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

Sandra L. Sliwicki,
Petitioner,

v.

Case No.: **CV 11-63**

HCN Enrollment Committee,
Respondent.

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**ORDER
(Motion for Summary Remand Denied & Motion to Intervene Granted)**

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INTRODUCTION

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The Court must determine whether to grant the outstanding *Motion to Intervene* and *Motion for Summary Remand*. The Court allowed the parties and proposed intervenors an opportunity to submit briefing and provide oral argument on both motions. The Court grants the movants' *Motion to Intervene* and denies the petitioner's *Motion for Summary Remand* for the reasons stated below.

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PROCEDURAL HISTORY

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The petitioner initiated the current action by filing a *Petition for Administrative Review* on August 5, 2011. See TRIBAL ENROLLMENT AND MEMBERSHIP CODE, 2 HCC § 7.12; see also *Ho-Chunk Nation Rules of Civil Procedure* (hereinafter *HCN R. Civ. P.*), Rule 63(A)(3). On August 31, 2011, the Court entered the *Scheduling Order*, setting forth the timelines and procedures to which the parties should adhere during the pendency of the appeal.

1 On September 1, 2011, the petitioner filed a *Motion for Summary Remand*, a *Brief in*
2 *Support of Motion for Summary Remand*, and an *Affidavit in Support of Motion for Summary*
3 *Remand*. On September 8, 2011, the respondent, by and through HCN DOJ Attorney Wendi
4 Huling, timely filed the *Respondent's Response to Petitioner's Brief in Support of Summary*
5 *Remand* along with the *Supplement to Administrative Record*. Consequently, the Court delivered
6 *Notice(s) of Hearing*, informing the parties of the time, date and location of a *Motion Hearing*.
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8 The Court convened a *Hearing* on October 25, 2011, at 3:30 p.m. CDT. The following
9 parties were in attendance: Sandra Sliwicki, petitioner, with counsel, Attorney Shari LePage
10 Locante; HCN DOJ Attorney Wendi Huling, counsel for the respondent, Ho-Chunk Nation
11 Tribal Enrollment Committee; and Attorney Kenneth J. Artis, counsel for the proposed
12 intervenors. The Court granted a continuance to allow the proposed intervenors an opportunity
13 to file briefing both on the *Motion to Intervene* and *Motion for Summary Remand*. *Mot. Hr'g*
14 (LPER at 5, Oct. 25, 2011, 03:43:03 p.m. CDT).
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17 On or about October 26, 2011, the Court delivered *Notice(s) of Hearing*, informing the
18 parties of the time, date and location of a *Continued Motion Hearing*. Prior to this *Hearing*,
19 Attorney Kenneth J. Artis filed a *Notice of Motion to Intervene*, *Motion to Intervene*, and
20 *Movant's Brief in Support of Motion to Intervene*. The Court convened a *Continued Motion*
21 *Hearing* on November 15, 2011 at 1:30 p.m. CST. The following parties were in attendance:
22 Sandra Sliwicki, petitioner, with counsel, Attorney Shari LePage Locante; HCN DOJ Attorney
23 Wendi Huling, counsel for the respondent; and Attorney Kenneth J. Artis, counsel for the
24 proposed intervenors.
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1 **APPLICABLE LAW**

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

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4 **Art. II - Membership**

5 **Sec. 1. Requirements.** The following persons shall be eligible for membership in the Ho-
6 Chunk Nation, provided, that such persons are not enrolled members of any other Indian nation:

7 a. All persons of Ho-Chunk blood whose names appear or are entitled to appear on
8 the official census roll prepared pursuant to the Act of January 18, 1881 (21 Stat. 315), or the
9 Wisconsin Winnebago Annuity Payroll for the year one thousand nine hundred and one (1901),
or the Act of January 20, 1910 (36 Stat. 873), or the Act of July 1, 1912 (37 Stat. 187); or

10 b. All descendants of persons listed in Section 1(a), provided, that such persons are
11 at least one-fourth (1/4) Ho-Chunk blood.

12 **Sec. 5. Membership Code.** The Legislature shall have the power to enact laws not
13 inconsistent with this Article to govern membership. Removal of any person who is not eligible
14 for membership from the Membership Roll shall be done in accordance with the Membership
15 Code, provided, that such removal is approved by at least two-thirds (2/3) vote of the General
16 Council.

17 **Art. VII - Judiciary**

18 **Sec. 4. Powers of the Judiciary.** The judicial power of the Ho-Chunk Nation shall be
19 vested in the Judiciary. The Judiciary shall have the power to interpret and apply the
20 Constitution and laws of the Ho-Chunk Nation.

21 **HO-CHUNK NATION TRIBAL ENROLLMENT AND MEMBERSHIP CODE, 2 HCC § 7**

22 **Subsec. 2 Purpose.** To establish within the Department of Heritage Preservation, an Office
23 of Tribal Enrollment, to maintain one official roll of all Members and to provide procedures
24 for determining which persons meet the requirements for Membership in the Ho-Chunk Nation.

