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**IN THE
HO-CHUNK NATION TRIAL COURT**

Julie Schultz,
Petitioner,

v.

Case No.: **CV 08-26**

**Robert Funmaker; Ho-Chunk Nation; Ho-
Chunk Casino, Hotel & Convention Center;
Ho-Chunk Nation Department of
Personnel; and Ho-Chunk Nation
Department of Business,**
Respondents.

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**ORDER
(Default Judgment)**

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INTRODUCTION

16 The Court must determine whether to grant the relief requested by the petitioner. The
17 respondents failed to answer the *Petition for Writ of Mandamus* (hereinafter *Petition*) despite
18 proper service of process. The Court, therefore, renders a default judgment against the
19 respondents, awarding the petitioner permissible relief sought in the *Petition*.
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PROCEDURAL HISTORY

23 The petitioner, Julie Schultz, by and through Attorney Mark L. Goodman, initiated the
24 current action by filing the *Petition* with the Court on June 24, 2008. Consequently, the Court
25 issued a *Summons* accompanied by the above-mentioned pleading on June 24, 2008, and served
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1 the documents upon the respondents' representative, Ho-Chunk Nation Department of Justice
2 (hereinafter DOJ),¹ by personal service as permitted by *HCN R. Civ. P. 5(C)(1)*.

3 The *Summons* informed the respondents of the right to file an *Answer* within twenty (20)
4 days of the issuance of the *Summons* pursuant to *HCN R. Civ. P. 5(A)(2)*. The *Summons* also
5 cautioned the respondents that a *default judgment* could result from failure to file within the
6 prescribed time period. See *HCN R. Civ. P. 54(A)*. The respondents, however, failed to answer
7 prior to the expiration of such timeframe.
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9 Instead, the respondents filed the Grievance Review Board (hereinafter GRB)
10 administrative record on July 9, 2008, despite the petitioner not filing a *Petition for*
11 *Administrative Review* and the Court issuing no *Scheduling Order* in the instant case.² On
12 August 11, 2008, the Court mailed *Notice(s) of Hearing* to the parties, informing them of the
13 date, time and location of a *Status Hearing*. The Court convened the *Hearing* on August 26,
14 2008 at 2:30 p.m. CDT. The following parties appeared at the *Status Hearing*: Attorney Mark
15 L. Goodman, petitioner's counsel (by telephone), and DOJ Attorney Alysia E. LaCounte,
16 respondents' counsel.
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19 **APPLICABLE LAW**

20 **CONSTITUTION OF THE HO-CHUNK NATION**

21 **Article I - Territory and Jurisdiction**

22 Section 1. Territory. The territory of the Ho-Chunk Nation shall include all lands held by
23 the Nation or the People, or by the United States for the benefit of the Nation or the People, and
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27 ¹ The *Ho-Chunk Nation Rules of Civil Procedure* (hereinafter *HCN R. Civ. P.*) permit the Court to serve the initial
28 pleading upon the DOJ when the plaintiff/petitioner names as a party either a unit of government or enterprise or an official
or employee being sued in their official or individual capacity. *HCN R. Civ. P. 27(B)*.

² The petitioner initiated a contemporaneous cause of action on July 7, 2008, with the filing of her *Petition for
Administrative Review*, which resulted in the Court's entry of a *Scheduling Order* on July 8, 2008. See *HCN R. Civ. P.
63(D)*.

1 any additional lands acquired by the Nation or by the United States for the benefit of the Nation
2 or the people, including but not limited to air, water, surface, subsurface, natural resources and
3 any interest therein, notwithstanding the issuance of any patent or right-of-way in fee or
otherwise, by the governments of the Ho-Chunk Nation, existing or in the future.

4 Section 2. Jurisdiction. The jurisdiction of the Ho-Chunk Nation shall extend to all territory
5 set forth in Section 1 of this Article and to any and all persons or activities therein, based upon
6 the inherent sovereign authority of the Nation and the People or upon Federal law.

7 Article VI - Executive

8 Sec. 1. Composition of the Executive.

9 (b) The Executive Branch shall be composed of any administrative Departments created by
10 the Legislature, including a Department of the Treasury, Justice, Administration, Housing,
11 Business, Health and Social Services, Education, Labor, and Personnel, and other Departments
12 deemed necessary by the Legislature. Each Department shall include an Executive Director, a
13 Board of Directors, and necessary employees. The Executive Director of the Department of
14 Justice shall be called the Attorney General of the Ho-Chunk Nation. The Executive Director of
15 the Department of Treasury shall be called the Treasurer of the Ho-Chunk Nation.

