Based on the foregoing, we find the Trial Court committed reversible errors both in disallowing Appellant Lisa Louie, to present a defense of necessity, and in evincing a bias against her Spokesman, Daniel Gargan, and for Appellee Colville Tribes. The guilty verdict entered herein is VACATED, and this matter is REVERSED and REMANDED for a new trial, consistent with the rulings in this Opinion.

It is so ORDERED.

CTEC GAMING COMMISSION, Appellant,

vs.

Marianne MOSQUEDA, Appellee.

Case No. AP06-004, 4 CTCR 28

8 CCAR 61

[Elizabeth Fry, Omak WA, Spokesman for Appellant.
Marianne Mosqueda, appeared pro se.
Trial Court Case No. AD-2005-25007]

Argued June 16, 2006. Decided July 10, 2006.

Before Chief Justice Anita Dupris, Justice Gary Bass and Justice Howard E. Stewart.

Dupris, C.J., for the panel.

SUMMARY

This is an interlocutory appeal of a denial of an Affidavit of Prejudice brought pursuant to CTC §1-1-143. For reasons stated below, we find the Trial Judge who reviewed the Motion and Affidavit should have made a more detailed inquiry regarding whether there were sufficient facts to support the Appellant's allegations of potential bias on the part of Judge Aycock because (1) Judge Aycock has already heard an

employment case regarding the same parties, and ruled in favor of the Appellee; and (2) some of the same facts alleged in the first hearing in which Judge Aycock had made a ruling will form a basis for the Appellant's allegations in the instant case.

Discussion

On April 19, 2006 CTEC filed an Affidavit and Motion to Recuse Judge Aycock from the employment appeal case at the trial level, alleging "Marianne Mosqueda, the Petitioner herein, has appeared before Judge Steve Aycock in an employment matter against this same Respondent. The matter has turned into a termination case. Information from the prior proceeding will come up in the fact-finding hearing in this case."

On April 26, 2006 Associate Judge Connie Johnston entered an Order Denying Motion to Disqualify Judge. She based her decision on three (3) grounds:

> (1) it was untimely, having been filed 3 ½ months after the initial hearing in the case;
>
> (2) the initial Order entered by Judge Aycock on January 3, 2006 constituted a discretionary ruling by the Judge, which is "trial action." CTC §1-1-143 requires that the Affidavit of Prejudice be filed before any trial action is taken; and
>
> (3) Insufficient facts were alleged, which do not establish or set forth a basis for the motion to disqualify Judge Aycock.

A review of our rulings on Affidavits of Prejudice show that we have five (5) cases in which we have set some standards for such affidavits. From a review of these cases we find first that the standard of review is clearly erroneous. *See*, *Louie v. CCT*, 7 CCAR 46 (2004) ("The clearly erroneous standard applies here when we review the facts upon which the judge relied to deny the Affidavit..."). The decision to disqualify a judge is within the sound discretion of the reviewing judge, and is not automatic. *See*, *St. Peter v. CCT*, 1 CCAR 1, 1 CTCR 72 (1993) .

Any decision to disqualify a judge requires a careful review of the affidavit filed and a particularized inquiry into the fact alleged in each case. See, *In Re L.S.-L & R.S.-L, Minors v. CCT, et al*, 5 CCAR 46, 3 CTCR 33 (2001) Although additional fact-finding is not necessary upon every review of an Affidavit of Prejudice, one must be given in

circumstances when "...the Affidavit contains serious allegations and very little fact....[D]ue process and judicial economy require the judge to consider whatever evidence can be offered for or against recusal." *See*, *Cleparty v. CCT*, 2 CCAR 19 (1993). "Each reason will, by its very nature, be unique to each party filing the Affidavit, dealing with the party's relationship with the Judge." *See*, *In Re L.S.-L & R.S.-L, Minors v. CCT, et al*, 5 CCAR 46, 3 CTCR 33 (2001), and *Ortiz & Louie v. CCT*, 7 CCAR 07, 4 CTCR 0 (2003) ("Applying basic fundamentals of due process, we hold that a fact finding should be held, whether by hearing or by sworn affidavits, to allow the parties an opportunity to put forth facts concerning their allegations in the Motion.")

HOLDING

When we reviewed the record below there was no indication that a fact-finding had taken place at the Trial Court in the instant case. Our records show that Judge Aycock has held two (2) status or pre-trial hearings regarding the termination of Ms. Mosqueda from her employment with CTEC. We assume this is the only record Judge Johnston had to review when she made her decision.

The Affidavit submitted by CTEC alleges Judge Aycock had already heard some of the evidence to be presented in the termination hearing. What CTEC failed to allege in its writtn affidavit was that the fact-finding was a separate case previously heard by Judge Aycock, in which the Judge found for Ms. Mosqueda and against CTEC. The case number of the hearing has not been submitted to us. Ms. Mosqueda confirmed on record that Judge Aycock did handle another employment appeal she filed against CTEC, in which she prevailed.

If we only look at the instant case, Judge Johnston's ruling that "[i]nsufficient facts were alleged, which do not establish or set forth a basis for the motion to disqualify Judge Aycock," is not erroneous. However, the record does not appear to reflect that Judge Johnston considered the other case CTEC was referring to when it filed its Affidavit. It is important that the affiant state with particularity and clarity all the facts on which it is basing its request for recusal. This was not done herein.

The lack of clarity in CTEC's Affidavit should not preclude a review of all of the relevant facts, however. "[D]ue process and judicial economy require the judge to consider whatever evidence can be offered for or against recusal." *See*, *Cleparty v. CCT*,

supra, at p20. The fact that Judge Aycock has made factual rulings regarding Ms. Mosqueda's employment with CTEC, and the conduct of Ms. Mosqueda which gave rise to the first fact-finding hearing being a part of the facts alleged in the instant case, warrant a more particularized review by Judge Johnston[34].

For the reasons stated above, we find cause to GRANT the interlocutory appeal, to REVERSE the decision to deny the Affidavit of Prejudice, and to REMAND for a more detailed inquiry regarding the allegations supporting the Affidavit, either by a review of sworn affidavits or a fact-finding hearing.

It is SO ORDERED.

Eldon L. WILSON, Appellant,

vs.

Rory GILLILAND, Appellee.

Case No. AP04-008, 4 CTCR 29

8 CCAR 64

[Daniel T. Gargan, Spokesman, appeared for Appellant.
James R. Bellis, Office of Reservation Attorney, appeared for Appellee.
Trial Court case no. CV-OC-2002-22404]

Argued December 17. 2004. Decided July 21, 2006.

Before Theresa M. Pouley, Presiding Justice, Justice David C. Bonga and Justice Elizabeth Fry

Pouley, A.J.

SUMMARY

[34] Our ruling below is dispositive, so we will not issue an Opinion on whether Judge Johnston's rulings finding (1) the motion was untimely; and (2) "trial action" had already taken place. We will not issue "guidelines" for the Trial Court to follow regarding Affidavits of Prejudice. We have previously held "...the issuance of guidelines for deciding on Motions for Disqualification is one for the trial court or should be made by the legislative body of the Tribe and not this Court." *Ortiz & Louie v. CCT*, 7 CCAR 07, 10, 4 CTCR 04 (2003).