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

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**ORDER (Dismissing Without Prejudice)**

**STEWART MILLER,**

Plaintiff,

v.

Case No.: **CV 99-18**

**HO-CHUNK NATION LEGISLATURE,**

Defendant.

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The Ho-Chunk Nation Trial Court and Honorable Joan Greendeer-Lee convened a *Hearing* in this case on March 24, 1999 at the Ho-Chunk Nation Courthouse at Black River Falls, WI. Appearances: Paul Millis for Stewart Miller, John Swimmer for Ho-Chunk Nation Legislature.

**INTRODUCTION**

The plaintiff has filed a *Motion for Temporary Restraining Order* and a *Motion for Expedited Consideration*. Upon being served with two summons, the defendant argued that the Court confused the defendant about the applicable time line for answering the *Complaint*.<sup>1</sup> While *HCN R. Civ. P. 19(B)*, sets no clear deadline for considering a *Motion for Expedited Consideration*, *HCN R. CIV. P. 20* is a general rule and states that hearings on motions may be held in the discretion of the Court. As a result, the Court has generally interpreted these rules as leaving to the discretion of the judge the decision of whether a hearing will be held and if so when.

The plaintiff, Area V Representative Stewart Miller, basically requests that the Ho-Chunk Nation Legislature be ordered to allow Mr. Miller to fulfill his duties as representative. On March

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<sup>1</sup> Initially, the defendant was served the *Complaint* and *Summons* allowing the defendant 20 days to answer the *Complaint*. Upon discovering that the plaintiff also filed a *Motion for Expedited Consideration*, the Court issued a second *Expedited Summons* thereby indicating that the defendant had only 5 days to respond. In fact, the 5 days only applied to the two *Motions*. During the March 24, 1999 *Hearing*, the parties agreed that the defendant has 20 days to answer the *Complaint*.

1 16, 1999, the Ho-Chunk Nation Legislature voted to suspend Mr. Miller, excluding him from  
2 Legislative meetings. The Nation counters, among other things, that the suit is barred by the  
3 doctrine of sovereign immunity. The Court finds for the defendant on the basis of the sovereign  
4 immunity argument.

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## APPLICABLE LAW

7 HCN CONST., ART. XII - Sovereign Immunity

8 Section 1. Immunity of Nation from Suit. The Ho-Chunk Nation shall be immune from suit  
9 except to the extent that the Legislature expressly waives its sovereign immunity, and  
officials or employees of the Ho-Chunk Nation acting within the scope of their duties or  
authority shall be immune from suit.

10 Section 2. Suit Against Officials and Employees. Officials or employees of the Ho-Chunk  
11 Nation who act beyond the scope of their duties or authority shall be subject to suit in equity  
12 only for declaratory and non-monetary injunctive relief in Tribal Court by persons subject to  
its jurisdiction for purposes of enforcing rights and duties established by this constitution or  
other applicable laws.

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14 *Ho-Chunk Nation Rules of Civil Procedure*

15 *Rule 19(B)*. Motions for Expedited Consideration. Any *Motion* which requires action prior to the  
16 normal time period identified in part "A" above shall be accompanied by a *Motion for Expedited*  
*Consideration*.

17 *Rule 20*. A hearing on a *Motion* may be held in the discretion of the court.

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## FINDINGS OF FACT

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- 20 1) That the plaintiff filed this case on March 18, 1999.
- 21 2) The caption of the case indicated that the defendant was the "Ho-Chunk Nation Legislature."

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## DECISION

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25 This Court is bound by the precedent set by the Ho-Chunk Nation's Supreme Court. The  
26 Supreme Court has set down a clear rule with regard to whether the Ho-Chunk Nation Legislature  
27 can be sued.

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In *Chloris A. Lowe, Jr. v. Ho-Chunk Nation, Ho-Chunk Nation Legislature, and Ho-Chunk*

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1 *Nation General Council*, the HCN Supreme Court stated that sovereign immunity bars suits against  
2 the Nation. SU 97-01 at 3 (HCN S. Ct. June 13, 1997). This result can be avoided if the Legislature  
3 expressly waives sovereign immunity. The Supreme Court also stated that the “Ho-Chunk  
4 Legislature is the same as the Ho-Chunk Nation for the purposes of [sovereign immunity].”

5         Later in *Lowe*, the Supreme Court states “It is necessary for the Courts to know which  
6 individuals are being sued so that the trier of fact may access whether or not that specific individual  
7 has acted out side the scope of their authority or not.” *Id.* at 4. The parties cited *Gary Lonetree, Sr.,*  
8 *v. John Holst, as Slot Director, and Ho-Chunk Casino Slot Dept.*, CV 97-127 (HCN Tr. Ct.  
9 September 24, 1998) and *Diane Lone Tree v. Elliott Garvin, et. al.*, CV 97-133 (HCN Tr. Ct.  
10 September 26, 1997). In both instances, the complaints named specific individuals. In the present  
11 case, the only defendant named by the plaintiff is the Ho-Chunk Nation Legislature and no express  
12 waiver of sovereign immunity exists. Therefore, this Court is bound by precedent to dismiss the  
13 plaintiff’s claim. However, the dismissal will be without prejudice because an exception to the rule  
14 may exist. Sovereign immunity does not bar suits against government officials where those officials  
15 act outside the scope of their authority, are named as individual plaintiffs, and the relief sought is  
16 equitable. *See* HCN CONST. ART. XII, Sec. 2. This Court is unable to reach to merits of the  
17 *Temporary Restraining Order.*

18         **IT IS SO ORDERED** this 25th day of March, 1999 from within the sovereign lands of the  
19 Ho-Chunk Nation.

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22 Hon. Joan Greendeer-Lee

23 HCN Associate Trial Court Judge

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