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

**General Council Agency, and Angie Waege,
Milly WhiteEagle-Lee, Marvin Decorah,
Sr., Rosetta Hunt, Roberta Funmaker,
Rodger Thundercloud, Michelle Decora (in
their individual and official capacities),**
Plaintiffs,

v.

Case No.: **CV 11-07**

**Ho-Chunk Constitutional Task Force, Paul
Krause (in his individual and official
capacity), Forest Funmaker, Troy Swallow,
Gloria Visintin, Chris Jendrisak, Cheri
Byhre, Vicki Browneagle, Myrna
Thompson, Kent Kirkwood, Alicia Miner,
Richard Mann, and Cecil Garvin (in their
official capacities)**
Defendants.

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**ORDER
(Rescheduled Preliminary Injunction Hearing)**

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Parties have presented requests for preliminary injunctions to the Court in two (2) different manners in the past. Some parties have lodged the request within the body of the pleading. *See, e.g., Anna Rae Funmaker v. Kathryn Doornbos et al.*, CV 96-02 (HCN Tr. Ct., Nov. 22, 1996) at 1; *see also Ho-Chunk Nation Rules of Civil Procedure* (hereinafter *HCN R. Civ. P.*), Rule 60(B-C). Others have submitted the request in a motion accompanying the pleading. *See, e.g., Todd R. Matha v. HCN Election Bd. Chairperson, Vaughn Pettibone, et al.*, CV 02-34 (HCN Tr. Ct., Apr. 12, 2002) at 2; *see also HCN R. Civ. P.* 18, 19(A). Either method has proven acceptable to the Court since equally accommodated by the *HCN R. Civ. P.*

1 Shortly after its formation, the Court adopted a four-part test for the purpose of
2 evaluating requests for preliminary injunctions. *Joyce Warner et al. v. HCN Election Bd.*, CV
3 95-03-06, -09-10 (HCN Tr. Ct., July 3, 1995) at 4 (citing *Merril Lynch, Pierce, Fenner & Smith,*
4 *Inc. v. Salvano*, 999 F.2d 211, 214-15 (7th Cir. 1993)).¹ The Ho-Chunk Nation Supreme Court
5 later sanctioned the use of the incorporated federal standard. *Coalition for a Fair Gov't II v.*
6 *Chloris A. Lowe, Jr. et al.*, SU 96-02 (HCN S. Ct., July 1, 1996) at 7 (quoting *Tracy*
7 *Thundercloud v. HCN Election Bd.*, CV 95-16 (HCN Tr. Ct., Aug. 28, 1995) at 3); *see also Anna*
8 *Rae Funmaker v. Kathryn Doornbos et al.*, SU 96-12 (HCN S. Ct., Mar. 25, 1997) at 2-3.
9 Consequently, the Court must deny a request for a preliminary injunction when a plaintiff
10 neglects to articulate the standard and/or allege facts capable of satisfying the four-part test.
11 *HCN Election Bd. et al. v. Aurelia Lera Hopinkah*, SU 98-08 (HCN S. Ct., Apr. 7, 1999) at 8-9;
12 *see also HCN R. Civ. P. 18, 60(B).*

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15 In the instant case, the plaintiffs filed the *Complaint* and *Request for Preliminary*
16 *Injunction and Permanent Injunction and Declaratory Relief* on January 26, 2011, followed by
17 an *Amended Complaint* on February 7, 2011. The Court scheduled a *Preliminary Injunction*
18 *Hearing* on Wednesday, February 9, 2011 at 8:00 a.m. CST. However, at that hearing, the
19 plaintiffs moved for the preclusion of Attorney General Corbine and the Ho-Chunk Nation
20 Department of Justice as counsel for the defendants, as the plaintiffs would likely request
21 Attorney General Corbine as a necessary witness, and Attorney General Corbine sought the
22 assistance of her coworkers regarding the *Attorney General Opinions*. The Ho-Chunk Nation
23 Department of Justice Attorneys indicated that successor representation would be sought for the
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27 ¹ The Court recognizes the presence of an "irreparable harm" inquiry in above-referenced test. *HCN Legislature v.*
28 *Chloris A. Lowe, Jr.*, CV 95-28 (HCN Tr. Ct., Apr. 3, 1996) at 4 (citing *Abbott Labs. v. Mead Johnson & Co.*, 971
F.2d 6, 11 (7th Cir. 1992)). As stated, the Court derived its test from a Seventh Circuit Court of Appeals decision,
wherein the court reviewed a district court's assessment of irreparable harm in the context of a temporary restraining
order. *Merrill Lynch*, 999 F.2d at 215.

