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

Sherman J. Funmaker,
Plaintiff,

v.

Election Board,
Defendant.

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

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**ORDER
(Dismissal with Prejudice)**

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On February 25, 2009, the plaintiff, Sherman J. Funmaker, filed a *Complaint*, stating that the Election Board allowed particular candidates more time to complete their nomination petitions, and the plaintiff's nomination papers were returned due to the fact the petition lacked the requisite signatures. The plaintiff, Sherman J. Funmaker, initiated the current action by filing the February 25, 2009 *Complaint*. Consequently, the Court issued a *Summons* accompanied by the above-mentioned *Complaint* on the same date, and served the documents upon the defendant's representative, Ho-Chunk Nation Department of Justice (hereinafter DOJ), by mail as permitted by *HCN R. Civ. P. 5(C)*. The *Summons* informed the respondent of the right to file an *Answer* within twenty (20) days of the issuance of the *Summons* pursuant to *HCN R. Civ. P. 5(A)(2)*. The defendant, by and through DOJ Attorney Michelle M. Greendeer, filed a timely *Answer* on Friday, March 13, 2009, asking the Court to deny the *Complaint*. *See Defendant's Answer* at 6. Furthermore, the defendant filed a *Motion to Dismiss* on March 18, 2009, and an insufficient request for expedited consideration.

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In the instant case, the plaintiff neither requested a preliminary injunction of the March 17, 2009 Primary Election, nor made mention of the prevailing standard for a preliminary

1 injunction within his *Complaint*.¹ The Court, therefore, processed the pleading in the typical
2 fashion. *See generally, Robert A. Mudd v. Ho-Chunk Nation Legislature et al.*, CV 03-01 (HCN
3 Tr. Ct., Jan. 17, 2003) at 2. The plaintiff maintains the burden to prosecute his case. *See, e.g.*,
4 *Joshua F. Smith, Sr. v. Adam Estes et al.*, CV 03-08 (HCN Tr. Ct., Dec. 18, 2003) at 13; *Leigh*
5 *Stephen et al. v. Ho-Chunk Nation*, CV 97-141 (HCN Tr. Ct., Oct. 26, 1998) at 5; *Edward Fronk*
6 *v. Ho-Chunk Tours*, CV 96-11 (HCN Tr. Ct., June 19, 1996) at 1.

8 At this point, the Court would typically schedule a *Scheduling Conference*, however, it is
9 unnecessary since the outcome sought was for the plaintiff “to have extra time also to get the
10 signatures I needed to be a candidate in 3/2009 election. And that these individuals not be
11 allowed to run because of their tardiness.” *Compl.* at 3. The General Primary Election is
12 scheduled for tomorrow, Thursday, March 19, 2009. By processing the *Complaint* in the typical
13 fashion, the plaintiff’s request is now moot. *See DeFunis v. Odegaard*, 416 U.S. 312, 316
14 (1974); *Powell v. McCormack*, 395 U.S. 486, 496 (1969).

17 Furthermore, the *Complaint* is also dismissed because the plaintiff did not allege a
18 violation of any specific law capable of conferring subject matter jurisdiction upon the Court to
19 hear this case. *See Ho-Chunk Nation v. Harry Steindorf et al.*, CV 99-82 (HCN Tr. Ct., Feb. 11,
20 2000), *aff’d*, SU 00-04 (HCN S. Ct., Sept. 29, 2000) (clarifying the scope of the Court’s subject
21 matter jurisdiction). The plaintiff fails to cite to the CONSTITUTION OF THE HO-CHUNK NATION,
22 the ELECTION ORDINANCE, or any custom or tradition within the initial pleading. *See Id.*;

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

1 CONST., ART. VII, § 5(a); *Compl.* at 3. Moreover, the plaintiff sued the Election Board, and not a
2 named individual, and the case would therefore be dismissed on the grounds of sovereign
3 immunity as well. *Timothy G. Whiteagle et al. v. Alvin Cloud, Chair of the Gen. Council, in his*
4 *official capacity, et al.*, CV 04-04 (HCN Tr. Ct., Aug. 5, 2004), *aff'd in part*, SU 04-06 (HCN S.
5 Ct., Dec. 30, 2004) (dismissing allegations against the General Council Planning Committee due
6 to the presence of sovereign immunity from suit); *see also Chloris Lowe, Jr. v. HCN Legislature*
7 *et al.*, CV 00-99 (HCN Tr. Ct., Oct. 19, 2000) (dismissing pre-emptive election challenge filed
8 against the Legislature and Election Board due to the presence of sovereign immunity).
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11 The Court consequently dismisses this case with prejudice. The parties retain the right to
12 file a timely post judgment motion with this Court in accordance with *HCN R. Civ. P.* 58,
13 Amendment to or Relief from Judgment or Order. Otherwise, “[a]ny final *Judgment* or *Order* of
14 the Trial Court may be appealed to the Supreme Court. The *Appeal* must comply with the *Rules*
15 *of Appellate Procedure* [hereinafter *HCN R. App. P.*], specifically *Rules of Appellate Procedure*,
16 Rule 7, Right of Appeal.” *HCN R. Civ. P.* 61. The appellant “shall within sixty (60) calendar
17 days after the day such judgment or order was rendered, file with the Supreme Court Clerk, a
18 *Notice of Appeal* from such judgment or order, together with a filing fee as stated in the appendix
19 or schedule of fees” *HCN R. App. P.* 7(b)(1). “All subsequent actions of a final *Judgment* or
20 Trial Court *Order* must follow the [*HCN R. App. P.*]” *HCN R. Civ. P.* 61.
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Election Bd. et al. v. Aurelia Lera Hopinkah, SU 98-08 (HCN S. Ct., Apr. 7, 1999) at 8-9; *see also HCN R. Civ. P.* 18, 60(B).

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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IT IS SO ORDERED this 18th day of March 2009, by the Ho-Chunk Nation Trial Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

Honorable Amanda L. Rockman
Associate Trial Court Judge