25 **Subsec. 10 Ineligible Tribal Member Removal Procedures.**

26 a. Grounds for Removal.

27 (2) insufficient proof of Ho-Chunk ancestry (Article II, Section 1(a) of the
28 Constitution);

1 b. Persons Authorized to Initiate Possible Removal.

2 (2) Initiation of Removal by Members. Any three (3) enrolled Ho-Chunk adult
3 Members who are not Legally Incompetent may initiate a removal of a Member from the
4 Membership Roll only by filing Affidavits with the Office of Tribal Enrollment. The Affidavits
5 must clearly state the grounds for removal. A non-refundable filing fee of Fifty Dollars (\$50.00)
6 must accompany each Affidavit.

7 HO-CHUNK NATION JUDICIARY ESTABLISHMENT AND ORGANIZATION ACT, 1
8 HCC § 1

9 Subsec. 4. Jurisdiction. The Ho-Chunk Judiciary shall exercise jurisdiction over all matters
10 with the power and authority of the Ho-Chunk Nation including controversies arising out of the
11 Constitution of the Ho-Chunk Nation; laws, statutes, ordinances, resolutions, and codes enacted
12 by the Legislature; and such other matters arising under enactments of the Legislature or the
13 customs and traditions of the Ho-Chunk Nation. The jurisdiction extends over the Nation and its
14 territory, persons who enter its territory, its members, and persons who interact with the Nation
15 or its members wherever found.

16 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

17 Ch. II - Beginning an Action

18 Rule 5. Notice of Service of Process.

19 (B) General. Any time a party files a document other than the *Complaint* or *Citation* with the
20 Court in relation to a case, the filing party must serve copies on the other parties to the action and
21 provide *Certificate of Service* to the Court. Anytime the Court issues an *Order* or *Judgment* in
22 the context of an active case, the Court must serve copies on all parties. Service of process can
23 be accomplished as outlined in Section (C).

24 (C) Methods of Service of Process.

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

29 Ch. III - General Rules for Pleading

30 Rule 18. Types of Motions.

31 *Motions* are requests directed to the Court and must be in writing except for those made in Court.
32 *Motions* based on factual matters shall be supported by affidavits, references to other documents,
33 testimony, exhibits or other material already in the Court record. *Motions* based on legal matters

1 shall contain or be supported by a legal memorandum, which states the issues and legal basis
2 relied on by the moving party. The *Motions* referenced within these rules shall not be considered
3 exhaustive of the *Motions* available to litigants.

4 Rule 19. Filing and Responding to Motions.

5 (B) Responses. A *Response* to a written *Motion* must be filed at least one (1) day before the
6 hearing. If no hearing is scheduled, the *Response* must be filed with the Court and served on the
7 other parties within ten (10) calendar days of the date the *Motion* was filed. The party filing the
8 *Motion* must file a *Reply* within three (3) calendar days.

8 Ch. IV - Parties to an Action

9 Rule 24. Substituting, Intervening and Joining Parties.

10 If a party becomes incompetent or transfers his/her interest or separates from some official
11 capacity, another party may be substituted as justice requires. A party with an interest in an
12 action may intervene and be treated in all respects as a named party to the action. To the greatest
13 extent possible, all persons with an interest will be joined in an action if relief cannot be
14 accorded among the current parties without that person, or the absent person's ability to protect
15 their interests is impeded unless they are a party. Failure to join a party over whom the Court has
16 no jurisdiction will not require dismissal of the action unless it would be impossible to reach a
17 just result without the absent party. The Court will determine only the rights or liabilities of those
18 who are a party to the action or eligible for relief as part of a class certified under Rule 9.

17 Ch. VII - Judgments and Orders

18 Rule 55. Summary Judgment.

19 Any time after the date an *Answer* is due or filed, a party may file a *Motion for Summary*
20 *Judgment* on any or all of the issues presented in the action. The Court will render summary
21 judgment in favor of the moving party if there is no genuine issue as to material fact and the
22 moving party is entitled to judgment as a matter of law.

23 Rule 57. Entry and Filing of Judgment.

24 All judgments must be signed by the presiding Judge. All signed judgments shall be deemed
25 complete and entered for all purposes after the signed judgment is filed with the Clerk. A copy
26 of the entered judgment shall be mailed to each party within two (2) calendar days of filing. The
27 time for taking an appeal shall begin running from the date the judgment is filed with the Clerk.
28 Interest on a money judgment shall accrue from the date the judgment is filed with the Clerk at a
rate set by the Legislature or at five percent (5%) per year if no rate is set.

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

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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
motion is entered, whichever occurs first. If within thirty (30) days after the filing of such
motion, and the Court does not decide a motion under this Rule or the judge does not sign an
order denying the motion, the motion is considered denied. The time for initiating the appeal
from judgment commences in accordance with the *Rules of Appellate Procedure*.

