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

Diana Wolf,
Petitioner,

v.

Case No.: **CV 09-48**

Ho-Chunk Nation Grievance Review Board,
Respondent.

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**ORDER
(Denying Review)**

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INTRODUCTION

The Court must determine whether to review the decision of the Grievance Review Board (hereinafter GRB). The Court declines to perform an administrative review due to the petitioner's failure to file a timely initial pleading. This failure resulted in the imposition of statutory bars to judicial consideration of the merits. The analysis of the Court follows below.

PROCEDURAL HISTORY

The petitioner, Diana J. Wolf, filed her *Petition for Administrative Review* (hereinafter *Petition*) on May 28, 2009. See EMPLOYMENT RELATIONS ACT OF 2004 (hereinafter ERA), 6 HCC § 5.35c; see also *Ho-Chunk Nation Rules of Civil Procedure* (hereinafter *HCN R. Civ. P.*), Rule 63(A)(1)(a). On May 28, 2009, the Court entered the *Scheduling Order*, setting forth the timelines and procedures to which the parties should adhere during the pendency of the appeal. In response, the respondent submitted the administrative record on June 4, 2009. See *HCN R. Civ. P.* 63(D).

1 The petitioner next filed a timely *Initial Brief* on June 29, 2009. *Id.*, Rule 63(E). The
2 respondent, by and through Ho-Chunk Nation Department of Justice (hereinafter DOJ) Attorney
3 Wendi A. Huling, filed a timely *Response Brief* on July 28, 2009. *Id.* The petitioner opted to
4 forego the filing of a *Reply Brief* on or before August 7, 2009. *Id.*

5
6 Thereafter, the Court issued *Notice(s) of Hearing* on November 2, 2009, informing the
7 parties of the date, time and location of a *Status Hearing*.¹ The Court convened the *Hearing* on
8 November 12, 2009 at 10:00 a.m. CST. The following parties appeared at the *Status Hearing*:
9 Diana J. Wolf, petitioner, and DOJ Attorney Wendi A. Huling, respondent's counsel.

10
11 At the *Hearing*, the Court scheduled an oral argument as reflected in the November 12,
12 2009 *Order (Notice of Oral Argument)*.² *See Initial Br.* at 1; *Pet.* at 3. The Court convened the
13 *Oral Argument Hearing* on March 3, 2010 at 10:00 a.m. CST. The following parties appeared at
14 the *Hearing*: Diana J. Wolf, petitioner, and DOJ Attorney Wendi A. Huling, respondent's
15 counsel.

16 17 **APPLICABLE LAW**

18 19 **CONSTITUTION OF THE HO-CHUNK NATION**

20 **Art. V - Legislature**

21 **Sec. 2. Powers of the Legislature.** The Legislature shall have the power:

22 (b) To establish Executive Departments, and to delegate legislative powers to the Executive
23 branch to be administered by such Departments, in accordance with the law; any Department

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25 ¹ The Court scheduled the *Status Hearing* to provide the petitioner an opportunity to demonstrate grounds for
26 supplementing the evidentiary record. *See Initial Br.* at 1; *Pet.* at 3 (citing *HCN R. Civ. P.* 63(D)(1)); *see also* ERA,
27 § 5.35e. While the petitioner could not establish that the respondent excluded relevant evidence, *Status Hr'g*
(LPER, Nov. 12, 2009, 10:27:55 CST), she did prove an inability to submit two (2) rebuttal documents in time for
the April 16, 2009 GRB hearing. *Id.*, 10:33:31 CST. The Court accepted each document in the absence of an
objection from the respondent. *Id.*, 10:36:48 CST; *see also HCN R. Civ. P.* 63(D)(1)(b).

28 ² On January 4, 2010, the respondent filed a *Motion to Reschedule* accompanied by a *Motion for Expedited
Consideration*, seeking a postponement of the oral argument due to a medical concern of respondent's counsel. The
Court granted the request and subsequently issued *Notice(s) of Hearing* on February 17, 2010, informing the parties
of the date, time and location of the rescheduled *Oral Argument Hearing*.

