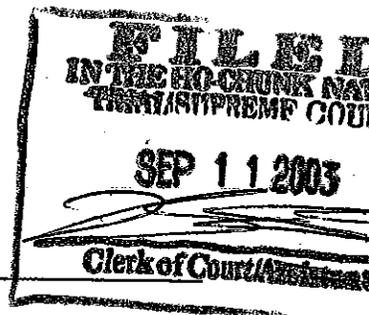


IN THE
HO-CHUNK NATION SUPREME COURT



HO-CHUNK NATION,
Appellee

vs.

SU 03-06
Order
(Denying Motion for Reconsideration and
Denying request for Stay of Proceedings)

BANK OF AMERICA, N.A.,
Appellant.

This Court received a *Notice of Appeal* from the Bank of America on June 18, 2003. That petition was denied by this Court in its *Order* dated July 8, 2003. Appellant's now request this Court to reconsider its denial of Appellant's interlocutory request for an appeal, or in the alternative to Amend the *Order Denying Appeal*.

PROCEDURAL HISTORY

The *Ho-Chunk Nation*, "*Nation*", through its Legislature, and the *Bank of America, N.A.*, "*Bank*", have entered into an interest rate swap agreement regarding a financial transaction of the *Nation*. A dispute arose between the parties regarding certain payment terms of the swap agreement, and the *Nation* brought suit against the *Bank* in the Nation's Trial Court on September 27, 2002. An *Amended Complaint* was served on the *Bank* on October 22, 2002. The *Bank* filed an *Answer* on October 31, 2002 by its attorney, Thomas E. Harms, solely for the purpose of challenging jurisdiction in this matter. The appellate record indicates that a *Scheduling Hearing* was held on December

11, 2002. On January 9, 2003, the *Bank*, by special appearance in the Trial Court for the purpose of challenging jurisdiction of the Nation's Courts to hear the case, filed a *Notice of Motion and Motion to Dismiss* for lack of jurisdiction and supporting *Brief*. After a February 17, 2003 hearing on the *Bank's Motion to Dismiss* for lack of jurisdiction, the Trial Court issued its *Order* on May 19, 2003. That *Order* denied the *Bank's Motion to Dismiss* and advised the parties of their rights to seek post-judgment relief and set forth the applicable rules relating to same. *Order*, at p. 16.

The Ho-Chunk Nation Supreme Court received the *Bank's Notice of Appeal* on June 18, 2003. The full Court reviewed the appellate record and applicable rules and issued the *Order Denying Appeal* on July 8, 2003, based on the failure to timely file an interlocutory appeal.

The appellant *Bank's Notice of Motion and Motion for Reconsideration to Reinstate Appeal or in the Alternative, to Amend Order Denying Appeal* and supporting Exhibits were received by the Clerk of the Supreme Court on July 14, 2003. *Appellee Nation* submitted a *Brief Opposing Bank of America's Motion for Reconsideration and the Affidavit of Justice Ericson Lindell and Supporting Exhibits* on July 17, 2003. The *Appellant* submitted a *Reply Memorandum in Support of Motion to Reconsider or Modify Appeal* on July 17, 2003. On August 14, 2003 this Court issued a *Notice of Extension* to the parties. The full Court has considered the appellate record.

APPLICABLE LAW

HO-CHUNK NATION CONSTITUTION

ARTICLE VII - JUDICIARY

Section 5. Jurisdiction of the Judiciary.

a. The Trial Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Constitution, laws, customs and traditions of the Ho-Chunk Nation, including cases in which the Ho-Chunk Nation, or its officials and employees, shall be a party. Any such case or controversy arising within the jurisdiction of the Ho-Chunk Nation shall be filed in Trial Court before it is filed in any other court. This grant of jurisdiction by the General Council shall not be construed to be a waiver of the Nation's sovereign immunity.

b. The Supreme Court shall have appellate jurisdiction over any case on appeal from the Trial Court.

