

1 **APPLICABLE LAW**

2 HCN CONSTITUTION ART. X.

3 Section 1. Bill of Rights.

- 4 (a) The Ho-Chunk Nation, in exercising its powers of self-government, shall not:
5 (8) deny to any person within its jurisdiction the equal protection of its laws or deprive any
6 person of liberty or property without due process of law;

7 WISCONSIN STATE SUPREME COURT RULES CHAPTER 20. RULES OF PROFESSIONAL CONDUCT FOR
8 ATTORNEYS, adopted by the HCN Supreme Court on August 31, 1996.

9 SCR 20:1:7 CONFLICT OF INTEREST: GENERAL RULE

10 (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to
11 another client, unless:

- 12 (1) the lawyer reasonably believes the representation will not adversely affect the relationship with
13 the other client; and
14 (2) each client consents in writing after consultation.

15 (b) A lawyer shall not represent a client if the representation of that client may be materially limited by
16 the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests,
17 unless:

- 18 (1) the lawyer reasonably believes the representation will not be adversely affected; and
19 (2) the client consents in writing after consultation.

20 **DECISION**

21 The plaintiff asked this Court to consider his *Motion to Disqualify William A. Boulware, Jr.*
22 based on the attached *Affidavit*. The defendant suggested to the Court that the plaintiff failed to clearly
23 establish or demonstrate the relation between the DOJ Counsel Boulware and the defendant, Acting
24 Attorney General is a conflict of interest. This Court finds that neither party adequately offered proof
25 or instances in prevailing law to make specific findings of fact and conclusions of law. The reasons
26 articulated in the *Affidavit* of the filed motion are vague. Equally dissatisfying is the defendant's general
27 citation to SCR 20, which is 84 pages in length, reference to SCR 20:1.7 (which defers the resolution of
28 conflict to the lawyer or advocate), and the case law of *State v. Klessig*, 211 Wis.2d 194 (1997). The
29 plaintiff raised an issue about the Nation's authority to represent its agent particularly when that agent is
30 considered the chief of DOJ. If the HCN's Legislature and DOJ realized and established a precedent
31 acknowledging the existence of a conflict when the DOJ is the defendant, the plaintiff failed to show this

1 offering of evidence or proof. However, the defendant's own arguments resting on *State v. Klessig* and
2 SCR 20:1.7 are no clear indication that a conflict of interest does not exist in this matter. A review of
3 *State v. Klessig* shows that the case involved the competency level of a pro se defendant in a criminal
4 proceeding. It is not facially applicable to the civil matter at hand. In SCR 20:1.7, the defendant claims
5 that it is up to the discretion of the attorney to resolve the conflict of interest. However, this
6 presumption is rebuttable when the opposing party files such motion as the one before this Court. In
7 reviewing SCR 20, this Court finds SCR 20:1.13 more relevant and yet, this has not been addressed.
8 This Court agrees with both parties that the DOJ is an interested party in the matter and that this
9 *Complaint* is an employee grievance, but this has little or no bearing to the issue before the Court.

10 This Court is inclined to dismiss the motion since "There are no standards of law or rules that
11 would provide the Court with a method of measuring discretionary decisions. The Court is without
12 authority to determine whether a person's discretionary decision is a violation of law, when the person is
13 afforded such discretion to make decisions. . . The Court finds that plaintiff has not raised a
14 constitutional claim, nor alleged or demonstrated a violation of the law for which the Court can provide
15 relief." *Pierre Decorah, Jr. v. Rainbow Casino*, CV 95-018 at 5 (HCN Tr. Ct., March 15, 1996). The
16 problem remains that both parties have failed to diligently offer persuasive law to resolve this issue.
17 There remains the question of the DOJ responsibility pursuant to both HCNL 0011-95 Ho-Chunk
18 Nation Discovery Act and HCNL 016-95 Department of Justice Establishment and Organization Act of
19 1995. As a result, the Court is unable to make a determination on the merits of the filed motion. This
20 Court shall reserve a decision for one week. In this time, both parties must specify persuasive law that
21 either justifies grounds for dismissing or granting such motion. If the parties file timely, this should not
22 hamper with the scheduled proceedings as outlined in the March 27, 1998 *Scheduling Order*.

23 IT IS SO ORDERED this 6th day of April 1998 at the Ho-Chunk Nation Court in Black River
24 Falls, Wisconsin from within the sovereign lands of the Ho-Chunk Nation.

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Hon. Joan Greendeer-Lee, Associate Judge

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