1 established by the Legislature shall be administered by the Executive; the Legislature reserves
2 the power to review any action taken by virtue of such delegated power;

3 Art. VI - Executive

4 Sec. 1. Composition of the Executive.

5 (b) The Executive Branch shall be composed of any administrative Departments created by
6 the Legislature, including a Department of the Treasury, Justice, Administration, Housing,
7 Business, Health and Social Services, Education, Labor, and Personnel, and other Departments
8 deemed necessary by the Legislature. Each Department shall include an Executive Director, a
9 Board of Directors, and necessary employees. The Executive Director of the Department of
Justice shall be called the Attorney General of the Ho-Chunk Nation. The Executive Director of
the Department of Treasury shall be called the Treasurer of the Ho-Chunk Nation.

10 Art. XII - Sovereign Immunity

11 Sec. 1. Immunity of Nation from Suit. The Ho-Chunk Nation shall be immune from suit
12 except to the extent that the Legislature expressly waives its sovereign immunity, and officials
13 and employees of the Ho-Chunk Nation acting within the scope of their duties or authority shall
be immune from suit.

14 STATUTE OF LIMITATIONS & COMMENCEMENT OF CLAIMS ACT, 2 HCC § 14

15 Subsec. 2. Purpose. This Act establishes the maximum time periods in which civil action
16 must be commenced or be forever barred.

17 Subsec. 4. Civil Action and Time Limitation. Civil actions may be commenced only within
18 the periods as prescribed here:

19 e. Employment. All employment actions must be filed in the Trial Court within 30
20 calendar days of the final administrative grievance review decision by the Grievance Review
Board.

21 EMPLOYMENT RELATIONS ACT OF 2004, 6 HCC § 5

22 Subsec. 31. Employee Discipline.

23 a. Depending on the nature of the circumstances of an incident, discipline will
24 normally be progressive and should bear a reasonable relationship to the violation. Based on the
25 severity of the employee conduct, progressive discipline may not be applicable. Supervisors
26 imposing discipline shall afford Due Process to the employee prior to suspending or terminating
any employee. Types of discipline include:

27 (2) Termination.
28

1 Subsec. 34. Administrative Review Process.

2 a. Policy.

3 (1) The Department of Personnel will take all reasonable steps to investigate
4 any incident, which has resulted in disciplinary action. It is the policy of the Ho-Chunk
5 Nation to afford all eligible employees who have been subject to suspension or
6 termination a means of having the circumstances of such disciplinary action reviewed by
an impartial and objective Grievance Review Board (Board).

7 (2) Employees are entitled to grieve suspensions or terminations to the Board.
8 The Board will be selected from a set pool of employees and supervisors with grievance
training, who will review a case and determine whether to uphold the discipline.

9 (3) Following a Board decision, the employee shall have the right to file an
10 appeal with the Ho-Chunk Nation Trial Court (Court).

11 c. Notification of Disciplinary Action. At the time an employee is notified of
12 disciplinary action, the employee shall be advised of his or her right to a hearing before the
Grievance Review Board.

13 d. Request for a Hearing. An employee must request a hearing within five (5)
14 business days of the date the disciplinary action was taken. At the time the employee requests a
15 hearing, he or she must inform the Department of Personnel if he or she is to be represented by
16 an attorney. If so, the attorney must also file for an appearance with Department of Personnel
17 within five (5) days of the date the employee requested a hearing. Failure to request the hearing
within this time frame will result in the forfeiture of a hearing by the Board.

18 g. Proceedings of the Board. At the commencement of a hearing before the
19 Grievance Board of Review [*sic*], the Department of Personnel will discuss with the Board their
responsibilities and obligations including, but not limited to, the following:

20 (7) At the conclusion of the presentation of testimony and evidence, the Board
21 will privately deliberate and make a decision within five (5) business days. No record of
22 the Board's deliberation will be made. The decision of the Board shall describe the facts
of the case and determine whether the facts support a violation of the Employment
23 Relations Act or applicable Unit Operating Rules.

