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

**In the Interest of Minor Children: C.E.H.,
DOB 07/13/91, T.R.H., DOB 12/19/92, and
B.F.H., DOB 03/13/94,
by Janelle H. Hopinkah,
Petitioner,**

v.

Case No.: **CV 02-98**

**Ho-Chunk Nation Office of Tribal
Enrollment,
Respondent.**

**ORDER
(Conditional Denial of Petition)**

INTRODUCTION

This case concerns whether the parent, Janelle H. Hopinkah, can access monies on behalf of her minor children, C.E.H., DOB 07/13/91, T.R.H., DOB 12/19/92, and B.F.H., DOB 03/13/94, from the Children's Trust Fund (hereinafter CTF) to pay for purchases of clothing, bedroom furniture and bedding, and satisfy unpaid medical bills. The Court must employ the standard enunciated in the PER CAPITA DISTRIBUTION ORDINANCE (hereinafter PER CAPITA ORDINANCE), 2 HCC § 12.8c to assess the merit of the parent's request. Regrettably, the Court must conditionally deny the request due to the extreme passage of time.

PROCEDURAL HISTORY

The petitioner, Janelle H. Hopinkah, initiated the current action by filing the October 7, 2002 *Petition for Release of Per Capita Distribution* (hereinafter *Petition*). Consequently, the

1 Court issued a *Summons* accompanied by the above-mentioned *Petition* on October 7, 2002, and
2 served the documents upon the respondent's representative, Ho-Chunk Nation Department of
3 Justice (hereinafter DOJ),¹ by personal service as permitted by *HCN R. Civ. P. 5(C)(1)*. The
4 *Summons* informed the respondent of the right to file an *Answer* within twenty (20) days of the
5 issuance of the *Summons* pursuant to *HCN R. Civ. P. 5(A)(2)*. The *Summons* also cautioned the
6 respondent that a *default judgment* could result from failure to file within the prescribed time
7 period.
8

9 The respondent, by and through DOJ Attorney Leslie Parker Cohan, filed a timely
10 *Answer* on October 25, 2002, requesting that the petitioner submit further corroborative evidence
11 and that the Court schedule a *Fact-Finding Hearing*. In response, the Court entered its October
12 28, 2002 *Order (Requiring Submission of Documents)*. The petitioner provided additional
13 documentation on December 5, 2002, and the Court accordingly mailed *Notice(s) of Hearing* to
14 the parties on February 5, 2003.
15

16 The *Notice(s)* informed the parties of the date, time and location of the *Fact-Finding*
17 *Hearing*. The Court convened the *Fact-Finding Hearing* on February 26, 2003 at 9:30 a.m.
18 CST. The following parties appeared at the *Hearing*: Janelle H. Hopinkah, petitioner, and DOJ
19 Attorney Leslie Parker Cohan, respondent's counsel. The Court required the petitioner to submit
20 further documentation within thirty (30) days, and the petitioner complied with this requirement
21 on March 25, 2003.² *Fact-Finding Hr'g* (LPER at 3, Feb. 26, 2003, 09:56:47 CST).
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25 ¹ The *Ho-Chunk Nation Rules of Civil Procedure* (hereinafter *HCN R. Civ. P.*) permit the Court to serve the
26 *Complaint* upon the DOJ when the plaintiff/petitioner names as a party a unit of government or enterprise. *HCN R.*
27 *Civ. P. 27(B)*.

28 ² The presiding judge extends his sincerest apologies to the parties for the failure of the Court to enter a more timely
decision in this matter. Each trial judge maintains a duty to "dispose promptly of the business of the court." *HCN*
Rules of Judicial Ethics, § 4-1(E). Former Chief Judge William H. Bossman utterly failed in this regard by not
issuing a judgment prior to the expiration of his legislative appointment on July 1, 2005. In the interests of justice,
the Court informs the parties of the availability of seeking mandamus relief from the Ho-Chunk Nation Supreme

1 **APPLICABLE LAW**

2
3 PER CAPITA DISTRIBUTION ORDINANCE, 2 HCC § 12

4 Subsec. 8. Minors and Other Legal Incompetents.

5 c. Funds in the CTF of a minor or legally incompetent Member may be available for the
6 benefit of a beneficiary's health, education, and welfare when the needs of such person are not
7 being met from other Tribal funds or other state or federal public entitlement programs, and upon
8 a finding of special need by the Ho-Chunk Nation Trial Court. In order to request such funds,
the following provisions apply:

9 (1) A written request must be submitted to the Trial Court by the beneficiary's parent
10 or legal guardian detailing the purpose and needs for such funds.

