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FOND DU LAC BAND OF  
LAKE SUPERIOR CHIPPEWA

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FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

TRIBAL COURT CLERK

In the Matter of:	)	Case No.: EC-001-16
APRIL 5, 2016 PRIMARY ELECTION	)	
CONTEST OF DISTRICT I CLOQUET	)	DECISION
REPRESENTATIVE	)	
	)	
DEBRA TOPPING,	)	
<u>Contester.</u>	)	

This matter was heard on April 18, 2016. The following appeared for the hearing:

Debra Topping – The Contester  
Attorney Henry Buffalo – for the FDL General Reservation Election Board  
Witnesses for the Contester – James Warren Northrup III, William L. Dufault Sr., and Juanita Anderson

On April 12, 2016, Ms. Topping timely filed a Notice of Contest with Mr. Gary Frazier, Executive Director of the MCT and the Election Contest Judge as required by MCT Election Ordinance (as amended 11/09/2015). Ms. Topping is contesting the results of the Fond du Lac Reservation's 2016 Primary Election for the following reasons:

1. The April 2016 edition of the Fond du Lac newspaper Nahgahchiwanong, which came out on March 30<sup>th</sup>, 2016, states on the last page in bold lettering that the election was to be on Wednesday, April 6<sup>th</sup>. She alleges that the misprint of the actual date of the primary election misled Band members.
2. Candidate Wally Dupuis sent out campaign literature in which his Absentee Ballot Request stated that the Primary Election would be on April 6, 2016.
3. Wally Dupuis's campaign literature has correlating numbers on both envelopes and his request for ballot that could be traced back to him.
4. She submitted complaints on March 17, 2016 to the Tribe's General Election Board, the Reservation Business Committee and the Tribal Executive Committee regarding this Primary Election.

The following exhibits were offered and accepted by the Court, without objection:

1. Topping Exhibit #1 – The April 2016 Edition of the Fond du Lac newspaper Nahgahchiwanong in its entirety.
2. Topping Exhibit # 2 – The campaign mailout of candidate Wally Dupuis consisting of the envelope, campaign letter, and an Absentee Ballot Request with a date of April 6, 2016 at the top.

DECISION

Fond du Lac Reservation  
Office of the Election Contest Judge  
Mailing Address: 1720 Big Lake Road Cloquet, MN 55720  
Physical Address: 28 University Road Cloquet, MN 55720  
Phone: (218) 878-7151 Fax: (218) 878-7169

3. Topping Exhibit #3 – Contestor Topping’s letter to the General Election Board of March 17, 2016.
4. Topping Exhibit #4 – General Election Board response dated March 22, 2016.

### **PROCEDURAL HISTORY**

Ms. Topping timely filed her Notice of Contest by 4:30 on April 12, 2016. Her notice contained the following exhibits: Copy of part of a page from the Nahgahchiwanong with a section circled stating “April 6 FDL Primary 8 a.m. CCC, SCC & BCC”; Copy of Candidate Wally Dupuis’ campaign envelope, campaign letter, and request for ballot; the Election Calendar; Letter to the General Election Board dated March 17, 2016; and the Response from the General Reservation Election Board dated March 17, 2016.

On April 13<sup>th</sup> this Court entered a Notice and Order Setting Election Contest Hearing Date for April 18<sup>th</sup>, 1026 at 10:00 a.m.

On April 15<sup>th</sup> Attorney Henry M. Buffalo Jr. filed a Notice of Appearance and the Response of the General Reservation Election Board. Attorney Buffalo’s response contained the following attachments: Affidavit of Chairperson Jason Ojibway; Announcement of Election; Certified Election Results; the April 1, 2014 Primary Election Contest final decision, Bruce M. Savage, Contestor, Case # EC-14.

Contestor Topping and Attorney Buffalo appeared at the April 18<sup>th</sup> hearing.

At the hearing the Court enquired of Ms. Topping as to the nature of her allegations. She presented her exhibits which were attached to her Contest Notice as “evidence” that Band members were misled as to the actual date of the Primary Election which according to the election calendar was to be April 5, 2016 and not April 6, 2016 as stated in the section circled in her exhibit and not April 6, 2016 as stated on the Absentee Ballot Request included with Candidate Dupuis’ campaign mailout. Her letter to the General Election Board alleging Candidate Dupuis’ use of a printing company contracted by Fond du Lac Management to handle his campaign literature she contends is evidence the Primary Election was not “uniform”.

