

1 *Complaint* and attachments on September 10, 1999, and personally served the documents upon the
2 defendant, Indian Child Welfare/Child & Family Services [hereinafter ICW/CFS]. The *Summons*
3 informed the defendant of the right to file an *Answer* within twenty (20) days of the issuance of the
4 *Summons* pursuant to the *HCN R. Civ. P. 5(B)*. The *Summons* also cautioned the defendant that a
5 *default judgment* could result from failure to file within the prescribed time period.
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7 The defendant, by and through Attorney Leslie Parker Cohan, filed the *Answer* on September 29,
8 1999, serving such documents on the plaintiff via first class mail. The Court subsequently mailed
9 *Notice(s) of Hearing* on October 5, 1999, informing the parties of the date, time and location of the
10 *Scheduling Conference*. Prior to the *Scheduling Conference*, the defendant filed the October 13, 1999
11 *Defendant's Notice and Motion to Dismiss* and *Defendant's Brief in Support of Motion to Dismiss*. The
12 defendant served such documents on the plaintiff via first class mail. The following parties appeared at
13 the October 21, 1999 *Scheduling Conference*: Attorney Leslie Parker Cohan and Helen Harden.
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15 At the *Conference*, the Court, with the consent of the defendant, extended the ten (10) day
16 response period under *HCN R. Civ. P. 19 (A)*.¹ The Court required the plaintiff to file a *Response* on or
17 before November 1, 1999.² The Court also afforded the plaintiff the ability to argue against the *Motion*
18 *to Dismiss* at a *Motion Hearing* scheduled for November 8, 1999. *Notice(s) of Hearing* mailed on
19 October 21, 1999 reminded the parties of the date, time and location of the *Motion Hearing*.
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21 The Court filed the *Scheduling Order* on October 22, 1999. The defendant, in compliance with
22 the *Scheduling Order*, filed the *Defendant's Preliminary Witness List* on October 29, 1999. The
23 following parties appeared at the November 8, 1999 *Motion Hearing*: Attorney Leslie Parker Cohan.
24 Helen Harden failed to appear, and did not provide the Court with prior notice explaining her non-
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26 ¹ The plaintiff alleged that she had not received the defendant's October 13, 1999 *Defendant's Notice and Motion to*
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1 attendance.

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3 **APPLICABLE LAW**

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5 **HO-CHUNK NATION RULES OF CIVIL PROCEDURE**

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7 **Rule 5. Notice of Service of Process**

8 (B) *Summons*. The *Summons* is the official notice to the party informing him/her that he/she is
9 identified as a party to an action or is being sued, that an *Answer* is due in twenty (20) calendar days
10 (*See, HCN R. Civ. P. 6*) and that a *Default Judgement* may be entered against them if they do not file an
11 *Answer* in the limited 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 shall be served
with a copy of the filed *Complaint* attached.

12 **Rule 19. Filing and Responding to Motions**

13 (A) *Motion*. *Motions* may be filed by a party with any pleading or at any time after their first pleading
14 has been filed. A copy of all written *Motions* shall be delivered or mailed to other parties at least five (5)
15 calendar days before the time specified for a hearing on the *Motion*. A *Response* to a written *Motion*
16 must be filed at least one day before the hearing. If no hearing is scheduled, the *Response* must be filed
with the Court and served on the other parties within ten (10) calendar days of the date the *Motion* was
filed. The party filing the *Motion* must file any *Reply* within three (3) calendar days.

17 **Rule 44. Presence of Parties and Witnesses**

18 (C) *Failure to Appear*. If any party fails to appear at a hearing or trial for which they received proper
19 notice, the case may be postponed or dismissed, a judgement may be entered against the absent party, or
20 the Court may proceed to hold the hearing or trial.