HO-CHUNK NATION JUDICIARY ACT OF 1995

Section 2. Jurisdiction

The Ho-Chunk Judiciary shall exercise jurisdiction over all matters within the power and authority of the Ho-Chunk Nation including controversies arising out of the Constitution of the Ho-Chunk Nation; laws, statutes, ordinances, resolutions and codes enacted by the Legislature; and such other matters arising under enactments of the Legislature or the customs and traditions of the Ho-Chunk Nation. This jurisdiction extends over the Nation and its territory, persons who enter its territory, its members, and persons who interact with the Nation or its members wherever found.

HO-CHUNK NATION RULES OF CIVIL PROCEDURE

Rule 58. Amendment to or Relief from Judgment or Order

(A) Relief from Judgment. A Motion to Amend or for relief from judgment, including a request for a new trial shall be made within ten (10) calendar days of the filing of judgment. The Motion 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.

(B) Motion for Reconsideration. Upon motion of the Court or by motion of a party made not later than ten (10) calendar days after entry of judgment, the Court may amend its findings or conclusions or make additional findings or conclusions, amending the judgment accordingly. The motion may be made with a motion for a new trial. If the Court amends the judgment, the time for initiating an appeal commences upon entry of the amended 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) days after the entry of judgment, the Court does not decide a motion under this Rule 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.

(C) 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.

(D) Grounds for Relief. The Court may grant relief from judgments or orders on motion of a party made within a reasonable time for the following reasons: (1) newly discovered evidence which could not reasonably have been discovered in time to request a new trial; or (2) fraud, misrepresentation or serious misconduct of another party to the action; or (3) good cause if the requesting party was not personally served in accordance with Rule 5(c)(1)(a) or (b); 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.

Rule 61. Appeals.

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

HO-CHUNK NATION RULES OF APPELLATE PROCEDURE

Rule 7.5 Appeal by Permission

An appeal from an interlocutory order may be sought by filing a petition for permission to appeal with the Clerk of Court within ten (10) calendar days after the entry of such order with proof of service on all other parties to the action. The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the Trial Court; a statement of the question itself; and a statement of the reasons why substantial basis exists for a difference of opinion on the question and why and immediate appeal may materially advance the termination of the litigation. The petition shall include or have annexed a copy of the order relating thereto. Within ten (10) calendar days after service of the petition and adverse party may file an answer in opposition.

Rule 8. Filing Fees and Costs

- a. The filing fee for an appeal shall be thirty-five dollars (\$35.00).
- b. The Chief Justice of the Supreme Court may waive the filing fee upon *Motion for a Fee Waiver* by the Appellant where the Chief Justice is satisfied the Appellant lacks the means to pay the filing fee. The Motion must include an affidavit demonstrating inability to pay and must accompany the *Notice of Appeal*.

c. Where the Nation is the Appellant, the filing fee may be waived upon Motion to the Chief Justice of the Supreme Court. The Motion must include an affidavit. However, if the Appellant is a tribal enterprise or board with delegated powers, the filing fee cannot be waived.

d. A cash deposit or bond in an amount equal to the amount of any money judgment, plus costs assessed by the Trial Court, or a *Motion for Waiver* of this requirement, must accompany the *Notice of Appeal*. The deposit/bond requirement may be waived only when in the judgment of the Supreme Court such deposit/bond is not in the interest of justice and such waiver does not unnecessarily harm the judgment holder. The *Motion for Waiver* of the deposit/bond requirement must be requested with Notice to all parties. If the *Motion for Waiver* is denied, the deposit/bond must be submitted within ten (10) calendar days of the denial. The appeal will be dismissed if the deposit/bond is not paid or waived.

Rule 9. Computation of Time

a. The computation of any time period in these Rules shall be calendar days.

b. When the interests of justice require an expedited appeal, the Supreme Court shall notify all parties promptly of the reduced time limit.

c. There shall be no extension of time limits contained in these rules unless the requesting party demonstrates unforeseen or emergency circumstances.

DECISION

This Court has previously stated that it prefers to accept appeals after the Trial Court has fully considered and disposed of all of the issues based on the facts of the case. *Order Denying Appeal* at p. 2, 3. The Appellant's have requested that this Court grant a reconsideration of the *Order Denying Appeal*. In the alternative they seek an amendment of the *Order Denying Appeal*.

