

MAY 21 1999

Willa RedCloud
Clerk of Court/Assistant

IN THE
HO-CHUNK NATION SUPREME COURT

DEBRA GREENGRASS,
Plaintiff/Appellee,

vs.

HO-CHUNK NATION ELECTION BOARD,
Defendant/Appellant.

RECUSAL
OPINION
SU99-03

This Opinion GRANTS the Amended Motion for Recusal filed on May 5, 1999 as to Chief Justice Mary Jo B. Hunter.¹ Although the Chief Justice agrees that the recusal is discretionary under Rule 4 of the Ho-Chunk Nation Rules of Appellate Procedure, she disagrees with the purported basis for the recusal request. The Chief Justice recuses herself based upon *stare decisis*. That is, the decision by the Chief Justice is based upon prior case law of this Court. In *Debru Knudson vs. Ho-Chunk Nation Treasury Department*, SU98-01 (HCN S. Ct., May 11, 1998), this Court restated that the standard to be applied under Rule 4 is whether or not there is an appearance of impropriety.

In this case, an election issue is at the heart of the matter. The crux of the case involves whether or not a current member of this very Court will be on the election ballot or not. In this writer's opinion, it is of no matter as to familial or personal relationships with either of the

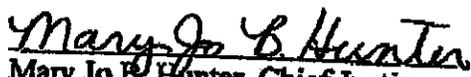
¹The Chief Justice was concerned with incorrect allegations made in the initial Motion. Such errors could be avoided by counsel by adhering to Rules of Professional Conduct for Attorneys, SCR20:3.3, Candor Toward the Tribunal. See Comment, Representations by a Lawyer. Counsel should be advised that such serious allegations are better made by a sworn statement from the actual affiant. In this case, the Chief Justice passed election documents for ALL the candidates from the hands of Mr. Gary Hunter, a member of the Winnebago Tribe of Nebraska, to tribal members seated behind her. Mr. Hunter who does not normally attend Area V Meetings attended to campaign for Ms. Greengrass. If the mere passing of documents in a meeting is considered "campaigning", judicial officers who are also tribal members will be prevented from attending such meetings. Such a "chilling effect" on those judicial officers who wish to participate in the local process to obtain information seems harsh. The actions of spouses in tribal elections will be considered during the completion of the HCN Rules of Judicial Ethics to provide guidance for the members of the court system.

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persons seeking that seat. Rather, it is a question of whether it would appear improper for a current sitting Justice to consider the appeal as to the Justice seat that is up for election. The answer is obvious. It would appear improper for a current Justice to make such a determination.

The question is not one of direct or personal interest. The question is not one of relationships or bias. It is simply a matter of what looks proper and what does not look proper. In this case, it is this writer's opinion that neither current sitting Justice should hear this appeal as it simply does not look appropriate.

For the foregoing reasons, Chief Justice Mary Jo B. Hunter recuses herself on this matter.
Dated this 20th day of May 1999.


Mary Jo B. Hunter, Chief Justice
HCN Supreme Court