24 h. Scope of Authority and Limited Waiver of Sovereign Immunity. The decision of
25 the Board shall direct a remedy or remedies consistent with the findings of the Board,
enforceable by the Executive Director of Personnel, subject to the following considerations and
26 limitations:

27 (1) Employees bear the burden of proof to show by a preponderance of the
28 evidence that they have been subject to improper disciplinary action, harassment, or
discrimination.

1 Subsec. 35. Judicial Review.

2 a. Waiver of Sovereign Immunity. Pursuant to Article XII of the Constitution of the
3 Ho-Chunk Nation, the Ho-Chunk Nation Legislature expressly waives the sovereign immunity of
4 the Ho-Chunk Nation in the limited manner described herein. This waiver shall be strictly
5 construed.

6 c. Judicial review of a grievance involving suspension, termination, discrimination,
7 or harassment may proceed to the Ho-Chunk Nation Trial Court only after the Administrative
8 Review Process has been exhausted through the Grievance Review Board.

9 (1) An employee may appeal a Board decision to the Trial Court within thirty
10 (30) calendar days of when the Board decision is served by mail.

11 e. Under this limited waiver of sovereign immunity, the Court shall review the
12 Board's decision based upon the record before the Board. Parties may request an opportunity to
13 supplement the record in the Trial Court, either with evidence or statements of their position.
14 The Trial Court shall not exercise *de novo* review of Board decisions. The Trial Court may only
15 set aside or modify a Board decision if it was arbitrary and capricious.

16 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

17 Rule 5. Notice of Service of Process.

18 (C) Methods of Service of Process.

19 3. After the first successful service of process, the Court and the parties will then perform
20 all written communications through regular mail at that address. Therefore, each party to an
21 action has an affirmative duty to notify the Court.

22 Rule 57. Entry and Filing of Judgment.

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

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

30 (A) Relief from Judgment. A *Motion to Amend* or for relief from judgment, including a request
31 for a new trial shall be made within ten (10) calendar days of the filing of judgment. The *Motion*
32 must be based on an error or irregularity that prevented a party from receiving a fair trial or a
33 substantial legal error that affected the outcome of the action.

1 (B) Motion for Reconsideration. Upon motion of the Court or by motion of a party made not
2 later than ten (10) calendar days after entry of judgment, the Court may amend its findings or
3 conclusions or make additional findings or conclusions, amending the judgment accordingly.
4 The motion may be made with a motion for a new trial. If the Court amends the judgment, the
5 time for initiating an appeal commences upon entry of the amended judgment. If the Court
6 denies a motion filed under this Rule, the time for initiating appeal from the judgment
7 commences when the Court denies the motion on the record or when an order denying the
8 motion is entered, whichever occurs first. If within thirty (30) days after the filing of such
9 motion, and the Court does not decide a motion under this Rule or the judge does not sign an
10 order denying the motion, the motion is considered denied. The time for initiating the appeal
11 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
20 within thirty (30) calendar days after the filing of such motion, and the Court does not decide the
21 motion or the judge does not sign an order denying the motion, the motion is considered denied.
22 The time for initiating an appeal from judgment commences in accordance with the *Rules of*
23 *Appellate Procedure*.

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

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

29 Rule 61. Appeals.

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

1 Rule 63. Judicial Review of Administrative Adjudication.

2 (A) Any person aggrieved by a final agency decision may request that the Ho-Chunk Nation
3 Trial Court review such decision by filing a *Petition for Administrative Review* with the Court
4 within thirty (30) calendar days of such decision, unless otherwise provided.

