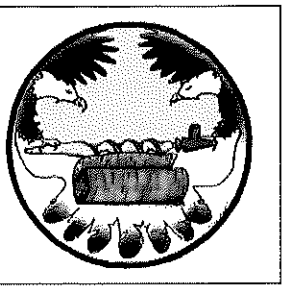
LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS **Tribal Court** **Civil Division**	

Court Mailing Address: **7500 Odawa Circle, Harbor Springs, MI 49740** Phone: 231-242-1462

REGINA GASCO-BENTLEY, in her official capacity as TRIBAL CHAIRPERSON OF THE LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS,

Plaintiff,

v.

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS TRIBAL COUNCIL in its official capacity,

Defendant.

Case No.: C-233-0918

Hon. Allie Greenleaf Maldonado

ORDER DENYING MOTION REQUESTING RECONSIDERATION AND GRANTING MOTION REQUESTING CLARIFICATION

ORDER DENYING MOTION REQUESTING RECONSIDERATION AND GRANTING MOTION REQUESTING CLARIFICATION

Before the Court is the Defendant's Motion Requesting Reconsideration and/or Clarification of this Court's Order of June 25, 2019, which granted the Tribal Chairperson's motion for summary disposition. In that Order, this Court held that the Tribal Chairperson ("Plaintiff") has the constitutional right to submit nominations for appointed positions on Tribally-chartered corporations and other subordinate Tribal entities because the constitutional appointment process has two parts: Executive nomination and Tribal Council appointment. The

Tribal Council ("Defendant") claims that the Court erred in its judgment and requests clarification of the Court's reasoning. For the reasons discussed below, the Court DENIES the Defendant's Motion Requesting Reconsideration and GRANTS the Defendant's Motion Requesting Clarification.

JURISDICTION

The Defendant filed its timely Motion under LTBBRCP XXVI, which allows the Court to order new trials and alter or amend its judgments. The Defendant cited LTBBRCP XXVI(a) in its Motion, which only refers to requests for a new trial, and is inapplicable to the present case since no trial occurred. However, the Rule in general does "provide a means for a party who seeks reconsideration of a Tribal Court judgment by the Tribal Court." *Beck v. Little Traverse Bay Bands of Odawa Indians*, No. A-028-0815 at 7 (LTBB Ct. App. Feb. 13, 2017). Accordingly, the Court construes the Defendant's Motion as a "motion to alter or amend a judgment" as identified in LTBBRCP XXVI(e).

The Tribal Council has not issued a separate waiver of sovereign immunity for the Court to review this Motion or to answer questions left unanswered by this Court's initial Order. As the Court is not prepared to infer an additional or extended waiver of sovereign immunity, the following analysis is bound by the same limitations as the initial Order. *See* Stipulation to the Question Presented to the Court and Limited Waiver of Sovereign Immunity; *see also* Order Granting Mot. for Summ. Disposition at 2, 4, 7. The Court is aware of the potentially unsatisfactory answer it has provided the parties because of these limitations. However, as this Court explained in its initial Order, waivers of sovereign immunity must be strictly construed. *See* Order Granting Mot. for Summ. Disposition at 3; *see also McGraw v. Colby*, No. A-030-

1115 at 6 (LTBB Ct. App. Oct. 1, 2015) ("In deference to the Council's determination, waivers of sovereign immunity are strictly construed."); *LTBB Gaming Regulatory Comm'n v. Roberts*, No. A-018-0811 at 5 (LTBB Ct. App. Dec. 20, 2012).

In this case, the waiver of sovereign immunity is tied to one particular question: whether the Tribal Chairperson has the constitutional right to nominate for positions on Tribally-chartered corporations or other subordinate Tribal entities under any of the following constitutional provisions:

> LTBB Const. art. VIII, § C, cl. 3
> LTBB Const. art. VII, § D, cl. 16
> LTBB Const. art. VII, § D, cl. 24

Stipulation to the Question at 1-2.

