

## ELECTION COMMITTEE CONTEST

**Complainant:** Janet Liedel

**Respondent:** Angela Declue

May 5, 2016

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### HEARING DECISION

#### History

Respondent Declue filed to run for a Unit 1 seat on the Board of Directors. On April 19, 2016, the Election Committee certified Declue as a candidate by publishing her name on the list of eligible candidates. On April 19, 2016, Liedel exercised her statutory right to contest the Election Committee's certifying Declue as a candidate pursuant to Tribal Code Chapter 10: Election Ordinance at Section 10.118 and did so within the prescribed time limit.

Liedel argues that Declue is not a resident of Sault Ste. Marie, Michigan, which is situated within the exterior boundaries of the Unit 1 election unit, and is therefore ineligible for candidacy. Liedel argues that Declue actually lives in Waterford, Michigan (at the hearing it was established that the alleged down state home is not Waterford but Pontiac, Michigan). Declue argues that she lives in Sault Ste. Marie with her aunt and uncle and has resided there since early June, 2015.

On April 25, 2016, representatives of the Election Committee met with Declue pursuant to Section 10.120(2)(b) to further investigate the allegations via a face to face interview. On April 27, 2016, the Election Committee discussed what was discovered during the interview and determined that the matter warranted a hearing pursuant to Section 10.120(2)(c) and so ordered.

The Election Committee held a hearing on the contest in Sault Ste. Marie on May 4, 2016. Present were the Election Committee, the Election Attorney, Liedel and Declue.

### **Decision**

The hearing was conducted pursuant to the Election Committee Hearing Procedures. The hearing was conducted under the presumption that Declue is a resident of Unit 1 and is therefore an eligible candidate and the burden is on Liedel to show by a preponderance of the evidence that Declue is not a resident of Unit 1 and is therefore ineligible for candidacy. That burden was not met and the Election Committee finds that Declue is an eligible candidate

This contest hinges entirely on whether or not Declue is an eligible candidate based on her being a resident of Unit 1 and for being a resident of Unit 1 for one year. Section 10.110(1)(e) states that in order to be eligible for office one must have resided in the applicable election unit for one year prior to the election. Specifically it reads:

Have established **Residency** within the Election Unit the Candidate seeks to represent, or any Election Unit if seeking the position of Tribal Chairperson, at least **one (1) year prior to the election.** *{Emphasis Added}*

“Residency” is defined at Section 10.103(23) as:

“Residency” shall mean the address at which a Member has his or her **true, fixed home and principal establishment**, and to which he or she has the intention of returning whenever absent. Residency therefore requires two elements:  
**(a) physical presence in a Unit; and (b) the intent to make that Unit home.** For the purposes of this Election Code, a Member has only one residency, regardless of the number of houses maintained. In determining which of a Member’s houses is their true residence, attention must be given to the Member’s intent, which requires an examination of the entire course of the Members’ conduct.  
*{Emphasis Added}*

In order for Liedel to meet her burden of proof she must show that Declue fails to make it over one of two hurdles or both hurdles. First, Liedel must show that Declue has not resided in Unit 1 for a period of one year. Failing to knock out Declue on that front, Liedel must show that the Sault Ste. Marie address, the home of the aunt and uncle, is not Declue's "true, fixed home and principle establishment" by applying the two elements of presence in the election unit and the intent to make Unit 1 home.

### **One Year Residency In Unit 1**

Liedel has not proven that Declue fails to meet Section 10.110(1)(e)'s requirement that a candidate live in the applicable election unit for one year prior to the election. To be eligible for this 2016 general election Declue must have resided in Unit 1 as of June 23, 2015. The 2016 general election is June 23, 2016 and one year back from that is June 23, 2015. Liedel argues that the trigger date is not June 23, 2015, but rather it is January 29, 2015. Liedel makes the common mistake of assuming the "election" as used in Section 10.110(1)(e) is the start of the election process – meaning the statutory mandated date upon which the Notice of Election is published which is the last Friday in January of an election year. That is a common yet incorrect interpretation of 10.110(1)(e).

