

Brown County:

Oneida Tribe of Indians of
Wisconsin:

Oneida Appeals
Commission:

Leah S. Dodge,
Michael Debraska, and
Cathy L. Metoxen
Appellants,

v.

Oneida Business Committee,
Respondents

Appeal the Decision of the
Trial Level to the Appellate
Level regarding the
Motion to Dismiss

Case No.: 13-AC-19

Appellants herein appeal the decision of the trial level of Case No. 13-TC-129 and believe that the trial level Judicial Officers Jean Webster, Mary Adams and Sandra Skenadore erred in their decision in granting the “Motion to Dismiss” in favor of the Respondents based upon the following reasoning and rationale.

**Failure to Recuse Where Conflict of Interest Exists in violation of Judicial Code, Article VI,
Sec. 6-1(c) and Chapter 152, Canons of Judicial Conduct**

1. In the decision of the trial level the judicial officers clearly admit in their own analysis that Judicial Officer Jean Webster and the Respondents’ Attorney Rebecca “Becky” Webster are extended family, and that Judicial Officer Sandra Skenadore is an extended family member of Mr. Layatalati “Lati” Hill, whose improper hiring as an attorney by the Respondents is the matter challenged in the initial complaint. The analysis of the trial level, which utilized Chapter 152 of Judicial Canon of Ethics, is as follows:

“Recently enacted Chapter 152, Canons of Judicial Conduct, defines ‘Immediate Family;’ there is no reference to nephew-in-law or niece-in-law with the definition. Lati Hill is nephew-in-law to Honorable Skenadore. Attorney Webster is niece-in-law to Honorable Webster.” (Page 2)

Chapter 152 actually states the following:

*"Throughout these Canons, there are various references to a Judge's 'immediate family'. For the purposes of these canons, the term 'immediate family' shall be defined as husband, wife, mother, father, son, daughter, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, brother-in-law, sister-in-law, first or second cousin, step-parent, or someone who is recognized by the Oneida General Tribal Council and/or its delegate as a **MEMBER OF THE JUDGE'S EXTENDED FAMILY.**"* (capitalization & emphasis added).

By the Appeals Commissioners' own admission, Jean Webster's nephew is the husband of Attorney Rebecca (Becky) Webster who is counsel for the Respondents, thus Jean Webster should have recused herself as should Sandra Skenadore given that her sister is Lati Hill's aunt. The use of the term "in-law" in the decision as though that somehow negates the extended familial connection is improper at the trial level and any level because the Canons of Judicial Conduct includes a list of relationships but also says "**OR someone who is recognized by the Oneida General Tribal Council and/or its delegate as a member of the judge's extended family**" meaning the list of family titles is not to be considered exhaustive. Any suggestion that the Canons of Judicial Conduct are any less stringent than the previous Code of Judicial Conduct as to what constitutes an "*extended family member*" would require GTC's approval as a material change in judicial standards.

This also raises the question as to whether the new Canons of Judicial Conduct actually applies to Appeals Commissioners given that Chapter 150 Judiciary of the Tribe's Code of Laws will not go into effect until November 2014, or whether the Appeals Commissioners are still held to the standards of the Code of Judicial Conduct.

2. Appeals Commissioners are not Wisconsin State Bar licensed judges whose conduct is regulated by Wisconsin Supreme Court rules and other professional organizations such as the American Bar Association. Nor are they Wisconsin State Bar licensed attorneys; if they were, they would be required to recuse themselves on the basis of standard

understandings of the conflicts of interest created by the family relationships along with the attorney's canon of ethics. Given these facts Attorney Becky Webster had a legal, professional and ethical obligation to recuse herself from this case and withdraw her representation of the Respondents based upon her professional canon of ethics as an attorney as soon as her husband's aunt, Jean Webster, refused to properly recuse herself as a judicial officer even though Jean is an extended family member of Atty. Webster.

