

HO-CHUNK NATION

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I. INTRODUCTION TO THE RULES

Rule 1. Scope of Rules.

CONSTITUTION OF THE HO-CHUNK NATION, ART. VII, sec. 7(B) requires that the Supreme Court establish written rules for the Judiciary. These rules, adopted by the Supreme Court, shall govern the procedure of the Trial Court in all actions and proceedings. The judges of the Trial Court may look to Ho-Chunk customs and traditions for guidance in applying justice and promoting fairness to parties and witnesses.

Rule 2. Liberal Construction

These rules shall be liberally construed to secure a just and speedy determination of every action.

II. BEGINNING AN ACTION

Rule 3. Complaints.

General. A civil action begins by one of the following procedures:

- (A) filing a written *Complaint* with the Clerk of Court and paying the appropriate fees. The *Complaint* shall contain short, plain statements of the grounds upon which the Court's jurisdiction depends, the facts and circumstances giving rise to the action, and a demand for any and all relief that the party is seeking. Relief should include, but is not limited to, the dollar amount that the party is requesting. The *Complaint* must contain the full names and addresses of all parties and any counsel, as well as a telephone number at which the complainant may be contacted. The *Complaint* shall be signed by the filing party or his/her counsel, if any.
- (B) a Ho-Chunk Nation official with the authority to enforce Code provisions issuing and serving a written *Citation* on the defendant, and filing a copy of the *Citation* in the Court within (1) one day of serving the defendant.

1. The *Citation* shall contain:

- a. a written summary by the issuing official describing in short, plain statements the nature of the offense committed, including the time and place as nearly as may be ascertained, the name or description of the person(s) alleged to have

- committed the offense, the section of the Ho-Chunk Nation Code allegedly violated, and the alleged grounds for the Court's jurisdiction;
- b. a statement of the options provided in these Rules for responding to the *Citation* and the procedures necessary to exercise those options (*See HCN R. Civ. P. 6(C)*), including a statement that, if the matter proceeds to *Trial*, the Nation has the burden of proving, by a preponderance of the evidence, that the violation was committed;
 - c. a date and time certain for the defendant to appear before the Court for the *Preliminary Hearing*;
 - d. a statement that failing to appear at the scheduled *Preliminary Hearing* without previously responding and admitting the charge may result in a *Default Judgment* being entered against the defendant (*See HCN R. Civ. P. 54(B)*); and
 - e. a statement that an order imposing a fine or penalty shall be a debt owed to the Nation and may be enforced against the defendant's per capita distributions if the defendant is an enrolled member of the Ho-Chunk Nation.

2. The issuing Ho-Chunk Nation official shall sign the *Citation*.

Rule 4. Filing.

(A) General. No document will be considered filed until the filing fee is paid or a *Motion to Waive Filing Fees* is filed, with the exception of a *Citation*, for which the Court does not require a filing fee. If the *Motion to Waive Filing Fees* is denied, and the filing fees are paid within ten (10) calendar days of the denial, the *Complaint* will be considered filed on the date the *Motion to Waive Filing Fees* was filed.

(B) Fee. The filing fee for a *Complaint* in the Court shall be fifty dollars (\$50.00 U.S.). The fee may be waived at the Court's discretion for good cause.

(C) Motion to Waive Filing Fees. A person asking to file their *Complaint* without paying the fee shall file an *Affidavit* stating that they are the complaining party and that they are requesting an order to proceed without paying the filing fee. The *Motion* shall be accompanied by an *Affidavit* stating the kind and amount of income earned by their household, household expenses, whether they are represented by a civil legal service program and any other supporting information that will help the judge understand their situation. A copy of the *Motion* and *Affidavit* shall be attached to the *Complaint*. In the event that the Court denies the *Motion to Waive Filing Fees*, the moving party shall have ten (10) calendar days from the date of denial, oral or written, in which to pay the filing fees. Should the party pay the fees within the ten-day deadline, the *Complaint* will be considered filed when the *Motion to Waive Filing Fees* was filed. Should the ten day deadline elapse, the Court will consider the *Complaint* as filed on the date the filing fee is received.

