

DEC 15 1996

T. Peltano
Clerk of Court/Assistant

IN THE
HO-CHUNK NATION SUPREME COURT

HO-CHUNK NATION LEGISLATURE,

Appellee,

DECISION

vs.

CHLORIS A. LOWE JR.,
President of the Ho-Chunk Nation
And
JO DEEN B. LOWE,
Appellants.

Case No. SU96-09
(formerly SU96-01)

This matter having become before the Court on Wednesday, November 27, 1996 based upon the Appellee's Brief in Opposition to Appeal, this Court has reconsidered the Appellants' Notice of Appeal by telephonic hearing. On December 3, 1996, the Reply Brief of Appellants was filed. The matter was revisited by the full Court on Saturday, December 14, 1996. This Court has reconsidered the decision to accept the appeal in light of our prior Order dated February 28, 1996 as to the recusal of Judge Mark Butterfield from hearing this matter. Appellees are correct in referring to our prior ruling "[T]hat all counts of the complaint should be heard by either the Judge Pro Tempore or the Associate Judge." Since the prior determination of Judge Butterfield's recusal which is the crux of this appeal, had been previously determined by the Court, we decline to revisit the matter in the interests of judicial economy. Rather, we hereby **REVERSE** the Administrative Order dated October 17, 1996 and hereby **REMAND** the matter back to the Trial Court to be heard by the Associate Judge Greendeer-Lee as we previously ordered.

The resolution of this case has been delayed excessively. It is incumbent upon the Trial Court to resolve this matter expeditiously and fairly. Our previous Order clearly enunciated that Judge Butterfield was not to handle this matter. Whether or not this Court has adopted Rules of Judicial Conduct is irrelevant. A judge must act in a fair and neutral manner. The Ho-Chunk Nation tribal members deserve to have judicial officers who act in a manner consistent with the Ho-Chunk Nation Constitution. We have previously ruled that the trial judge's involvement with the case did not comply

with the Ho-Chunk Nation Constitution. Therefore, the trial judge did not require the adoption of Rules of Judicial Conduct to recognize that he was going beyond the perimeters that this Court had provided in our prior Order. At the same time, this Court is sympathetic to the Trial Court's efforts to resolve the issue of the judicial appointment. As stated above, this Court had previously resolved that issue in the February 28, 1996 decision. Since it is not possible for this Court to mandate Judge Kittecon to perform beyond his contract or his capability to continue, we are adopting our second alternative.

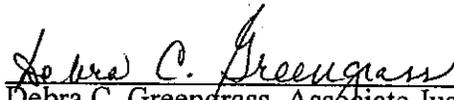
The Appellants assert that remanding this matter to the Associate Judge Joan Greendeer-Lee raises questions as to the need for a recusal. However, this Court is not the forum to address such concerns initially. Rather, we are remanding this matter to the assignment of the Associate Judge. Parties with recusal requests should address them to the court below.

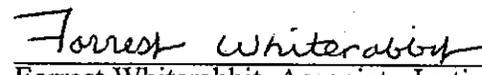
For the foregoing reasons, this matter is hereby, **REVERSED AND REMANDED** to the Trial Court in accordance with our prior decision dated February 28, 1996.

IT IS SO ORDERED, EGI HESHKEJENET.

Dated this 15 day of December 1996.

By the Court:


Debra C. Greengrass, Associate Justice
Ho-Chunk Nation Supreme Court


Forrest Whiterabbit, Associate Justice
Ho-Chunk Nation Supreme Court


Mary Jo Brooks 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 of the Ho-Chunk Nation, do hereby certify that on the date set forth below I served a true and correct copy of the attached paper filed in Case No. SU96-09, by the United States Postal Service, upon all persons listed below:

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Date: *12-16-96*
Tari Pettibone
Tari Pettibone, Clerk
Ho-Chunk Nation Supreme Court