5 1. The following laws provide for filing within thirty (30) days:

6 a. EMPLOYMENT RELATIONS ACT OF 2004

7 (B) The *Petition for Administrative Review* shall identify the petitioner making the request by
8 name and address. The *Petition for Administrative Review* must also contain a concise statement
9 of the basis for the review, i.e., reason or grounds for the appeal, including a request to
10 supplement the evidentiary record pursuant to *HCN R. Civ. P.* 63(D)(1)(a-b), if applicable. The
11 statement should include the complete procedural history of the proceedings below. The
12 petitioner must attach a copy of the final administrative decision to the *Petition for*
13 *Administrative Review*.

14 (D) The commission or board, designated as the respondent, must transmit the administrative
15 record to the Court within fifteen (15) days after receipt of the *Petition for Administrative*
16 *Review*. The administrative record shall constitute the sole evidentiary record for judicial review
17 of the agency decision, unless the petitioner avails him or herself of the following exception:

18 1. The petitioner may request an opportunity to supplement the evidentiary record
19 within an Employee Grievance Review Board appeal, provided that the petitioner demonstrates
20 that the Board:

21 a. excluded relevant evidence as defined by the Federal Rules of Evidence,
22 Rule 401; or

23 b. failed to consider evidence that could not reasonably have been discovered
24 prior to the Employee Grievance Review Board hearing.

25 (E) Within thirty (30) calendar days of filing the *Petition for Administrative Review*, the
26 petitioner shall file a written brief, an *Initial Brief* The respondent shall have thirty (30)
27 calendar days after filing of the brief in which to file a *Response Brief*. After filing of
28 respondent's *Response Brief*, the petitioner may file the *Reply Brief* within ten (10) calendar
29 days.

30 (G) At the discretion of the Court, the Court may require an oral argument. The Court shall
31 decide the order of the presentation, the length of time each party is permitted for their
32 presentation, the issues to be addressed in oral argument, and such other matters as may be
33 necessary. An order entitled, *Notice of Oral Argument*, shall include all such matters and shall be
34 served on all parties at least ten (10) calendar days prior to the date set for argument.

35 (J) The Court maintains discretion to grant continuances upon a showing of good cause.

1 (K) The Court shall issue a final written decision within ninety (90) calendar days after the
2 conclusion of oral argument. If no oral argument is held, the timeframe for issuance of a
3 decision begins after the expiration of time to file a *Response Brief* or *Reply Brief*, whichever is
longer.

4 FEDERAL RULES OF EVIDENCE³

5 Art. IV - Relevancy and Its Limits

6 Rule 401. Definition of “Relevant Evidence”.

7
8 “Relevant evidence” means evidence having any tendency to make the existence of any
9 fact that is of consequence to the determination of the action more probable or less probable than
it would be without the evidence.

10
11 **FINDINGS OF FACT**

12 1. The petitioner, Diana J. Wolf, is a non-member, and maintains a mailing address of
13 N12712 Poplar Road, Fairchild, WI 54741. *Pet.* at 1. The petitioner was employed as a
14 Financial Aid Specialist within the Ho-Chunk Nation Department of Education. The Education
15 Department is an executive department with principal offices located on trust lands at Ho-Chunk
16 Nation Headquarters, W9814 Airport Road, P.O. Box 667, Black River Falls, WI. *See*
17 CONSTITUTION OF THE HO-CHUNK NATION (hereinafter CONSTITUTION), ART. VI, § 1(b). The
18 Ho-Chunk Nation (hereinafter HCN or Nation) is a federally recognized Indian tribe. *See* 74
19 Fed. Reg. 40218 (Aug. 11, 2009).
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22 2. The respondent, GRB, is a statutorily established entity created for the purpose of hearing
23 certain employment grievances, and is primarily comprised of randomly selected members who
24 receive training facilitated by the HCN Department of Personnel. ERA, § 5.34a(1-2); *see also*
25 *Janet Funmaker v. Libby Fairchild, in her capacity as Executive Dir. of HCN Dep’t of Pers., et*
26

27
28 ³ The Supreme Court adopted the FEDERAL RULES OF EVIDENCE for usage in all tribal judicial proceedings. *In re*
Adoption of Fed. R. Evid. (HCN S. Ct., June 5, 1999).