(D) Other Costs Waived. A person authorized to file their *Complaint* without paying a filing fee shall also be entitled to have other costs and expenses deferred until the time of settlement or judgment of the action.

Rule 5. Notice of Service of Process.

(A) Definitions.

1. Service of Process-The manner in which parties are informed of the *Complaint* or *Citation* and of the opportunity to *Answer*. Personal service is preferred, however, service by registered U.S. mail (return receipt requested) at the person's home or usual place of business or employment are equally acceptable and effective. Other methods of service may be employed when, in the Court's discretion, they are most likely to result in actual notification of the parties.
2. Summons-The official notice to the party informing him/her that he/she is identified as a party to an action or is being sued, that an *Answer* is due in twenty (20) calendar days (*See HCN R. Civ. P. 6*) and that a *Default Judgment* may be entered against them if they do not file an *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 shall be served with a copy of the filed *Complaint* attached.
 - a. In the event that a *Citation* is issued upon an alleged violator of one or more provisions of the Ho-Chunk Nation Code, the *Citation* shall serve as the *Summons* to command the initial appearance of the defendant at the *Preliminary Hearing*. The issuance and service of the *Citation* upon the defendant by the issuing authorized tribal official negates the Clerk's duty to issue and serve a *Summons* upon the defendant.

(B) General. Any time a party files a document other than the *Complaint* or *Citation* with the Court in relation to a case, the filing party must serve copies on the other parties to the action and provide *Certificate of Service* to the Court. Anytime the Court issues an *Order* or *Judgment* in the context of an active case, the Court must serve copies on all parties. Service of process can be accomplished as outlined in Section (C).

(C) Methods of Service of Process.

1. Personal Service. The required papers are delivered to the party in person by the bailiff, or when authorized by the Court, a law enforcement officer from any jurisdiction, or any other person not a party to the action who is eighteen (18) years of age or older and of suitable discretion.
 - a. Personal Service is required for the initiation of actions in the following:
 - i. Relief requested is over \$5,000.00, excluding the enforcement of foreign child support orders; or

- ii. Children's custody and/or placement is/are subject matter of the proceedings.
 - b. Where personal service is required by this Rule and the Court or the filing party exercises due diligence in unsuccessfully pursuing personal service of process, the filing party may move for permission to pursue service of process by any means provided for in sections (c) through (f). The Court will grant the motion where good cause is shown. The Court may also enter such an order *sua sponte* for good cause shown.
 - c. Service upon a Business, Corporation or Entity. Service may be made upon an agent of a business, corporation or governmental agency.
 - d. Service upon an Individual. The required papers are delivered in person to the party's home or usual and current place of business or employment to someone of suitable age and discretion over fourteen (14) years of age.
 - e. Service by Mail. Service of process may be accomplished by sending the required papers to a party by registered mail with return receipt requested, except in the instances of Rule 5(C)(1)(a)(i) and 5(C)(1)(a)(ii) as stated above.
 - f. Service by Publication. Upon order of the Court for good cause shown, service of process may be accomplished by publishing the contents of the *Summons*. Where service by publication is being made on a member or members of the Ho-Chunk Nation, the contents of the *Summons* may be published in the Hocak Worak or a newspaper of general circulation in the area where the party is most likely to be made aware of the *Summons*. In the case of non-members of the Ho-Chunk Nation, the contents of the *Summons* may not be published in the Hocak Worak but may be published in a newspaper of general circulation in an area where the party is most likely to be made aware of the *Summons*. If publication is sought in the Hocak Worak, publication must be in two (2) consecutive issues. If publication is sought in a paper of general circulation, publication must be at least once per week for four (4) consecutive weeks. Proof of publication must be provided to the Clerk of Court.
- 2. Service of process may be made on a party by any means permitted in sections (a) through (e). Service of process may be made on a party by publication as outlined in section (1)(f), provided that a preponderance of the evidence shows the Court that the party lives in the area where the *Summons* is to be published.
 - 3. After the first successful service of process, the Court and the parties will then perform all written communications through regular mail at that address.

