



UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET #300
ARLINGTON, VIRGINIA 22203
703-235-3816

CALIFORNIA VALLEY MIWOK TRIBE,
CALIFORNIA.

APPELLANT

PACIFIC REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS.

APPELLEE

YAKIMA DIXIE, VELMA WHITEBEAR, AND
CHADD EVERONE.

INTERESTED PARTIES

OPPOSITION OF

THE INTERESTED PARTIES
TO RECUSAL OF THE CHIEF
ADMINISTRATIVE JUDGE

AND

A REQUEST FOR
SANCTIONS ON APPELLANT
AND FOR
AN EXPEDITED HEARING

DOCKET No. IBIA 07-100-A

AUGUST 27, 2007

The Interested Parties are in receipt of the correspondence, dated August 14, 2007, from the Chief Administrative Judge (Board of Indian Appeals) to the Director (Office of Hearing and Appeals) regarding the matter of the former's recusal from this case. The Interested Parties are opposed to any such recusal of the Chief Administrative Judge from the adjudication of this case (IBIA 07-100-A) or the associated case (IBIA 06-07-A), unless the Director or the Judge determine that there is real and substantial cause to do so and that such recusal would be in the furtherance of a proper resolution to the issues which are under appeal and that a recusal would serve to expedite administrative due process. The cause for such a recusal appears to be groundless; and such a recusal would almost certainly delay and confound the adjudication of the Appeal(s).

The Interested Parties believe that this action, on the part of the Appellant-Burley, is an attempt to obstruct rather than to facilitate administrative due process and that the action is an attempt to harass the Interested Parties and intimidate The Board. Further, because Mr. Thompson, once again, failed to send a copy to the Interested Parties of his various communications to the Board, he, himself, might be in violation of making an attempt at an *ex parte* communications in accordance with 43CFR4.27(b)(1), which reads:

1 "... there shall be no communication concerning the merits of a proceeding between any
2 party to the proceeding or any person interested in the proceeding or any representative
3 of a party or interested person and any Office personnel involved ... in the decision
4 making process on that proceeding, unless the communication ..., if written, is furnished
5 to all other parties."

6 Consequently, Mr. Thompson might be the one subject to sanctions and an order to show cause,
7 in accordance with 43CFR4.27(b)(2), which reads:

8 "The administrative law judge, board, or Director who has responsibility for the matter
9 with respect to which a prohibited communication has been knowingly made may impose
10 appropriate sanctions on the offending person or persons, which may include requiring an
11 offending party to Show Cause Why Its Claim, Motion, Or Interest Should Not Be
12 Dismissed, Denied, Or Otherwise Adversely Affected ... And Invoking Such Sanctions
13 Against Other Offending Persons As May Be Appropriate Under The Circumstances."

14 The issue of Mr. Thompson's repeated failure to send copies of his pleadings to the Interested
15 Parties does require judicial notice. Not only on this occasion but on many others, Mr. Thomp-
16 son failed to send a copy to the Interested Parties of his pleadings; and the record will show that
17 The Board has, in the past, had to admonish and reprimand him for not doing so. Certainly this
18 defect in legal practice cannot be due to ignorance of the required procedures, so, it must be due
19 to a sense of maliciousness or a petty harassment tactic. In any case (ignorance, maliciousness,
20 or harassment), the act of not sending copies of pleadings to Interested Parties should not be
21 countenanced by The Board. And the Interested Parties request that The Board levy monetary
22 sanctions on the Appellant-Burley in an amount that is deemed appropriate by The Board.

