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

LEIGH STEPHEN, ET AL., **ORDER (Dismissed With Prejudice)**

Plaintiffs,

v.

HO-CHUNK NATION, Case No.: **CV 97-141**

Defendant.

On November 3, 1997, the plaintiffs filed a *Complaint* in the Ho-Chunk Nation [hereinafter HCN] Trial Court requesting equal health benefits for all HCN employees. Unable to respond to the filing, the defendant requested the Court order the plaintiffs to file a more definite statement and allow the defendant leave to answer the amended complaint. Plaintiffs amended their claim, alleging that the preferential health benefits afforded to tribal member employees violate their rights as non-member employees. The plaintiffs allege three causes of action: 1) the ordinances associated with the change in health care benefits were unconstitutional, 2) the change in health care benefits deprived the non-member employees of their property rights; and 3) the ordinance permitting preferential treatment for health care benefits violates their rights to due process and equal protection as guaranteed by the Indian Civil Rights Act of 1968. The Court denied the defendant=s first motion to dismiss the action. The defendant=s renewed the *Motion to Dismiss*, the Court will readdress this issue.

APPLICABLE LAW

HCN R.Civ. P., Rule 44.(c) Presence of Parties and Witnesses.
Failure to Appear. If any party fails to appear at a hearing or trial for which they received proper notice, the case may be postponed or dismissed, a judgement may be entered against the absent party, or the Court may proceed to hold the hearing or trial.

HCN R.Civ. P., Rule 54. Default Judgement.
A *Default Judgement* may be entered against a party who fails to answer if the party was personally served in accordance with Rule 5(c)(1)(a) or 5(c)(1)(b) or if a party fails to appear at a hearing, conference or trial for which he/she was given proper notice. A *Default Judgement* shall not award

1 relief different in kind from, or exceed the amount stated in the request for relief. A *Default Judgement*
2 may be set aside by the Court only upon a timely showing of good cause.

3 HO-CHUNK NATION CONSTITUTION

4 ART. I SEC. 2 Jurisdiction. The jurisdiction of the Ho-Chunk Nation shall extend to all territory set
5 forth in Section 1 of this Article and to any and all persons or activities therein, based upon the inherent
6 sovereign authority of the Nation and the People or upon Federal law.

7 ART. VII SEC. 4 The judicial power of the Ho-Chunk Nation shall be vested in the Judiciary. The
8 Judiciary shall have the power to interpret and apply the Constitution and laws of the Ho-Chunk Nation.

9 ART. VII SEC. 5 The Trial Court shall have original jurisdiction over all cases and controversies, both
10 criminal and civil, in law or in equity, arising under the Constitution, laws, customs and traditions of the
11 Ho-Chunk Nation, including cases in which the Ho-Chunk Nation, or its officials and employees, shall
12 be a party. Any such case or controversy arising within the jurisdiction of the Ho-Chunk Nation shall be
13 filed in Trial Court before it is filed in any other court. This grant of jurisdiction by the General Council
14 shall not be construed to be a waiver of the Nation's sovereign immunity.

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DECISION

Due to the failure of the plaintiff to appear at the *Hearing* on July 29, 1998, the Court has the
discretion to order a default judgment against the plaintiff, pursuant to *HCN R. Civ. P. 44(c)*.
Furthermore, a judgment may be entered against a party who fails to appear at a hearing for which a
party was given proper notice, *HCN R. Civ. P. 54*. Therefore, the Court orders a default judgment in
favor of the defendant and dismisses the claim with prejudice.