Therefore, each party to an action has an affirmative duty to notify the Court and all other parties, of a change of address within ten (10) calendar days of such change.

(D) Using a Process Server or Bailiff. The Court's bailiff shall be authorized to serve process in any action filed with the Court. In addition, the Court may authorize other persons to serve process when there is an assurance the other person knows how to effect proper service and will make adequate factual inquiries to assure that service is proper.

(E) Return of Service. A return of service shall be endorsed with the name of the person serving and the date, time and place of service. It shall state the manner in which service was made and shall be filed with the Clerk of Court.

(F) Effect of Incomplete or Improper Service. Incomplete or improper service results in a lack of jurisdiction over the person incompletely or improperly served. If a person refuses to accept, service shall be deemed properly performed if the person is informed of the purpose of the service and offered copies of the papers to be served. If a person intentionally avoids service, the Court may also consider service as properly performed. Upon order of the Court for good cause shown, if the Court or the filing party exercises due diligence in unsuccessfully pursuing service of process, whether personal or otherwise, a *Default Judgment* may be entered in accordance with Rule 54.

(G) Time Limit for Service of Process. A *Complaint* must be served and proof of service filed with the Court within one hundred twenty (120) calendar days of filing, or it will be considered dismissed without prejudice by the Court with notice provided to the filer. Upon order of the Court for good cause shown, a sixty (60) calendar day extension may be ordered in the event that the Court or the filer exercises due diligence in unsuccessfully providing service of process.

(H) Emergency Notice. This section governs cases of emergency where the Court may need to conduct a hearing that requires less than forty-eight (48) hours notice to the parties. In cases of emergency, upon motion of a party or *sua sponte*, the Court can provide notice of a hearing less than forty-eight (48) hours prior to the hearing. In cases of emergency, the Court may provide notice by telephone with written confirmation or by telephone and fax at least forty-eight (48) hours in advance. Documentation of the call or fax shall be included in the record.

1. Notice by Telephone-When the parties are notified by telephone, documentation of the telephone call shall be filed in the record. Documentation of the call shall include who made the call, the name of the person to whom the *Notice* was directed, the telephone number called, the date and time of the call, and the name given by the person receiving the call.
2. Notice by Fax-When the parties are notified by fax, a call must be made confirming receipt of the fax. Documentation of the call must be included in the record. Documentation of the call shall include the name of the party

confirming receipt of the fax notice, the time of the confirmation call, and a copy of the time-stamped fax.

(I) Service of *Citations*. Service of a *Citation* is accomplished by the issuing authorized tribal official serving the written *Citation* on the alleged violator via one of the methods of service described above. The issuing official shall indicate certification of service of the *Citation*, or other evidence of delivery satisfactory to the Court, on the face of the *Citation*.

Rule 6. Answering a Complaint or Citation.

(A) Answering a Complaint. A party against whom a *Complaint* has been made shall have twenty (20) calendar days from the date the *Summons* is issued, or from the last date of service by publication, to file an *Answer* with the Clerk of Court. The *Answer* shall use short and plain statements to admit, admit in part, or deny each statement in the *Complaint*, assert any and all claims against other parties arising from the same facts or circumstances as the *Complaint* and state any defenses to the *Complaint*. The *Complaint* must contain the full names of all parties and any counsel. The *Answer* must be signed by the party or his or her counsel and contain their full names and addresses, as well as a telephone number at which they may be contacted. An *Answer* shall be served on other parties and may be served by mail. A *Certificate of Service* shall be filed as required by Rule 5(B).

(B) Motion for More Definite Statement. Should a party against whom a *Complaint* has been made find that they are unable to formulate an *Answer* due to deficiencies in the *Complaint*, they may file a *Motion for More Definite Statement* within the prescribed time to file an *Answer*. The *Motion for More Definite Statement* shall include: a statement of why the *Complaint* is inadequate, and the information the party would like to have to assist him/her in formulating an *Answer*. Should the *Motion for More Definite Statement* be denied, the party shall file an *Answer* within the time limit set by the judge, said time limit not to exceed twenty (20) calendar days.

