify that I am a qualified circulator and that to the best of my knowledge and belief, no signature on the petition was obtained through fraud, deceit, or misrepresentation nor have I caused or permitted a person to sign the petition more than once; I have no knowledge of a person signing the petition more than once; each signature is the genuine signature of the person purporting to sign the petition; the signer was an eligible voter of the Tribe residing at the address shown, and that the signature was solicited and obtained in compliance with the Tribal Code Chapter 10 “Removal Code”;

Signature: *Charles Kinnart* Date: 8/13/2023

CERTIFICATION of Principal Sponsor/petitioner

Under penalty of perjury, I, Charles Kinnart, 1600 S. 30th St. Lot 69 Escanaba, MI 49829 understand that to the best of my knowledge and belief, that each page of this petition was circulated by a qualified circulator and complies with 16.104(2) of the Tribal Removal Code:

Signature: *Charles Kinnart* Date: 8/13/2023 Page 2 of 29

No telephone number appears on this form. The Respondent argues forcefully that § 16.104(2) mandates the inclusion of a telephone number through the use of the word “shall.” Similarly, the code provides that if the Hearing Officer finds that the Petitioner did not comply with § 16.104, the petition “shall” be dismissed. § 16.108.

The Hearing Officer respectfully disagrees. Important facts became clear during the hearing on this matter. First, the Hearing Officer finds that the Petitioner was not aware of the telephone number requirement. Second, the Hearing Officer finds that the Petitioner did not intend to deceive the public. Third, the Hearing Officer finds that the Petitioner did include his residential address on each petition. Fourth, the Hearing Officer finds from a review of the petition certifications that the Petitioner personally collected many, perhaps most, of the signatures. As a matter of

law, the Hearing Officer finds pursuant to the principle of *ayaangwaamizin* (careful and cautious consideration) that Petitioner was not hiding from the public, and that the petitioner was accountable to those who signed. Pursuant to the principle of *nibwaakaawin* (wisdom-use of good sense), the Hearing Officer concludes that neither the Respondent nor the public suffered meaningful injury from the lack of a telephone number on the petition.

Additionally, the right of the tribal citizenry to invoke a removal process would be substantially impaired by the dismissal of the petition for no apparent benefit of the Respondent other than an easy, technical win. This is because pursuant to the principles of *minadendmowin* (respect – act without harm) and *zaagi'idiwin* (practice absolute kindness), the tribal citizenry is to invoke respect and kindness toward its elected officials in carrying out their duties and responsibilities associated with Anishinaabe governance (the act of reciprocally caring for and acting in a responsible manner toward and on behalf of the tribal citizenry). Surely, the outcome of a technical dismissal is inconsistent with Sault Tribe traditions favoring “participatory and consensual resolution of disputes, maximizing the opportunity for airing grievances (i.e. hearing), participation, and resolution in the interests of healing the participants and preventing friction within the tribal community.” *Hoffman, supra*, at 9.

B. Financial Disclosure

The second relevant requirement is that the petition’s sponsor must disclose the names or entities of persons contributing funds in furtherance of the petition at the time the petition is filed and weekly thereafter:

The principal sponsor and the accused official shall be required to file with the Secretary of the Board of Directors a full disclosure of all funding and services received from any source other than the principal sponsor’s or accused official’s own funds. The disclosure shall disclose the name and address of each person or entity contributing funds or services (and the value of those services). *A disclosure shall be filed with the petition and weekly thereafter until the entire matter is resolved.* The disclosure shall be signed under penalty of perjury. The penalty for perjury under this section shall include, but not be limited to, a fine of no less than \$1,000.00 and no more than \$5,000.00. [§ 16.104(4) (emphasis added)]

The Tribal Registrar certified the signatures needed to initiate the removal proceeding on August 22, 2023. The Board of Directors voted to initiate the removal proceeding a week later. Petitioner did not file a financial disclosure statement until September 21, 2023 and filed no other statements.

