

JUL 07 1999

*Willa RedCloud*  
Clerk of Court/Assistant

IN THE  
HO-CHUNK NATION SUPREME COURT

NINA GARVIN,  
Appellant,

vs.

ORDER DENYING APPEAL  
Case No. SU99-04

CAROL LAUSTRUP, HO-CHUNK CASINO,  
Appellee.

This matter came before the full Court on Sunday, June 27, 1999 through telephonic conference call. This Court reviewed the Notice of Appeal filed on June 1, 1999. That Notice did not include the proof of service on the opposing party. The Supreme Court's Clerk of Court issued a notice to the Appellant that the appeal was deficient as it lacked the proof of service.

On or about June 16, 1999, the Supreme Court Clerk received a copy of a sheet with a fax "Post-It" which had been faxed to the Department of Justice on June 15, 1999. On June 22, 1999, the Appellee, by and through her attorney, John Swimmer, filed Appellant's (sic) Notice and Motion in Opposition to Appellee's (sic) Appeal. The Appellee, Carol Laustrup, argued that Ms. Garvin had not complied with the requirements of Rule 10 (c) of the Ho-Chunk Nation Rules of Appellate Procedure. This Court considered the issue of whether or not proper service had been timely made which would allow for this appeal to be accepted.

Rule 10(c) clearly states that "[C]opies of the Notice of Appeal shall be served on all parties to the action by the Appellant. Proof of Service shall be promptly filed with the Court." The notice of deficiency to the Appellant does not give the Appellant the opportunity to serve the opposing party after a failure to do so. Rather, it simply is requiring that the proper proof of *timely* service is filed with the Court.

In this case, the Appellant first failed to file proof of service. Upon the request for that proof, she attempted to cure the defect by serving the opposing party by fax on June 15, 1999.<sup>1</sup>

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<sup>1</sup>Although this involved a service by fax, this Court is not addressing whether service by fax is sufficient.

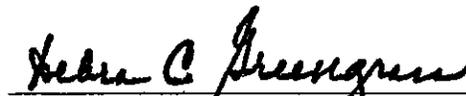
**IN THE  
HO-CHUNK NATION SUPREME COURT**

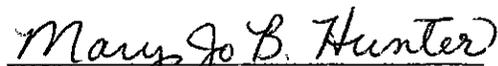
Unfortunately, the opposing party should have been served with the Notice of Appeal prior to filing the documents with the Supreme Court. Only by serving the other party will they be noticed of the pending appeal process. The HCN Rules of Appellate Procedure are sufficiently clear on this point. Therefore, the Appellant did not timely comply with the HCN Rules of Appellate Procedure. Therefore, the Appellant's Notice of Appeal is **DENIED**.

IT IS SO ORDERED.

Dated this 7<sup>th</sup> day of July 1999.

  
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Rita A. Cleveland, Associate Justice

  
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Debra C. Greengrass, Associate Justice

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

## CERTIFICATE OF SERVICE

I, Willa RedCloud, Clerk of the Ho-Chunk Nation Supreme Court of the Ho-Chunk Nation, do hereby certify that on the date set forth below I served a true and correct copy of the attached paper filed in Case No. SU-99-04 (CV-98-54), by the United States Postal Service, upon all persons listed below:

Ms. Nina Garvin  
309 B 7th Street  
Baraboo, WI 53913

John Swimmer  
HCN Dept. Of Justice  
P.O. Box 667  
Black River Falls, WI 54615

Hon. Debra Greengrass  
6200 West Locust Street  
Milwaukee, WI 53210

Hon. Mary Jo Brooks Hunter  
4 Linder Court  
Saint Paul, MN 55106

Hon Rita Cleveland  
367 River Street  
Black River Falls, WI 54615

Indian Law Reporter  
319 McArthur Blvd.  
Oakland, CA 94610

Date: 7/07/99

Willa RedCloud  
Willa RedCloud, Clerk of Court  
Ho-Chunk Nation Supreme Court