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

3 **Nicholas Joseph Kedrowski,**  
4 Plaintiff,

5 v.

Case No.: **CV 05-01**

6 **Gaming Commissioners Sharon Whitebear,**  
7 **Verdi Kivimaki, Sandy Smalley and Tris**  
8 **Harris,**  
9 Defendants.

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**ORDER  
(Granting Motion to Dismiss)**

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**INTRODUCTION**

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15 The Court must determine whether to grant a dismissal of the instant action. The  
16 defendants contend that the plaintiff filed an untimely initial pleading, constituting a violation of  
17 the relevant statute of limitation. The Court agrees that this defense bars the plaintiff's claims as  
18 indicated by the clear language of the ordinance. The analysis of the Court follows below.  
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**PROCEDURAL HISTORY**

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23 The plaintiff, Nicholas J. Kedrowski, initiated the current action by filing a *Complaint*  
24 with the Court on January 4, 2005. Consequently, the Court issued a *Summons* accompanied by  
25 the above-mentioned *Complaint* and attachments on January 8, 2005, and delivered the  
26 documents by personal service to the defendants' representative, Ho-Chunk Nation Department  
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1 of Justice (hereinafter DOJ).<sup>1</sup> The *Summons* informed the defendants of the right to file an  
2 *Answer* within twenty (20) days of the issuance of the *Summons* pursuant to *HCN R. Civ. P.*  
3 *5(A)(2)*. The *Summons* also cautioned the defendants that a *default judgment* could result from  
4 failure to file within the prescribed time period.  
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6 The defendants, by and through Legislative Counsel William A. Boulware, Jr., timely  
7 filed their *Answer* on January 19, 2005.<sup>2</sup> The plaintiff filed a January 28, 2005 *Response to*  
8 *Defendant's Answer* prior to the Court mailing *Notice(s) of Hearing* to the parties, informing  
9 them of the date, time and location of the *Scheduling Conference*, which the Court delayed due  
10 to the defendants' representation difficulties. The Court convened the *Scheduling Conference* on  
11 July 8, 2005 at 1:30 p.m. CDT. The following parties appeared at the *Conference*: Nicholas J.  
12 Kedrowski, plaintiff, and Attorney Mark L. Goodman, defendants' counsel. The Court entered  
13 the *Scheduling Order* on July 11, 2005, setting forth the timelines and procedures to which the  
14 parties should adhere prior to trial.<sup>3</sup>  
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17 On July 29, 2005, the defendants filed the *Response to Plaintiff's Discovery Motion*,  
18 prompting the August 1, 2005 *Plaintiff's Response to Defendants [sic] "Standing Objection" to*  
19 *Discovery*. The plaintiff also filed a document entitled, *Motions Regarding the 3 generalized*  
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21 <sup>1</sup>The *Ho-Chunk Nation Rules of Civil Procedure* (hereinafter *HCN R. Civ. P.*) permit the Court to serve the  
22 *Complaint* upon the DOJ when the plaintiff/petitioner names as a party either a unit of government or enterprise or  
23 an official or employee being sued in their official or individual capacity. *HCN R. Civ. P. 27(B)*.

24 <sup>2</sup>On January 18, 2005, DOJ Attorney Michael P. Murphy submitted a correspondence in which he indicated that the  
25 DOJ would decline representation of the defendants due to a perceived conflict of interest. Instead, the DOJ would  
26 facilitate the acquisition of outside legal counsel. Ho-Chunk Bar Member Attorney Mark L. Goodman subsequently  
27 filed a June 3, 2005 *Notice of Entry of Appearance* after Attorney William A. Boulware, Jr. likewise needed to  
28 recuse himself. *DOJ Correspondence*, CV 05-01 (June 3, 2005).