The removal code imposes restrictions on that right, restrictions that appear to be perfectly reasonable in light of the policy justifications articulated or implied by the Board in imposing these restrictions. It is apparent the Board was utilizing the principle of *debwewin* (truth – obtaining truth in life)² in addressing a concern about efforts to deceive the public about any financial backing for removal efforts from a “non-tribal source.” § 16.104(4)(b). Further, the Board was concerned about “intentional violation[s]” of the financial backing of a removal effort. § 16.110(4)(c). Such “intentional” violations are directly contrary to the principle of *mino-bimaadiziwin*. The Respondent again argues forcefully in favor of a dismissal of the petition for violation of these requirements. Again, the Hearing Officer disagrees, though the question is much closer.

The Hearing Officer reiterates factual findings from earlier, that the Petitioner was not aware of these requirements and had no intent to deceive the public about the financial backing of the removal effort. The Hearing Officer reaches these findings well aware that the Petitioner’s conduct appears not to be entirely innocent. The Hearing Officer finds first that the Petitioner did not file a financial disclosure until September 21, 2023. This disclosure came several weeks after the Board voted to allow the removal process to begin. The disclosure came more than a month after the Petitioner and his sister Brenda began to solicit and receive funding. The Hearing Officer notes that Petitioner received \$175 from two confirmed sources and perhaps an additional amount from a third source. These sources were all tribal citizens. The total amount of money appears modest. The Hearing Officer does find that Nancy Hatch, one of the funding sources, repeatedly reached out as early as July to both Petitioner and his sister to warn them of the financial disclosure requirement. It appears their personal relationship soured over these specific contacts (and perhaps other reasons not relevant here). Even so, the Hearing Officer concludes as a matter of law pursuant to the principle of *ayaangwaamizin* (careful and cautious consideration) that the injury suffered to the public and to the Respondent was insufficient to justify dismissal.

² *Hoffman, supra*, at 13 (“Tribal Oath of Office ... In discharging those duties, I will honor the seven teachings of our people; Wisdom, Love, Respect, Bravery, Honesty, Humility and Truth.”).

Again, Sault Tribe traditions support this conclusion for the same reasons as mentioned above.

§ 16.110 and § 16.105 Grounds for Dismissal – Sufficiency of the Claim

The Hearing Board hereby dismisses the petition for failure to allege violations of tribal law that would justify the removal of Respondent from the Board of Directors.

The standard for removal is onerous. The Tribal Constitution sets two main standards. First, the sitting elected official's conduct "constitutes a violation of this constitution and bylaws or any duly enacted tribal ordinance or resolution." Article VI, § 3. Second, the Petitioner must "allege[] specific facts which, if shown to be true, would establish that the official has engaged in [that] conduct." *Id.* The removal code provides further, "Removal of officials elected by tribal members is disfavored and is warranted only in serious circumstances." § 16.102(2). Like the Appellate Court in *Payment*, the code emphasizes the procedural rights of the accused. The "specific facts" requirement is:

intended to provide the accused with fair notice of the charges against him or her, to allow for a determination whether the allegations would warrant removal if proven, to safeguard elected officials against spurious accusations, and to inform the accused official of the facts which will be at issue at the hearing. [§ 16.102(3)]

In short, the thumb of the law is on the side of the scale favoring retention of the elected official. This is because the Hearing Board recognizes the role of the tribal citizenry in choosing their *ogimaag* (chiefs, leaders), through their *doodem* (clan) responsibilities as a fundamental component of traditional Anishinaabe governance.

That said, a sitting official may be removed for violations of tribal law, enumerated in the removal code as follows:

Violations of the following shall constitute the only grounds which a petition for removal may be based upon:

- (a) Violation of the Constitution and Bylaws.
- (b) Violation of the Tribal Code Ch. 10: Election Ordinance, or *Tribal Code Ch. 96: Open Meetings Ordinance*.

(c) Violation of any other ordinance or resolution that specifically provides that its violation may constitute grounds for removal from office.

(d) A criminal conviction in state, Federal, or Tribal Court.