14 Article VII - Judiciary

15 Sec. 5. Jurisdiction of the Judiciary.

16 (a) The Trial Court shall have original jurisdiction over all cases and controversies, both
17 criminal and civil, in law or in equity, arising under the Constitution, laws, customs and
18 traditions of the Ho-Chunk Nation, including cases in which the Ho-Chunk Nation, or its
19 officials and employees, shall be a party. Any such case or controversy arising within the
20 jurisdiction of the Ho-Chunk Nation shall be filed in the Trial Court before it is filed in any other
21 court. This grant of jurisdiction by the General Council shall not be construed to be a waiver of
22 the Nation's sovereign immunity.

21 Section 7. Powers of the Tribal Court.

22 (a) The Trial Court shall have the power to make findings of fact and conclusions of law.
23 The Trial Court shall have the power to issue all remedies in law and equity including injunctive
24 and declaratory relief and all writs including attachment and mandamus.

25 HO-CHUNK NATION JUDICIARY ESTABLISHMENT AND ORGANIZATION ACT, 1
26 HCC § 1

27 Subsec. 4. Jurisdiction. The Ho-Chunk Judiciary shall exercise jurisdiction over all matters
28 with the power and authority of the Ho-Chunk Nation including controversies arising out of the
Constitution of the Ho-Chunk Nation; laws, statutes, ordinances, resolutions, and codes enacted
by the Legislature; and such other matters arising under enactments of the Legislature or the

1 customs and traditions of the Ho-Chunk Nation. The jurisdiction extends over the Nation and its
2 territory, persons who enter its territory, its members, and persons who interact with the Nation
or its members wherever found.

3 DEPARTMENT OF JUSTICE ESTABLISHMENT & ORGANIZATION ACT OF 2001, 1
4 HCC § 8

5 Subsec. 4. Functions. The Department of Justice shall:

6 b. Provide expert legal advice and competent representation for all Branches of the
7 Nation on those matters that concern the Nation's interests and welfare.

8 c. Represent the Nation in Tribal, State, and Federal forums.

9 EMPLOYMENT RELATIONS ACT OF 2004, 6 HCC § 5

10 Ch. V - Work Rules & Employee Conduct, Discipline, & Administrative Review

11 Subsec. 34. Administrative Review Process.

12 a. Policy.

13 (3) Following a Board decision, the employee shall have the right to file an
14 appeal with the Ho-Chunk Nation Trial Court (Court).

15 h. The Board shall have the authority to direct the Executive Director of Personnel
16 to execute the appropriate remedy consistent with the determination of the Board.

17 Subsec. 35. Judicial Review.

18 c. Judicial review of a grievance involving suspension, termination, discrimination,
19 or harassment may proceed to the Ho-Chunk Nation Trial Court only after the Administrative
20 Review Process has been exhausted through the Grievance Review Board. An employee may
21 appeal a Board decision to the Trial Court within thirty (30) calendar days of when the Board
decision is served by mail.

22 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

23 Rule 5. Notice of Service of Process.

24 (A) Definitions.

25 2. Summons - The official notice to the party informing him/her that he/she is identified
26 as a party to an action or is being sued, that an *Answer* is due in twenty (20) calendar days (*See*
27 *HCN R. Civ. P. 6*) and that a *Default Judgment* may be entered against them if they do not file an
28 *Answer* in the prescribed time. It shall also include the name and location of the Court, the case

1 number, and the names of the parties. The *Summons* shall be issued by the Clerk of Court and
2 shall be served with a copy of the filed *Complaint* attached.

3 (C) Methods of Service of Process.

4 1. Personal Service. The required papers are delivered to the party in person by the
5 bailiff, or when authorized by the Court, a law enforcement officer from any jurisdiction, or any
6 other person not a party to the action who is eighteen (18) years of age or older and of suitable
discretion.