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

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

22 (E) Grounds for Relief. The Court may grant relief from judgments or orders on motion of a
23 party made within a reasonable time for the following reasons: (1) newly discovered evidence
24 which could not reasonably have been discovered in time to request a new trial; (2) fraud,
25 misrepresentation or serious misconduct of another party to the action; (3) good cause if the
26 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.

27 Rule 61. Appeals.

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

5 DECISION

6 I. Motion to Intervene

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8 The *Ho-Chunk Nation Rules of Civil Procedure* permit a party with an interest in an
9 action “to intervene and be treated in all respects as a named party to the action.” *HCN R. Civ. P.*
10 24. The rule mandates, “To the greatest extent possible, all persons with an interest will be
11 joined in an action if relief cannot be accorded among the current parties without that person, or
12 the absent person’s ability to protect their interests is impeded unless they are a party.” *Id.*
13 Consequently, although a lenient standard, the movant is required to satisfy only one of two
14 grounds to intervene in an action. *Id.*

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16 In the case at bar, the three affiants who initiated the enrollment removal proceeding
17 request to intervene in this administrative appeal. *Movants’ Br. in Supp. of Mot. to Intervene*;
18 *See* TRIBAL ENROLLMENT AND MEMBERSHIP CODE (hereinafter MEMBERSHIP CODE), 2 HCC §
19 7.10(b)(2). Their purported interest in this action is determining whether Russell Monegar is the
20 father of the petitioner, Sandra L. Sliwicki. *Movants’ Br. in Supp. of Mot. to Intervene* at 3.
21 Though the Court acknowledges that removal proceedings are intended to “determin[e] which
22 persons meet the requirements for Membership in the Ho-Chunk Nation” and not to serve as a
23 paternity test, arguments concerning whether the petitioner must prove parentage through DNA
24 would undoubtedly involve the aforementioned interests in this action. *See* MEMBERSHIP CODE,
25 § 7.2. Accordingly, the Court grants the movants’ *Motion to Intervene* and shall include Cynthia
26 M. Radtke, Aaron J. Falcon and Lainey W. Ward as parties in this matter.
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1 **II. Motion for Summary Remand**

2 The MEMBERSHIP CODE provides for administrative review of the Committee on Tribal
3 Enrollment's findings and recommendations by the Ho-Chunk Nation Trial Court. MEMBERSHIP
4 CODE, § 7.12. In performing this function, the Trial Court must base its decision on the
5 administrative record as well as additional written statements or oral arguments, if required. *Id.*
6 § 7.12(b). Consequently, the Court routinely allows parties an opportunity to submit briefs and
7 provide oral arguments during administrative appeals. *See Scheduling Order*, CV 11-63 (HCN
8 Tr. Ct., Aug. 31, 2011).

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11 In the instant case, the petitioner has filed a *Motion for Summary Remand* requesting that
12 this Court remand the matter to the Ho-Chunk Nation Committee on Tribal Enrollment due to
13 procedural irregularities, arbitrary, capricious and unreasonable findings and the denial of the
14 petitioner's motion to dismiss. *Mot. for Summ. Remand*. Though the Court acknowledges the
15 expansive nature of Rule 18 of the *Ho-Chunk Nation Rules of Civil Procedure* as it pertains to
16 limits on available motion types, the Court refuses to allow motion practice circumvent,
17 significantly alter or unnecessarily frustrate the procedures provided for administrative appeals.
18 In the case at bar, the *Motion for Summary Remand* serves no purpose as the parties' motion
19 briefs and oral arguments mirror those provided in administrative appeals absent superfluous
20 motions. Therefore, the Court denies the petitioner's *Motion for Summary Remand*. Any
21 additional briefing or requests for oral argument addressing the merits of the appeal must be filed
22 within thirty (30) days of this *Order*. Any response briefs must be filed within ten (10) days
23 thereafter.

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26 The parties retain the right to file a timely post-judgment motion with this Court in
27 accordance with *HCN R. Civ. P. 58*, Amendment to or Relief from Judgment or Order.
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1 Otherwise, "[t]he time for taking an appeal shall begin from the date the judgment is filed with
2 the [Trial Court] Clerk [of Court]." *HCN R. Civ. P. 57*. Since this decision represents a nonfinal
3 judgment, "[a]n appeal from [this] interlocutory order maybe [*sic*] sought by filing a petition for
4 permission to appeal with the Supreme Court Clerk within ten (10) calendar days after the entry
5 of such order with proof of service on all other parties to an action." *Ho-Chunk Nation Rules of*
6 *Appellate Procedure*, Rule 8.
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8 **IT IS SO ORDERED** this 7th day of February 2012, by the Ho-Chunk Nation Trial
9 Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.
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12 _____
13 Honorable Amanda L. Rockman
14 Associate Trial Court Judge
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Ho-Chunk Nation Court System
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