BACKGROUND

This Court issued its Order granting summary disposition in the instant case on June 25, 2019. *See* Order Granting Mot. for Summ. Disposition. The initial suit began on September 14, 2018 as a dispute over the Gaming Authority statute's (WOS 2018-016) exclusion of an Executive nomination provision.[1] *See* Pl. Compl. ¶ 15-18; Pl. Compl. Ex. A at 2. By February 22, 2019, the parties issued a stipulated question, stated above. *See* Stipulation to the Question. This question both clarified the issue before the Court and broadened the scope of the dispute beyond the Gaming Authority to include similar entities. Within this stipulation, the Tribal Council issued a limited waiver of sovereign immunity solely for "the disposition of the above stated question." *Id.*

[1] For a full summary of the background of this case, see the Order Granting Motion for Summary Disposition at 4-5.

The Plaintiff moved for summary disposition on March 22, 2019, arguing that the parties' stipulation presented a purely legal dispute for the Court to resolve. *See* Pl. Mot. for Summ. Disposition. After responses and oral arguments, the Court held on June 25, 2019 that the stipulated question was indeed one of law, and granted the Plaintiff's Motion for Summary Disposition on the basis that the Tribal Chairperson does have the right to nominate for positions on subordinate Tribal entities if those positions are appointed, because this is consistent with the appointment process set out in the Tribal Constitution. *See* Order Granting Mot. for Summ. Disposition at 1, 7, 10, 13.

The Defendant submitted its Motion Requesting Reconsideration and/or Clarification and Stay of Proceedings on July 3, 2019. That same day, the Court granted the Defendant's Request for Stay of Proceedings and placed a moratorium on the tolling of the deadline for filing an appeal. *See* Civil Scheduling Order. The Plaintiff submitted its Opposition to the Defendant's Motion on July 12, 2019, asking that the Court deny the Defendant's Motion on all counts. Pl. Opp. to Mot. to Reconsider at 7. Upon the issuance of this Order, the moratorium is lifted and clock begins again on the deadline for filing an appeal.

DEFENDANT'S CLAIMS

The Defendant claims that there was "error or irregularity" which prevented the parties from receiving a fair hearing in this case. Def. Mot. Requesting Reconsideration and/or Clarification at 1. The Defendant asserts that the Court's Order "fail[ed] to address the central argument set forth by the parties" and made factual errors. *Id.* at 1-2. These errors, the Defendant argues, demonstrate the existence of a genuine dispute of material fact and provide a sufficient

basis for the Court to reconsider its Order and deny the Plaintiff's Motion for Summary Disposition. *Id.* The alleged errors include the following:

1. The Court's Order "implied a fact that people were 'appointed'" to the positions at issue in the case, which is a fact that "was neither argued, supported, nor proven" by the Plaintiff. *Id.* at 2.

2. The positions at issue in the case were not "'government-appointed' positions" as the Order at times referred to them. *Id.* at 2.

3. The Defendant "find[s] error in the Order stating that there are no exceptions to the 'standard nomination' process." *Id.* at 6.

The Defendant also requests that the Court "clarify or explain what is meant by 'Exclusive Power' of the Tribal Chair and Tribal Council in the nomination of appointed positions." *Id.* at 2. The Defendant contends that "there are many examples of how the appointment process is not exclusive to the Tribal Chair and Tribal Council," and asks that the Court clarify, if such exceptions are valid, "what foundation is used to make such distinctions or determinations." *Id.* at 8.

ANALYSIS

The Court has construed the Defendant's Motion Requesting Reconsideration and/or Clarification according to LTBBRCP XXVI(e), which allows parties to request that the Court alter or amend its judgment. The Court declines to reconsider its Order of June 25, 2019 because the Defendant has failed to meet the limited circumstances which justify reconsideration under the Rule. However, the Court believes clarification is warranted in this case and will provide further analysis to be read in context with this Court's initial Order.