7 Rule 6. Answering a Complaint or Citation.

8 (A) Answering a Complaint. A party against whom a *Complaint* has been made shall have
9 twenty (20) calendar days from the date the *Summons* is issued, or from the last date of service
10 by publication, to file an *Answer* with the Clerk of Court. The *Answer* shall use short and plain
11 statements to admit, admit in part, or deny each statement in the *Complaint*, assert any and all
12 claims against other parties arising from the same facts or circumstances as the *Complaint* and
13 state any defenses to the *Complaint*. The *Complaint* must contain the full names of all parties
14 and any counsel. The *Answer* must be signed by the party or his or her counsel and contain their
full names and addresses, as well as a telephone number at which they may be contacted. An
Answer shall be served on other parties and may be served by mail. A *Certificate of Service*
shall be filed as required by Rule 5(B).

15 Rule 27. The Nation as a Party.

16 (B) Civil Actions. When the Nation is filing a civil suit, a writ of mandamus, or the Nation is
17 named as a party, the *Complaint* should identify the unit of government, enterprise or name of
18 the official or employee involved. The *Complaint*, in the case of an official or employee being
19 sued, should indicate whether the official or employee is being sued in his or her individual or
20 official capacity. Service can be made on the Ho-Chunk Nation Department of Justice and will
be considered proper unless otherwise indicated by these rules, successive rules of the Ho-Chunk
Nation Court, or Ho-Chunk Nation Law.

21 Rule 54. Default Judgment.

22 (A) General. A *Default Judgment* may be entered against a party who fails to answer if the party
23 was personally served in accordance with Rule 5(C)(1)(a)(i) or 5(C)(1)(a)(ii) or informed
24 through other means of judicially authorized service such as publication or if a party fails to
25 appear at a hearing, conference or trial for which he/she was given proper notice. A *Default*
26 *Judgment* shall not award relief different in kind from, or exceed the amount stated in the request
for relief. A *Default Judgment* may be set aside by the Court only upon a timely showing of
good cause.

1 Rule 58. Amendment to or Relief from Judgment or Order.

2 (A) Relief from Judgment. A *Motion to Amend* or for relief from judgment, including a request
3 for a new trial shall be made within ten (10) calendar days of the filing of judgment. The *Motion*
4 must be based on an error or irregularity that prevented a party from receiving a fair trial or a
substantial legal error that affected the outcome of the action.

5 (B) Motion for Reconsideration. Upon motion of the Court or by motion of a party made not
6 later than ten (10) calendar days after entry of judgment, the Court may amend its findings or
7 conclusions or make additional findings or conclusions, amending the judgment accordingly.
8 The motion may be made with a motion for a new trial. If the Court amends the judgment, the
9 time for initiating an appeal commences upon entry of the amended judgment. If the Court
10 denies a motion filed under this Rule, the time for initiating appeal from the judgment
11 commences when the Court denies the motion on the record or when an order denying the
12 motion is entered, whichever occurs first. If within thirty (30) days after the filing of such
13 motion, and the Court does not decide a motion under this Rule or the judge does not sign an
14 order denying the motion, the motion is considered denied. The time for initiating the appeal
15 from judgment commences in accordance with the *Rules of Appellate Procedure*.

16 (C) Motion to Modify. After the time period in which to file a *Motion to Amend* or a *Motion for*
17 *Reconsideration* has elapsed, a party may file a *Motion to Modify* with the Court. The *Motion*
18 must be based upon new information that has come to the party's attention that, if true, could
19 have the effect of altering or modifying the judgment. Upon such motion, the Court may modify
20 the judgment accordingly. If the Court modifies the judgment, the time for initiating an appeal
21 commences upon entry of the modified judgment. If the Court denies a motion filed under this
22 Rule, the time for initiating an appeal from the judgment commences when the Court denies the
23 motion on the record or when an order denying the motion is entered, whichever occurs first. If
24 within thirty (30) calendar days after the filing of such motion, and the Court does not decide the
25 motion or the judge does not sign an order denying the motion, the motion is considered denied.
26 The time for initiating an appeal from judgment commences in accordance with the *Rules of*
27 *Appellate Procedure*.

28 (D) Erratum Order or Re-issuance of Judgment. Clerical errors in a Court record, including the
Judgment or Order, may be corrected by the Court at any time.

