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

**Daria Powless,**  
Petitioner,

v.

Case No.: **CV 10-15**

**HCN Enrollment Committee,**  
Respondent.

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**ORDER  
(Addressing the Motion to Withdraw as Counsel)**

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**INTRODUCTION**

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The Court must determine whether or not to grant Attorney JoAnn Jones' *Motion to Withdraw as Counsel*. All substantive issues in this case were disposed of in the Court's previous *Order. Order (Admitting Evidence and Affirming)*, CV 10-15 (HCN Tr. Ct., Jan. 20, 2011). The sixty (60) calendar days allowed for filing an appeal has also elapsed. *HCN R. App. P. 7(b)(1)*.<sup>1</sup> Therefore, the Court denies the *Motion to Withdraw as Counsel* as it is moot. The Court does not make a formal ruling on the merits of the motion. Nonetheless, the Court addresses the *Ho-Chunk Nation Rules of Professional Conduct* implicated by Attorney Jones' actions.<sup>2</sup>

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**PROCEDURAL HISTORY**

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The Court previously detailed the procedural history of this case in its September 2, 2010 *Decision* and January 20, 2011 *Order*. On December 10, 2010, Attorney Jones filed a *Notice*

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<sup>1</sup>Parties can obtain a copy of the applicable rules by contacting the Ho-Chunk Nation Judiciary at (715) 284-2722 or (800) 434-4070 or visiting the judicial website at [www.ho-chunknation.com/government/judicial/cons\\_law.htm](http://www.ho-chunknation.com/government/judicial/cons_law.htm).

1 and Motion to Withdraw as Counsel. A Motion for Expedited Consideration was not attached.  
2 HCN R. Civ. P. 19(C). The Court convened previously scheduled Hearing, of which all parties  
3 had proper notice, on December 13, 2010, at 9:30 a.m. CST. Attorney Huling appeared  
4 personally on behalf of the respondent. Despite no ruling on her Motion to Withdraw as  
5 Counsel, Attorney Jones did not appear. The petitioner also failed to appear. The Court  
6 disposed of the substantive issues of the case in its January 20, 2011 Order. The Court also  
7 scheduled a hearing to address the outstanding motion to dismiss. Order (Admitting Evidence  
8 and Affirming), CV 10-15 (HCN Tr. Ct., Jan. 20, 2011) at n. 1.  
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11 A Notice of Hearing was sent to both parties informing them that a Motion Hearing had  
12 been scheduled for March 8, 2011, at 1:30 p.m. CST. On February 24, 2011, Attorney Jones  
13 filed an Amended Notice of Hearing indicating that the parties stipulated to reschedule the  
14 Motion Hearing for March 22, 2011, at 10:00 a.m. CST. The Court convened the Motion  
15 Hearing on March 22, 2011, at 10:00 a.m. CST. The petitioner, Ms. Daria Powless, appeared  
16 personally at this hearing, and Attorney Jones also appeared personally. Attorney Wendi Huling  
17 appeared personally on behalf of the respondent.  
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## 19 20 APPLICABLE LAW

### 21 CONSTITUTION OF THE HO-CHUNK NATION

#### 22 Art. VII – Judiciary

#### 23 Sec. 7. Powers of the Supreme Court

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25 (b) The Supreme Court shall have the power to establish written rules for the  
26 Judiciary, including qualifications to practice before the Ho-Chunk courts,  
27 provided that such rules are consistent with the laws of the Ho-Chunk Nation.  
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<sup>2</sup> The Ho-Chunk Nation Supreme Court adopted the *Wisconsin Rules of Professional Conduct*. *In re Adoption of Rules of Prof'l Conduct for Att'ys* (HCN S. Ct., Aug. 31, 1996).

1 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

2 Rule 19. Filing and Responding to Motions.

3 (C) Motions for Expedited Consideration. Any *Motion* that requires action within five (5)  
4 calendar days shall be accompanied by a *Motion for Expedited Consideration*. The *Motion for*  
5 *Expedited Consideration* shall state the reasons why the accompanying *Motion* should be heard  
6 prior to the normal time period, and what efforts the party has made to resolve the issue with the  
opposing party prior to filing the *Motion for Expedited Consideration*.

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

8 (A) Relief for Judgment. A *Motion to Amend* or for relief from judgment, including a request for  
9 a new trial shall be made within ten (10) calendar days of the filing of the judgment. The *Motion*  
10 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.

