HO-CHUNK NATION CODE (HCC)
TITLE 1 – ESTABLISHMENT ACTS
SECTION 1 – HO-CHUNK NATION JUDICIARY ESTABLISHMENT AND ORGANIZATION ACT

ENACTED BY LEGISLATURE: APRIL 6, 2005

LAST AMENDED AND RESTATED: April 21, 2015

CITE AS: 1 HCC § 1

This Act supersedes the Ho-Chunk Nation Judiciary Establishment Act of 1995 (HCC 95-010).

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1. **Authority**.

a. Article VII of the Constitution of the Ho-Chunk Nation ("Constitution") establishes the Judiciary Branch of the Ho-Chunk Nation Government.

b. Article VII, Section 1 of the Constitution establishes a Supreme Court and a Trial Court of the Ho-Chunk Nation and grants the Legislature the power to establish lower courts of special jurisdiction as deemed necessary and other forums of special jurisdiction for traditional dispute resolution as deemed necessary.

c. Article VII, Section 3 of the Constitution grants the Legislature the power to determine the number of Associate Judges as deemed necessary.

d. Article VII, Section 8 of the Constitution grants the Legislature the power to enact qualifications for Supreme Court Justices and Trial Court Judges.

e. Article VII, Section 11 of the Constitution establishes that The Chief Trial Judge and any Associate Judges to the Trial Court shall be elected by a majority vote of the eligible voters of the Ho-Chunk Nation in accordance with the General Election provisions in Article VIII Section 1, unless otherwise provided. All candidates shall be a member of the Ho-Chunk Nation. Trial Judges shall serve staggered four (4) year terms and shall serve until a successor has been sworn into office except if the Trial Court Judge has been successfully recalled or removed. In the event a Trial Court Justice is removed, the Legislature may appoint an Interim Trial Court Judge, until a successor has been sworn into office

f. Article VII, Section 13 of the Constitution grants the Legislature the power to appoint a Justice or Judge pro tempore to fill any vacancy due to recusal by a Justice or Judge.

g. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

h. Article V, Section 13 of the Constitution grants the Legislature the power to enact an annual budget to include an appropriation of operating funds for each branch of the government.

2. **Purpose**. This Act enacts the Legislature's policy and procedures for its constitutionally mandated authority in the establishment and organization of the Judiciary Branch of the government.

3. **Organization**. The Ho-Chunk Nation Judiciary Branch is organized as follows:

a. A Supreme Court consisting of a Chief Justice and two (2) Associate Justices.

b. A Trial Court consisting of a Chief Trial Judge and other Associate Judges as deemed necessary by the Legislature.

c. A Traditional Court of Ho-Chunk elders for traditional dispute resolution.

d. A Healing to Wellness Court consisting of a Treatment Team made up of a Trial Court Judge, a prosecutor, a public defender/advocate, a Treatment Team coordinator, a Researcher, a law enforcement official, a representative of the Legislature, a representative of probation, a representative of substance abuse treatment providers, a representative of Traditional Court, a representative of social services, a representative of compliance, and other members to be determined by the Judiciary and/or Treatment Team.

e. A Family Wellness Court consisting of a Treatment Team made up of a Trial Court Judge, a tribal attorney, a guardian ad litem/child advocate, a public defender/parental advocate, a Treatment Team coordinator, a representative(s) of social services, a systems of care representative, a representative from youth services and/or education, a representative of substance abuse treatment providers, a representative of Traditional Court, a representative from Clan Mothers, a law enforcement official, and other members to be determined by the Judiciary and/or Treatment Team.

4. **Jurisdiction**. The Ho-Chunk Judiciary shall exercise jurisdiction over all matters 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 or actions of the Legislature or the customs and traditions of the Ho-Chunk Nation. The jurisdiction extends over the Nation and its territory, persons who enter its territory, its members, and persons who interact with the Nation or its members wherever found.

5. **Rules and Procedures**.

a. Proceedings of the Judiciary shall be conducted in a public place suitable for the purpose, but not necessarily in Ho-Chunk territory.

b. The Judiciary shall complete a permanent record of all proceedings and decisions. Decisions shall be in writing and shall be submitted to the parties. Absent protective orders granted for good cause or Legislative enactments to the contrary, these records shall be open to the public.

c. The Judiciary shall have exclusive authority and responsibility to employ personnel and to establish written rules and procedures governing the use and operation of the Courts.

d. All matters shall be tried in accordance with the Ho-Chunk Rules of Procedures and the Ho-Chunk Rules of Evidence which shall be written and published by the Supreme Court and made available to the public.