21 **Rule 58. Amendment to or Relief from Judgement or Order**

22 (A) *Relief from Judgement*. A *Motion to Amend* or for relief from judgement, including a request for a
23 new trial shall be made within ten (10) calendar days of the filing of judgement. The *Motion* must be
24 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.

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Dismiss and Defendant's Brief in Support of Motion to Dismiss.

27 ²The plaintiff filed an untimely *Response to Motion to Dismiss and Witness List* on November 8, 1999.

1 (B) Motion for Reconsideration. Upon motion of the Court or by motion of a party made not later than
2 ten (10) calendar days after entry of judgement, the Court may amend its findings or conclusions or
3 make additional findings or conclusions, amending the judgement accordingly. The motion may be
4 made with a motion for a new trial. If the Court amends the judgement, the time for initiating an appeal
5 commences upon entry of the amended judgement. If the Court denies a motion filed under this rule, the
6 time for initiating an appeal from the judgement commences when the Court denies the motion on the
7 record or when an order denying the motion is entered, whichever occurs first. If within thirty (30) days
8 after the entry of judgement, the Court does not decide a motion under this Rule or the judge does not
9 sign an order denying the motion, the motion is considered denied. The time for initiating an appeal
10 from judgement commences in accordance with the Rules of Appellate Procedure.

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

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

20 DECISION

21 Pursuant to *HCNR. Civ. P. 44 (C)*, the defendant moved to dismiss the instant proceeding at the
22 November 8, 1999 *Motion Hearing* on the basis of the plaintiff's failure to attend the *Hearing* after
23 receipt of proper notice. The defendant filed the *Defendant's Notice and Motion to Dismiss* and
24 *Defendant's Brief in Support of Motion to Dismiss* on October 13, 1999. The defendant served the
25 documents on the plaintiff via first class mail, and the plaintiff was in actual receipt of the *Motion to*
26 *Dismiss* on October 21, 1999. The parties coordinated a mutually agreeable *Motion Hearing* date at the
27 October 21, 1999 *Scheduling Conference*. The Court thereby provided verbal notice of the November 8,
1999 *Motion Hearing*. The Court also provided the plaintiff ten (10) days from the *Scheduling*
Conference to file a *Response* to the *Motion to Dismiss*. However, the plaintiff failed to submit a

1 *Response* on or before November 1, 1999, thereby waiving that right. The Court mailed written
2 *Notice(s) of Hearing* to the parties on October 21, 1999, reminding the parties of the date, time and
3 location of the November 8, 1999 *Motion Hearing*. Regardless, the plaintiff failed to appear at the
4 *Motion Hearing*, and provided no prior notice to the Court explaining her non-attendance.

5 **THEREFORE**, the Court dismisses the instant action pursuant to *HCNR. Civ. P. 44 (C)*. The
6 plaintiff retains the right to file a timely post judgment motion with this Court in accordance with *HCN*
7 *R. Civ. P. 58, Amendment to or Relief from Judgement or Order*. Otherwise, all parties have the right to
8 appeal a final judgement or order of the Trial Court. If either party is dissatisfied with the decision of
9 this Court, they may file a *Notice of Appeal* with the Ho-Chunk Supreme Court within thirty (30)
10 calendar days from the date this Court renders such final judgment or order. The *Notice of Appeal* must
11 show service was made upon the opposing party prior to its acceptance for filing by the Clerk of Court.
12 The *Notice of Appeal* must explain the reason the party appealing believes the decision appealed from is
13 in error. All appellate pleadings to the Ho-Chunk Supreme Court must conform with the requirements
14 established by the Ho-Chunk Supreme Court as stated in the Ho-Chunk Nation.

15 **IT IS SO ORDERED** this November 10, 1999, but *nunc pro tunc* November 8, 1999, at the Ho-
16 Chunk Nation Trial Court in Black River Falls, Wisconsin from within the sovereign lands of the Ho-
17 Chunk Nation.

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22 Hon. Todd R. Matha,
23 HCN Associate Trial Judge
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