The membership of the Ho-Chunk Nation has set the course for the Judiciary in the HO-CHUNK NATION CONSTITUTION. Article VII at Section 5 Jurisdiction of the Judiciary, states:

- (a) The Trial Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Constitution, laws, customs, and traditions of the Ho-Chunk Nation, including cases in which the Ho-Chunk Nation, or its officials and employees, shall be a party. Any such case or controversy arising within the jurisdiction of the Ho-Chunk Nation shall be filed in the Trial Court before it is filed in any other court. This grant of jurisdiction by the General Council shall not be construed to be a waiver of the Nation's sovereign immunity.
- (b) The Supreme Court shall have appellate jurisdiction over any case on appeal from the Trial Court.

Likewise, Article VII, Section 7 Powers of the Supreme Court sets forth the Constitutional mandates for the Ho-Chunk Nation high court:

- (a) The Supreme Court shall have the power to interpret the Constitution and laws of the Ho-Chunk Nation and to make conclusions of law. The Supreme Court shall not have the power to make findings of fact except as provided by enactment of the Legislature.
- (b) The Supreme Court shall have the power to establish written rules for the Judiciary, including qualifications to practice before the Ho-Chunk courts, provided such rules are consistent with the laws of the Ho-Chunk Nation.
- (c) Any decision of the Supreme Court shall be final.

It is the obligation of the Court to fairly and impartially decide those matters which come before it. That review must take place within a framework established by the Nation. The framework enhances the interests of Justice and consists of the HCN CONSTITUTION, the Rules of the Court, and the complete development of the factual and procedural records, taking into consideration relevant case law. "Indian tribes are 'distinct, independent political communities, retaining their original natural rights' in matters of local self-government. *Worcester v. Georgia*, 6 Pet. 515, 559, 8 L.Ed. 483, (1832); see *United States v. Mazurie*, 419 U.S. 544, 557, 95 S.Ct. 710, 718, 42 L.Ed.2d 706, (1975); Although no longer 'possessed of the full attributes of sovereignty,' they remain a 'separate people, with the power of regulating their internal and social relations.' *United States v. Kagama*, 118 U.S. 375, 381-82, 6 S.Ct. 1109, 1112-1113, 30 L.Ed. 28 (1886). See *United States v. Wheeler*, 435 U.S. 313, 98 S.Ct. 1079, 55 L.Ed.2d 303

(1978). They have the power to make their own substantive law in internal matters, *see Roff v. Burney*, 168 U.S. 218, 18 S.Ct. 60, 42 L.Ed. 442, (1897) (membership); *Jones v. Meehan*, 175 U.S. 1, 29; 20 S.Ct. 1, 12, 44 L.Ed. 9, (1899) (inheritance rules); *United States v. Quiver*, 241 U.S. 602, 36 S.Ct. 699, 60 L.Ed. 1196, (1916) (domestic relations), and to enforce that law in their own forums, *see, e.g., Williams v. Lee*, 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251, (1959).

The Ho-Chunk Nation has established its Court system to deal with disputes between parties. The system provides for a trial level to address the merits of a dispute as well as providing additional due process guarantees to parties to litigation through the provision of appellate processes. It is a well settled principle of federal law that the exhaustion of Tribal Court remedies is required before the claim may be entertained by the District Court, *National Farmer's Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845 (1985).

Through the *Order Denying Appeal*, this Court has previously affirmed that this matter is properly before the Trial Court.¹ On May 19, 2003, the Ho-Chunk Nation's Trial Court issued its *Order* in CV-02-93. That *Order* denied the Bank's *Motion to Dismiss*.

The Trial Court determined that the parties have entered into no contractual provision governing jurisdiction in this case. "Federal law allows this Court to exercise jurisdiction in this case. Ho-Chunk Nation law allows this Court to exercise jurisdiction in this case. For the foregoing reasons, the Court finds that it has both personal and

¹ This does not indicate a decision on the merits of Appellant's challenge to jurisdiction. Procedurally, due to the failure to timely file an interlocutory appeal, the Bank and Nation may now proceed to properly develop the full record including Appellant's contacts or lack of contacts with the Nation, its prior objections to jurisdiction, if any, and the proper application of the HCN CONSTITUTION.

subject matter jurisdiction in this case, and orders that the defendant's *Motion to Dismiss* is denied." *Order*, CV-02-93, May 19 at p. 15.