6. **Jury Trials**. In all matters other than criminal matters punishable by imprisonment, there shall be no right to trial by jury unless and until provided by Legislative enactment.

7. **Subpoenas**. Any Judge of the Trial Court, and if authority is delegated by the Chief Trial Judge to the Clerk of Court, shall have authority to issue subpoenas to compel attendance of witnesses or the production of documents or things. The failure to comply with a subpoena shall subject the person not complying to the contempt power of the Court. A person present in court may be required by the Court to testify in the same manner as if a subpoena was issued.

8. **Election and Recall of Judges**.

a. Supreme Court justices shall be elected in accordance with Section 10 of Article VII of the Constitution of the Ho-Chunk Nation:

"*Supreme Court Justices shall be elected by a majority vote of the eligible voters of the Ho-Chunk Nation, in accordance with the General Election provisions in Article VIII, Section 1, unless otherwise provided.*"

b. The Chief Trial Judge and Associate Judges of the Trial Court shall be elected in accordance with Section 11 of Article VII of the Constitution of the Ho-Chunk Nation:

"The Chief Trial Judge and any Associate Judges to the Trial Court shall be elected by a majority vote of the eligible voters of the Ho-Chunk Nation in accordance with the General Election provisions in Article VIII Section 1, unless otherwise provided. All candidates shall be a member of the Ho-Chunk Nation. Trial Judges shall serve staggered four (4) year terms and shall serve until a successor has been sworn into office except if the Trial Court Judge has been successfully recalled or removed. In the event a Trial Court Justice is removed, the Legislature may appoint an Interim Trial Court Judge, until a successor has been sworn into office."

c. Removal or Recall. Once Judges are elected they shall be subject to removal or recall only in accordance with Sections 4 and 5 of Article IX of the Constitution of the Ho-Chunk Nation.

d. Vacancies in the Supreme Court due to death, mental or physical incapacity, removal or recall vote, resignation, felony conviction, or any reason shall be filled in accordance with Section 8 of Article IX of the Constitution of the Ho-Chunk Nation.

e. Vacancies in the Trial Court because of death, mental or physical incapacity, removal or recall vote, resignation, felony conviction, or any other reason, such vacancy shall be filled in the following manner:

(a) If twelve (12) months or more remain before the next General Election, the Election Board shall call a Special Election in accordance with Article VIII. The Legislature may appoint an interim Trial Court Judge until a successor has been sworn into office in accordance with Section 11 of Article VII of the Constitution of the Ho-Chunk Nation.

(b) If less than twelve (12) months remains before the next General Election, the Legislature shall appoint an Interim Trial Court Judge in accordance with Section 11 of Article VII of the Constitution of the Ho-Chunk Nation to serve until a successor has been elected and sworn into office through that General Election.

9. **Qualifications of Justices and Judges**. All Justices of the Supreme Court and Judges of the Trial Court shall meet at least the minimum qualifications as specified in Article VII, Section 8 of the Constitution of the Ho-Chunk Nation.

10. **Funding**.

a. The Judiciary shall be funded by general appropriations from the Legislature; from filing fees, penalties, and assessment for costs to persons before the Judiciary; from federal appropriations or grants; and from such other sources of revenue as the Judiciary and the Legislature deem appropriate.

b. In order to ensure the continued existence and independence of the Judiciary and the reasonable compensation of Justices and Judges provided for in Section 12 of Article VII of the Constitution, the following extraordinary funding is authorized. If, in the discretion of the Chief Trial Judge, the Legislature, or any agent or employee of the Nation fails to authorize, appropriate, or disburse sufficient funds for the normal and efficient operation of the Judiciary, the Chief Trial Judge shall have complete authority to file and execute liens and judgments upon the funds or other assets of the Ho-Chunk Nation, its businesses and subsidiary corporations on or off its lands. This authority shall be limited to a maximum of $300,000 (three hundred thousand dollars) annually, exclusive of costs and attorney fees, which shall also be recoverable. The maximum authorized amounts shall be adjusted for inflation annually, with the 1994 year being the base year.

c. The Chief Trial Judge shall publish a budget for the operation of the Judiciary within forty-five (45) days of approval by the Legislature. If additional appropriations are deemed necessary by the Chief Trial Judge, the request shall be made to Legislature as provided for in the Nation's *Appropriations and Budget Process Act* (2 HCC § 4).