REQUEST FOR RECONSIDERATION

The LTBB Rules of Civil Procedure allow reconsideration of a Tribal Court judgment for five limited reasons: error or irregularity that prevents a party from receiving a fair trial, judicial misconduct, newly discovered evidence, excessive damages, or error in law. LTBBRCP XXVI; *see Beck*, No. A-028-0815 at 7.[2] In general, motions for reconsideration are disfavored, because "revising a final judgment is an extraordinary remedy and should be employed sparingly." *Ira Green, Inc. v. Military Sales & Serv. Co.*, 775 F.3d 12, 28 (1st Cir. 2014).[3] Public policy dictates a need for parties to trust that the judgments they receive from the Court will be not only fair, but final. Persistent re-litigation is also contrary to the interest of judicial efficiency. Motions for reconsideration, therefore, should not be used to request a "rehearing" of a case, *Northern Anesthesia Providers, Inc. v. Welles*, No. FC-233-0812 at 3 (LTBB Tribal Ct. Aug. 6, 2013), nor are they an opportunity to "re-argue" a case, *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998) (citing *FDIC v. World Univ. Inc.*, 978 F.2d 10, 16 (1st Cir. 1992) ("Rule 59(e)[4] motions are aimed at *re* consideration, not initial consideration. Thus, parties should not use them to raise arguments which could, and should, have been made before judgment issued.")). Motions for reconsideration may *only* be granted for the limited purposes set out in the Rule.

The Defendant hinges its request for reconsideration on a claim that "there is a need to correct clear error or manifest injustice." Def. Mot. at 2. The standard of "clear error" carries a

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[2] The U.S. federal courts have similar limitations: "A district court may alter or amend its judgment based on (1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice." *Brumley v. United Parcel Serv., Inc.*, 909 F.3d 834, 841 (6th Cir. 2018) (citation omitted).

[3] References to authorities from non-LTBB jurisdictions are merely used herein for analogy and as persuasive authority; they are not binding on the Tribal Court. *See LTBB Tribal Council Members: Bardwell et al. v. Harrington*, No. A-022-1212 at 5 (LTBB Ct. App. Mar. 5, 2015).

[4] Rule 59(e) is the federal analogy to LTBBRCP XXVI(e), a motion to alter or amend judgment. *See* Fed. R. Civ. Pro. 59(e).

high burden of proof: "In essence, a judgment must be 'dead wrong' to qualify as being clearly erroneous." *Kelly v. City of Fort Thomas, Ky.*, 610 F. Supp. 2d 759, 681 (E.D. Ky. 2009), aff'd in part, rev'd in part and remanded sub nom. *Sheffield v. City of Fort Thomas, Ky.*, 620 F.3d 596 (6th Cir. 2010) (citation omitted). The Defendant's Motion fails to meet this high burden.

1. **This Court did not imply or assume that any individuals were in fact appointed, nor did this Court incorrectly infer that the parties were arguing about appointed positions.**

The Defendant improperly raises a new argument in its Motion, which is that Tribal Council has been "assigning" rather than "appointing" individuals to positions on subordinate Tribal entities. Def. Mot. at 2-4. As noted above, a motion to alter or amend a judgment is an inappropriate vehicle for raising arguments "which could, and should, have been made before judgment issued." *Sault Ste. Marie Tribe*, 146 F.3d at 374 (quotation omitted). The Defendant certainly could have appropriately raised this argument prior to judgment, but it did not. Instead, the question presented by the parties, along with their supporting briefs, made clear to the Court that the dispute was about the constitutional *appointment* process.[5] The parties asked the Court about the constitutional right to nominate, *see* Stipulation to the Question, which pairs directly with the appointment power—the two powers work hand-in-hand. The Defendant's "assignment" argument is therefore barred on a motion for reconsideration.

Even if properly raised, however, the Defendant's argument would not have changed this Court's decision. First, the Defendant's concerns are unfounded because the Court did not make

[5] While the parties' briefings repeatedly discussed appointment and its relation to nomination, not once did either party refer to "assignment" until now. The Defendant's Motion cites Tribal Council policy, minutes, and the Tribe's website in support of its "assignment" argument, which have not been presented to the Court previously. Def. Mot. at 3-4. Even with evidence appropriately presented, the Court has no "duty to search through the record to develop a party's claims." *Magnum Towing & Recovery v. City of Toledo*, 287 Fed. Appx. 442, 449 (6th Cir. 2008)). It is the parties' duty to direct the Court to supporting evidence in a timely and appropriate manner.