This matter appears to be dissimilar from the situation addressed by the United States Supreme Court in *Strate v. A-1 Contractors*, (95-1872), 520 U.S. 438 (1997). In that case, a non-tribal member pursued a lawsuit in tribal court against a non-tribal member entity that had subcontracted with a tribal corporation for losses incurred as the result of a motor vehicle accident occurring on a State highway running through the Reservation. The United States Supreme Court held that absent express authorization by federal statute or treaty, tribal jurisdiction over nonmembers' conduct exists only in limited circumstances. *Strate* is substantially different than the case at bar. A critical distinguishing factor in this matter is that it is the *Nation*, not a sub-contracted non-Indian entity, that has directly entered into a consensual agreement with *Bank*.

This Court is mindful of the decision in *Strate*, and accordingly has also considered the Federal case law developed in *National Farmers Union Insurance Companies v. Crow Tribe*, 471 U.S. 845 (1985) and *Iowa Mutual Insurance Company v. LaPlante*, 480 U.S. 9 (1987). Critical to those cases was the initial and full opportunity for the Tribal Court to determine its own jurisdiction. This Court has also considered the decision of the United States Supreme Court in *Montana v. United States*, 450 U.S. 544 (1981). In this instance *Montana* is controlling.

Here, the Bank's transaction with the Nation bears directly on the use and disposition of Tribal resources (money) and concerns tribal affairs. The Bank's commercial transaction with the Nation is the result of a consensual relationship with the tribe. This consensual relationship has a direct effect on the economic security of the

tribe. The *Bank* has stated that it entered the swap agreement with the *Nation* to “hedge against the risk of fluctuating interest rates”.² Under the rationale of *Montana v. United States*, it is clear that Indian Tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands.³ That case sets forth guidance for this Court in determining the nature of the relationship between tribal courts and non-Indians. Here the *Appellant* is a non-Indian entity that has entered into a consensual relationship with the Nation. Further, the non-members are engaging in activities which directly affect the economic security of the Tribe, and which may arguably affect the political integrity, health and welfare of the Tribe as well.

In this instance this Court must also look to the HCN *JUDICIARY ACT*, WHICH speaks to the exercise of jurisdiction. “...This jurisdiction extends over the Nation and its territory, persons who enter its territory, its members, and persons *who interact with the Nation* or its members wherever found. (*Emphasis supplied*).

Here, the parties have not exhausted the available remedies in the Tribal Court. In fact the parties have not presented the merits of this case to the Courts of the Ho-Chunk Nation. The fact that the appellate procedures of this Court concerning interlocutory appeals have not been followed requires that the parties now take up the entire case on its merits. This Court acknowledges that should those matters be appealed from the Trial Court, that this Court will then have an opportunity to act on an appeal of the merits of this dispute in accordance with the *HCN R. OF APP. P.* Despite the procedural ruling made in this case, the tribal court forum remains readily available to the parties.

² The underlying credit agreement was for \$45,000,000.00. See *Brief and Addendum of Appellant Bank of America, N.A.*, filed June 30, 2003 at page 2.

³ *Montana* at 565, 566.

RECONSIDERATION

Appellant has failed to meet the standard for reconsideration as has been set forth in *Ralph Babcock v. Ho-Chunk Gaming Commission*, CV-95-08, (HCN Trial Court, March 14, 1996). This case sets forth a four prong test. A motion to reconsider may be granted by the court provided the moving party timely files a motion within ten days of the date the order being asked to be reconsidered was distributed, if the movant shows that any one or more of the following factors exists, *i.e.*, that the court has:

- 1) Overlooked, misapplied or failed to consider a statute, decision or principle directly controlling; or
- 2) Overlooked or misconceived some material fact or proposition of law; or
- 3) Overlooked or misconceived a material question in the case; or
- 4) The law applied in the ruling has been subsequently changed by court decision or statute.

Here the *Bank* was served with this Court's *Order Denying Appeal* July 10, 2003 and the *Notice of Motion and Motion for Reconsideration or Reinstatement of Appeal* were filed with the Clerk of the Supreme Court on July 14, 2003, which is within the ten days.