(E) Grounds for Relief. The Court may grant relief from judgments or orders on motion of a
party made within a reasonable time for the following reasons: (1) newly discovered evidence
which could not reasonably have been discovered in time to request a new trial; (2) fraud,
misrepresentation or serious misconduct of another party to the action; (3) good cause if the
requesting party was not personally served in accordance with Rule 5(c)(1)(a)(i) or (ii), did not
have proper service and did not appear in the action; or (4) the judgment has been satisfied,
released, discharged or is without effect due to a judgment earlier in time.

1 Rule 61. Appeals.

2 Any final *Judgment* or *Order* of the Trial Court may be appealed to the Supreme Court. The
3 *Appeal* must comply with the *Rules of Appellate Procedure*, specifically *Rules of Appellate*
4 *Procedure*, Rule 7, Right of Appeal. All subsequent actions of a final *Judgment* or Trial Court
5 *Order* must follow the *Rules of Appellate Procedure*.

6 Rule 63. Judicial Review of Administrative Adjudication.

7 (D) The commission or board, designated as the respondent, must transmit the administrative
8 record to the Court within fifteen (15) days after receipt of the *Petition for Administrative*
9 *Review*. The administrative record shall constitute the sole evidentiary record for judicial review
10 of the agency decision, unless the petitioner avails him or herself of the following exception:

11 **FINDINGS OF FACT**

12 1. The petitioner, Julie Schultz, is a non-member and resides at S2453 Simpson Road,
13 Reedsburg, WI 53959. The petitioner is employed as a beverage server at Ho-Chunk Casino,
14 Hotel & Convention Center. *Pet.* at 1.

15 2. The respondent, Ho-Chunk Nation (hereinafter HCN or Nation), is a federally recognized
16 Indian tribe with principal offices located on trust lands at HCN Headquarters, W9814 Airport
17 Road, P.O. Box 667, Black River Falls, WI. *See* 73 Fed. Reg. 18553 (Apr. 4, 2008). The
18 respondents, HCN Department of Business and HCN Department of Personnel, are HCN
19 executive departments located at HCN Headquarters. CONSTITUTION OF THE HO-CHUNK NATION
20 (hereinafter CONSTITUTION), ART. VI, § 1(b). The respondent, Ho-Chunk Casino, Hotel &
21 Convention Center, is a sub-entity within the HCN Department of Business located at S3214
22 Highway 12, Baraboo, WI 53913. *See* <http://www.ho-chunknation.com/?PageId=230> (last
23 visited Nov. 17, 2008). The respondent, Robert L Funmaker, Jr., is employed as Beverage
24 Manager at Ho-Chunk Casino, Hotel & Convention Center and serves as the petitioner's
25 supervisor. *See Schultz v. Funmaker*, GRB-080-05-H (GRB, Jan. 14, 2008) (hereinafter
26 *Decision*).

1 3. The respondents received proper service of process of the *Summons* and *Petition*. See
2 *HCN R. Civ. P. 27(B)*; see also DOJ ESTABLISHMENT & ORG. ACT OF 2001, 1 HCC § 8.4b-c. On
3 June 24, 2008, Assistant Clerk of Court Margaret A. Falcon personally served DOJ Paralegal II
4 Fran Kernes with these documents. *Summons*, CV 08-26 (HCN Tr. Ct., June 24, 2008); see also
5 *HCN R. Civ. P. 5(C)(1)*.
6

7 4. The respondents failed to file a responsive pleading within a period of twenty (20) days
8 after issuance of the *Summons*, *i.e.*, on or before July 14, 2008. See *HCN R. Civ. P. 5(A)(2)*,
9 6(A).
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11 5. The respondents conjectured that the failure possibly arose in conjunction with former
12 DOJ Attorney Brian T. Steven's departure from the office, although the Court directed the
13 *Summons* to the DOJ as a whole. *Status Hr'g* (LPER, Aug. 26, 2008, 02:31:08 CDT). The
14 respondents indicated that they became aware of the deficiency approximately two (2) weeks
15 after the response deadline. *Id.*, 02:31:17 CDT. Regardless, the respondents proceeded to file
16 only the unnecessary administrative record during the subsequent four-week period of time. The
17 respondents ultimately requested the ability to file a responsive pleading on or before September
18 5, 2008. *Id.*, 02:31:53 CDT.
19

20 6. The petitioner objected to granting an extension of the responsive timeframe. *Id.*,
21 02:34:39 CDT.
22

23 7. The petitioner made the following request for relief, in relevant part, within her *Petition*:

24 a. For an Order commanding all respondents to at once return the
25 petitioner to her 8 a.m. to 4 p.m. shift.