The plaintiffs initially filed the claim on November 3, 1997. Counsel for the plaintiffs noticed
the Court of representation and requested to appear *Pro Hac Vice* on April 6, 1998. The claim laid
dormant until May 13, 1998 when the Trial Court convened a *Pre-Trial Hearing*. At that time, the
parties requested more time because the plaintiffs failed to offer a more definite statement and the
plaintiffs were considering petitioning the Court for a class action status, or even moving the claim into
a foreign court, such as State or Federal Court. On June 1, 1998, the plaintiff=s filed an *Amended*
Complaint and the defendant responded on June 22, 1998 and asked the Court to dismiss the action with
prejudice. The plaintiff was served *Hearing Notice* on July 17, 1998 for oral arguments on the
defendant=s move to dismiss the case with prejudice. The plaintiff failed to appear at the hearing.

1 Indeed, the plaintiffs and their counsel failed to notify the Court as to the reason for their failure to
2 appear. This Court, memorialized in an *Order* on July 29, 1998, did not grant the defendant=s motion
3 because action had occurred, i.e, an *Order* after the May 13 *Hearing* and the plaintiff=s *Amended*
4 *Complaint* on June 1, 1998, keeping the action alive within the last six months. The defendant requested
5 this Court to reconsider its motion to dismiss. In turn, the Court gave the defendant a time frame to file
6 a more specific *Motion to Dismiss*.

7 **I. CAN THE PLAINTIFFS MOVE THE CLAIM TO FEDERAL COURT?**

8 This Court reserves the right of exclusive jurisdiction over claims involving the Indian Civil
9 Rights Act [hereinafter ICRA]. The ICRA, as interpreted by *Santa Clara Pueblo v. Martinez*, limited
10 the exercise of tribal self-governance, but is not subject to interpretation by federal courts, aside from
11 the power of habeas corpus. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). This Court also
12 notes that the only exception to a habeas corpus review for an ICRA claim requires the exhaustion of
13 tribal remedies. While a tribal court is obligated, under federal law, to enforce the rights created by the
14 Indian Civil Rights Act, and this Court freely does so, federal courts cannot intervene, under any
15 standard, where tribal courts fulfill their ICRA obligation. Since this Court provided such a forum, the
16 plaintiffs cannot pursue an ICRA claim in federal court. *See White v. Pueblo of San Juan*, 728 F.2d
17 1307 (10th Cir. 1984); *See Akins v. Penobscot Nation*, 130 F.3d 482 (1st Cir. 1997); *See Dillon v.*
18 *Yankton Sioux Tribe Housing Auth.*, 1998 WL 251223 (8th Cir. 1996); *See Barker v. Menominee Nation*
19 *Casino*, 897 F.Supp 389 (E.D.Wis. 1995).

20 Instead, Tribal Courts retain exclusive jurisdiction over any action alleging a violation of the
21 ICRA, with the power to interpret the ICRA in tune with tribal tradition. *See Howlett v. Salish and*
22 *Kootenai Tribes of Flathead Reservation* (9th Cir. 1976); *See Also McCurdy v. Steele*, 353 F.Supp. 629
23 (D.C.Utah 1973). *Martinez* further held that the ICRA did not waive a tribe=s sovereign immunity in
24 federal court. However, this Court considers it the duty of this Court to protect an individual=s equal
25 protection under the Indian Civil Rights Act, as the defense of sovereign immunity fails where any civil

1 rights violations invoke the authority of ICRA, when in tribal court. *See White; See Also Barker; Dillon;*
2 *Works v. Fallon Paiute-Shoshone Tribe*, 14 Indian L. Rep 6078 (InterTr. Ct. App. Nev. 1987); *Dupree v.*
3 *Cheyenne River Housing Auth.*, 16 Indian L. Rep. 6106 (Chy. R. Sx. Ct. App. 1988); *Davis v. Keplin*, 18
4 Indian L. Rep. 6148, Turt. Mtn. Tr. Ct. 1991); Christian Frietz, *Putting Martinez to the Test: Tribal*
5 *Court Disposition of Due Process*, 72 Ind. L. J. 831 (noting that *Martinez* was not an abrogation of
6 judicial oversight, but rather a delegation of that judicial oversight to tribal courts; many tribal courts
7 have not been negligent in enforcing the ICRA, precluding further federal intervention).

