

POKAGON BAND OF POTAWATOMI INDIANS  
TRIBAL COURT

58620 Sink Road, P.O. Box 355, Dowagiac, MI 49047

POKAGON BAND OF POTAWATOMI  
INDIANS,

Plaintiff

Case No: 14-2905-CO

-vs-

HON. DAVID M. PETERSON

BRADLEY G. ENGLE,  
Respondent

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**OPINION AND ORDER ON JURY DEMAND**

**Background**

Bradley G. Engle (Respondent) is charged with disorderly conduct under the Pokagon Band of Potawatomi Indians Code of Offenses, Section 10(A)(1)(c). Respondent filed a jury demand on November 19, 2014, along with a supporting Memorandum of Law.

Respondent argues he is entitled to a trial by jury pursuant to PBCivO Section 2.B. claiming he is not a member of an Indian Tribe and his "civil disorderly conduct offense" could be charged as a criminal offense if he were a Tribal member.

Because the Respondent's demand for a trial by jury for a civil infraction is one of procedure and there is sufficient Tribal and other law governing the issue, the Court feels it can render a decision without further briefing or oral argument. If, after review of the Court's opinion and order, either party feels aggrieved and they have a meritorious claim, they may request reconsideration pursuant to MCR 2.119(F).

**Applicable Law**

**1. Constitution.**

The Pokagon Band of Potawatomi Indians is a federally recognized Indian Tribe pursuant to Public Law 103-323, 108 stat 2152, 25 U.S.C. 1300j-1300j-8. As such, the

Band has certain rights as a sovereign nation, Const. Article 1, Section 1, including the right to pass codes, statutes and ordinances to govern persons subject to the Band's jurisdiction, Const. Article 2, Section 1. That jurisdiction includes the Band's trust lands within its service area including Berrien County, Michigan, within which the Four Winds Casino Resort is located.

The Respondent is charged with a violation of the Code of Offenses as a non Indian at the Four Winds Casino Resort which is located on Pokagon trust lands within New Buffalo Township, Berrien County, Michigan.

## **2. Code of Offenses.**

The Pokagon Band of Potawatomi Indians Code of Offenses is divided into three divisions: Criminal Offenses, Criminal Procedure and Civil Offenses, the pertinent parts of which are:

### **A. Criminal Offenses.**

Section 1 L Definitions, provides:

**Offense** – means a violation of a statutory standard of conduct contained in or adopted by reference in this Code for which a sentence of labor, time in jail, a fine, restitution, or other penalty provided by law may be imposed.

**Civil Offense** – means an offense, as that term is defined in this Code, for which only civil fines or other civil penalties may be provided by law may be imposed.

Section 2. A. Civil Prosecution of Non Indians, provides:

Generally, any non-Indian alleged to have committed an offense enumerated in this Code may be civilly prosecuted by the Band and such offense shall be considered for all purposes under the Pokagon Band law as a civil offense. In no event shall such civil prosecution permit incarceration of a non-Indian or permit the imposition of a criminal fine against a non-Indian.

As can clearly be seen from the above, disorderly conduct by a non-Indian is both a *civil* matter and not punishable by imprisonment and in no event shall a civil prosecution permit incarceration.

**B. Civil Offense.**

The Civil Offense Code provides at Section 2. D. as follows:

Upon a finding that a non Indiana has committed any of the following civil offenses enumerated in this Code, the Tribal Court shall impose a civil fine in accordance with the following schedule:

2. For a Class B offense the fine shall not exceed \$250.00.

As can clearly be seen from the above, disorderly conduct by a non-Indian is only punishable by a civil fine not exceeding \$250 and not punishable by imprisonment.

**3. Case Law.**

**A. Tribal Court Code.**

The Pokagon Band of Potawatomi Indians Tribal Court Code provides at Section 7. E. –

Notwithstanding any other provision of this Code, there shall be no right to jury in the Tribal Court in any civil matter or for any crime not punishable by imprisonment.

Section 7. B. of the Pokagon Band of Potawatomi Indians Tribal Court Code provides:

Prior to adoption of such rules, practice, procedure and evidence in the Tribal Court and the Court of Appeals shall be governed by the Rules of Practice and Evidence in effect in the courts of the State of Michigan with such variations as the Chief Judge, the Associate Judge, or the Court of Appeals may deem appropriate by order in individual cases.

The above permits the Court to apply Michigan law where the Band has not adopted specific rules of civil procedure.

In *People v Richard J. Schomaker*, 116 Mich App 507 (1982), the respondent in that case was issued a civil infraction citation and demanded a trial by jury. The court ruled that the denial of the right of trial by jury under the Civil Infraction Act does not render the Act unconstitutional in that civil infraction proceedings are not comparable to any proceedings in which the right to trial by jury existed at the time of adoption of the constitutional provision governing the right to trial by jury.

The charge against the Respondent is a civil matter and if it were a crime charged against the Respondent no jail could be imposed because he is a non-Indian.

***B. Court Rules for Civil Infractions.***

The Pokagon Band has adopted court rules for civil infractions. Section 4 sets out the rights of respondents and enumerates numerous rights a person charged with a civil infraction may enjoy, none of which include a trial by jury.

**CONCLUSION**

For the following reasons (and as more fully explained above), the Respondent is not entitled to a trial by jury:

1. Disorderly conduct is a civil offence (§1 L PBCrimO).
2. In no event shall a civil prosecution permit incarceration of a non-Indian (§2.A. PBCivO).
3. There shall be no right to jury in any civil matter or for any crime not punishable by imprisonment (§7 E Tribal Court Code). Disorderly conduct

is a civil matter and is not punishable by imprisonment as applied to a non-Indian.

4. Denial of trial by jury in a civil infraction trial is not unconstitutional (*Schomaker* above).
5. There is no right to a trial by jury in civil infractions (§ 4 Rules for Civil Infractions).

**ORDER**

The Respondent's demand for a jury trial is denied for the above reasons.

**IT IS SO ORDERED.**

Dated this 8<sup>th</sup> day of December, 2014.

  
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David M. Peterson, Tribal Judge