(C) Answering a Citation.

1. If the defendant named in the *Citation* does not wish to contest the determination that a violation took place as stated in the *Citation*, he/she shall respond by completing the appropriate portion of the *Citation* and submit it to the Court. A check or money order in the amount of the fine or penalty set forth in the *Citation* must be submitted with the response. Payment of the fine or penalty shall constitute an admission of the violation. The response and payment must be received by the Court on or before the *Preliminary Hearing* date set forth in the *Citation*. Upon the defendant's response and admission, the Clerk of Court shall remove the scheduled *Preliminary Hearing* from the Court's calendar and close the matter.
2. If the defendant named in the *Citation* does not respond and pay the fine or penalty set forth in the *Citation* prior to the *Preliminary Hearing*, the

defendant shall appear in Court at the date and time certain indicated on the *Citation* for the *Preliminary Hearing*. At the *Preliminary Hearing* the defendant shall admit or deny the allegations in the *Citation*. If the defendant admits the allegations, the Court may consider any evidence presented by the defendant in imposing an appropriate fine or penalty. If the defendant denies the allegations in the *Citation*, the Court shall schedule a date for *Trial*.

Rule 7. Defenses and Counterclaims.

A defense that alleges new facts excusing the conduct of the defendant if statements in the *Complaint* are true must be affirmatively stated. *Counterclaims* arising from the same facts or circumstances as alleged in the *Complaint* shall be raised in the *Answer*. If a party fails to raise such *Counterclaims*, he/she shall be forever barred from bringing them to the Court in a future action. Other claims against parties in the action may also be raised in the *Answer*. A party may file a response to counterclaims raised in the *Answer*, but is not required to do so.

Rule 8. Requests to Appear before the Traditional Court.

(A) Requests to Transfer Case to Traditional Court. Whenever a party or parties have a right to be heard by the Trial Court, a party may request to appear before the Traditional Court on matters related to custom and tradition of the Ho-Chunk Nation. All parties involved in the dispute must voluntarily consent to appear before the Traditional Court and to be bound by its decision. A party or parties that bring an action before the Trial Court may elect to appear before the Traditional Court at any time.

(B) Requests for Assistance on Matters of Custom and Tradition. Upon a motion of the Court or by a party, the Trial Court may request assistance from the Traditional Court on matters relating to custom and tradition of the Nation, pursuant to the HO-CHUNK NATION JUDICIARY ESTABLISHMENT AND ORGANIZATION ACT, 1 HCC § 1.12.

Rule 9. Class Actions.

(A) General. A class action lawsuit is one in which a small number of representatives represent the legal interests of a large number of people. A judge must certify the call for purposes of the litigation. Such *Motion* shall include: the identity of the class, the basis for the personal and subject matter jurisdiction, the legal issues involved, and why it would not be practical to join each person instead of proceeding with a class action. The opposing party shall have ten (10) calendar days to file a *Response* to this *Motion*. The Court, at its discretion, may then enter an *Order* stating whether or not the class has been certified, or convene a fact-finding hearing prior to entering an *Order*. The Court may conditionally certify the class. At all times during the litigation, the Court may *sua sponte* reconsider its *Order* to certify the class.

(B) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or

defenses of the class and (4) the representative parties will fairly and adequately protect the interests of the class.

(C) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of section (B) are satisfied, and in addition:

1. the prosecution of separate actions by or against individual members would
 - a. create a risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the party opposing the class, or
 - b. as a practical matter, dispose of the interests of the other members not party to the adjudications or substantially impair or impede their ability to protect their interests; or
2. the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
3. the Court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and effective adjudication of the controversy. The matters pertinent to the findings include:
 - a. the interest of members of the class in individually controlling the prosecution or defense of separate actions;
 - b. the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
 - c. the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
 - d. the difficulties likely to be encountered in the management of a class action.