1 defendants. Due to the request to preclude the defendants' counsel, the Court opted to postpone
2 the hearing. The defendants must respond to the plaintiffs' request for a preliminary injunction as
3 soon as possible, or in the alternative, in person at the hearing. The Court shall schedule a
4 *Continued Preliminary Injunction Hearing* on Wednesday, February 15, 2011 at 1:30 p.m. CST.²
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6 **APPLICABLE LAW**

7 **HO-CHUNK NATION RULES OF CIVIL PROCEDURE**

8 **Rule 18. Type of Motions.**

9 *Motions* are requests to the Court and must be in writing except for those made in Court.
10 *Motions* based on factual matters shall be supported by affidavits, references to other documents,
11 testimony, exhibits or other material already in the Court record. *Motions* based on legal matters
12 shall contain or be supported by a legal memorandum, which states the issues and legal basis
13 relied on by the moving party. The *Motions* referenced within these rules shall not be considered
14 exhaustive of the *Motions* available to litigants.

15 **Rule 19. Filing and Responding to Motions.**

16 (A) Filing. *Motions* may be filed by a party with any pleading or at any time after their first
17 pleading has been filed. A copy of all written *Motions* shall be delivered or mailed to other
18 parties at least five (5) calendar days before the time specified for a hearing on the *Motion*.
19 *Motions for Extension of Time and More Definite Statement* may be filed before the initial
20 pleading.

21 **Rule 60. Emergency Order, Temporary Restraining Order and Ex Parte Temporary** 22 **Restraining Order.**

23 (A) Emergency Order. The Court may enter an *Emergency Order* without a hearing if it appears
24 from the *Complaint*, affidavits and sworn testimony that irreparable harm will result without the
25 *Order*. The *Order* will expire in thirty (30) calendar days unless extended by the Court for good
26 cause. A hearing on the matters contained in the *Order* will be held prior to its expiration. The
27 removal of a child from its residence by the Department of Social Services or equivalent agency
28 and the imminent destruction of records or property essential to the case are examples of matters
that may require an *Emergency Order*.

²The Ho-Chunk Nation Department of Justice indicated that they may not be able to secure counsel for the
defendants for the *Preliminary Injunction Hearing*, but would endeavor to do so. If the hearing must be rescheduled,
the defendants will notify the Court as soon as practicable. The Court noted its desire to deal with this matter
expeditiously. Given the plaintiffs' request for preclusion of the defendants' counsel at the hearing, the Court noted
an extended deadline for the response timeframe for the *Amended Complaint* of twenty (20) days, akin to the
original response timeframe. See *HCN R. Civ. P.*, R 6(a), but see *id.*, R. 21.

1 (B) Temporary Restraining Order. When it appears from a party's pleading that a party is
2 entitled to judgment and any part thereof consists in restraining some act, the commission or
3 continuance of which during the litigation would injure the party, or when during the litigation it
4 shall appear that a party is doing or threatens or is about to do, or is procuring or suffering some
act to be done in violation of the rights of another party and tending to render the judgment
ineffectual, a temporary injunction may be granted to restrain such act.

5 (C) Procedure. The application for an injunction or restraining order made to the Court shall not
6 be heard except upon notice to such other persons as may be defendants in the action, unless the
7 Court is of the opinion that irreparable loss or damage will result to the applicant unless a
temporary restraining order is granted.

8 **IT IS SO ORDERED** this 9th day of February 2011, by the Ho-Chunk Nation Trial
9 Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

10 SgPlus1
11 *Amanda L. Rockman*
12 02/09/2011 09:24:03 am

13 Honorable Amanda L. Rockman
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



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