[§ 16.105(3) (emphasis added)]

Additionally, the removal code demands that the Hearing Board should consider the Respondent's alleged conduct in light of numerous public policies:

In making the determination as to whether the violations alleged in the petition would, if true, warrant removal from office, the Hearing Board shall consider the nature of the conduct and the public interest of the Tribe, including, but not limited to, such factors as:

(a) the provisions of law violated or in the case of a criminal conviction, the crime for which the accused official was convicted;

(b) whether the conduct is a breach of public trust, abuse of authority, or official misconduct;

(c) whether the conduct evidences lack of integrity;

(d) whether the conduct contravenes or frustrates an important Tribal policy or interest; and

(e) whether the Tribe's interests or public trust and confidence in the Tribe or its officials would be impaired if the accused remained in office.

(f) the credibility of parties and witnesses;

(g) whether there is bias or prejudice on the part of any party or witness.

[§ 16.110(2)]

Petitioner's allegation about the violation of law by Respondent is that Respondent used a personal device to record video of another Member of the Tribal Board of Directors at a board meeting on July 11, 2023 in violation of § 96.110 of the Open Meetings Ordinance. The section states, "Audio or video recording or photography is permitted at Board of Directors meetings only with the prior

permission of the Chairperson or the Board.” The petition more specifically alleges that the Respondent recorded video without the consent of the subject of the record, did so without the consent of the Tribal Chairperson, and did so “shamelessly.”

The Hearing Board took brief testimony on this question. The parties stipulated that the Tribal Chairperson granted permission for the meeting to be streamed live online and can be found on publicly available websites. The Hearing Board does not and cannot reach a finding on whether the Respondent received permission to record from the Chair. We further do not reach a finding on whether consent allegation of the petition is true or whether the Respondent’s conduct was “shameless.”

We conclude pursuant to the principle of *nibwaakaawin* (wisdom – use of good sense) that even if a technical violation of the permission requirement occurred and the Petitioner could prove it, in these circumstances where the meeting was streamed online the Respondent’s conduct does not rise to the level of conduct sufficient to justify removal. We point to § 16.110(2), which demands a much higher standard. The Respondent’s conduct does not seriously implicate any of the first four policies articulated in § 16.100(2). We conclude that (1) the Respondent’s video recording did not constitute a crime; (2) was permitted by the Tribal Chair and therefore could not be a breach of public trust, abuse of authority, or official misconduct; (3) was permitted by the Tribal Chair and therefore did not evidence a lack of integrity; and (4) did not contravene an important tribal public policy. On the fifth element, we respectfully take seriously Petitioner’s concern that Respondent’s recording may have implicated their trust in Respondent, as a public official pursuant to the principle of *inawendiwin* (reciprocal relationships)³, but given that the Board’s meeting was live-streamed and is available online in its entirety undercuts that concern considerably. The last two policies do not appear to be relevant here.

In honor of this Hearing Board’s obligation to guarantee due process “emanate[ing] from the concept of achieving harmony in life, to live in balance with all of creation, otherwise known to the Anishinaabe as *mino-bimaadiziwin*,” *Payment, supra*, at 4, we cannot conclude that Respondent’s conduct rises to the level of conduct justifying removal. We see no way for Petitioner to make a factual

³ Pursuant to the principle of *mino-bimaadiziwin*, reciprocal relationship protocols provide the legal requirements of how we are supposed to conduct ourselves, in the pursuit of harmony. As a result, embedded in Anishinaabe law, are the Band’s kinship ways of relating. That is how to act in relationship with one another.

showing that Respondent engaged in removable conduct unless Petitioner is allowed to expand the scope of inquiry; it would be, of course, improper to do so. We accept that Petitioner and the many signatories to the petition may find Respondent's conduct reprehensible, but in this instance, we must defer to the protections afforded sitting elected officials in the Tribal Constitution, the removal code, and Sault Tribe traditions and dismiss the petition.

IT IS SO ORDERED.

Dated: November 3, 2023

By: /s/MATTHEW L.M. FLETCHER
Matthew L.M. Fletcher, Hearing Officer