1 *al.*, SU 07-05 (HCN S. Ct., Aug. 31, 2007) at 4 (clarifying that the GRB is “an agency within the
2 Department of Personnel”).

3 3. On April 16, 2009, the GRB conducted the hearing in relation to the termination
4 grievance.⁴ *In re the Matter of: Diana Wolf v. Dep’t of Educ. et al.*, GRB-026-09T (GRB, Apr.
5 23, 2009) (hereinafter *Decision*) at 2.⁵

6
7 4. In the *Decision*, the GRB informed the petitioner of her right to appeal, explaining that
8 “[t]he ERA further provides that an employee may appeal a Board decision to the Trial Court
9 within 30 calendar days of service of the Board’s decision by mail.”⁶ *Id.* at 12. The GRB mailed
10 the *Decision* on April 23, 2009, to the petitioner at her address of record. *Id.* at 13.

11
12 5. On Thursday, May 28, 2009, the petitioner filed her initial pleading, which occurred
13 thirty-five (35) days after the issuance of the *Decision*.

14 6. The respondent asserted that the petitioner filed an untimely initial pleading. *Oral*
15 *Argument Hr’g* (LPER at 13, Mar. 3, 2010, 10:30:31 CST); *Resp. Br.* at 2-3.

16
17 7. The petitioner offered neither a verbal response nor a written response to the respondent’s
18 defense since she did not file a reply brief.

19 20 DECISION

21 The Court begins by emphasizing that it is not performing a deferential review of an
22 administrative agency decision in the instant case. *See* ERA, § 5.35e. Rather, the Court must
23 first resolve whether the petitioner filed a timely initial pleading.⁷ In the absence of a timely
24

25
26 ⁴ The ERA does not establish a timeframe in which the GRB must convene a hearing after receiving a grievance. In
27 this instance, thirty-six (36) days elapsed between the filing of the March 11, 2009 grievance and the hearing.

28 ⁵ The ERA requires the GRB to issue a decision within five (5) business days of the hearing. ERA, § 5.34g(7).

⁶ The governing employment statute specifically provides, in relevant part, as follows: “An employee may appeal a
Board decision to the Trial Court within thirty (30) calendar days of when the Board decision is served by mail.”
ERA, § 5.35c.

⁷ In this regard, the Court follows standing practice of the HCN Supreme Court. *See Gale White v. Jean Day et al.*,
CV 07-54 (HCN Tr. Ct., Dec. 9, 2008) at 17 n.7.

1 filing, the petitioner cannot avail herself of the limited waiver of sovereign immunity
2 incorporated within the prevailing employment law. *Id.*, § 5.35a, c(1). Also, the petitioner's
3 cause of action would be barred by the applicable statute of limitation.⁸ STATUTE OF
4 LIMITATIONS & COMMENCEMENT OF CLAIMS ACT (hereinafter SLCCA), 2 HCC § 14.4e.

5
6 The GRB issued its administrative decision on April 23, 2009, and mailed the document
7 to the petitioner on the same date. *Decision* at 1, 13. The GRB informed the petitioner that she
8 could "appeal a Board decision to the Trial Court within 30 calendar days of service of the
9 Board's decision by mail." *Id.* at 12. The underlying law similarly states: "An employee may
10 appeal a Board decision to the Trial Court within thirty (30) calendar days of when the Board
11 decision is served by mail." ERA, § 5.35c. The question becomes whether service occurs upon
12 mailing or upon receipt. Notably, the ERA nowhere mentions or references receipt of the
13 decision, but focuses solely upon the act of mailing.⁹

14
15 Commonly speaking, the Court performs service of process by mail when it transmits a
16 document to the United States Postal Service for delivery. Alternatively, designation of the date
17 of receipt as the date upon which the statute of limitation begins to run would amount to the
18 selection of a variable starting point. Attempting to ascertain actual party receipt by regular mail
19 is an entirely speculative exercise.¹⁰ The Court cannot regard service by mail as referencing

22 ⁸ The limited waiver simultaneously acts as a statute of limitation because it erects an initial judicial filing deadline.
23 *See generally Kenneth L. Twin v. Douglas Greengrass, Executive Dir. of Admin.*, CV 03-88 (HCN Tr. Ct., Oct. 7,
24 2004), *appeal denied*, SU 04-08 (HCN S. Ct., Dec. 29, 2004) (detailing the legal justification of statutes of
25 limitation).