factual findings regarding particular statutes, entities, or positions.[6] There was no assumption or factual finding on the Court's part as to the *actual* appointed status of any particular positions or individuals on subordinate Tribal entities. Second, and more importantly, the Court has found no constitutional basis for an "assignment" power to support the Defendant's claims. Because the Tribal government has only limited powers, any claimed power must be supported by a specific enumeration in the Tribal Constitution. *See LTBB Tribal Council Members: Bardwell et al. v. Harrington*, No. A-022-1212 at 16 (LTBB Ct. App. July 9, 2014). However, the constitutional provisions directly cited by the parties in their stipulated question refer only to "appointment." *See, e.g.*, LTBB Const. art. VIII, § C, cl. 3; art. VII, § D, cl. 16. The Defendant has not provided the Court with an additional constitutional basis for its alleged "assignment" power, nor is there an enumerated "assignment" power in the plain language of the Tribal Constitution. The Defendant's "assignment" argument therefore falls flat.

Additionally, the Court tends to agree with the Plaintiff that the use of the word "assign" rather than "appoint" presents a distinction without a difference. *See* Pl. Opp at 3. For instance, the word "appoint" is often used in defining the word "assign." *See Assignment, Black's Law Dictionary* (11th ed. 2019) ("a task, job, or appointment"); *Assign*, Merriam-Webster.com (last visited Jul. 15, 2019) ("to appoint to a post or duty"). The thesaurus even lists the words "assign" and "appoint" as direct synonyms under the following meaning: "to pick (someone) by one's authority for a specific position or duty." *Assign* and *Appoint*, Merriam-Webster.com (last visited Jul. 15, 2019).[7]

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[6] The Defendant may be reassured of this by the explicit language of the Court's initial Order. *See* Order Granting Mot. for Summ. Disposition at 2 ("The Court, therefore, does not read the Stipulation as a request to analyze specific statutes or determine which ones in fact exclude Executive nomination."); *see also id.* at 7 ("The Court must also be mindful of the immunity waiver tied to the parties' Stipulation, which precludes the Court from considering facts surrounding specific statutes or applications of them.")

[7] Not only are "assign" and "appoint" synonyms under the meaning cited above, but the two words also have identical lists of other synonyms: attach, commission, constitute, designate, detail, name, nominate, and place. *Id.*

Regardless of the words' similarity, the Court's decision was based on the actual practice at issue in the waiver, rather than semantics. For those positions subject to the constitutional appointment process, the appointment, by whatever name, may only happen in conjunction with nomination. The Tribal Constitution does not allow for unilateral appointment by a single branch of government because this would be a violation of the foundational principle of separation of powers.

2. The Court did not err in its use of the term "government-appointed" positions.

The Defendant misunderstood the Court's use of the term "government-appointed" positions. The Court used this term to refer to "government-appointed" positions on subordinate Tribal entities, meaning that such positions are subject to appointment *by* government authorities. *See* Order Granting Mot. for Summ. Disposition at 11 ("If such entities have government-appointed positions . . ."). The government authorities doing the appointing are the Executive and the Tribal Council via the two-part constitutional appointment process. The use of "government-appointed" did not imply any factual findings as to the governmental function or status of subordinate Tribal entities. *See* Def. Mot. at 5.

3. The Court did not err in stating that there are no exceptions to the "standard nomination" process.

In stating that there are no exceptions to the "standard nomination" process, this Court meant that there is no reason to categorically exclude positions on subordinate Tribal entities or Tribally-chartered corporations from the constitutional appointment process. This does not mean, as the Defendant fears, that any time the word "appoint" appears in any context that Executive

nomination must automatically apply. *See* Def. Mot. at 6-10. The Court will provide further guidance on this matter in its following clarification.

