IN THE
HO-CHUNK NATION TRIAL COURT

Dion W. Funmaker **Tribal Enrollment No. 439A000850,** Plaintiff, v. **Ho-Chunk Nation; Ho-Chunk Nation President Troy Swallow; Ho-Chunk Nation Legislators: Wade Blackdeer, Elliot Garvin, Clarence Pettibone, Tracy Thundercloud, Dallas Whitewing, Gerald Cleveland, Sr., Christine Funmaker-Romano, Myrna Thompson, George Lewis, Kathyleen Lonetree-Whiterabbit, and Sharyn Whiterabbit in their official capacity and as individuals of the Legislature; and Ho-Chunk Nation Election Board: Vaughn Pettibone, James Seymore, Wilma Thompson, Brandee Alderman, Ruth Decorah, Jo Ann Baker, Tayra Blackdeer, Ermon Dick, Michele DeCora, Winona Funmaker and Mary Ellen Dumas in their official capacity and as individuals of the Election Board,** Defendants. -and-	Case No.: **CV 02-07**
Demetrio D. Abangan, **Tribal Enrollment No. 439A000001,** Plaintiff, v. **Ho-Chunk Nation Election Board in their official capacity,** Defendant. -and-	Case No.: **CV 02-08**

Stewart J. Miller, **Tribal Enrollment No. 439A002566, and** **Brenda Neff,** **Tribal Enrollment No. 439A002134,** Plaintiffs, v. **Ho-Chunk Nation Legislative Members: Elliot Garvin, Clarence Pettibone, Tracy Thundercloud, Wade Blackdeer, Dallas Whitewing, Gerald Cleveland, Sr., Christine Funmaker-Romano, Myrna Thompson, George Lewis, Kathyleen Lonetree-Whiterabbit and Sharyn Whiterabbit in their official capacity and individually,** Defendants.	Case No.: **CV 02-10**

ORDER
(Consolidation and Establishing of Discovery Period)

The plaintiff, Dion W. Funmaker, filed a *Complaint* on January 22, 2002. The plaintiffs, Demetrio D. Abangan, Stewart J. Miller and Brenda Neff, subsequently filed separate *Complaint(s)* on January 23, 2002. Each of the pleadings timely challenged the results of the January 12, 2002 Special Redistricting/Reapportionment Election. *See* CONSTITUTION OF THE HO-CHUNK NATION [hereinafter CONSTITUTION], ART. VIII, § 7. The Court enters this *Order* to facilitate and ensure a just and fair proceeding within the condensed timeframe required by the CONSTITUTION. *Id*.

First, the Court shall consolidate the instant cases as permitted by the *Ho-Chunk Nation Rules of Civil Procedure* [hereinafter *HCN R. Civ. P.*]. *HCN R. Civ. P.* 47(A). Consolidation

appears appropriate due to the common questions of law and fact posed by the plaintiffs. *Id*. The Court hopes to avoid unnecessary cost and delay by this action. *Id*.

Second, the Court directs the parties to serve required disclosures upon one another on or before Monday January 28, 2002. *See id.*, Rule 31; *Election Challenge Rules* [hereinafter *Election R. Civ. P.*], Rule 1. This requirement may coincide, in part, with the defendants' responsibility as delineated in *Election R. Civ. P.* 3. The parties shall be guided by the FEDERAL RULES OF EVIDENCE, Rule 401 in determining the scope of documentation contemplated by these requirements.

Third, parties may begin submitting discovery requests following the issuance of this *Order*. A party must comply with a discovery request within three (3) calendar days of its receipt. *Election R. Civ. P.* 6. The discovery period shall conclude on Friday February 1, 2002. Therefore, a discovery request must be received on or before Tuesday January 29, 2002 in order to guarantee a response. In this regard, parties bear the responsibility of accomplishing timely service of process.

The Court shall consider a document untimely served if received by the Court or a party after 4:30 P.M. CST of a deadline date, signaling the end of the business day. Parties must be able to verify receipt of documents regardless of the means of delivery.[1] Additionally, parties must provide two (2) calendar days advance notice of any scheduled deposition during the period of discovery. *Id*.

Finally, the Court shall convene a *Pre-Trial Conference* on Tuesday January 29, 2002 at 3:00 P.M. CST. *Id.*, Rule 5. The Court shall address concerns related to this judgment, and

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[1] The Court shall permit service by facsimile, and discourages service by mail with the exception of next day delivery. *Election R. Civ. P.* 5. Parties must communicate with one another to establish the desired method of service of process. A party requesting service by next day delivery shall bear the cost of service, and the Ho-Chunk

discuss the manner in which these consolidated cases shall proceed to resolution. The Court shall allow the parties to participate by telephone at the *Conference*, but the Court only possesses the capacity to have two (2) calls forwarded into the courtroom. The parties, therefore, must mutually agree upon who should participate in this manner. Alternatively, the parties could seek to share the expense of a teleconference call arranged by an outside service provider (*e.g.*, AT&T).

Parties participating by telephone shall bear the cost of the telephonic appearance, and may not use the Court's toll free number. At the scheduled time, the parties must contact either the Clerk of Court or Assistant Clerk of Court at (715) 284-2722. Upon making such contact, the Clerk or Assistant Clerk of Court will forward the telephone call to the courtroom conference line. All appearances by telephone shall be timely.