As this Court has stated in *Louella A. Kelty v. Jonette Pettibone and Ann Winneshiek, in their official capacities*, SU 99-02, (HCN S. Ct. September 24, 1999):

The Court has previously considered various requests by parties for reconsideration. See *HCN Legislature v. Chloris A. Lowe*, SU 96-01 (HCN S. Ct., May 16, 1996); *HCN Legislature v. Chloris A. Lowe, Jr. and Jo Deen B. Lowe*, SU 96-09 (HCN S. Ct., April 23, 1997); *C & B Investments v. HCN Dept. of Health and HCN*, SU 96-13 (HCN S. Ct., June 23, 1997); *Carol J. Smith v. Rainbow Bingo and Bernice Cloud*, SU 97-04 (HCN S. Ct., October 16, 1997); *HCN and HCN Election Bd. V. Aurelia L. Hopinkah*, SU 98-08 (HCN S. Ct., December 18, 1998) and *Joelene Smith v. HCN and Tammy Lang*, SU 98-03 &

SU 98-04 (HCN S. Ct. July 31, 1998). This Court has been reluctant to reconsider decisions, which were made as final decisions pursuant to the Constitution, ART. VII, § 7. The Constitution states that “[A]ny decision of the Supreme Court shall be final”.

In keeping with our constitutional mandates, this Court has been reluctant to reconsider decisions. Therefore, this Court will reconsider decisions only in rare situations where there is a glaring problem such as a technical oversight or misstatement by the Court. This Court will not routinely second guess itself as the time and effort which goes into decision making is lengthy and deliberate. Routine reconsiderations are therefore unnecessary.

In the instant case, the Appellant’s *Notice of Appeal* informs this Court that the appellant has entered a limited appearance in the Ho-Chunk Nation Trial Court to challenge that Court’s jurisdiction over a dispute between *Bank* and the *Nation* related to the enforceability of certain payment terms of the parties’ interest-rate swap agreement.

This Court has opined that “. . . the matter now before us is not an appeal from a final judgment or order of the Trial Court. . . .” Citing the applicable rule for an appeal of an interlocutory matter, this Court denied the appeal as being untimely, and cited the judicial policy of preference for a matter to be completely considered and dispose of the issues based on the facts of the case. *Citing Margaret G. Garvin v. Donald Greengrass and Margaret G. Garvin v. Ho-Chunk Nation, and Donald Greengrass in his official and individual capacity, and Evans Littlegeorge in his individual capacity*, SU 01-04 (HCN S.Ct., April 5, 2001).

The development of the complete record furthers the interests of justice. The Appellant has not shown that there is any compelling need to reinstate the appeal under the standard set forth in the *Babcock* case. This Court has made it clear that it is not permanently denying review of the May 19, *Order*. The Bank will have an opportunity for appeal once the Trial Court has completely developed the record in this matter

The jurisdictional issue is an important aspect of this case. This Court is mindful of the *APPELLATE RULES* and the role of legal counsel in the administration of justice. A careful review of the Court Rules will benefit those who litigate in the Courts. While the Nation's Court system provides access to information about the Courts, it behooves all practitioners to familiarize themselves with the various rules in order to avoid difficulties with timelines and other procedural requirements. The fact that the appellant's legal counsel have relied, for whatever reason, upon the incorrect rule of this Court is not fatal to their claims on the merits of this case. As this Court has previously stated, the rules are to be liberally construed to promote the interests of justice. However, the rules can not be so liberally construed as to make them useless.

Familiarity with the Rules of this Court has been promoted by providing each member of the HCN Bar with a copy of the *HCN Rules of Civil Procedure* and the *HCN Rules of Appellate Procedure* upon their admission. Likewise the Court has made a concerted effort to keep the bar informed regarding matters of importance to those who practice before this tribunal. In fact, the topic of how to file an Appeal was the subject of a recent article in the *COURT BULLETIN*. That bulletin is mailed to each member of the bar, and is also available in electronic format on the Court's website.⁴ The article titled "The Nuts and Bolts of Filing an Appeal" may be found at Vol.9. No. 3, of the *COURT BULLETIN* for March 2003. All counsel should personally familiarize themselves with the rules of this Court. It behooves all practitioners to personally carefully review the Rules to in order to comply with the procedure of this forum.⁵

⁴ The Court Bulletin is available at www.Ho-Chunknation.com/government/court/.