The Court gave Ms. Topping considerable leeway in presenting her case. The exhibits were allowed to be entered to mainly because there were no objections and they essentially speak for themselves as to the information contained therein. On the issue of whether Band members were misled or influenced because of the misprint in the Tribal newspaper and Candidate Dupuis’ campaign literature the Court allowed three witnesses to testify. Mr. Northrup, Mr. Dufault, and Ms. Anderson all testified that they were “influenced” or “confused” by the misinformation. Ms. Anderson’s testimony was that she was present in late March when the Tribal newspaper was handed out and the misprint was noted. However, all three witnesses voted in the Primary Election on April 5<sup>th</sup>, despite feeling influenced or confused about the Tribal newspaper misprint and/or Candidate Dupuis’ campaign literature.

At the close of Ms. Topping's presentation, Attorney Buffalo moved for dismissal of her Contest for failure to carry her burden of proof as set forth in the Election Ordinance. For reasons which are set out below the Court granted Attorney Buffalo's motion to dismiss and the proceedings were closed.

### FINDINGS OF FACT

1. Debra Topping was a candidate in the April 5, 2016 FDL Primary Election for District I.
2. Debra Topping timely filed her Notice of Contest on April 12, 2016.
3. The Fond du Lac newspaper Nahgahchiwanong, April 2016 Edition, states on the last page in bold lettering that the election was to be on Wednesday, April 6<sup>th</sup>. See Topping Exhibit # 1.
4. The Fond du Lac newspaper Nahgahchiwanong, April 2016 Edition, printed in the calendar date box for Tuesday April 5 below and to the left of the referenced date in Finding #3, "FDL Primary Election." See Topping Exhibit # 1.
5. Candidate Dupuis mailed campaign literature which included an Absentee Ballot Request that stated April 6, 2016 as the Primary Election date. See Topping Exhibit # 2.
6. Ms. Topping complained to the General Election Board that a uniform election was not being granted because Chairman Wally Dupuis used a printing company contracted by Fond du Lac Management, Inc., Black Bear Casino, to handle his campaign literature, which was an interference with the 2016 election. See Topping Exhibit # 3.
7. The General Reservation Election Board responded to Ms. Topping that the GEB attends to the mechanics of the election process and not the qualifications of a candidate. See Topping Exhibit # 4.

### THE APPLICABLE LAW

Chapter III of the Minnesota Chippewa Tribe's Election Ordinance sets out the process for recounts, contests, and appeals. Section 3.2 covers the Contest of a Primary, Regular or Special Election. Only a candidate on the ballot in an election may contest that election, and the contest may only involve the position for which he/she was a candidate. A candidate contesting an election will prepare a written Notice of Contest stating specific reasons for his/her contest.

The burden of proof rests with the contestor who must show by clear and convincing evidence the alleged violations of the Ordinance. There shall be a presumption of correctness in favor of the General Election Board and the election results until the contestor has met his or her burden of proof. See Section 3.2(B)(1) of the Ordinance.

The contestor must present relevant and material evidence demonstrating how any violations of the Ordinance, alleged and proven, **affected the outcome of the election** (emphasis added). Evidence may be received on violations of the Ordinance alleged to have taken place in the contested election. See 3.2(B)(2) of the Ordinance.

## DISCUSSION

There was no evidence presented by the Contestor that the misprint in the Tribal newspaper or Candidate Dupuis' campaign literature occurred in violation of the Tribal Election Ordinance. Contestor Topping alleged that Band members were misled by the misprints but did not present enough evidence that misinformation affected the outcome of the election. The three witnesses allowed to testify during her portion of the case, while influenced or confused by misinformation, actually voted on the correct day. There is nothing in the Election Ordinance with sets out the process for the manner in which candidates are required to conduct their campaigns, save for the prohibitions against electioneering within a direct line of 200 feet in any direction from the primary entrance used by voters at the polling place.

The meaning of clear and convincing evidence was addressed by this Court in the Bruce Savage contest. There it was stated that "Clear and convincing evidence" is a higher standard of proof than a mere preponderance, and is generally understood to mean evidence "that the thing to be proved is highly probative or reasonably certain". See Final Decision of Primary Election Contest of District II, Bruce M. Savage, Case # EC-002-14.

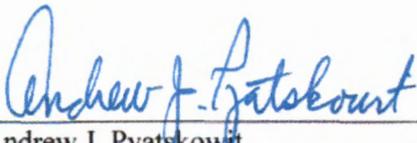
Ms. Topping has failed to show by clear and convincing evidence that the allegations in her Notice of Contest affected the outcome of the Primary Election for April 2016.

## CONCLUSIONS OF LAW

For the reasons set out above, Contestor Topping has failed to meet her burden of proof as required by the Tribal Election Ordinance that a violation of the election ordinance occurred and that the alleged violations affected the outcome of the election.

**NOW THEREFORE**, the results of the April 5, 2016 primary election in District I are **AFFIRMED**.

**IT IS SO ORDERED** this 21st day of April 2016.



Andrew J. Pyatskowitz  
Fond du Lac Election Contest Judge