<sup>3</sup> On July 7 and 8, 2005, the plaintiff filed the *Request for assistance due to financial constraint* and *Motion*  
26 *requesting an Order of Discovery*, respectively. The Court addressed and resolved the issues contained within these  
27 motions at the *Scheduling Conference*. The Court required defendants' counsel to submit the Ho-Chunk Nation  
28 Gaming Commission (hereinafter Gaming Commission) *Show Cause Hearing* transcript as required by the  
AMENDED AND RESTATED GAMING ORDINANCE OF THE HO-CHUNK NATION (hereinafter GAMING ORDINANCE) and  
to regard the plaintiff's second motion as a discovery request. *Scheduling Conf.* (LPER, July 8, 2005, 01:53:41  
CDT); *see also* GAMING ORDINANCE, § 1101(c)(ii) (requiring Gaming Commission to transmit the record within



1 traditions of the Ho-Chunk Nation, including cases in which the Ho-Chunk Nation, or its  
2 officials and employees, shall be a party. Any such case or controversy arising within the  
3 jurisdiction of the Ho-Chunk Nation shall be filed in the Trial Court before it is filed in any other  
4 court. This grant of jurisdiction by the General Council shall not be construed to be a waiver of  
5 the Nation's sovereign immunity.

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AMENDED AND RESTATED GAMING ORDINANCE OF THE HO-CHUNK NATION  
Chapter 8 - Ho-Chunk Gaming Commission

Sec. 801. Establishment of Commission.

(a) There shall be established a Ho-Chunk Gaming Commission consisting of five Commissioners appointed by a majority vote of the Legislature acting at a meeting at which quorum is present in the manner hereafter described, one from each of the five designated Areas of the Nation.

Sec. 807. Powers and duties of Commission. The Commission shall be responsible for enforcing this Ordinance and shall ensure compliance with this Ordinance, IGRA [Indian Gaming Regulatory Act] and the Compact, any licenses issued, and any Resolutions of the Legislature specifically enforceable by the Commission. In addition to other duties specifically delegated to the Commission in this Ordinance, the Commission shall have the following powers and duties:

(c) Except as otherwise provided, the Commission shall issue and deny gaming licenses in accordance with Chapter 12 of this Ordinance.

(f) The Commission or the Legislature may impose penalties for violations of this Ordinance, any Order of the Commission, or any License condition in accordance with Chapter 18 of this Ordinance.

(i) The Commission shall have the authority and responsibility to interpret this Ordinance and its rules in proceedings before it.

Sec. 810. Commission Hearings.

(b) The Commission shall afford a Licensee the opportunity for a hearing prior to taking final action resulting in the imposition of any penalties which the Commission is authorized to impose pursuant to this Ordinance or the Commission's Rules of Practice and Procedure.

Sec. 820. Determination by the Commission.

(b) All significant determinations made by the Commission shall be documented in a written resolution. Significant determinations include the grant, denial or cancellation of a License, a finding of a violation of the Ordinance, the Compact, the IGRA, the conditions of any license issued by the Commission, any decision rendered by the Commission pursuant to this

1 Ordinance, or any other applicable laws, regulations or agreements regulating gaming, including,  
2 but not limited to, any agreement with the Ho-Chunk Nation, and the imposition of any sanctions  
3 or penalties.

4 (c) A copy of any resolution reached pursuant to this section shall be served upon the  
5 Applicant or Respondent by registered or certified mail, or may be served personally.

6 Sec. 822. Appeals. Decisions of the Commission under this chapter may be appealed under  
7 Sec. 1101 of this Ordinance.

8 Chapter 10 - Powers and Duties of the Ho-Chunk Nation Legislature

9 Sec. 1002. Appeal of Commission Decisions to the Legislature.

10 (a) Jurisdiction. The Ho-Chunk Nation Legislature shall have the jurisdiction to  
11 review all decisions denying a License under Sec. 1203 (a)(iv).

12 Chapter 11 - Powers and Duties of the Ho-Chunk Nation Trial Court

13 Sec. 1101. Appeal of Commission Decision to the Tribal Court.

14 (a) Appellants. A party aggrieved by [a] decision of the Commission pursuant to an  
15 enforcement proceeding may appeal the decision as provided in this Section.

16 (b) Jurisdiction. The Tribal court shall have jurisdiction to review all such decision,  
17 [sic] except decisions denying a License under Sec. 1203 (a)(iv) which shall be reviewable only  
18 by the Legislature.

19 (c) Procedures. Appeals to the tribal court shall be brought as provided by tribal law,  
20 except that the tribal court shall apply the same standards of review set out in subsec. (v) below.

