



1 which informed the parties of the date, time and location of the *Motion Hearing*. Prior to  
2 convening the *Hearing*, the plaintiff submitted the timely *Response to Defendants' Motion to*  
3 *Modify* on January 20, 2006. *Id.*, Rule 19(C). The Court convened the *Hearing* on February 22,  
4 2006 at 9:30 a.m. CST. The following parties appeared at the *Motion Hearing*: Louella A. Kelty  
5 n/k/a Youngthunder, plaintiff; Daniel E. Youngthunder, Sr., plaintiff's spokesperson; and DOJ  
6 Attorney Michael P. Murphy, defendants' counsel.  
7

## 8 9 **APPLICABLE LAW**

### 10 11 **CONSTITUTION OF THE HO-CHUNK NATION**

#### 12 **Article XII - Sovereign Immunity**

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

18  
19 **Sec. 2. Suit Against Officials and Employees.** Officials and employees of the Ho-Chunk  
20 Nation who act beyond the scope of their duties or authority shall be subject to suit in equity only  
21 for declaratory and non-monetary injunctive relief in Tribal Court by persons subject to its  
22 jurisdiction for purposes of enforcing rights and duties established by this constitution or other  
23 applicable laws.

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25 **HO-CHUNK NATION PERSONNEL POLICIES AND PROCEDURES MANUAL** (updated  
26 July 10, 1998)

#### 27 **RESOLUTION 6-9-98A**

[p. 50b]

#### 28 **Tribal Court Review:**

Judicial review of any appealable claim may proceed to the HoChunk [*sic*] Tribal Court after the  
Administrative Review Process contained in this Chapter has been exhausted. The HoChunk  
[*sic*] Nation Rules of Civil Procedure shall govern any judicial review of an eligible  
administrative grievance shall file [*sic*] a civil action with the Trial Court within thirty (30) days  
of the final administrative grievance review decision.

1 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

2 Rule 3. Complaints.

3 General. A civil action begins by one of the following procedures.

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5 (A) filing a written *Complaint* with the Clerk of Court and paying the appropriate fees. The  
6 *Complaint* shall contain short, plain statements of the grounds upon which the Court's  
7 jurisdiction depends; the facts and circumstances giving rise to the action; and a demand for any  
8 and all relief that the party is seeking. Relief should include, but is not limited to the dollar  
9 amount that the party is requesting. The *Complaint* must contain the full names and addresses of  
10 all parties and any counsel, as well as a telephone number at which the Complainant may be  
11 contacted. The *Complaint* shall be signed by the filing party or his/her counsel, if any.

12 Rule 6. Answering a Complaint or Citation.

13 (A) Answering a Complaint. A party against whom a *Complaint* has been made shall have  
14 twenty (20) calendar days from the date the summons is issued, or from the last date of service  
15 by publication to file an *Answer* with the Clerk of Court. The *Answer* shall use short plain  
16 statements to admit, admit in part, or deny each statement in the *Complaint*, assert any and all  
17 claims against other parties arising from the same facts or circumstances as the *Complaint* and  
18 state any defenses to the *Complaint*. The *Complaint* must contain the full names of all parties  
19 and any counsel. The *Answer* must be signed by the party or his or her counsel and contain their  
20 full names and addresses, as well as a telephone number at which they may be contacted. An  
21 *Answer* shall be served on other parties and may be served by mail. A *Certificate of Service*  
22 shall be filed as required by Rule 5(B).

23 Rule 19. Filing and Responding to Motions.

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

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

(C) Motion to Modify. After the time period in which to file a Motion to Amend or a Motion for  
Reconsideration has elapsed, a party may file a Motion to Modify with the Court. The Motion  
must be based upon new information that has come to the party's attention that, if true, could  
have the effect of altering or modifying the judgment. Upon such motion, the Court may modify  
the judgment accordingly. If the Court modifies the judgment, the time for initiating an appeal  
commences upon entry of the modified judgment. If the Court denies a motion filed under this  
rule, the time for initiating an appeal from the judgment 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) 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.

1 The time for initiating an appeal from judgment commences in accordance with the Rules of  
2 Appellate Procedure.

3  
4 **FINDINGS OF FACT**

- 5 1. The parties received proper notice of the February 22, 2006 *Motion Hearing*.  
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7 2. The plaintiff presented the following request for relief within her initial pleading:

8 that Native American Preference (Ho-Chunk Preference) be adhered to  
9 without prejudice[;] that [I] maintain my job and position[; that] I be  
10 compensated for loss [*sic*] wages, . . . for insurance and disability policy,  
and any benefits related to the loss of my job[; and] that the Recall Policy  
be adhered to fully, my seniority be[ing] consider[ed] in all aspects.