26 *Pet.* at 3 (numerical designation modified).

27 8. The petitioner seeks mandamus relief to force the respondents to abide by the final
28 determination of the GRB, specifically:

1 Due to the finding of harassment, we grant Grievant her requested relief
2 with respect to her shift change. The Supervisor shall return Grievant to
3 her shift of 8 a.m. to 4 p.m. on her same rotation prior to the harassment.
4 The Board directs the Executive Director of Personnel to execute this
remedy pursuant to its authority under 6 HCC § 5[.34h].

5 *Decision* at 11.

6 9. The respondents did not file an appeal of the GRB *Decision*. See EMPLOYMENT RIGHTS
7 ACT OF 2004 (hereinafter ERA), 6 HCC § 5.34a(3), 35c.³

8 DECISION

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10 The Court deems that no procedural irregularities occurred within its performance of
11 service of process of the *Summons* and *Petition*. The respondents, however, neglected to file a
12 timely responsive pleading, choosing instead to wait six (6) weeks after the responsive deadline
13 before requesting an extension. The Court shall not grant such an extension, in the absence of
14 mutual party consent, when the basis for the request is either inattentiveness or inadvertence.⁴
15 See *Roger Littlegeorge v. JoDeen B. Lowe et al.*, CV 96-31 (HCN Tr. Ct., Aug. 23, 1996) at 3
16 (commenting that a “failure of the Department of Justice’s own employees is no concern of the
17 Court”). The Court must similarly treat all litigants that appear before it,⁵ and has previously
18 rendered the Nation, inclusive of its officials, in default due to a failure to respond to an initial
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21 ³ The cited statutory provisions solely address the appellate rights of the employee, and not the employer, which perhaps
22 raises some questions about agency independence. Predecessor legislation likewise refrained from discussing employer
23 appellate rights since the former Administrative Review Process constituted an employer-governed system. HCN PERS.
24 POLICIES & PROCEDURES MANUAL, Ch. 12 at 61-63 (ed. Jan. 22, 2004). Nonetheless, the Nation has previously appealed
GRB final determinations. See, e.g., *Steve Garvin, Executive Manager of Majestic Pines Casino v. Jan Rousey*, CV 07-
39 (HCN Tr. Ct., Oct. 19, 2007).

25 ⁴ Unlike its federal counterpart, a tribal motion for relief from judgment may not simply denote “mistake, inadvertence,
surprise, or excusable neglect.” Compare FED. R. CIV. PRO. 60(b)(1), with *HCN R. Civ. P.* 58(E).

26 ⁵ The Court routinely regards a failure to respond as “a tacit agreement with the allegations in the pleading,” and declines
27 to enter default judgments only when subject matter jurisdiction appears lacking. See, e.g., *Ho-Chunk Nation et al. v.*
28 *Marlon White Eagle*, CV 07-88 (HCN Tr. Ct., Feb. 11, 2008) at 8 n.3-4 (citing *Scholze Ace Home Ctr., Inc. v. Perry*, CV
00-92 (HCN Tr. Ct., Oct. 26, 2000)). The Court cannot act in the absence of subject matter jurisdiction. See CONST., ART.
VII, § 5(a); HCN JUDICIARY ESTABLISHMENT & ORG. ACT, 1 HCC § 1.4. In this regard, “it has been the virtually
universally accepted practice of the federal courts to permit any party to challenge or, indeed, to raise *sua sponte* the
subject matter jurisdiction of the court at any time and at any stage of the proceedings.” *Sadat v. Mertes*, 615 F.2d 1176,
1188 (7th Cir. 1980).