⁵ In fact, this Court cautions all counsel regarding the fact that the Trial bench has taken to the use of boilerplate language regarding Appeals. Such language accurately sets forth a provision of the Nation's

STAY OF PROCEEDINGS

The *Notice of Appeal* petitions this Court for an order staying further proceedings in the Nation Court in this action, pending the Court's decision on appeal. Neither party has provided this Court with information concerning the pending calendar for this matter. The Court does not consider that it is under any obligation to search the record for factual matters that might support either the grant or denial of that part of the motion seeking a stay of further proceedings. It is the duty of the parties to bring to the Court's attention all factual and legal matters material to the resolution of the issues in dispute. Here the appellant seeks a *Motion to Reconsider*; this Court has not been presented with any compelling information which supports the request for a stay of proceedings.

In its *Order Denying Appeal*, this Court did not address the issue of the *Request for an Stay*. Neither was the issue of a stay directly addressed by the Trial Court in its *Order Denying Motion to Dismiss*, but the parties were advised of their rights to seek appeal. *Order* at p. 16.

The applicable rule concerning a stay of proceedings in the Trial Court is *HCN R.Civ.P. 68*. That rule states: *Stays Pending Appeal*.

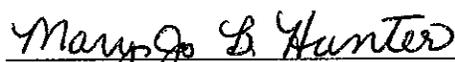
The Trial Court may delay execution of the final *Order* or *Judgment* during the appeal on its own motion or on the request of either party if a bond is given or other conditions prescribed by the Court are met that protect the interests of the party in whose favor the final *Judgment* or *Order* is entered.

(Footnote 5 Continued) laws, but the applicability of that law to the given factual scenario remains a responsibility of the advocates for a party. As a member of the Ho-Chunk Nation bar, Counsel has a duty to this Court and to the parties to take such action as a member of this bar knows or reasonably should know as is procedurally correct. Additionally, reliance on the representations or opinions of staff or others having no duty to the parties may result in adverse consequences and is a questionable practice at best. This court is confident that through the care and diligence of the professionals that practice in this Court the interests of justice will be served. Counsel must bear the burden of personal responsibility for knowledge of and compliance with this Court's rules.

The record does not clearly indicate whether the parties and the Trial Court have addressed the issue of a stay of proceedings at the Trial Court level. Additionally, this Court notes that in this appeal, the appellant has not posted bond, nor sought waiver of the bond through motion to this Court. Such a bond is a requirement under the *HCN R. App. P. 8(d)* unless that requirement has been waived by the Supreme Court. Here the record reflects no request for such a waiver.⁶ Regardless, this Court determined that the request for appeal from the decision of the Trial Court was denied. Therefore there is no basis for a stay of proceedings. This Court encourages the parties to resolve their differences, one means of which is to proceed with the fact finding at the Trial Court. The parties must be clear on this fact: the procedural denial of this Court's *Order Denying Appeal* is not a denial on the merits. The parties to this action may proceed on the merits in the Trial Court. When the trial record is complete, this Court stands ready to review the merits if this case returns.

Egi Heskekjet.

Dated this 11th day of September 2003.



Chief Justice Mary Jo B. Hunter
Ho-Chunk Nation Supreme Court



Hon. Mark D. Butterfield, Associate Justice
Ho-Chunk Nation Supreme Court



Hon. Jo Deen B. Lowe, Associate Justice
Ho-Chunk Nation Supreme Court

⁶ Appellant's have included a footnote in their *Notice of Appeal* which attempts to address the issue of a bond, but it is unclear as to whether the reference is to the provisions of *HCN R. Civ. P. 68*, or to the more general *HCN R. App. P.8 (d)*. The provisions of *HCN R. App. P. 8(d)* do not make it the discretion of the party seeking appeal to determine whether or not a bond is required, but rather this rule sets forth the procedural requirements for posting bond, or in the alternative seeking a waiver from that requirement.