Regardless, we examine Declue's residency under Section 10.110(1)(e) and under the June 23, 2015 trigger date out of propriety as Liedel has made statements alleging, and submitted information arguably supporting the same, that over the summer and fall of 2015 Declue was in fact not living in Sault Ste. Marie but was in fact living in Pontiac. These arguments render moot the Liedel's mistaken reliance on the wrong date.

Liedel provides as evidence of Declue's not residing in Unit 1 in contravention of 10.110(1)(e) a series of Facebook post by Declue generally illustrating Declue's presence in

Pontiac on a series of dates generally consisting of: (a) six dates over July and August 2015 where the post indicates Declue's presence in Pontiac; (b) a span of perhaps a week or more in February, 2016. Liedel also offers as evidence the March 26, 2014 Roll of Registered Voters for Unit 1 which list Declue's address as her Pontiac address.

To counter this allegation Declue states that she moved to Sault Ste. Marie in early June of 2015 but cannot provide the exact date. Declue provided as a witness Ms. Synett, her aunt, with whom she purports to reside in Sault Ste. Marie. Ms. Synett testified that Declue moved in with her in April of 2015 – being contrary to Declue's statement that she moved north in early June. Declue clarified that she began moving her personal possessions north in April but did not begin her residency until early June. Ms. Synett agreed. Ms. Synett also testified that the Election Committee was engaging in collusion with unnamed parties by investigating Declue's eligibility.

Last, we examined, but were not provided copies of, a number of documents intended to demonstrate Declue's residency in Unit 1 as of early June, 2015. These will be discussed in greater detail below but one of these documents in particular is of importance here. Declue provided her driver's license and her voter registration card which both indicated that she change her address from Pontiac to Sault Ste. Marie in early June of 2015.

We are unconvinced that Declue's sporadic presence in Pontiac as evidenced by the Facebook posts is enough to meet the burden of proof required to show that Declue in fact did not establish residency in Unit 1 before June 23, 2015. Nothing in Ch. 10 prohibits a person from visiting their historic - lifelong home or spending sporadic lengths of time there.

## **Residency**

Liedel must show Declue's Unit 1 address is not her "true, fixed home and principle establishment" by applying Section 10.103(23)'s two elements; presence in the election unit and the intent to make Unit 1 home. Liedel must prove by a preponderance of the evidence that Declue does not have physical presence in Sault Ste. Marie and that Declue has no intention of making the Sault Ste. Marie her home.

By way of evidence Liedel relies on the same Facebook screen grabs discussed above wherein Declue states in some way that she in is the Pontiac area. The best piece of evidence supporting Liedel is a July 9, 2015, where Declue discusses getting verbally accosted by her cat upon her arrival "home" in Pontiac due to the cat missing her over her long absence. We find this unconvincing as home can mean so many things to so many people – even more so when one uses the term home in referring to the place one was born and raised. We do not find this single use indicative of anything. The remaining Facebook posts offer only less persuasive evidence.

In response Declue admitted that she does in fact on occasion return to Pontiac to help care for a grandson, returned for an illness in the family, returns every two months for medical attention and returns on occasion for other matters and we presume these visits correspond with the Facebook posts.

Declue allowed us to review (no copies were provided) an array of receipts and other documents that indicate her presence in Sault Ste. Marie going back to June of 2015. These include her driver's license, Michigan voter registrant, jury duty summons in Tribal Court, various shopping and gas receipts, auto insurance, receipts accounting for her own cable line into her aunt and uncles home, ATM withdrawals and other such material. Declue indicated that she

filed her 2015 taxes jointly with her husband who lives in Pontiac and from whom she is separated. This does not give us any concern. We note that Declue's Pontiac address remains listed on her health care related paperwork for what are described as Medicaid purposes. We admit that it gives us pause that Medicaid may be under the false impression that Declue still lives in Pontiac but that is an issue between Declue and the applicable state and Federal agencies and has no bearing on where Declue lives for purposes of Ch. 10.