3. The Appeals Commissioners' argument relies on the assumption that in moving forward to a more formal, organized, and accredited Judiciary, the standards for recusal based on extended family relationships is taking a step backward. This is not the case as the GTC has not approved a material change of standards. The not-yet-effective Judiciary's standards for Judges would not only disqualify these particular Appeals Commissioners but would also be predicated on the accepted standards of conflict of interest as defined by the American Bar Association and other professional legal organizations.
4. If these Appeals Commissioners argue that Chapter 152 applies to them, they are in fact arguing against not just what the GTC has recognized as "*a member of the Judge's extended family*" but what the Appeals Commission and General Tribal Council has long recognized as "*a member of the Judge's extended family*" by virtue of the Oneida Tribe's Judicial Code of Conduct in Article VI. 'Disqualification/Refusal,' 6-1 (c) 2:

*"Judicial Officers shall disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including instances where: A Judicial Officer's spouse, and **any reasonably close family member in the Judicial Officer or spouse's family is acting as a lawyer or advocate in the proceeding[.]**"*

Becky Webster being the spouse of Jean Webster's nephew makes them, by any reasonable definition of the term, "family members." The same is true of Sandra Skenadore and Lati Hill based on their extended family relationship.

5. The trial level commissioners further assert and state that, *“In addition, this court is unique in that it has three judges for every trial; no other court in this country that we are aware of has a panel of three judges for every trial. The reasoning behind the three-judge panel is so that personal bias, conflict of interest and prejudicial notions are minimized.”* (Page 2). This assertion demonstrates what little these trial level commissioners know about history of the United States of America, including the fact that the State of Louisiana and small portions of Mississippi are predicated upon French law and often have trials with multiple judges presiding over cases while other state courts are predicated upon Anglo-Saxon law whereby a single judge who is either elected or appointed to review or hear and render a decision on a case.
6. The fact that one of the petitioners, Michael Debraska, was absent from the initial proceedings should have no effect or bearing on this case or matter at hand. Lati Hill was also absent from the proceedings but that fact was never stated or even mentioned in the trial level analysis so mentioning this was and is not noteworthy other than perhaps as an odd attempt by the trial level commissioners to prevent an appeal based upon a lack of a sufficient number of petitioners being present at the hearing, which is not required.
7. Rather than abide by the either the Tribe’s Judicial Code of Conduct or the Oneida Tribal Judiciary Canons of Judicial Conduct, Lead Judicial Officer Mary Adams refused to order the recusals of Judicial Officers Jean Webster and Sandra Skenadore after they refused to recuse themselves as requested by the Petitioner’s Motion for Recusal (which was also presented in written form at the November 26, 2013 hearing). Petitioners never once conceded their rights or grounds for requesting recusal or on the conflicts of interest between those Judicial Officers and the Respondents’s attorney and the subject of the complaint. Neither did the Petitioners submit any waiver of disqualification regarding Judicial Officers Webster and/or Skenadore.

Contempt for Petitioners' Due Process and Rights to an Impartial Hearing

The actions of the three Judicial Officers showed contempt for the Petitioners' constitutional rights in receiving a fair trial free of conflicts of interest between judicial officers and opposing parties and counsel. This is shown by the refusals of the two Officers Jean Webster and Sandra Skenadore with the conflicts of interest to recuse themselves, and the refusal of the Lead Judicial Officer Mary Adams to order that they properly recuse themselves to guarantee a fair hearing free of conflicts of interest.

The obstinate refusal by the Appeals Commissioners to provide the Appellants a fair hearing free of the judicial officers' admitted familial conflicts of interest is a clear violation of constitutional provisions, is clearly based on erroneous interpretations of the Canons of Judicial Conduct and the Code of Judicial Conduct, is against the weight of the evidence presented at the hearing level, and was therefore a harmful error that directly contributed to the final decision for dismissal in favor of the Respondents.

It should come as no surprise that Atty. Becky Webster, as niece-in-law to Judicial Officer Jean Webster, saw no problem with Officer Webster insisting on remaining on this case, even though Becky had a legal, professional and ethical obligation to withdraw from the case as soon as her husband's Aunt Jean refused to recuse herself.