1 pleading. *Id.*, CV 96-31 (HCN Tr. Ct., Sept. 20, 1996); *see also Donaldson A. June v. Kate*
2 *Doornbos et al.*, CV 96-19 (HCN Tr. Ct., Jan. 30, 1997).⁶

3 The Court possesses authority pursuant to *HCN R. Civ. P. 54* to award a default judgment
4 for injunctive relief articulated in a petitioner's request for relief when the respondents fail to
5 answer a properly served petition.⁷ Rule 54(A), however, mandates that the Court "not award
6 relief different in kind from, or exceed the amount stated in the request for relief." *HCN R. Civ.*
7 *P. 54(A)*. Therefore, the Court may entertain the portion of the request for relief pled with
8 particularity in the *Petition*.⁸ To that end, the respondents failed to submit a timely answer. The
9 petitioner requested that the Court enjoin the respondents to abide by the *GRB Decision*. *Pet.* at
10 3. The petitioner is entitled to a *default judgment* in relation to this request incorporated within
11 the June 24, 2008 *Petition*. **THEREFORE**, the respondents shall ensure that the petitioner is
12 immediately returned to "her shift of 8 a.m. to 4 p.m. on her same rotation prior to the
13 harassment."⁹ *Decision* at 11.

14 The parties retain the right to file a timely post judgment motion with this Court in
15 accordance with *HCN R. Civ. P. 58*, Amendment to or Relief from Judgment or Order.

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20 ⁶ The *June* Court, for unbeknownst reasons, analogized to case law from the Third Circuit Court of Appeals when
21 determining the conditions under which it would grant a motion for default judgment. *June*, CV 96-19 (HCN Tr. Ct., June
22 24, 1996) at 5, *rev'd*, SU 06-03 (HCN S. Ct., Oct. 15, 1996) (reversing on an issue of sufficiency of service of process).
23 While remarking about the necessity of establishing "good cause" for setting aside a default judgment, the Court concluded
24 that it "must consider[, in the first instance,] whether 1) plaintiff will be prejudiced if default is denied, 2) defendant has a
25 meritorious defense, and 3) default was a product of defendant's culpable conduct." *Id.* (citing *United States v.*
26 *\$55,518.05 in U.S. Currency*, 728 F.2d 192, 195 (3rd Cir. 1984)). The Third Circuit, however, directed the district court
27 to employ the preceding test only when "exercising its discretion in granting or denying a motion to set aside a default . . . or
28 a default judgment," and not prior to finding a party in default. *U.S. Currency*, 728 F.2d at 195. Alternatively, the
Seventh Circuit Court of Appeals uses a different test in which the issue of "good cause" is a component part of the test.
Breuer Elec. Mfg. Co. v. Toronado Sys. of Am., Inc., 687 F.2d 182, 185 (7th Cir. 1982). So, despite the *June* Court's
direction that this "elemental test . . . should be employed by this Court in deciding to enter default judgments in the future,"
the Court shall not accept this invitation. The seeming confusion may likely result from the lack of a distinction between an
entry of default and default judgment within the tribal rule. Also, the tribal rule does not require a party to move for default
judgment, and such motions are rarely filed with the Court. *Compare* FED. R. CIV. PRO. 55, with *HCN R. Civ. P. 54(A)*.

⁷ Moreover, the Court possesses the explicit authority to grant a writ of mandamus. CONST., ART. VII, § 7(a).

⁸ The Court retains discretion to grant default judgments by virtue of the permissive wording of the relevant rule. *See*
Citizens Cmty. Fed. v. Neperud, CV 04-18 (HCN Tr. Ct., Apr. 26, 2004).



1 Otherwise, “[a]ny final *Judgment* or *Order* of the Trial Court may be appealed to the Supreme
2 Court. The *Appeal* must comply with the *Rules of Appellate Procedure* [hereinafter *HCN R.*
3 *App. P.*], specifically *Rules of Appellate Procedure*, Rule 7, Right of Appeal.” *HCN R. Civ. P.*
4 61. The appellant “shall within sixty (60) calendar days after the day such judgment or order
5 was rendered, file with the Supreme Court Clerk, a *Notice of Appeal* from such judgment or
6 order, together with a filing fee as stated in the appendix or schedule of fees” *HCN R. App. P.*
7 7(b)(1). “All subsequent actions of a final *Judgment* or Trial Court *Order* must follow the [*HCN*
8 *R. App. P.*].” *HCN R. Civ. P.* 61.

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10 **IT IS SO ORDERED** this 19th day of November 2008, by the Ho-Chunk Nation Trial
11 Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.
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15 _____
16 Honorable Todd R. Matha
17 Chief Trial Court Judge
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⁹ The respondents chose not to appeal the GRB *Decision*, and, consequently, should have adhered to the direction of the GRB since to do otherwise would render the GRB toothless. See ERA, § 5.34h.