26 ⁹ "[C]ourts have upheld service when statutes mandate mailing and do not mention receipt . . ." *Miller v. Stimpson*,
27 20 Pa. D. & C.3d 31, 33 (C.P. Adams 1981) (citing 62 AM. JUR. 2D *Process* § 65 (1972)).

28 ¹⁰ In a separate context, the HCN Supreme Court recommended as follows: "Given the variables in the potential
delivery of mail, the Department of Personnel should utilize return receipts on its mailing notices to employees . . .
" *Kenneth L. Twin v. Toni McDonald et al.*, SU 05-09 (HCN S. Ct., July 3, 2006) at 10. Notably, the Supreme
Court has not adopted an equivalent rule for the Judiciary, but has plainly imposed an affirmative obligation upon a
party to inform the Court of any change of address following initial service of process. *See HCN R. Civ. P. 5(C)(3)*,
57. Moreover, usage of certified mail does not ensure party receipt, and, therefore, constitutes a form of
constructive, not actual, service since a non-party may affix his or her signature to a Domestic Return Receipt.

1 receipt since the Court is required to “strictly construe[]” the limited waiver of sovereign
2 immunity. *Id.*, § 5.35a. A strict interpretation would not permit an ambiguous appellate
3 timeframe.

4
5 The petitioner’s failure to adhere to the terms of the limited waiver has the effect of
6 raising the shield of sovereign immunity against her suit. The petitioner filed the initial pleading
7 five (5) calendar days after the expiration of the appeal period.¹¹ *Id.*, § 5.35c(1). The petitioner
8 consequently cannot maintain a cause of action against the respondent. “The Ho-Chunk Nation
9 shall be immune from suit except to the extent that the Legislature expressly waives its sovereign
10 immunity” CONST., ART. XII, § 1. This immunity extends to the separate branches and
11 sub-entities of the tribe. *Timothy G. Whiteagle et al. v. Alvin Cloud, Chairman of the Gen.
12 Council of Oct. 11, 2003, in his official capacity, et al.*, SU 04-06 (HCN S. Ct., Jan. 3, 2005) at
13 6; *Chloris A. Lowe, Jr. v. Ho-Chunk Nation et al.*, SU 97-01 (HCN S. Ct., June 13, 1997) at 3-4.
14
15 As stated above, the GRB serves as a division within the HCN Department of Personnel, and the
16 Judiciary has long held that an untimely filing constitutes a failure to adhere to the express terms
17 of the limited waiver of sovereign immunity. *See, e.g., Marie WhiteEagle v. Ho-Chunk Nation et*
18 *al.*, CV 01-52 (HCN Tr. Ct., Sept. 21, 2001), *aff’d*, SU 01-14 (HCN S. Ct., Nov. 27, 2001).

19
20 The Court’s decision to deny administrative review may seem an unjust result given the
21 need to engage in the preceding statutory interpretation. The Court holds that this interpretation
22 independently justifies the result, but several other reasons also militate against allowing the
23 preservation of petitioner’s suit. First, the respondent effectively raised the sovereign immunity
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27 ¹¹ The petitioner opted to use the judicially-created boilerplate pleading form when instituting her cause of action.
28 *See* <http://www.ho-chunknation.com/UserFiles/PetitionforAdministrativeReview09.pdf> (last visited May 6, 2010).
One should be capable of completing the fill-in-the-blank *Petition* with relative ease, and a reasonably diligent
individual would not require thirty (30) days in which to do so. In contrast, a petitioner must draft his or her own
Initial Brief, but a party can request continuances for good cause. *HCN R. Civ. P.* 63(e, j).