21 (i) Filing Appeal. An appellant may file a petition of review and three (3)  
22 duplicate copies with the Clerk of the Ho-Chunk Nation Trial Court requesting that the  
23 Trial Court review a decision of the Commission. The Court shall certify all copies,  
24 retain one copy for the record, and forward one each to the appellant, the Commission  
25 and the Attorney General of the Department of Justice. The petition must be filed  
26 within forty-five (45) days of the decision, unless additional time is granted by the  
27 Court, and shall include a copy of the Commission's decision and order appealed from  
28 and contain a short statement of the reason for the appeal.

(ii) Trial Court Review of the Record. Upon receiving a petition of review  
which conforms to the requirements of this Section, the Commission shall have forty-  
five (45) days to transmit the record of its decision and to respond to the petition. The  
court shall schedule a hearing within thirty (30) days after receipt of the Commissions  
[sic] record and response to the petition to consider the appeal. A petition of appeal  
shall not be scheduled for review unless the appellant has paid all costs of the  
investigation and proceedings before the Commission, and if the Commission imposed a

1 fine in the decision that is the subject of the appeal, the appellant shall post bond in the  
2 amount of the fine. The trial court judge shall preside at the meeting on the appeal. The  
3 court, in its discretion, may deny the appeal on the record and any written statements  
submitted, or it may grant the petition for review.

4 (v) Decisions. Decisions of the trial court shall be based on a review of the  
5 record of the Commission's proceedings. Oral arguments, if any, and any written  
6 statements submitted. The trial court shall not exercise de novo review of Commission  
7 decisions and shall give proper deference to the administrative expertise of the  
8 Commission and to determinations of credibility. The tribal court shall not set aside or  
9 modify any decision unless it finds that the decision was arbitrary and capricious,  
10 unsupported by substantial evidence or contrary to law. The trial court shall Issue [*sic*]  
11 a written decision on all appeals.

12 (vii) Relief afforded to appellants. The Trial Court of the Ho-Chunk Nation is  
13 limited to the following relief for actions under this Ordinance:

14 (a) In the case of employee or vendor licensing determinations, the  
15 Trial Court is limited to remanding determinations to the Gaming Commissions  
16 [*sic*] for reconsideration consistent with its findings should it find that the  
17 Gaming Commission acted in an arbitrary and capricious manner or its decision  
18 was unsupported by substantial evidence or contrary to law.

19 (b) Should the trial Court [*sic*] remand a determination of the Gaming  
20 Commission for reconsideration, the Commission, upon reconsideration, may  
21 award up to six (6) months in lost wages and health care costs, if any (minus any  
22 compensation, including unemployment benefits, that an employee may have  
23 received during a suspension). In the case of a vendor, the Commission may  
24 refund of a license fee remitted to the Commission.

25 (c) Any reconsideration ordered by the court under this section must  
26 occur within thirty (30) days of the court's order. During that time, the trial court  
27 retains jurisdiction of the case.

28 (d) Any monies ordered to appellants under this section shall be paid  
from an account isolated by the Ho-Chunk Nation Treasury Department of funds  
received from any fees or fines collected pursuant to this Ordinance.

(e) Nothing in this Ordinance shall be construed to grant a party  
remedies other than those included in this section.

## Chapter 12 - Licensing Procedures

### Sec. 1201. Gaming License Required.

1 (a) Persons. Every person employed in any of the Nation's Gaming Facilities is  
2 required to obtain a tribal Gaming License. The following persons must obtain tribal Licenses  
3 under the procedures of this Chapter 12, as a condition to employment in any Gaming Operations  
4 on the Nation's Lands:

4 (i) Any Owner Controlling person;

5 (ii) Primary Management Official;

6 (iii) Key Employees; and

7  
8 (iv) Any other employee or class of employees as determined by the  
9 Legislature.