23 Time is of the essence in these appeals. The Board is in receipt of the most recent pleading of
24 the Interested Parties dated August 18, 2007 (i.e., "Answer of Interested Parties To Order Setting
25 Briefing of the IBIA etc."). In Exhibit 3 of that pleading, evidence was provided that demon-
26 strates that a substantial tribal asset has been improperly conveyed, recently, by Appellant-
27 Burley to herself. Additional abuses are suspected. Any further delay in the adjudication of
28 these IBIA appeals will only server to exacerbate irreparable harm to The Tribe. Also, the BIA
29 is close to naming the "putative member" class for the Tribe as the basis for organizing the Tribe;
30 and these appeals may retard that process. Therefore, an expedited hearing by The Board on
31 both cases (IBIA 07-100-A and IBIA 06-07-A) is warranted and requested by the Interested
32 Parties. On October 12, 2007, the Court of Appeals is scheduled to hear the case in which
33 Appellant-Burley is challenging the dismissal of her District Court case. This Interested Party
34 (Everone) plans to be in D.C. for that hearing; and if The Board intends to hold hearings on the
35 appeals which are currently before it (rather than adjudicate on the documents) and if at all possi-
36 ble, the Interested Parties request that the IBIA hold those hearings on October 10th or 11th.

37 **Comments**

38 Attempting to analyze the transactions which Mr. Thompson cites as the basis of his request for
39 recusal, there seems to be some contradictions. In his correspondence of July 25, 2007, Thomp-
40 son states that he had a conversation with Jane Smith, Assistant Attorney for the BIA, and that
41 she mentioned having spoken with Judge Debra Luther of the IBIA. Mr. Thompson alleges a
42 violation of the rule against *ex parte* communications, and he demands that a "show cause" order
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1 be issued by Judge Linscheid and that Ms. Luther recuse herself from being involved in these
 2 cases (IBIA 07-100-A) and the associated case (IBIA 06-07-A). On July 30, 2007, Judge
 3 Linscheid responds, pointing out that Judge Luther had already recused herself from participat-
 4 ing in those two appeals. Accordingly, Judge Linscheid declined to inquire further into Thomp-
 5 son's allegations and noted that no details were provided about the substance upon which the
 6 allegation was based. Then, on August 8, 2007, Mr. Thompson responded by complaining that
 7 Judge Linscheid should have inquired into the substance of the conversation between Judge
 8 Luther and Jane Smith, and he suggested that Judge Linscheid may have had conversations with
 9 Judge Luther about the tribe and requested that Linscheid recuse himself based on that possibil-
 10 ity. Finally, on August 14, 2007, Judge Linscheid responds to Mr. Thompson, reviewing the
 11 sequence of these events and the governing regulations; and he declined to recuse himself on
 12 various grounds. The question which occurs to this Interested Party is that if, *arguendo*, the
 13 conversation between Judge Luther and Assistant Attorney Smith did deal with prohibited
 14 subject matter and Judge Linscheid did not know about the substance of that discussion, then
 15 Linscheid would still be in conformance with protocol and could continue adjudicating the
 16 appeals. However, if Judge Linscheid were to make an inquiry into that conversation, as
 17 requested by Mr. Thompson, would, in that case, Judge Linscheid become a party to such
 18 prohibited material and therefore would he not have to have recused himself? In other words,
 19 was this a set-up by Thompson to sabotage Linscheid? Perhaps this is attributing a too Machiav-
 20 ellian under-current; but such a maneuver is possible.

20 *Aho!*

21
 22 Respectfully,

23
 24 Drafted for Interested Parties by:

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 27
 28 _____
 29 Chadd Everone, Deputy

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 31 Date: _____

Approved By Phone

32 Velma WhiteBear, Executive Director

33 Date: August 27, 2007

Approved By Phone

34 Yakima K. Dixie, Chief & Hereditary Authority

35
 36 Date: August 27, 2007
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Certificate of Service

On August 28, 2007, a copy of this Appeal has been sent to:

The IBIA:

Board of Indian Appeals
Office of Hearings and Appeals
U.S. Department of the Interior
801 North Quincy St.
Arlington, Virginia 22203

Appellee:

Associate Solicitor
Division of Indian Affairs
Attention: Jane Smith / Scott Keep
Office of the Solicitor
MS-6456-MIB
U.S. Department of the Interior
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**NOTE: THE MAILING ADDRESS HAS
CHANGED SOMEWHAT.**