(D) Notice; Judgment: Actions Conducted Partially as Class Actions.

1. In any class action maintained under subsection (C)(3), the Court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that: the Court will exclude the member from the class if the member so requests in writing by a specified date; the judgment, whether favorable or

not, will include all members who do not request exclusion; and any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

2. The judgment in an action maintained as a class action under subsection (C)(1) or (C)(2), whether or not favorable to the class, shall include and describe those whom the Court finds to be members of the class. The judgment in an action maintained as a class action under subsection (C)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subsection (D)(1) was directed and who have not requested exclusion and whom the Court finds to be members of the class.
3. When appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class, and the provisions of this Rule shall then be construed and applied accordingly.

(E) Orders in Conduct of Actions. In the conduct of actions to which this Rule applies, the Court may make appropriate orders: (1) determining the course of proceeding or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise come into the action; (3) imposing conditions on the representative parties of the intervenors; (4) requiring that the pleadings be amended to eliminate allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters.

(F) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the Court directs.

(G) Appeals. The Supreme Court may in its discretion permit an appeal from an order of the Trial Court granting or denying class action certification under this Rule if application to the Supreme Court is made within ten (10) calendar days after entry of the order. An appeal does not stay proceedings in the Trial Court unless the Trial Court or the Supreme Court so orders.

Reserved 10-12

III. GENERAL RULES FOR PLEADING

Rule 13. Form.

All pleadings shall be on 8½ by 11 inch paper (letter size, not legal size) with at least a one (1) inch top margin and a one (1) inch left margin. The information must be typewritten or clearly printed within the margins and double-spaced between the lines. The first page of a pleading shall contain the caption.

Rule 14. Caption.

The first line of the pleading shall identify the Court where the action is filed. The names of parties to the action, with the complaining party placed first on the left side of the first page beginning on the next line. The title of the pleading (*e.g.*, *Complaint*, *Citation*, *Petition*, *Answer*) and the case number shall be placed on the right side of the first page, next to the list of parties. Parties shall always be listed in the same order as in the *Complaint*.

Rule 15. Attachments.

Attachments to pleadings must be specifically identified and referenced to in the pleading and conform to the rules for pleading.

Rule 16. Signature of Parties and Counsel: Special Appearances.

(A) The *Complaint* and *Answer* shall be signed by the party or his/her counsel. The signature means the statements in the pleading are made in good faith, are believed to be true and accurate, and are based upon adequate research or investigation. The Court may impose sanctions if it finds statements in a pleading are not made in good faith, contain intentional misstatements, or are not based upon adequate research or investigation. This includes omitting material facts or law that the person knew, or should have reasonably known, was relevant to the action. Sanctions may include removing issues from consideration in the action, imposing costs and counsel fees, and any other relief that may be appropriate under the circumstances.

(B) Counsel not admitted to practice before the Ho-Chunk Nation Courts may be permitted to appear on behalf of a client by *Special Appearance* in an action. In order to be permitted to make a special appearance, counsel must file a motion to allow the special appearance; a proposed *Order*; and an affidavit containing the oath or affirmation for admission to practice, stating that they are admitted to practice in another state, federal or tribal jurisdiction, and stating they have been in actual practice for two or more years. They must also submit a processing fee for the special appearance of thirty-five dollars (\$35.00 U.S.).

(C) Counsel not admitted to practice before the Ho-Chunk Nation Courts, but seeking to appear on behalf of a federally recognized Indian tribe in a proceeding regarding a petition for guardianship or for child protection over a child who is a member of that tribe, or eligible for membership in that tribe, shall be permitted to appear without paying any fee. Counsel representing an Indian tribe in such a matter shall also be permitted to make their appearance without filing a motion for special appearance, provided that, at that appearance, said counsel states on the record that they are admitted to practice in another state, federal, or tribal jurisdiction; that they have been in actual practice for two or more years, and takes the oath or affirmation for practice. This rule shall not apply to attorneys who appear on behalf of the Ho-Chunk Nation.

Rule 17. Computation of Time.