11 SCR CHAPTER 20: RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS

12 SCR 20:1.16 Declining or terminating representation

13 (b) Except as stated in par. (c), a lawyer may withdraw from representing a client if:

14 (1) withdrawal can be accomplished without material adverse effect on the  
15 interests of the client;

16 (2) the client persists in a course of action involving the lawyer's services that the  
17 lawyer reasonably believes is criminal or fraudulent;

18 (3) the client has used the lawyer's services to perpetrate a crime or fraud;

19 (4) the client insists upon taking action that the lawyer considers repugnant or  
20 with which the lawyer has a fundamental disagreement;

21 (5) the client fails substantially to fulfill an obligation to the lawyer regarding the  
22 lawyer's services and has been given reasonable warning that the lawyer will withdraw  
23 unless the obligation is fulfilled;

24 (6) the representation will result in an unreasonable financial burden on the  
25 lawyer or has been rendered unreasonably difficult by the client; or

26 (7) other good cause for withdrawal exists.

27 (c) A lawyer must comply with applicable law requiring notice to or permission of a  
28 tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall  
continue representation notwithstanding good cause for terminating the representation.

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2 (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably  
3 practicable to protect a client's interests, such as giving reasonable notice to the client, allowing  
4 time for employment of other counsel, surrendering papers and property to which the client is  
entitled and refunding any advance payment of fee or expense that has not been earned or  
incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

5 SCR 20:8.3 Reporting professional misconduct

6 (a) A lawyer who knows that another lawyer has committed a violation of the Rules of  
7 Professional Conduct that raises a substantial question as to that lawyer's honesty,  
8 trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional  
authority.

9 HO-CHUNK NATION RULES OF JUDICIAL ETHICS

10 SEC. 4-1 Standards

11 The judicial duties of a tribal judges or justice should take precedence over all other activities.  
12 The judicial duties of the judge or justice include all the duties of the office prescribed by tribal  
13 law, custom or tradition. In the performance of the duties, the following standards apply:

14 H. A tribal court judge or justice should initiate appropriate disciplinary measures against a  
15 judge or lawyer for unprofessional conduct of which the judge or justice may become aware.

16 *Comment: A Professional Responsibility Complaint form should be filed by the judge. See HCN*  
17 *S. Ct. Form 9.*

18 **FINDINGS OF FACT**

- 19 1. The parties received proper notice of the *Motion Hearing* scheduled for March 22, 2011.
- 20 2. The petitioner, Daria Powless, is a member of the Ho-Chunk Nation, Tribal ID #  
21 439A004799, and resides at W2425 Raedel Lane, Wisconsin Dells, WI 53965-0363.
- 22 3. The respondent, HCN Tribal Enrollment Committee, is a division within the Ho-Chunk  
23 Nation Department of Heritage Preservation located on trust lands at Ho-Chunk Nation  
24 Headquarters, W9814 Airport Road, P.O. Box 667, Black River Falls, WI 54615. *See DEP'T OF*  
25 *HERITAGE PRES. ESTABLISHMENT & ORG. ACT OF 2001, § 6.5c.*
- 26 4. Attorney Jones is a member of the Ho-Chunk Nation Bar Association.
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1 5. Attorney Jones had proper notice of the December 13, 2010 *Hearing*.

2 6. Attorney Jones' *Motion to Withdraw as Counsel* was filed on December 10, 2010,  
3 without a *Motion for Expedited Consideration*.

4 7. The Court did not rule on Attorney Jones' *Motion to Withdraw as Counsel* prior to the  
5 December 13, 2010 *Hearing*.

6 8. Attorney Jones failed to appear at the December 13, 2010 *Hearing*.

7 9. At the December 13, 2010 *Hearing*, the respondent indicated it had no position as to  
8 Attorney Jones' *Motion to Withdraw as Counsel*. *Hr'g* (LPER at 6, Dec. 13, 2010, 9:34:37  
9 CST).  
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## 12 DECISION