11 (2) The parent or legal guardian shall maintain records and account to the Trial Court
12 in sufficient detail to demonstrate that the funds disbursed were expended as required by this
Ordinance and any other applicable federal law.

13 (3) Any other standards, procedures, and conditions that may be subsequently
14 adopted by the Legislature consistent with any applicable federal law shall be met.

15 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

16 Rule 5. Notice of Service of Process.

17 (A) Definitions.

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

23 (C) Methods of Service of Process.

24 (1) Personal Service. The required papers are delivered to the party in person by the
25 bailiff, or when authorized by the Court, a law enforcement officer from any jurisdiction, or any
26 other person not a party to the action who is eighteen (18) years of age or older and of suitable
discretion.

27 Court in order to compel action of a trial level judge. *See In re: Casimir T. Ostrowski*, SU 05-01 (HCN S. Ct., Feb.
28 21, 2005) (citing CONSTITUTION OF THE HO-CHUNK NATION, ART. VII, § 6(a)).

1 Rule 27. The Nation as a Party.

2 (B) Civil Actions. When the Nation is filing a civil suit, a writ of mandamus, or the Nation is
3 named as a party, the *Complaint* should identify the unit of government, enterprise or name of
4 the official or employee involved. The *Complaint*, in the case of an official or employee being
5 sued, should indicate whether the official or employee is being sued in his or her individual or
6 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.

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

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

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

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

(E) 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,

1 misrepresentation or serious misconduct of another party to the action; or (3) good cause if the
2 requesting party was not personally served in accordance with Rule 5(c)(1)(a)(i) or (ii); did not
3 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.

4 Rule 61. Appeals.

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

10 **DECISION**

11
12 The Court feels compelled to conditionally deny the October 7, 2002 *Petition* since the
13 Court unfortunately failed to address the merits of the case for over two and a half (2½) years
14 after submission for final decision. CTF requests are inherently time sensitive in nature since the
15 Court must assess financial need under existing familial circumstances. Also, purported health
16 and welfare necessities may alter over the course of time. Therefore, the Court shall deny the
17 petitioner's request, but extend the opportunity to the petitioner to revive or modify her request
18 within twenty (20) days after the issuance of this decision by filing formal notice to the Court.³

19
20 The parties retain the right to file a timely post-judgment motion with this Court in
21 accordance with *HCN R. Civ. P. 58, Amendment to or Relief from Judgment or Order.*

22
23 Otherwise, “[a]ny final *Judgment* or *Order* of the Trial Court may be appealed to the Ho-Chunk
24 Nation Supreme Court. The *Appeal* must comply with the Ho-Chunk Nation *Rules of Appellate*

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26 ³ The Court must receive the filing before 4:30 p.m. CST/CDT on the filing deadline. *HCN R. Civ. P. 84. A*
27 *Certificate of Service* must accompany the filing. *HCN R. Civ. P. 5(B)*. Parties may obtain a copy of the *HCN R.*
28 *Civ. P.* by contacting the Court at (800) 434-4070 or (715) 284-2722 or by visiting the Judiciary's website at
www.ho-chunknation.com/government/courts.htm.

1 *Procedure* (hereinafter *HCN R. App. P.*), specifically [*HCN R. App. P.*], Rule 7, Right of
2 Appeal.” *HCN R. Civ. P.* 61. The appellant “shall within sixty (60) calendar days after the day
3 such judgment or order was rendered, file with the Supreme Court Clerk, a *Notice of Appeal*
4 from such judgment or order, together with a filing fee as stated in the appendix or schedule of
5 fees” *HCN R. App. P.* 7(b)(1). “All subsequent actions of a final *Judgment* or *Trial Court Order*
6 must follow the [*HCN R. App. P.*].” *HCN R. Civ. P.* 61.
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10 **IT IS SO ORDERED** this 24th day of October 2005, by the Ho-Chunk Nation Trial
11 Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.
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14 Honorable Todd R. Matha
15 Chief Trial Court Judge
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Ho-Chunk Nation Court System
P.O. Box 70
Black River Falls, WI 54615
(715) 284-2722 or 800-434-4070