On another front Declue's own words give the Election Committee pause. Declue readily admits that she moved to Sault Ste. Marie so that she could run for the Board of Director's and if she loses she is going "home" or "going back to Pontiac". These statements were made at the hearing and at the April 25th interview. While we certainly appreciate the honesty the statements due create a conundrum when weighed against the two elements used to determine residency. We are satisfied that Declue has had a physical presence here, for at least one year, and Liedel has offered nothing to counter that; however, we find it difficult to so easily dismiss the second element in 10.103(23) – that Declue must have the intent to make Sault Ste. Marie her home - her "true, fixed home and principle establishment."

We begin by discussing what "true, fixed home and principle establishment" means. Webster's Third International Dictionary defines home as one's principle place of residence. Research on what home or principle place of residence means or what home means reveals endless results. The Internal Revenue Service doesn't even have a statutory definition and instead relies on a regulatory definition which states that "a tax payer's principle residence depends on all the facts and circumstances." *I.R.C. Section 121*. The average person may well define home as where the heart is. It is a horribly ambiguous word that can cause great disagreement when placed in a legal context. Thus in order to reach a decision point we properly

rely on the second element and simply ask if Declue had and has the intent to live in Sault Ste. Marie keeping in mind that we must presume that Declue had and has such intent and that Liedel carries the burden of showing that Declue did not have and does not have such intent.

Liedel has offered nothing by the way of evidence and has made no argument that Declue has no intent to make Sault Ste. Marie her home. Regardless, propriety demands that we not ignore Declue's statement of her reason for moving Unit 1 and her belief that she will leave if she does not win. That then is the evidence that we must apply to the second element.

What we know of Declue's intent is only what she has admitted and we take her at her word. So the question is whether her intent to vacate Unit 1 upon a possible election loss in the future means that she has no intent to make Unit 1 home. Does it mean that Unit is by default not her true, fixed home and principle establishment? Nothing in Section 10.103(23) requires any kind of permanency. Section 10.103(23) does not say that the "true, fixed home and principle establishment" must be perpetual, lasting, enduring or long term. Is this an omission or is this something we are to read in to the definition?

Interestingly, Section 10.103(24) which defines a "Resident" for purposes of becoming a registered voter may help answer that question. It states:

"Registered" shall mean those Members of the Tribe who maintain a **permanent** Residency within the Service Area.  
*{Emphasis Added}*

Here the use of the word permanent indicates a clear intent by the tribe that in order to be a registered voter you must permanently live in that election unit (acknowledging other applicable Ch. 10 sections on the matter). If we import the word permanent onto our definition of a "true, fixed home and principle establishment" the answer becomes quite clear – Declue is out as she has admitted that she no intention of this being her permanent home. But that is not what our

controlling statutory language says. The tribe clearly placed a permanent requirement in one area and clearly did not place it on another.

That, coupled with a plain reading of the controlling statutory language convinces us that when considering Declue's intent to make Unit 1 her home we are not to take into consideration what she may or may not do in the future. We are required to examine her conduct in the past and in the present and upon examining that conduct we find that she has had and continues to have the intent to make Unit 1 her home since early June 2015. What she does in the future is irrelevant.

### **Finding**

1. We unanimously find that Declue is an eligible candidate to run for a Unit 1 seat on the Board of Directors. Declue has lived in Sault Ste. Marie since early June, 2015, and has made Sault Ste. Marie her home since June, 2015.
2. A party that disagrees with this finding may appeal it to the Court of Appeals pursuant to Tribal Code Chapter 82: Appeals.
3. We order that this decision be provided to the parties via email (and a courtesy copy via first class mail) and for purposes of Tribal Code Chapter 82: Appeals at Section 82.204 the parties are deemed to have received this finding upon receipt of the email.
4. We further order that this decision shall be published pursuant to Section 10.120(2)(c).

The Election Committee

May 5, 2016