REQUEST FOR CLARIFICATION

This Court attempted to be as clear as possible in its initial Order while honoring the jurisdictional restraints of the limited waiver of sovereign immunity, but acknowledges that balancing these concerns may have created more confusion for the parties. Because of this, and "[g]iven the magnitude of laws and the impact this decision will have on the Tribal Government," Def. Mot. at 10, this Court will take the present opportunity to clarify the reasoning underlying its Order of June 25, 2019. This clarification is not to be understood as altering or amending the initial judgment. Rather, the Court is providing further analysis to be read in context with its existing Order.

The Court notes that it will not make a habit of clarifying its decisions, and cautions against repeated requests for clarification in cases where a party is merely dissatisfied with the result. The instant case presents a rare occasion where clarification is warranted, given the ruling's complexity and potential impact on Tribal government. However, the Court acknowledges that even this clarification may not answer all the outstanding questions in the minds of the parties. Further questions will be addressed only if they are properly before the Court as part of a case or controversy. *See LTBB Tribal Council Members: Bardwell et al. v. Harrington*, No. A-022-1212 at 4 (LTBB Ct. App. Mar. 5, 2015).

1. **The constitutional appointment process consists of exclusive powers because only the Tribal Chairperson has the enumerated power to nominate and only the Tribal Council has the enumerated power to appoint.**

The Tribal Constitution is one of enumerated, separated powers. These enumerated powers are by definition exclusive because each branch of government may *only* exercise the powers expressly granted to them by the Tribal Constitution, and they may *not* exercise the powers delegated to another branch. *See* LTBB Const. art. I, § A; art. VI, § C; art. VI, § D. This Court stated that the appointment process outlined in the Tribal Constitution consists of the exclusive powers of Executive nomination and Tribal Council appointment. *See* Order Granting Mot. for Summ. Disposition at 10-11. In this context, "exclusive power" means "enumerated power." The Tribal Chairperson has the "exclusive power" to nominate because it is the *only* office in the Tribal Constitution given the enumerated nomination power. *See* LTBB Const. art. VIII, § C, cl. 3; art. VII, § D, cl. 16. In a parallel manner, the Tribal Council has the "exclusive power" to appoint because it is the *only* body given the enumerated appointment power. *See id.* Neither of these governmental bodies can exercise the powers granted to the other. They must operate *together*, combining their individual powers to implement the constitutional appointment process.

2. **The constitutional appointment process is exclusive to the Tribal Chairperson and Tribal Council within the scope of the initial Order.**

The constitutional appointment process consists of specifically enumerated powers exclusive to the Tribal Chairperson and the Tribal Council, and it is the only mechanism for the nomination-and-appointment of positions. However, the Defendant is correct to point out that the constitutional appointment process does not apply to every use of the word "appoint" throughout the Tribal Constitution and Tribal Code. *See* Def. Mot. at 6-10. This Court did not intend to

analyze or extend its initial Order to every use of the word "appoint," as it was only discussing appointed positions on subordinate Tribal entities per the parties' stipulated question. This Court's ruling was meant to be read in the context of the question properly before it: Whether the Tribal Chairperson has the right to nominate for appointed positions on Tribally-chartered corporations or other subordinate Tribal entities. *See* Order Granting Mot. for Summ. Disposition at 1, 13.

The Defendant's Motion lists "exceptions" to the constitutional appointment process, which include: (1) the selection of judges to serve in matters where there is a conflict of interest within the Judiciary;[8] (2) the selection of individuals to temporarily fill vacancies in elected or appointed positions;[9] and (3) numerous instances where the Tribal Court may appoint legal representation for individuals in certain circumstances.[10] *See* Def. Mot. at 6-10. However, these examples are not "exceptions" to the constitutional appointment process. Instead, they are examples of positions which fall outside the scope of that process. The listed examples fall outside this scope because they either involve special circumstances requiring the selection of officials to fill limited, short-term roles or are positions which function internally to a particular branch and do not operate in a government capacity on behalf of the Tribe's collective interests.

