

MAY 21 1999

Willa RedCloud
Clerk of Court/Assistant

IN THE
HO-CHUNK NATION SUPREME COURT

Ho-Chunk Nation Election Board,
Appellant,

Response to Request for Recusal

vs.

Case No. SU - 99-03

Debra C. Greengrass,
Appellee.

JUSTICE CLEVELAND'S RESPONSE TO REQUEST FOR RECUSAL

Both parties in this appeal request that I recuse myself from this matter. The Appellant requests that I disqualify myself based upon the belief that I have an interest in the outcome of this appeal because I am related to Joan Greendeer-Lee. Joan Greendeer-Lee is the opponent to the Appellee in the election, which is before this Court.¹ The Appellee requests that I disqualify myself for the following reasons. First, because I am related to her opponent. Second, because I am a member of the Supreme Court. And third, because my recusal would avoid the appearance of impropriety in any decision which might be rendered in this matter.²

FACTS

Joan Greendeer-Lee is my NaNee Aink or "little mom", in the manner in which Ho-Chunks view relations. She is the daughter of my mother's brother, Orville

¹ The Appellant initially filed a Motion for Recusal seeking disqualification of both Chief Justice Mary Jo Brooks Hunter and myself on May 3, 1999. The Appellant later filed an Amended Motion for Recusal on May 5, 1999 changing its basis concerning Chief Justice Brooks Hunter only.

² See Appellee's Motion in Support of Appellant's Motion for Recusal filed May 5, 1999.

Greendeer. In Anglo-American relations, Joan Greendeer-Lee would be my relative in the 4th degree of kindred, or my first cousin.³

The Appellant argues that the Supreme Court should overrule the decision of the Trial Court for the reason that the Trial Court incorrectly determined that the Election Board does not have the authority under the Ho-Chunk Nation Constitution, or prior decisions of the Ho-Chunk Nation Courts, to certify a winner for a constitutional elective position based solely upon a candidate receiving a majority of votes cast in a primary election.

Joan Greendeer-Lee is not a party to this appeal. Should the Supreme Court determine that the Constitution and prior decisions of the Ho-Chunk Nation Courts support the argument of the Election Board; the prior certification of Joan Greendeer-Lee would likely be upheld. If the Supreme Court determines that the decision of the Trial Court was correct, the Trial Court's order to place the names of Joan Greendeer-Lee and the Appellee, Debra Greengrass, on the June 1, 1999 General Election Ballot would likely be upheld.

ISSUES

1. Does there exist some case law, statute, or standard of the Ho-Chunk Nation that mandates my disqualification from this appeal?
2. Should a Justice/Judge be required to recuse herself solely on the basis that the outcome of a case might benefit a relative, who is not a party to the case, without

³ Black's Law Dictionary (6th Ed.) describes Anglo-American descents as being either lineal or collateral, but always counted through a common ancestor. Under the dictionary definition of degree, it states a brother is in the 2nd degree of kindred. The first degree is to the common ancestor parent, and the 2nd degree is to the brother. Applying these definitions, according to Anglo-American relations, the distance I am removed from Joan Greendeer-Lee is four degrees of kindred; computed as follows: 1-my mother, 2-my mother's parents, 3-my *dega*, and 4-Joan.

there first being some showing that the Justice/Judge will also receive some direct benefit?

LEGAL ANALYSIS

A Justice or Judge has just as great a responsibility not to recuse, if there are no valid reasons for a disqualification, as it does to recuse when valid reasons exist. A Judge or Justice needs to consider, carefully, whether a sound legal standard is the basis for a recusal or if the request is frivolous.

My review of the HCN Tribal case law, did not reveal any mandatory reason for me to recuse. I was also unable to discover any specific statutes or standards mandating my disqualification in this matter. Generally, disqualification is required if a justice holds a direct interest in the result of the issue. Recusal is not required if this interest is speculative or conditional.

Recognizing that recusal based on relationships is an issue that continually plagues tribal court systems. In IN RE RICK MCARTHUR, SU97-07, the Supreme Court requested guidance from the Traditional Court regarding relationships. Based on the guidance of the elders, this Court recognized the discretionary nature of the motion and denied the Motion for Recusal. The basis for denial was my own belief that I was able to consider the appeal in a fair and neutral manner.⁴ In this case I once again believe that I am able to hear this case in a fair and neutral manner. In addition, I believe that to

⁴ Traditional Court Elder, Eli Youngthunder, translated by Orville Greendeer, stated that Judge Cleveland, being in the position that she is in, should be able to judge fairly and not set her mind to back her brother-in-law up in any matter", IN RE RICK MACARTHER, SU 97-07. In this same case, Mr. Youngthunder also addressed my relationship to former Trial Court Judge, Joan Greendeer-Lee by stating, "both women realize their responsibility to the Ho-Chunk people as well as their roles. Therefore, Mr. Youngthunder did not believe that it would be a problem for each of them to fulfill their respective roles and duties", IN RE RICK MACARTHER, SU 98-07, footnote #4, page 4.

consider recusal based on a fourth degree of relative, who is not a party in the case, will only serve to limit this Courts ability to hear future cases that involves relatives.

CONCLUSION

Based upon the above reasoning, I disagree that my relationship to Joan Greendeer-Lee is a sound legal basis for Recusal. If not for time constraints facing this Court, I would request that in situations such as this, that a separate hearing be held, during which, both parties would present their reasons and facts in support of their belief that my relationship to Joan Greendeer-Lee renders me impartial. Such a hearing would assist me, and perhaps other members of this court, in determining whether my impartiality would be affected, requiring me to disqualify myself. However, due to time constraints for the General Election and my earlier scheduled training during the time this appeal should be heard, I am unavailable to personally be present to hear this matter with the other Justices, and for that reason, I respectfully recuse from this case.

Dated this 20th day of May 1999.



Rita A. Cleveland, Associate Justice
HCN Supreme Court