10 Sec. 1203. Application for License.

11 (a) No license shall be issued under this Chapter except upon sworn Application filed  
12 with the Commission, in such form as may be prescribed by the Commission. Containing [*sic*] a  
13 full and complete showing, at a minimum, of the following:

14 (iv) Satisfactory proof that neither the Applicant, nor any Owner or  
15 Controlling Person of any Applicant which is a party to a Management Contract, nor any  
16 of the Applicant's employees has in any jurisdiction ever been convicted of, or entered a  
17 plea of guilty or no contest to, any of the following criminal offenses, unless the person  
18 has been pardoned:

17 (a) A felony other than a felony conviction for an offense under b, c,  
18 or d, within the immediately preceding ten (10) years;

19 (b) Any gaming-related offenses;

20 (c) Fraud or misrepresentation in any connection; or

21 (d) A violation of any provision of chs. 562 or 565, Wis. Stats., any  
22 rule promulgated by the Wisconsin Gaming Commission or other appropriate state regulatory  
23 body, or this Ordinance or any other ordinance of the Nation regulating or prohibiting gaming.

24 Chapter 18 - Enforcement and Penalties for Violations

25 Sec. 1801. Enforcement. Any person who:

26 (a) Violates any provision of this Ordinance . . . shall be subject to civil penalties as  
27 provided in Sec. 1802.

28 Sec. 1802. Penalties. The Commission shall be empowered to impose any of the following  
civil penalties:

1 (a) Termination, suspension or exclusion from employment in any Gaming Operations  
2 or other employee discipline;

3 (b) Exclusion from attendance at any Gaming Facilities;

4 (d) A fine of not more than \$10,000 for each such violation, except that a General  
5 Manager, Owner or Controlling Person or a party to a Management Contract shall be subject to a  
6 fine of not more than \$25,000 for each such violation, and actual damages to the Nation or its  
7 Gaming Operations.

7 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

8 Rule 5. Notice of Service of Process.

9 (A) Definitions.

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11 (2) Summons - The official notice to the party informing him/her that he/she is identified  
12 as a party to an action or is being sued, that an *Answer* is due in twenty (20) calendar days (See  
13 HCN R. Civ. P. 6) and that a *Default Judgment* may be entered against them if they do not file an  
14 *Answer* in the prescribed time. It shall also include the name and location of the Court, the case  
15 number, and the names of the parties. The *Summons* shall be issued by the Clerk of Court and  
16 shall be served with a copy of the filed *Complaint* attached.

15 Rule 17. Computation of Time.

16 (A) When counting days to meet time limits under these rules computation begins on the day  
17 after the filing. For example, if a *Complaint* is filed on the first day of a month and the *Answer* is  
18 due in twenty (20) calendar days, then the date the *Answer* is due will be the twenty-first day of  
19 the month. If the time limit identified in these rules is less than seven (7) calendar days, then  
20 Saturdays, Sundays and legal holidays are not counted in the time limit. Legal Holidays are  
21 defined as those organized by the Ho-Chunk Nation.

20 Rule 18. Types of Motions.

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22 *Motions* are requests directed to the Court and must be in writing except those made at trial.  
23 *Motions* based on factual matters shall be supported by affidavits, references to other documents,  
24 testimony, exhibits or other material already in the Court record. *Motions* based on legal matters  
25 shall contain or be supported by a legal memorandum, which states the issues and legal basis  
26 relied on by the moving party. The *Motions* referenced within these rules shall not be considered  
27 exhaustive of the *Motions* available to the litigants.

26 Rule 19. Filing and Responding to Motions.

27 (B) Responses. A *Response* to a written *Motion* must be filed at least one (1) day before the  
28 hearing. If no hearing is scheduled, the *Response* must be filed with the Court and served on the

1 other parties within ten (10) calendar days of the date the *Motion* was filed. The party filing the  
2 *Motion* must file any *Reply* within three (3) calendar days.

3 Rule 27. The Nation as a Party.

4 (B) Civil Actions. When the Nation is filing a civil suit, a writ of mandamus, or the Nation is  
5 named as a party, the *Complaint* should identify the unit of government, enterprise or name of  
6 the official or employee involved. The *Complaint*, in the case of an official or employee being  
7 sued, should indicate whether the official or employee is being sued in his or her individual or  
8 official capacity. Service can be made on the Ho-Chunk Nation Department of Justice and will  
be considered proper unless otherwise indicated by these rules, successive rules of the Ho-Chunk  
Nation Court, or Ho-Chunk Nation Law.