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14 The Court previously stated that the March 22, 2011 *Motion Hearing* would "not have an  
15 impact on the substantive disposition of the case." *Order (Admitting Evidence and Affirming)*,  
16 CV 10-15 (HCN Tr. Ct., Jan. 20, 2011) at n. 1. All substantive issues have been addressed. In  
17 addition, the timeframe for filing an appeal of the Court's January 20, 2011 *Order* has elapsed.  
18 *HCN R. App. P. 7(b)(1)*. There were only two purposes for holding the subsequent *Motion*  
19 *Hearing*. First, the Court wished to procedurally dispose of Attorney Jones' outstanding motion.  
20 Second, the Court wished to address the *Ho-Chunk Nation Rules of Professional Conduct*  
21 implicated by Attorney Jones' failure to appear at the December 13, 2010 *Hearing*.  
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24 The Court hereby denies Attorney Jones' *Motion to Withdraw as Counsel* as such a  
25 motion is moot at this point in the proceeding. Courts should generally avoid ruling on matters  
26 which could not affect the rights of the current litigants. *Chloris Lowe Jr. and Stuart Miller v.*  
27 *HCN Legislature et al.*, CV 00-104 (HCN Tr. Ct., Nov. 3, 2000) at 14. The Court intended to  
28 address Attorney Jones' motion at the December 13, 2010 *Hearing*, but she failed to appear. The

1 substantive issues of this case have since been decided and the time for an appeal has passed.  
2 Therefore, Attorney Jones' *Motion to Withdraw as Counsel* will have no practical effect on the  
3 rights of the parties. As the motion no longer poses a justiciable issue, the Court will not make a  
4 judgment on its merits.  
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6 Nevertheless, the Court expressed ethical concerns about Attorney Jones' actions. When  
7 a lawyer wishes to terminate representation, certain steps must be taken. SCR 20:1.16 (b-d).  
8 Typically, a lawyer *may* withdraw from representation if it can be accomplished without material  
9 adverse effect on the client's interest. SCR 20:1.16 [7] (emphasis added). However, even in  
10 instances where a lawyer is unfairly discharged, a lawyer must take all reasonable steps to  
11 mitigate the consequences to the client. SCR 20:1.16 [9]. Attorney Jones faxed a *Notice and*  
12 *Motion to Withdraw as Counsel* and an accompanying proposed *Order* during the late afternoon  
13 of Friday, December 10, 2010. As the basis for withdrawal, Attorney Jones merely stated that  
14 she was "unable to communicate with [her] client to represent her." *Notice and Mot. to*  
15 *Withdraw as Counsel* at 1. Attorney Jones' motion was filed only one (1) business day before  
16 the December 13, 2010 *Hearing* to authenticate the DNA test. *See Decision*, CV 10-15 (HCN  
17 Tr. Ct., Sept. 2, 2010) at 18; *Hr'g* (LPER, Nov. 16, 2010, 1:40:10 CST); and *Notice of Hr'g*, CV  
18 10-15 (HCN Tr. Ct., Nov. 18, 2010). As a *Motion for Expedited Consideration* was not attached,  
19 the Court did not rule on the motion prior to the December 13, 2010 *Hearing*. *HCN R. Civ. P.*  
20 19(C). The Court did not sign Attorney Jones' proposed *Order* approving her withdrawal.  
21 Thus, Attorney Jones, still the attorney of record, failed to show up and represent her client's  
22 interests at a hearing of which she had proper notice.  
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26 Attorney Jones indicated that she had communication issues with her client on December  
27 10, 2010, and further, Attorney Jones was going through extremely difficult family  
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1 circumstances. LPER (Mar. 22, 2011, 10:05:31 CST). However, there are numerous examples  
2 of how Attorney Jones could have mitigated any possible harm to her client. Attorney Jones  
3 could have evidenced that she had attempted to contact her client during the preceding 25 days of  
4 the December 13, 2010 hearing. *See Notice of Hr'g*, CV 10-15 (HCN Tr. Ct., Nov. 18, 2010).  
5 Rather she indicated that she simply could not get in touch with her client on December 10,  
6 2010. Further, the Court was completely unaware of her familial circumstances. At the very  
7 least, Attorney Jones could have appeared at the hearing telephonically to explain the situation.  
8 Attorney Jones' actions could and appear to constitute a violation of the *Ho-Chunk Nation Rules*  
9 *of Professional Conduct*. However, the Ho-Chunk Nation Supreme Court has assumed the role  
10 of the primary ethics enforcer for members of the Ho-Chunk Nation Bar Association. *Ho-Chunk*  
11 *Nation Rules of Judicial Ethics* Sec. 4-1, H.

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14 **IT IS SO ORDERED** this 24th day of March, 2011, by the Ho-Chunk Nation Trial  
15 Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

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17  <sup>SgPlus1</sup>  
18 03/24/2011 01:06:41 pm

19 Honorable Amanda L. Rockman  
20 Associate Trial Court Judge

Ho-Chunk Nation Court System  
P.O. Box 70  
Black River Falls, WI 54615  
(715) 284-2722 or 800-434-4070