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[8] *See* LTBB Constitution at Article IX (titled "Judiciary"), Section J (titled "Conflict of Interest"). Clause 2 states in relevant part: "If all Tribal Court judges recuse, the judges of the Tribal Court shall appoint a judge from another Tribal Court to serve as a temporary associate Tribal Court judge to hear the particular case. In the alternative the Tribal Court may request the Tribal Council to make a special appointment of a judge to hear the particular case." LTBB Const. art. IX, § J, cl. 2. Clause 3 is almost identical, but applies to the Tribal Appellate Court. *See* LTBB Const. art. IX, § J, cl. 3.

[9] *See* LTBB Constitution at Article XIII (titled "Recall, Removal and Vacancies"), Section G (titled "Vacancies in the Executive"). Clause 1 states in relevant part: "When there is a vacancy in the Vice-chairperson position, the Chairperson will appoint a new Vice-chairperson subject to ratification by a majority vote of the full Tribal Council. LTBB Const. art. XIII, § G, cl. 1.

[10] *See, e.g.*, the LTBB Child Protection statute (WOS 2012-010) at Section VIII (titled "Court Appointed Attorneys). Part A states in relevant part: "At any stage of the proceedings conducted under this Statute, the Children's Court may appoint a lawyer or advocate as guardian ad litem, for the child." WOS 2012-010 § VIII(A).

This is a subtle but important distinction. The constitutional appointment process is exclusive, but not all-encompassing. It does not apply to every government-related position, nor did this Court's initial Order state that it does. This Court's Order must be read in the context of the parties' stipulated question, as it was intended. It did not appear to this Court that the parties disputed whether specific positions were in fact appointed. Though the stipulated question was framed in terms of Executive nomination, this Court understood the parties to be asking whether the Tribal Council *alone* could appoint individuals to serve on subordinate Tribal entities, and this Court ruled that Tribal Council could not. Any other questions are not properly before the Court.

Nevertheless, this Court did base the reasoning for its initial Order on the functioning of the constitutional appointment process in general, and it is apparent from the parties' briefings that genuine confusion persists as to how and when this process applies. Therefore, the Court will provide some insight into its understanding of the constitutional appointment process.

The plain language of the Tribal Constitution states that the constitutional appointment process applies to all "appointed positions." *See* LTBB Const. art. VIII, § C, cl. 3. This does not mean the process applies anytime the word "appoint" appears. While the Defendant has focused on the word "appointed," the Court's focus is on the context and nature of the "positions" to which the Tribal Constitution refers. This is because the constitutional appointment process, with its two-part structure, is crucial to upholding the governing authority of the Tribal citizens and maintaining the separation of powers between the branches of Tribal government.

The preamble to the Tribal Constitution declares that the document was created as an act of inherent self-governance. LTBB Const. pmbl. All governing authority rests with the Tribal citizens, who delegate only specific powers and functions to the Tribal government. LTBB

Const. art. I, § A; *see* Order Granting Mot. for Summ. Disposition at 9-10. One way the Tribal citizens delegate this authority is by electing individuals to serve in the Executive and Legislative branches. Another way is by giving the elected branches the power to use the constitutional appointment process to jointly select individuals to fill other positions.

The two-part constitutional appointment process is more than a formality or tradition—it is designed to ensure public accountability and retain an element of the Tribal citizens' governing authority in the selection of each representative working on the Tribe's behalf. Crucially, it is also an important guard against encroachment, upholding the separation of powers outlined in the Tribal Constitution. The Supreme Court of the United States explained this in the context of the U.S. Appointments Clause:

> [T]he Appointments Clause of Article II is more than a matter of "etiquette or protocol"; it is among the significant structural safeguards of the constitutional scheme. By vesting the President with the exclusive power to select the principal (noninferior) officers of the United States, the Appointments Clause prevents congressional encroachment upon the Executive and Judicial Branches. . . . By requiring the joint participation of the President and the Senate, the Appointments Clause was designed to ensure public accountability for both the making of a bad appointment and the rejection of a good one.

Edmond v. United States, 520 U.S. 651, 659-60 (1997) (quoting *Buckley v. Valeo*, 424 U.S. 1, 125 (1976) (per curiam)).