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

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

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

24 (C) Motion to Modify. After the time period in which to file a *Motion to Amend* or a *Motion for*  
25 *Reconsideration* has elapsed, a party may file a *Motion to Modify* with the Court. The *Motion*  
26 must be based upon new information that has come to the party's attention that, if true, could  
27 have the effect of altering or modifying the judgment. Upon such motion, the Court may modify  
28 the judgment accordingly. If the Court modifies the judgment, the time for initiating an appeal  
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. The time for initiating an appeal from  
judgment commences in accordance with the Rules of Appellate Procedure.

(D) Erratum Order or Reissuance of Judgment. Clerical errors in a court record, including the  
*Judgment* or *Order*, may be corrected by the Court at any time.

1 (E) Grounds for Relief. The Court may grant relief from judgments or orders on motion of a  
2 party made within a reasonable time for the following reasons: (1) newly discovered evidence  
3 which could not reasonably have been discovered in time to request a new trial; or (2) fraud,  
4 misrepresentation or serious misconduct of another party to the action; or (3) good cause if the  
5 requesting party was not personally served in accordance with Rule 5(c)(1)(a)(i) or (ii); did not  
6 have proper service and did not appear in the action; or (4) the judgment has been satisfied,  
7 released, discharged or is without effect due to a judgment earlier in time.

6 Rule 61. Appeals.

7 Any final *Judgment* or *Order* of the Trial Court may be appealed to the Ho-Chunk Nation  
8 Supreme Court. The *Appeal* must comply with the Ho-Chunk Nation *Rules of Appellate*  
9 *Procedure*, specifically *Rules of Appellate Procedure*, Rule 7, Right of Appeal. All subsequent  
10 actions of a final *Judgment* or Trial Court *Order* must follow the HCN *Rules of Appellate*  
11 *Procedure*.

12 **FINDINGS OF FACT**

- 13 1. The parties received proper notice of the August 26, 2005 *Motion Hearing*.
- 14 2. The plaintiff, Nicholas J. Kedrowski, is a non-member, and resides at 611 North Front  
15 Street, Fairchild, WI 54741. The plaintiff was employed as Surveillance Director of Rainbow  
16 Casino Surveillance, a division within the Ho-Chunk Nation Department of Justice, which  
17 maintains offices on trust lands at Ho-Chunk Nation Headquarters, W9814 Airport Road, P.O.  
18 Box 667, Black River Falls, WI. See DEP'T OF JUSTICE ESTABLISHMENT & ORG. ACT OF 2001, 1  
19 HCC § 8.5d; [http://www.ho-chunknation.com/government/executive/org\\_chart.htm](http://www.ho-chunknation.com/government/executive/org_chart.htm) (last visited  
20 Nov. 28, 2005) (on file with DOJ).
- 21 3. The defendants, Sharon Whitebear, Verdi E. Kivimaki, Sandy S. Smalley and Tris Y.  
22 Harris, are duly appointed members of the Gaming Commission, which maintains its offices at  
23 Ho-Chunk Nation Headquarters. See GAMING ORDINANCE, § 801(a).
- 24 4. On August 17 and 18, 2004, the Gaming Commission convened a *Show Cause Hearing*  
25 for the purpose of determining, in part, the plaintiff's continuing fitness and suitability to hold a  
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1 Ho-Chunk Nation Gaming License and whether the plaintiff committed any violations of the  
2 GAMING ORDINANCE. *In re: Nicholas J. Kedrowski*, SC 04-006 (HCN Gaming Comm'n, Oct. 6,  
3 2004) at 1; *see also* GAMING ORDINANCE, §§ 807(f, i), 810(b).

4  
5 5. On October 6, 2005, the Gaming Commission entered the above-cited decision and order  
6 in resolution format, canceling the plaintiff's gaming license and imposing the following  
7 penalties: monetary fines in the total amount of \$7,500.00 and exclusion from Rainbow Casino  
8 for a period of six (6) months. *In re: Kedrowski*, SC 04-006 at 4; *see also* GAMING ORDINANCE,  
9 §§ 820(b), 1801(a), 1802(b, d).

10  
11 6. On October 11, 2004, the Gaming Commission facilitated personal service of its decision  
12 and order upon the plaintiff. *Defs.' Mot. to Dismiss*, Ex. A. On October 13, 2004, the Gaming  
13 Commission delivered its decision and order to the plaintiff by certified mail. *Id.*, Ex. B; *see*  
14 *also* GAMING ORDINANCE, § 820(c).