11 *Compl.*, CV 98-49 (Aug. 4, 1998) at 2; *see also HCN R. Civ. P.* 3(A).

- 12  
13 3. The defendants failed to assert the defense of sovereign immunity from suit in response  
14 to the plaintiff's request for monetary damages. *Answer*, CV 98-49 (Aug. 27, 1998) at 5-6; *see*  
15 *also* CONSTITUTION OF THE HO-CHUNK NATION (hereinafter CONSTITUTION), ART. XII; *HCN R.*  
16 *Civ. P.* 6(A).

17  
18 **DECISION**

19  
20 The defendants correctly note that the Court typically denies requests for retroactive  
21 monetary relief when a plaintiff fails to name either the Ho-Chunk Nation or one of its sub-  
22 entities in a pleading, provided that the Ho-Chunk Nation Legislature has expressly waived the  
23 government's sovereign immunity for purposes of the cause of action at issue. *Mot. to Modify* at  
24 3 (citing *Roy J. Rhode v. Ona M. Garvin, as Gen. Mgr. of Rainbow Casino*, CV 00-39 (HCN Tr.  
25 Ct., Aug. 24, 2001)); *see also* CONST., ART. XII, § 1. In each instance, however, the defendant  
26 asserts the defense of sovereign immunity within his or her responsive pleading. *See, e.g.,*  
27 *Defendant's Answer*, CV 00-38 (May 25, 2000) at 5; *see also Sheryl A. Cook v. Tammi Modica et*  
28

1 al., CV 05-21 (HCN Tr. Ct., Nov. 22, 2005); *Dolores Greendeer v. Randall Mann*, CV 00-50  
2 (HCN Tr. Ct., July 18, 2001). The Court will sometimes interject that the plaintiff could have  
3 amended his or her pleadings after receiving notice of the defect, but failed to do so. *Rhode*, CV  
4 00-39 at 15; *see also Sherry Wilson v. HCN Dep't of Pers.*, CV 05-43 (HCN Tr. Ct., Jan. 4, 2006)  
5 at 13.<sup>1</sup> Regardless, the Court has afforded, and will continue to afford, proper recognition of the  
6 relevant defense.  
7

8 In the case at bar, the defendants did not raise the relevant defense, and the Court must  
9 dispense justice equally without regard to the identity of the parties. The defendants must bear  
10 the consequences of this failure in the same manner as the above-referenced plaintiffs.<sup>2</sup> The  
11 Court accordingly denies the *Defendants' Motion to Modify*, and reasserts its directive to the  
12 Department of Treasury "to deduct \$10,000.00 from the Department of Business budget, and  
13 issue a check for such amount, subject to applicable taxation, to the plaintiff within a period of  
14 thirty (30) days." *Order (Determination on Remand)* at 8.  
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16  
17 **IT IS SO ORDERED** this 22<sup>nd</sup> day of February 2006, by the Ho-Chunk Nation Trial  
18 Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.  
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20 \_\_\_\_\_  
21 Honorable Todd R. Matha  
22 Chief Trial Court Judge  
23

24 <sup>1</sup> *Wilson* presents the analogous situation wherein the plaintiff failed to name an individual defendant in order to  
25 maintain a request for declaratory and injunctive relief since no waiver of sovereign immunity existed in relation to  
26 the cause of action. *See CONST., ART. XII, § 2; see also Ronald K. Kirkwood v. HCN Hous. Dep't et al.*, CV 03-62  
27 (HCN Tr. Ct., Jan. 26, 2004).

28 <sup>2</sup> Initially, one might question the logic of requiring an individual to assert sovereign immunity on behalf of an  
unnamed governmental entity, but the Court is not simply entertaining an action between private actors. The  
plaintiff instead brought her cause of action under the laws of the Ho-Chunk Nation after exhausting available  
administrative remedies, naming institutional officials who received representation provided by the Nation. The  
Nation itself grants aggrieved employees the ability to proceed to Court. HO-CHUNK NATION PERSONNEL POLICIES  
& PROCEDURES MANUAL, Ch. 12 at 50b. Moreover, similarly situated officials, likewise represented by the DOJ,  
have raised the defense as stated above, likely because of the unique nature of these cases and the issues involved.