11. **Appeals**. Appeals shall be heard according to written rules established by the Judiciary under Section 5 of this Act.

12. **Traditional Dispute Resolution**. The Judiciary shall provide for the establishment, operation, and funding of the Nation's Traditional Court to assist the Judiciary whenever possible with the resolution of cases or controversies involving Tribal members.

13. **Wellness Court Ex Parte Communication**. A judge may initiate, permit, engage in or consider ex parte communications knowingly waived by a participant when the judge is assigned to any one of the Nation's therapeutic, treatment or problem-solving courts, i.e.;, Wellness Courts, in which the judge must assume a more interactive role with participants, treatment providers, probation officers, social workers, prosecutors, defense counsel, and others.

14. **Healing to Wellness Court**. The Judiciary shall provide for the establishment, operation, and funding of the Nation's Healing to Wellness Court to assist the Judiciary in providing alternatives

to prosecution and incarceration for Tribal Member criminal offenders who abuse alcohol or other drugs. This program is based upon principles of restorative justice that takes into account the traditions, culture, and customs of the Nation.

15. **Family Wellness Court**. The Judiciary shall provide for the establishment, operation, and funding of the Nation's Family Wellness Court to assist the Judiciary in providing alternatives to prosecution and incarceration for Tribal Members and their families who are criminal offenders who abuse alcohol or other drugs and are the subject of a Child in Need of Protection and Services (CHIPs) action in the Ho-Chunk Nation Trial Court, or in a CHIPs case which could be transferred to tribal trial court where the abuse of alcohol or other drugs is a factor. This program is based upon principles of restorative justice that takes into account the traditions, culture, and customs of the Nation. The Judiciary may re-name the Family Wellness Court taking into consideration the traditions, culture and customs of the Nation.

16. **Amendment and Repeal**. This Act shall remain in full force and effect and no amendment or resolution of repeal shall be effective unless such amendment or resolution of repeal is approved by an absolute majority of the Legislature.

Legislative History:

03/22/95	Legislature adopts the Ho-Chunk Nation Judiciary Establishment Act of 1995 as HCC 95-010.
11/24/04	Ho-Chunk Nation Judiciary Establishment Act reformatted IAW Legislative Resolution
11/16/04	Amended as Proposed Bill (1 HCC § 1) and submitted to the Judicial Branch and Office of the President for executive Review and Coordination.
02/15/05	Judicial Branch responds with no comments not suggested revisions.
03/10/05	Submitted to the Administration Committee.
03/22/05	Reviewed by full Legislature.
04/06/05	Enacted as the Ho-Chunk Nation Judiciary Establishment and Organization Act by Legislative Resolution 04/06/05D.
12/06/11	Legislature makes motion to place Ho-Chunk Nation Judiciary Establishment and Organization Act (1 HCC § 1) out for 45 day Public Review.
03/05/12	Legislature adopts Resolution 03/05/12A to amend the Ho-Chunk Nation Judiciary Establishment Act (1 HCC § 1); "create a Court of special jurisdiction to help tribal members who would benefit more from a specialized holistic treatment approach of justice as opposed to incarceration alone (Legislature authorizes creation of the Ho-Chunk Nation Healing to Wellness Court).
03/04/14	Legislature adopts Resolution 03-04-14G placing the Ho-Chunk Nation Judiciary Establishment and Organization Act (1 HCC § 1) out for 45 day Public Review.
05/20/14	Legislature adopts Resolution 05/20/14B amending the Ho-Chunk Nation Judiciary Establishment and Organization Act (1 HCC § 1).
09/09/14	Legislature adopts Resolution 09-09-14L placing the Ho-Chunk Nation Judiciary Establishment and Organization Act (1 HCC § 1) out for 45 Day Public Review.

04/21/15 Legislature adopts Resolution 04/21/15A amending the Ho-Chunk Nation Judiciary Establishment and Organization Act (1 HCC § 1).