8 In short, this Court recognizes the rights of the plaintiffs under the Indian Civil Rights Act,
9 refuses to bar any suit under the Indian Civil Rights Act on the grounds of sovereign immunity, and will
10 remedy any invasion of the plaintiffs= rights the ICRA, as necessary to enforce those rights. Hence, it
11 should be very clear that this Court is not, in any manner, denying anyone, now or in the future, a forum
12 for adjudicating claims under the Indian Civil Rights Act. To the contrary, this Court recognized the
13 plaintiffs= right to bring an ICRA action and notes that the doctrine of sovereign immunity precludes
14 neither liability nor remedy in this Court, where and when a violation of the ICRA is at stake. As long
15 as the Ho-Chunk Nation=s Judicial system protects the civil rights of those persons within its
16 jurisdiction, tribal self-government remains intact and foreign court invasion is impermissible.
17 Therefore, as this Court provides a fair forum and effective remedies, under the ICRA, the plaintiffs
18 have no right to remove the case to a foreign court, for an ICRA claim, and this Court would not grant
19 such a request. Since the claims under the Indian Civil Rights Act are identical, in substance, to the
20 claims alleging the action violated the HCN CONSTITUTION, the same analysis applies. The only
21 noteworthy difference between the rights guaranteed by the Ho-Chunk CONSTITUTION and the ICRA is
22 that the ICRA requires a waiver of sovereign immunity from suit in tribal court, while the Ho-Chunk
23 Constitution immunizes the tribe from suit under the doctrine of sovereign immunity. Again, this Court
24 makes clear that, if the plaintiff=s rights under the ICRA were violated, this Court will remedy any such
25 violation and enforce the plaintiffs ICRA rights, as required by *Martinez*. *See Martinez*, 436 U.S. 49.

1 **II. ARE THERE SUFFICIENT GROUNDS TO DISMISS THE CLAIM?**

2 On August 12, 1998, the defendant renewed his *Motion to Dismiss*, pursuant to *HCN R. Civ. P.*
3 44.(c) and 54. *HCN R. Civ. P.* 44.(c) allows this Court to grant judgment against a party for failing to
4 appear. Although the plaintiffs= counsel was served *Hearing Notice* on July 17, 1998, neither the
5 plaintiffs nor plaintiffs= counsel appeared at the hearing. This Court had no notice as to the reason for
6 their failure to appear. The Court is authorized to grant a *Default Judgment* against a party if a party
7 fails to appear at a hearing for which he was given proper notice.

8 As it is the burden of the plaintiffs to pursue any action brought before the HCN Trial Court in
9 good faith and with due diligence, this Court hereby finds that the plaintiffs in this case have failed to
10 carry that burden. In accordance to *HCN R. Civ. P.* 44.(c) and 54, this Court hereby **dismisses the**
11 **claim with prejudice.**

12 **CONCLUSION**

13 This Court cannot conclude that the health care benefit package violates the plaintiff=s rights to
14 the equal protection of the law or the rights to due process. Considering the failure of the plaintiff to
15 attend the hearing, or even notify the court of counsel=s absence, the Court orders a default judgment
16 against the plaintiffs. *HCN R. Civ. P.* 44.(C) and 54.

17 All parties have the right to appeal a final judgement or order of the Trial Court. If either party is
18 dissatisfied with the decision rendered by this Court, they may file a *Notice of Appeal* with the Ho-
19 Chunk Supreme Court within thirty (30) calendar days. In this instance, the plaintiffs may petition this
20 Court for reconsideration, upon a showing of good cause as to why the default judgment should not
21 stand. Such a request should, of course, be made in a timely fashion.

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23 **IT IS SO ORDERED** on this 26th day of October 1998 at the Ho-Chunk Nation Trial Court in
24 Black River Falls, Wisconsin from within the sovereign lands of the Ho-Chunk Nation.

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1 Hon. Joan Greendeer-Lee
HCN Associate Trial Court Judge

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