

IN THE
HO-CHUNK NATION SUPREME COURT

FILED
IN THE HO-CHUNK NATION
SUPREME COURT

JAN 12 2001

T. P. H. H. H.
Clerk of Court/Assistant

Jacob LoneTree, Forrest Whiterabbit,
Elliot Littlejohn, Libby Fairchild,
Spencer LoneTree, and Parmenton Decorah,
Appellees,

**ORDER GRANTING
MOTION FOR RECUSAL**
Case No. SU 00-16

Vs.

Mr. Robert Funmaker, Jr., Darcy Funmaker-Rave,
Gloria Visintin; and Ho-Chunk Nation Election Board,
Appellants.

This matter came before the full Court on Saturday, January 6, 2001 to consider the Appellee's Motion to Disqualify Justice Greengrass (hereinafter Motion) filed on January 5, 2001. The Appellee's file their Motion pursuant to Rule 4 of the HCN Rules of Appellate Procedure and Rule IV, Section 4-2, of the HCN Rules of Judicial Ethics.

The Motion is based, in part, on the Appellee's attendance at the October 21, 2000, General Council Meeting. The Appellees state that, because Justice Greengrass attended the General Council meeting on October 21, 2000, that she has personal knowledge of the facts of this case which may tend to color her views of this appeal. (See Appellees' Motion at 1). The Motion was filed as a discretionary recusal under Rule 4 of the HCN Rules of Appellate Procedure, which states in part, "...a party may request recusal of a Justice by Motion to the Chief Justice with notice given to all parties." Upon such a Motion, the full court decides upon the recusal request. This Court is not accepting of the assertion, that because we are elected officials of the HCN Court, that we automatically forgo our rights as tribal members to attend General Council meetings. Knowledge gained by attendance of such meetings or forums is no more than knowledge gained by reading the Hocak Worak. Furthermore, the Appellee did not provide anything

to this Court which conveyed inappropriate conduct by Justice Greengrass, such as publicly stating her opinion in favor of one side.¹ In accordance to the HCN Constitution, Art. IV, Sec. 1., Justice Greengrass, as a HCN tribal member retains the right to participate in the General Council meeting. HCN Rules of Judicial Ethics, Rule III, Sec. 3-2, offers guidance to a Judge's or a Justice's conduct as it relates to using his or her title or office to influence or be influenced. It is the opinion of this Court that, Justice Greengrass did not convey the appearance of being in attendance for the sake of one side. Therefore, it is the decision of this Court, that Justice Greengrass should not be recused based on her attendance at the October 21, 2000 General Council meeting.

However, the Appellee's assert that the Attorney for the Appellees, Alysia LaCounte, and two other attorneys from the firm Brown & LaCounte, Carol BrownBiermeier and Richard Monette, served as Justices Pro Tempore for the Ho-Chunk Nation on Justice Greengrass' appeal. In accordance with the HCN Rules of Judicial Ethics, Rule IV, Sec. 4-2, A, 1(a), "a Judge or justice shall recuse in any matter in which a direct personal or financial interest may exist. A direct personal interest is defined as, but not limited to an attorney/client relationship where the attorney represented someone in the same proceeding." The result of Justice Greengrass' appeal allowed her to assume her current position as Associate Justice on the Ho-Chunk Nation Supreme Court. To avoid the appearance of impropriety, this Court hereby Orders;

1. That the Appellee's Motion for Recusal is GRANTED and Justice Greengrass recused from further consideration of this case;
2. That this Court requests the HCN Legislature to appoint a Justice Pro Tempore pursuant to Article VII, Sec. 13 of the HCN Constitution;

¹ In fact, Justice Greengrass asserts that she arrived at the General Council Meeting after the vote was taken on the matter at hand.

3. That this appeal will be addressed after a Justice Pro Tempore is appointed to allow for the full Court to consider the Appeal as required by the HCN Constitution, Art. VII, Sec. 14.

Egi Heskekjet, this 12th day of January 2001.

Per Curiam.

Mary Jo B. Hunter

Hon. Mary Jo B. Hunter, Chief Justice
Ho-Chunk Nation Supreme Court

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T. Pettibone
Clerk of Court/Assistant

CERTIFICATE OF SERVICE

I, Tari Pettibone, Clerk of the Ho-Chunk Nation Supreme Court, do hereby certify that on the date set forth below I served a true and correct copy of the Order Granting Motion for Recusal file in Case No. SU-00-16 (TC CV-00-105) By the United States Postal Service, upon all person listed below:

Ms. Alysia E. LaCounte
22 E Mufflin Street
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Mr. Gary Montana
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HCN Trial Court (hand delivery)
Hon. Mark Butterfield
P.O. Box 70
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Hon. Debra Greengrass
6200 West Locust Street
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Hon. Mary Jo Brooks Hunter
4 Linder Court N.
St. Paul, MN 55106

Hon. Rita Cleveland
367 River Street
Black River Falls, WI 54615

Date: January 12, 2001

Tari Pettibone

Tari Pettibone, Clerk of Court
Ho-Chunk Nation Supreme Court