15  
16 7. Within the decision and order, the Gaming Commission alerted the plaintiff to his  
17 appellate rights, stating as follows:

18 [a]s with any person who disputes a decision of the Gaming Commission,  
19 you may appeal this decision to the Ho-Chunk Nation Tribal Court. All  
20 appeals must be filed within 45 days of receipt of the Commission's  
21 decision and follow the procedures outlined in Chapter 11 of the *Ho-  
Chunk Nation Amended and Restated Gaming Ordinance*.

22 *In re: Kedrowski*, SC 04-006 at 4; *see also* GAMING ORDINANCE, §§ 822, 1101(a-c).

23 8. In accordance with the GAMING ORDINANCE's statute of limitations, the plaintiff's initial  
24 pleading filing deadline was Monday, November 29, 2004. *See HCN R. Civ. P. 17(A)*  
25 (examining the effect of weekends and legal holidays upon time limits).

26  
27 9. The plaintiff acknowledged receipt of the decision and order on October 11, 2004, and  
28 also acknowledged that he read the appellate rights provision. *Mot. Hr'g* (LPER, Aug. 26, 2005,

1 09:57:44 CDT). However, rather than filing a complaint with the Trial Court, the plaintiff opted  
2 to file a legislative appeal on or about November 24, 2004. *Compl.* at 1. The plaintiff explained  
3 his decision as follows: "[i]t was my understanding [from my] reading of the GAMING  
4 ORDINANCE that the decisions of the Gaming Commission could also be appealed to the  
5 Legislature under Chapter 10." LPER, 09:58:31. The plaintiff subsequently realized that the  
6 appellate authority of the Ho-Chunk Nation Legislature (hereinafter Legislature) is limited to  
7 specific concerns regarding initial gaming license issuance. *Id.*, 10:01:43 CDT; *see also*  
8 GAMING ORDINANCE, §§ 1002(a), 1101(b), 1201(a), 1203(a)(iv). Furthermore, the plaintiff  
9 noted that he lacked the financial ability to post bond in the amount of the underlying fine. *Id.*,  
10 09:58:47 CDT; *see also* GAMING ORDINANCE, § 1101(c)(2), *but see Bonnie Smith v. HCN*  
11 *Gaming Comm'n*, CV 01-12 (HCN Tr. Ct., Feb. 14, 2001) at 7 n.2.

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14 10. The plaintiff alleges that legislative attorneys noted a willingness and ability of the  
15 Legislature to hear the plaintiff's appeal, but later informed the plaintiff that the Legislature  
16 maintained no such authority. LPER, 10:02:10 CDT.

17  
18 11. On January 4, 2005, the plaintiff filed his initial pleading in this Court.

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20 **DECISION**

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22 The Trial Court maintains authority to adjudicate cases and controversies that arise under  
23 the laws of the Ho-Chunk Nation, and accordingly exercises subject matter jurisdiction over  
24 certain Gaming Commission appeals. *See* CONSTITUTION OF THE HO-CHUNK NATION, ART. VII,  
25 § 5(a). Nonetheless, a dispute may fall victim to a number of recognized defenses, and the  
26 defendants raise a statute of limitations defense in the instant case. The GAMING ORDINANCE  
27 incorporates a statute of limitations defense in the instant case. The GAMING ORDINANCE  
28 incorporates a statute of limitation, requiring the filing of a complaint within forty-five (45) days

1 of the Gaming Commission decision and order. GAMING ORDINANCE, § 1101(c)(1).<sup>5</sup> The  
2 plaintiff does not dispute the filing of an untimely initial pleading, but claims ignorance of the  
3 law.

4  
5 The Judiciary does not possess the power to enact purely substantive law, only procedural  
6 rules. *See Bonnie Smith v. Ho-Chunk Nation Gaming Comm'n*, CV 01-02 (HCN Tr. Ct., Feb. 14,  
7 2001), *aff'd*, SU 01-02 (HCN S. Ct., June 15, 2001). Therefore, it necessarily follows that the  
8 Court cannot simply grant exemptions from unambiguous statutory authority. Moreover, the  
9 Gaming Commission clearly informed the plaintiff of his appellate rights, which he read and  
10 understood prior to lodging an appeal with the Legislature. While the Legislature can entertain  
11 limited appeals concerning the issuance of initial licenses under sec. 1203(a)(iv), the Court  
12 clearly exercises appellate jurisdiction over the plaintiff's cause of action. Alleged assurances to  
13 the contrary given by either legislative counsel or individual legislators may not serve to modify  
14 the prevailing ordinance.