1 and statute of limitation defenses.¹² Second, the petitioner neglected to offer any response to the
2 asserted defenses, thereby disregarding her burden to prosecute in this respect. *See, e.g., Joshua*
3 *F. Smith, Sr. v. Adam Estes et al.*, CV 03-08 (HCN Tr. Ct., Dec. 18, 2003) at 13; *Leigh Stephen*
4 *et al. v. Ho-Chunk Nation*, CV 97-141 (HCN Tr. Ct., Oct. 26, 1998) at 5; *Edward Fronk v. Ho-*
5 *Chunk Tours*, CV 96-11 (HCN Tr. Ct., June 19, 1996) at 1. Finally, the corresponding statute of
6 limitation reads as follows: “All employment actions must be filed in the Trial Court within 30
7 calendar days of the final administrative grievance review decision by the Grievance Review
8 Board.”¹³ SLCCA, § 14.4e. The statute of limitation erects a “maximum time period[] in which
9 [a] civil action must be commenced or be forever barred,” and omits any notation to mailing.
10 *Id.*, § 14.4a. The HCN Legislature adopted the SLCCA on July 20, 2005, following passage of
11 the ERA on December 9, 2004. The statute of limitation provision further confirms that the
12 Legislature intended the limited waiver of sovereign immunity to reference the date of issuance
13 of an administrative decision, which coincides with the date of mailing.
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17 **BASED UPON THE FOREGOING**, the Court denies the performance of an
18 administrative review due to the filing of an untimely initial pleading. The parties retain the
19 right to file a timely post judgment motion with this Court in accordance with *HCN R. Civ. P. 58*,
20 Amendment to or Relief from Judgment or Order. Otherwise, “[a]ny final *Judgment* or *Order* of
21 the Trial Court may be appealed to the Supreme Court. The *Appeal* must comply with the *Rules*
22 *of Appellate Procedure* [hereinafter *HCN R. App. P.*], specifically *Rules of Appellate Procedure*,
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24

25 ¹² “Where a party fails to assert a defense of sovereign immunity in a case, such a defense is waived.” *Sharon*
26 *Williams v. HCN Ins. Review Comm’n*, SU 08-01 (HCN S. Ct., Oct. 29, 2008) at 16 (citing *Louella A. Kelty v.*
27 *Jonette Pettibone et al.*, CV 98-49 (HCN Tr. Ct., Feb. 22, 2006)). Similarly, a statute of limitation provides an
28 affirmative defense subject to waiver. *Twin*, CV 03-88 at 8 (citing *Md. Cas. Co. v. Beleznay*, 245 Wis. 390, 397
(Wis. 1944) (Fowler, J. dissenting)).

¹³ The HCN Supreme Court offered equivalent direction: “Any person aggrieved by a final agency decision may request that the Ho-Chunk Nation Trial Court review such decision by filing a *Petition for Administrative Review* with the Court within thirty (30) calendar days of such decision” *HCN R. Civ. P. 63(A)(1)(a)*.

1 Rule 7, Right of Appeal.” *HCN R. Civ. P.* 61. The appellant “shall within sixty (60) calendar
2 days after the day such judgment or order was rendered, file with the Supreme Court Clerk, a
3 *Notice of Appeal* from such judgment or order, together with a filing fee as stated in the appendix
4 or schedule of fees.” *HCN R. App. P.* 7(b)(1). “All subsequent actions of a final *Judgment* or
5 *Trial Court Order* must follow the [*HCN R. App. P.*]” *HCN R. Civ. P.* 61.
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8 **IT IS SO ORDERED** this 7th day of May 2010, by the Ho-Chunk Nation Trial Court
9 located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.
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12 _____
13 Honorable Todd R. Matha
14 Chief Trial Court Judge
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Ho-Chunk Nation Court System
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(715) 284-2722 or 800-434-4070