The fact that the decision states that "*Attorney Webster has practiced before Judicial Officer Jean Webster many times without recusal issues*" is deeply troubling as a grave indication that previous petitioners and respondents in past cases may not have been made aware of their right to request a recusal based on a perceivable conflict of interest, and thereby also may have been denied their rights to fair hearings free of conflicts of interest between judicial officers and opposing parties. This admitted ongoing conflict of interest within the Oneida Appeals Commission as evidenced by Judicial Officers who do

not abide by their own Judicial Code or Canons of Judicial Conduct may be an egregious reflection on the lack of integrity of the body as a whole if not properly addressed.

Jean Webster's statement that she regularly informs parties that her nephew is Atty. Becky Webster's husband indicates that Jean Webster is fully aware that a perceivable conflict of interest does exist, or else she would not feel compelled to reveal that they are extended family members. Any decisions by parties in other cases to not request Jean's recusal when Becky serves as counsel for one of the parties is absolutely immaterial. The Plaintiffs in Case #13-TC-129 did rightly request recusal due to perceived conflicts of interest yet were wrongly denied their rights to have that reasonable request honored in compliance with the applicable Judicial Code and/or Canons of Judicial Conduct.

As has been noted, Attorney Rebecca "Becky" Webster, as a member of the Wisconsin State Bar, had a legal, professional and ethical obligation to withdraw as Counsel to the Respondent as soon as it became apparent that her husband's aunt, Judicial Officer Jean Webster refused to recuse herself from improperly remaining on Case #13-TC-129 in violation of both the Judicial Code and the Canons of Judicial Conduct.

Further, Lead Judicial Officer Mary Adams, after refusing to properly order the recusal of the two other judicial officers who had demonstrable and admitted conflicts of interest with the Respondents and their Attorney, accepted the Motion to Dismiss as presented by the Respondents' Attorney without any critical examination whatsoever of the inherent flaws and errors within the Respondents' Motion to Dismiss, which shall be detailed in the separate Answer to Respondents' Motion to Dismiss brief supporting this Appeal. The Appellants maintain that a careful, thoughtful and judicious examination of the Respondents' Motion to Dismiss and incisive questioning of the Respondents' Attorney by truly impartial Judicial Officers will not result in the flawed, arbitrary and capricious agreement with the Respondents' Motion to Dismiss by these three Judicial Officers.

When the Petitioners steadfastly asked that their rights to request recusal for a fair hearing free of conflicts of interest between the Judicial Officers and the Respondents' Counsel be honored, the Lead Judicial Officer Mary Adams wrongly dismissed the Petitioners' complaint without making any attempt to provide a fair hearing body with Judicial Officers free of conflicts of interest with the Respondents' Counsel even though alternates to Jean Webster and Sandra Skenadore are presumably available to adjudicate.

Because of the refusal of the judicial officers to guarantee a hearing free from the perception of a conflict of interest within the Trial Court level of the Oneida Appeals Commission wherein the Petitioners attempted to seek the remedy to their complaint, the Appellants hereby request a fair hearing with judicial officers who do not have any conflicts of interest with any of the Respondents (Oneida Business Committee), their Attorney (Rebecca Webster), the subject of the contested hiring, Layatalati Hill, or any of the staff of the Legislative Reference Office or the Oneida Law Office including Chief Counsel Jo Anne House who sponsored Lati Hill's improper hiring which was wrongly approved by the Business Committee.

The Appellants hereby request a truly impartial hearing with judicial officers who will honor both the Judicial Code and the Canons of Judicial Conduct as well as honor the rights of the Appellants to require the recusal of judicial officers whose extended family relationships to the Respondents and their Counsel create a perceived conflict of interest as outlined in the applicable judicial standards, especially the very basic and simply standard that judicial officers must recuse themselves as requested by either party when counsel for a party and/or one of the principals of the case is "***someone who is recognized by the Oneida General Tribal Council and/or its delegate as a member of the judge's extended family.***"