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17 Furthermore, the plaintiff is charged with constructive knowledge of the Nation's laws.  
18 *See Susan Bosgraff v. Ho-Chunk Nation Sec. Dep't.*, CV 01-01 (HCN Tr. Ct., Aug. 6, 2001) at 9  
19 (citing *Jean Day et al. v. Ho-Chunk Nation Pers. Dep't.*, CV 96-15 (HCN Tr. Ct., Aug. 21, 1996)  
20 at 3, 6). The Ho-Chunk Nation Supreme Court subsequently recognized this principle. *Marie*  
21 *WhiteEagle v. Wisconsin Dells Head Start et al.*, SU 01-14 (HCN S. Ct., Nov. 27, 2001) at 2  
22 (agreeing that a plaintiff "bears the responsibility of knowing the governing laws of the  
23 Nation."). As a result, the plaintiff may not evade his responsibility by claiming unfamiliarity  
24 with statutory law, especially when plainly informed of the law by the Gaming Commission.  
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28 <sup>5</sup> The Court has previously discussed the validity and value of this defense, which it shall not repeat here. *See*  
*generally Kenneth L. Twin v. Douglas Greengrass, Executive Dir. of Admin.*, CV 03-88 (HCN Tr. Ct., Oct. 7, 2004)  
at 6-12; *see also F. William Johnson v. Ho-Chunk Nation*, CV 01-15 (HCN Tr. Ct., June 18, 2003) at 18-23.

1 Finally, the plaintiff charges that the presence of the bond requirement rendered a judicial  
2 appeal a practical impossibility given his loss of employment. In fact, the Legislature withdrew  
3 this requirement in 1999, *see supra* p. 12, and the Court has heard numerous appeals in the  
4 absence of a bond. *See, e.g., Ralph H. Babcock v. HCN Gaming Comm'n*, CV 01-87 (HCN Tr,  
5 Ct., Aug. 6, 2001). The eventual filing of a complaint tends to undermine the plaintiff's  
6 contention of confusion, but, regardless, a conscientious litigant could have easily sought timely  
7 judicial guidance in relation to this issue.  
8

9 **BASED UPON THE FOREGOING**, the Court holds that the plaintiff's cause of action  
10 is barred by the applicable statute of limitation. Both the GAMING ORDINANCE and the Gaming  
11 Commission's decision and order indicate the appropriate filing timeline of forty-five (45) days.  
12 The plaintiff filed his *Complaint* after the applicable timeframe, and, therefore, the Court grants  
13 the *Defendants' Motion to Dismiss*, reserving comment on the other enumerated defenses.  
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15 The parties retain the right to file a timely post-judgment motion with this Court in  
16 accordance with *HCN R. Civ. P. 58*, Amendment to or Relief from Judgment or Order.  
17 Otherwise, “[a]ny final *Judgment* or *Order* of the Trial Court may be appealed to the Ho-Chunk  
18 Nation Supreme Court. The *Appeal* must comply with the Ho-Chunk Nation *Rules of Appellate*  
19 *Procedure* (hereinafter *HCN R. App. P.*), specifically [*HCN R. App. P.*], Rule 7, Right of  
20 Appeal.” *HCN R. Civ. P. 61*. The appellant “shall within sixty (60) calendar days after the day  
21 such judgment or order was rendered, file with the Supreme Court Clerk, a *Notice of Appeal*  
22 from such judgment or order, together with a filing fee as stated in the appendix or schedule of  
23 fees” *HCN R. App. P. 7(b)(1)*. “All subsequent actions of a final *Judgment* or Trial Court *Order*  
24 must follow the [*HCN R. App. P.*].” *HCN R. Civ. P. 61*.  
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**IT IS SO ORDERED** this 28<sup>th</sup> day of November 2005, by the Ho-Chunk Nation Trial Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

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Honorable Todd R. Matha  
Chief Trial Court Judge