The Court must enter a final written judgment on or before Monday February 11, 2002, and, therefore, the Court shall only modify the above schedule for compelling reasons. *See* CONSTITUTION, ART. VIII, § 7; *HCN R. Civ. P.* 42. A failure of the plaintiffs to comply with this *Order* and any of the relevant procedural rules may result in a dismissal. *See Election R. Civ. P.* 11; *HCN R. Civ. P.* 56(B). A similar failure by the defendants may expose them to the contempt powers of the Court. A copy of the *Election R. Civ. P.* shall accompany this judgment.

Nation Department of Justice may seek recoupment of costs as debts to the Nation if unpaid. *See* CLAIMS AGAINST

APPLICABLE LAW

CONSTITUTION OF THE HO-CHUNK NATION

Article VIII – Elections

Section 7. Challenges of Election Results. Any member of the Ho-Chunk Nation may challenge the results of any election by filing suit in Tribal Court within ten (10) days after the Election Board certifies the election results. The Tribal Court shall hear and decide a challenge to any election within twenty (20) days after the challenge is filed in Tribal Court.

ELECTION CHALLENGE RULES (Adopted Jan. 19, 2002)

Rule 1. The Election Challenge Rules shall be followed by parties who are challenging an election. The Election Challenge Rules are the procedural rules for the election challenge cases. The HCN Rules of Civil Procedure and the HCN Rules of Appellate Procedure may be utilized to supplement procedural questions. "Days" in these rules means calendar days.

Rule 3. The HCN Election Board shall file an Answer within five (5) days of the filing of the Complaint. The HCN Election Board shall attach to the Answer copies of the minutes of any relevant HCN Election Board meetings; copies of any relevant written rules regarding the conduct of the HCN Election Board; copies of any relevant written rules regarding the conduct of employees acting under the direction of the HCN Election Board and any other written documents relevant to the disputed election.

Rule 5. The Trial Court may hold hearings to expedite the proceeding, including pre-trial conferences, status conferences, show cause hearings and evidentiary hearings. The hearings shall be held within reasonable time limits. Notices of hearings shall be in writing and served on the parties at least twenty-four (24) hours prior to the hearing. Parties may waive the 24-hour notice and may accept service by facsimile. Parties may participate by telephone, at their own expense, if the Court allows such an appearance. The Court must find that a telephone appearance will not prejudice any party.

Rule 6. All documents, exhibits, answers to interrogatories and responses to requests for admission requested during discovery shall be provided to the requesting party within three (3) days unless otherwise ordered by the Court. Depositions will be conducted as the parties agree or as ordered by the Court.

Rule 11. Failure to abide by these rules may result in the dismissal of the action with prejudice.

PER CAPITA ORDINANCE, § 103(a)(i).

HO-CHUNK NATION RULES OF CIVIL PROCEDURE

Rule 31. Required Disclosures

(A) Disclosures. Except to the extent otherwise stipulated or directed by order, a party shall, without waiting for a discovery request, provide to the other parties:

> (1) the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information;
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> (2) a copy of, or a description by category and location of documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings;
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> (5) judicial notice shall be taken of and required disclosures shall be made of official documents, public documents, documents subject to public inspection, document [*sic*] and materials of non-executive session, governmental minutes and recordings of a governmental body pursuant to the HCN OPEN MEETINGS ACT OF 1996.

(B) Time of Disclosure. Unless otherwise stipulated or directed by the Court, these disclosures shall be made at or within 10 days after the meeting of the parties to plan for discovery. A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(C) The Court shall have sua sponte authority to compel disclosure or production of discoverable documents, records and other materials, and to compel parties to answer or respond upon the Court's own motion.

Rule 42. Scheduling Conference.

Scheduling Order. The Court may enter a scheduling order on the Court's own motion or on the motion of a party. The Scheduling Order may be modified by motion of a party upon a showing of good cause or by leave of the Court.

Rule 47. Consolidation and Separation of Action.

(A) Consolidation. When actions involving a common question of law or fact are pending before the Court, the Court may order a joint hearing or trial of any or all the matters in issue in the actions; the Court may order all the actions consolidated; and the Court may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Rule 56. Dismissal of Actions.

(B) Involuntary Dismissal. At any other time in the action, a party must file a *Motion to Dismiss*. A *Motion to Dismiss* may be granted (1) if there has been no *Order* or other action in a case for six (6) months, or, (2) if a party substantially fails to comply with these rules, or, (3) if a party substantially fails to comply with an order of the Court, or, (4) if a party fails to establish the right to relief following presentation of all evidence at trial. An *Order* to dismiss a claim is dismissed with prejudice.

FEDERAL RULES OF EVIDENCE (Adopted June 5, 1999)

Article IV – Relevancy and Its Limits

Rule 401. Definition of "Relevant Evidence".

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

CLAIMS AGAINST PER CAPITA ORDINANCE

Sec. 103. Permitted Claims Against Per Capita Shares.

The following claims shall be recognized and enforced by the Nation against a Per Capita Share at the time of Payment of the Per Capita Distribution of which it is a part, and prior to the distribution of such Per Capita Share to a Tribal Member:

(a) Any debt or monetary obligation then due and owing by the Tribal Member to the Nation, whether by acceleration or otherwise, which (i) has been established by a judgement of the Trial Court permitting recovery from such Tribal Member's Per Capita Share, or (ii) is stated in writing signed by the Tribal Member and which the Tribal Member has agreed in writing may be recovered from his Per Capita Share upon delinquency, default or other event;

IT IS SO ORDERED this 24th day of January, 2002 by the Ho-Chunk Nation Trial Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

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

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Honorable Todd R. Matha
Associate Trial Court Judge