

TRIBAL COURT
OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

IN THE COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX
(DAKOTA) COMMUNITY

FILED

JAN 18 2006

jet

LYNNEA A. FERRELL
CLERK OF COURT

In Re the Marriage of:

James Keith Anderson,

Court File No.: 551-05

Petitioner

and

Janelle Beth Anderson,

Respondent.

**MEMORANDUM AND ORDER GRANTING MOTION PERMITTING
ATTORNEY TO WITHDRAW, AND
AMENDED SCHEDULING ORDER**

On January 9, 2006, Peter J. Horejsi, Esq. filed a motion seeking (1) the Court's permission to withdraw as counsel to the Petitioner, James Keith Anderson, and (2) an extension of the schedule established in the Court's December 13, 2005 Scheduling Order, to permit the Petitioner to obtain substitute counsel. An affidavit of Mr. Horejsi that accompanied the motion averred that Mr. Horejsi had been unable to contact the Petitioner despite repeated attempts to do so.

Pursuant to Rule 33(d) of the Court's Rules of Civil Procedure, a telephone hearing, on the record, was held on Mr. Horejsi's motion on January 16, 2006. Mr. Horejsi participated, as did David Izek, Esq. on behalf of the Respondent. The Petitioner had received notice of the hearing, but did not participate.

During the hearing, Mr. Horejsi confirmed that the Petitioner had not responded to repeated attempts by Mr. Horejsi to contact him. Those attempts included mailed letters, telephone messages, text messages, and attempts to reach the Petitioner through friends. Mr. Horejsi averred that, under these circumstances, it was impossible for him to fulfill his ethical obligations to the Petitioner.

Mr. Izek opposed Mr. Horejsi's motion, arguing that proceedings in this matter would be more difficult if the Petitioner were not represented by legal counsel; and Mr. Izek opposed Mr. Horejsi's motion for an extension of the schedule established by the December 13, 2005 Scheduling Order, asserting that the Respondent could be prejudiced by delay and that the Petitioner should not benefit from his failure to participate in the proceedings. However, Mr.

Izek had written the Court on December 14, 2005 with the information that he had failed, during the conference that had preceded the Scheduling Order, to note that he had a scheduling conflict which would make it impossible for him to attend the Prehearing Conference scheduled for April 13, 2006.

Because the Court was and is convinced that it would be impossible for Mr. Horejsi to provide adequate legal counsel under the circumstances, the Court orally granted his motion to withdraw, and by the Order below does confirm that decision.

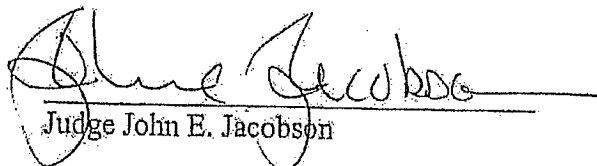
The Court took under advisement Mr. Horejsi's motion for a change in the Scheduling Order. Having now considered the scheduling matter fully, the Court has concluded that Mr. Izek's argument is sound: the fact that the Petitioner has declined to work with his attorney, and has declined to participate, to date, in these proceedings – proceedings that the Petitioner initiated – should not be allowed to work prejudice to the Respondent. It may well be that these proceedings will prove to be difficult, and it also may be that, if Petitioner obtains new legal counsel – which, in the Court's view, would be highly advisable – that counsel may feel it necessary to request a change in the case's schedule. If and when such a request is made, the Court will consider its merits (as the Court does, below, with respect to the Prehearing Conference), but will be disinclined to permit changes that might work harm to the Respondent. At the moment, however, with the Petitioner simply absent from the scene, the Court does not believe there is any sound reason for making a change in the schedule.

With respect to Mr. Izek's scheduling conflict on April 13, 2006, the Court is of the view that it is appropriate to reschedule the Prehearing Conference.

For the foregoing reasons, and based on all the pleadings and materials filed herein, it is herewith ORDERED:

1. The motion of Peter Horejsi and the law firm of McCloud & Boedigheimer to withdraw as legal counsel to the Petitioner is GRANTED, effective January 16, 2006;
2. The Prehearing Conference in this matter will take place at 10:00 a.m., Wednesday, April 19, 2006; and
3. The motion for an extension of the other deadlines in this Court's December 6, 2005 Scheduling Order is DENIED.

January 18, 2006


Judge John E. Jacobson