

**IN THE COURT OF THE
MODOC NATION
MIAMI, OKLAHOMA**

MODOC NATION, a federally recognized)	
Indian Tribe, by and through its Elected)	
Council,)	Case No.: CIV-22-001
Plaintiff,)	
)	
vs)	
)	
KIRK MILLER, BEN KARNES, DANNY)	
BURKYBILE, EDD MILLER, ANITA)	
WILLIAMS, and JASON CLARK,)	
Defendants.)	

TEMPORARY ORDER AND CONTINUANCE OF HEARING

NOW on this 20th day of July, 2022, this matter comes before the undersigned Special Judge for consideration on the merits of the Plaintiff’s Petition for Restraining Order as well as the Defendant’s Counterclaim and Petition for Emergency Temporary Restraining Order. The Plaintiffs are present by and through counsel, Conley Shulte. The Defendants are present by and through counsel, Joe Keene. Having reviewed the pleadings in this matter, heard the arguments of counsel and being fully advised in the premises, this Court does hereby FIND and ORDER as follows:

1. The issue of enrollment has been resolved as to Defendants, Anita Williams and Danny Burkybile and therefore, they are dismissed from this suit by agreement of the parties.
2. That the enrollment issue as it pertains to Ben Karnes is partially resolved as the Registrar has stated the Defendant has complied in submitting the requested documentation. It is anticipated that Defendant Karnes will be approved for membership by the Enrollment Committee on or before July 25, 2022. However, this Court will not dismiss Defendant Karnes from this litigation until such time as verification is received that the Enrollment Committee approved Defendant Karnes as a validly enrolled member of the Modoc Nation or until further order of this Court.

3. That the issue of enrollment continues to be disputed as to Defendants, Kirk Miller and Edd Miller and as such, this Court is hereby making specific provisions to insure the two Defendants, who are seeking elected office, have due process hearings in a timely manner. Those provisions include the following:

a. Kirk Miller and Edd Miller will have **until 4:00 p.m. on July 22, 2022** to provide evidence of descent from a Modoc Indian whose name appears on the 1878 Modoc Census of Subsistence and Ration.

b. The Enrollment Committee will consider the evidence of the two individuals on July 25, 2022 at their regularly scheduled meeting and determine enrollment based upon the qualifications submitted and the controlling law(s). The Enrollment Committee will notify the two individuals immediately of their decision. The notification should be by email and United States First Class Mail.

c. Should the Enrollment Committee deny enrollment to either, Kirk Miller or Edd Miller, or both, the two Defendants shall be entitled to an expedited appellate hearing before the Enrollment Committee. That hearing, if necessary, shall occur **on or before July 29, 2022** and must be requested to the Nation's Secretary in writing by the individual Defendant.

d. Should the Enrollment Committee deny the appeals of Kirk Miller and/ or Edd Miller, the Defendants will be allowed to file a written appeal to the Tribal Council and **same shall be submitted to the Nation's Secretary on or before noon on August 5, 2022.**

e. Upon receipt of any written notice of appeal from either or both, Kirk Miller or Edd Miller, the Secretary shall place the matter as item number 1 of business on the Tribal Council agenda.

f. Any enrollment issue pertaining to Kirk Miller or Edd Miller pending before the Tribal Council shall be heard prior to the scheduled elections for the Modoc elected Tribal Council. It is anticipated the Tribal Council will briefly recess between the enrollment issue and the election to give parties and members an opportunity to get prepared for the election.

g. The decision of the Tribal Council as to membership will be final in accordance with Article II, Section 3 of the Constitution of the Modoc Nation.

h. It will be the responsibility of the Modoc Election Committee to use the decision of the Tribal Council to determine eligibility of Kirk Miller and/or Edd Miller in seeking office or voting in the Modoc Elections.

4. Defendant Ben Karnes is advised that he may file for provisional candidacy for election, provided that he does so **no later than noon on July 22, 2022.**

5. Should the Enrollment Committee deny Defendant Karnes' enrollment, he will be included in the procedures for appeal as outlined in Paragraph 3 above. If the Enrollment Committee approves Defendant Karnes' enrollment, he may seek elected office in the same manner as any other Modoc tribal member, provided that he satisfies any and all other criteria as established in the Election Ordinance.

6. Defendant Kirk Miller may file for provisional candidacy for elected office, provided that he does so **no later than noon on July 22, 2022.** Should Defendant Kirk Miller prevail in any subsequent committee meeting or appellate procedure, he may seek elected office in the same manner as any other Modoc tribal member, provided that he satisfies any and all other criteria as established in the Election Ordinance.

7. Defendant Edd Miller may file for provisional candidacy for elected office, provided that he does so **no later than noon on July 22, 2022.** Should Defendant Edd Miller prevail in any subsequent committee meeting or appellate procedure, he may seek elected office in the same manner as any other Modoc tribal member, provided that he satisfies any and all other criteria as established in the Election Ordinance.

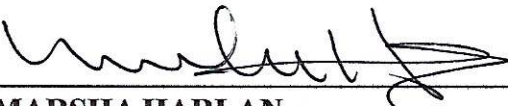
8. That the Plaintiffs have requested a show cause hearing upon allegations of contempt against the Defendants, specifically Ben Karnes and Kirk Miller, and this Court will hear that matter and any further contempt allegations on **July 28, 2022 at 10:00 a.m.**

9. That this Court's Order of June 29, 2022 remains in full force and effect and all parties are admonished to abide by the provisions therein, including but not limited to the Order Restraining Defendants from holding themselves out as duly or validly elected officers of the Modoc Nation.

10. That the Parties are specifically advised that the Court will issue a \$1,000.00 sanction per incident of violation of this Court's June 29, 2022 Order. In other words, from this date (July 20, 2022) forward to the show cause hearing scheduled to be held on July 28, 2022 at 10 a.m., any proven incidents of violation of this Court's previous order will result in a \$1,000.00 sanction. All incidents will be considered, including those where it is proven third party individuals have acted on behalf of the Defendants or at the direction of any of the Defendants. Further, the Court will appropriately take up prior incidents and will make a determination as to those matters as well at the July 28, 2022 hearing.

11. That this Court expects the Parties to conduct themselves in a civil manner from now forward and does hereby give notice that no tolerance will be had for misconduct which causes chaos or disruption to any governmental function of the Modoc Nation, whether the conduct is direct or indirect, and any proven misconduct will be dealt with in the harshest manner utilizing all the powers of this Court.

IT IS SO ORDERED.



MARSHA HARLAN
SPECIAL ASSOCIATE JUDGE