(A) When counting days to meet time limits under these Rules, computation begins on the day after the filing. For example, if a *Complaint* is filed on the first day of a month and the *Answer* is due in twenty (20) calendar days, then the date the *Answer* is due will be the twenty-first day of the month. If the time limit identified in these rules is less than

seven (7) calendar days, then Saturdays, Sundays and legal holidays are not counted in the time limit. Legal Holidays are defined as those organized by the Ho-Chunk Nation.¹

(B) If a time limit concludes on a weekend, legal holiday, or day when the Court is closed due to inclement weather or other unforeseen circumstances, then the time limit falls on the next working day, subject to a single exception. The preceding provision can neither extend nor expand a statutory statute of limitation regardless of whether such corresponding legislation is referenced elsewhere in these rules. Computation of time originates with the actual Court filing date or Court file stamped date of the document and not the date the notice or the document is received by the party.

Rule 18. Types of Motions.

Motions are requests directed to the Court and must be in writing except for those made in Court. *Motions* based on factual matters shall be supported by affidavits, references to other documents, testimony, exhibits or other material already in the Court record. *Motions* based on legal matters shall contain or be supported by a legal memorandum, which states the issues and legal basis relied on by the moving party. The *Motions* referenced within these Rules shall not be considered exhaustive of the *Motions* available to litigants.

Rule 19. Filing and Responding to Motions.

(A) Filing. *Motions* may be filed by a party with any pleading or at any time after their first pleading has been filed. A copy of all written *Motions* shall be delivered or mailed to other parties at least five (5) calendar days before the time specified for a hearing on the *Motion*. *Motions for Extension of Time* and *More Definite Statement* may be filed before the initial pleading.

(B) Responses. A *Response* to a written *Motion* must be filed at least one (1) 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.

(C) Motions for Expedited Consideration. Any *Motion* that requires action within five (5) calendar days shall be accompanied by a *Motion for Expedited Consideration*. The *Motion for Expedited Consideration* shall state the reasons why the accompanying *Motion* should be heard prior to the normal time period, and what efforts the party has made to resolve the issue with the opposing party prior to filing the *Motion for Expedited Consideration*.

Rule 20. Hearings on Motions.

The Court may grant a hearing on a *Motion* at its own discretion or at the request of a party. A party requesting a hearing must (a) schedule the hearing with the Court and (b) deliver or mail notice of the hearing to other parties at least five (5) calendar days prior to the hearing. If the trial is scheduled to begin within the time allowed for a hearing, all responses shall be made by the time scheduled for commencement of the trial. *Motions* made within fourteen (14) calendar days of trial may be dismissed and costs and fees assessed against the moving party if the Court finds no good cause exists for failing to file the *Motion* more than fourteen (14) calendar days in advance of the trial.

¹ Holidays are determined by the EMPLOYMENT RELATIONS ACT OF 2004, 6 HCC § 5.17.

Rule 21. Amendments to Pleadings.

Parties may amend a *Complaint* or *Answer* one time without leave of the Court prior to the filing of a responsive pleading, or if no responsive pleading is permitted, at any time within twenty (20) days of the original filing date. Subsequent amendments to *Complaints* or *Answers* may only be made upon leave of the Court and a showing of good cause, or with the consent of the opposing party. All amendments to the *Complaint* or *Answer* must be filed at least thirty (30) calendar days prior to trial or as otherwise directed by the Court. When an *Amended Complaint* or *Answer* is filed, the opposing party shall have ten (10) calendar days, or the time remaining in their original response period, whichever is greater, in which to file an amended responsive pleading.

Reserved 22.

IV. PARTIES TO AN ACTION

Rule 23. Naming Parties.

Every action shall be brought in the name of the real party in interest, however, a guardian, trustee or other person in a fiduciary position may sue in his/her own name without joining the party for whose benefit the action is maintained. Matters with minors and incompetents as parties shall be filed using only initials and date(s) of birth.

Rule 24. Substituting, Intervening and Joining Parties.