With this structural backdrop in mind, this Court understands the term "appointed positions" to refer to those positions designed to represent the collective interests of the Tribe. Such positions generally (1) carry some legal authority stemming from the Tribe's inherent sovereignty and (2) are "continuing." *See Officers of the United States within the Meaning of the Appointments Clause*, 31 U.S. Op. Off. Legal Counsel 73, 74 (2007) ("[A] position, however labeled, is in fact a federal office if (1) it is invested by legal authority with a portion of the

sovereign powers of the federal Government, and (2) it is 'continuing.'"). An office is "continuing" if it is permanent or, even if temporary, it is not "personal, 'transient,' or 'incidental.'" *See id.* at 77. In other words, a "continuing" position exists beyond a specific individual's occupation of it and beyond a specific task. Typically, an appointed position is also a high-level decision maker.

In the Court's mind, it is not enough that the word "appoint" appears, the position in question must also meet the qualifications set out above in order for the constitutional appointment process to apply. This understanding demonstrates why the Defendant's listed "exceptions" fall outside the scope of the constitutional appointment process. Recusals and vacancies, *see* Def. Mot. at 6, present specific and extraordinary circumstances mandating the selection of individuals to serve roles limited in time and scope. *See* Def. Mot. at 6. These are not continuing offices, but are subject to the unique selection processes set out for them in the Tribal Constitution.[11]

Court-appointed attorneys, *see* Def. Mot. at 8-10, also serve roles limited in time and scope, but for these positions there are additional reasons that the constitutional appointment process does not apply. Attorneys serve *individuals* in a private capacity. They do not represent the collective interests of the Tribe at large nor do they make high-level decisions on behalf of the Tribe. They also serve a purely internal function within the judicial branch. Because the constitutional appointment process serves as a guard against encroachment by one branch against another, separation of powers concerns are not present when it comes to internal positions such

[11] Statutory construction supports this understanding as well. Judicial recusals fall under an individual section titled "Conflict of Interest," *see* LTBB Const. art. IX, § J, rather than the "Judicial Appointments" section, *see* LTBB Const. art. IX, § D. Vacancies fall under an entirely separate article in the Tribal Constitution, titled "Recall, Removal and Vacancies." *See* LTBB Const. art. XIII.

as court-appointed attorneys or legislative standing committees charged with purely legislative functions. *See* Order Granting Mot. for Summ. Disposition at 12 n.7.

CONCLUSION

For the reasons discussed above, the Court DENIES the Defendant's Motion Requesting Reconsideration and GRANTS the Defendant's Motion Requesting Clarification. The Court's initial Order was restricted to the question presented in the parties' stipulation. In answering that question, the Court had occasion to review the appointment process outlined in the Tribal Constitution. The Court found no compelling reason for positions on subordinate Tribal entities to be excluded from this process. The Court hopes that by sharing its reasoning in greater detail the parties are able to resolve some of their concerns. Remaining questions will have to be addressed when a relevant case or controversy is properly before the Court.

IT IS SO ORDERED.

7/25/19
Date

Hon. Allie Greenleaf Maldonado,
LTBB Chief Judge

Little Traverse Bay Bands of Odawa Indians

911 Spring St. Petoskey, MI 49770

TRIBAL COURT

PROOF OF SERVICE

Case No. **C-233-0918 Order Denying Motion Requesting Reconsideration and Granting Motion Requesting Clarification** paper(s) and file proof of service with the court clerk. If you are unable to complete service, you must return this original and all papers to the court clerk.

X I served a copy of the papers described above by:

☐ Personal service ☐ Registered mail (copy of return receipt attached) **X First-class mail**

Name	Complete address of service	Day, date, time
Michael Novotny	Big Fire Law and Policy, L.L.P. 1404 Fort Crook Rd. S. Bellevue, NE 68005	07/25/2019
Donna L. Budnick	7500 Odawa Circle Harbor Springs, MI 49740	07/25/2019

_____ After diligent search and inquiry, I have been unable to find and serve the following person(s):

_____

_____

I have made the following efforts in attempting to serve process:

_____

_____

Signature 07/25/2019 Date

Michael M. Wolf, Court Administrator

Print name and title

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the papers described above on _____

Day, date, time

_____ On behalf of _____

Signature