If a party becomes incompetent or transfers his/her interest or separates from some official capacity, another party may be substituted as justice requires. A party with an interest in an action may intervene and be treated in all respects as a named party to the action. To the greatest extent possible, all persons with an interest will be joined in an action if relief cannot be accorded among the current parties without that person, or the absent person's ability to protect their interests is impeded unless they are a party. Failure to join a party over whom the Court has no jurisdiction will not require dismissal of the action unless it would be impossible to reach a just result without the absent party. The Court will determine only the rights or liabilities of those who are a party to the action or eligible for relief as part of a class certified under Rule 9.

Rule 25. Death of a Party.

An action may continue following the death of a party with the rights and liabilities continuing in the deceased's successor in interest.

Rule 26. Appointing Guardian Ad Litem.

The Court may appoint a *Guardian ad litem* to represent the interests of a minor or incompetent person who is a party in an action. The *Guardian ad litem* is not a party to the action, but is responsible for independently investigating and advising the Court on the best interests of the minor or incompetent person.

Rule 27. The Nation as a Party.

(A) Actions involving Minor or Adult Incompetents. When the Nation files an action concerning a minor or a legally incompetent adult, the *Complaint* will identify the following as parties: 1) matters with minors as parties shall be filed using only initials

and date(s) of birth or matters with incompetents as parties may be filed using their actual names; 2) the parents or legal guardians by names and residence(s); and 3) any other person having physical custody of the child/children by name, relationship to the child/children and residence.

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

Rule 28. Joining, Consolidating and Separating Claims.

(A) Joinder of Claims. Each complaining party in a case must join all claims arising from the same set of circumstances in one action. The complaining party may join all claims against one defendant in one action even if the claims arise from a different set of circumstances.

(B) Consolidation of Claims. The Court, on its own *Motion* or upon *Motion* of a party, may order a joint hearing or trial of any and all claims in an action and of multiple actions to avoid unnecessary costs or delay.

(C) Separation of Claims. The Court, on its own *Motion* or upon *Motion* of a party, may separate claims in an action for the convenience of the Court and to avoid prejudice or delay.

Reserved 29-30

V. DISCOVERY

Introduction. Discovery is the process used among parties to uncover evidence relevant to the action, including the identity of persons having knowledge of facts. Discovery may take place before an action has been filed and may be used for the purpose of preserving testimony or other evidence that might otherwise be unavailable at the time of trial. Discovery may include written interrogatories, depositions, and requests for the production of documents and things. It is the policy of the Court to favor open discovery of relevant material as a way of fostering full knowledge of the facts relevant to a case by all parties. It is the intent of these rules that reasonably open discovery will encourage settlement, promote fairness and further justice.

Rule 31. Required Disclosures.

(A) Disclosures. Except to the extent otherwise stipulated or directed by order, a party shall, without waiting for a discovery request, provide to other parties:

1. the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information;
2. a copy or a description by category and location, of all documents, data, complaints, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularly in the pleadings;
3. a computation of any category of damages claimed by the disclosing party, made available for inspection, and copying the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and
4. for inspection and copying any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment that may be entered in an action or to indemnify or reimburse for payments made to satisfy the judgment.
5. judicial notice shall be taken of and required disclosures shall be made of official documents, public documents, documents subject to public inspection, documents and materials of non-executive session, governmental minutes and recordings of a governmental body pursuant to the OPEN MEETINGS ACT, 2 HCC § 2.

(B) Time of Disclosure. Unless otherwise stipulated or directed by the Court, these disclosures shall be received by the Court within ten (10) calendar days after the scheduling conference. A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party had not made its disclosures.

(C) Authority to compel. The Court shall have *sua sponte* authority to compel disclosure or production of discoverable documents, records and other materials, and to compel parties to answer or respond upon the Court's own motion.

Rule 32. Interrogatories.

A party may submit interrogatories (written questions) to other parties. The requesting party must receive the responding party's written answers, under oath, within twenty-five

(25) calendar days of receiving them. The responding party must include facts he/she knows, facts available to him/her, and give opinions, if requested.

Rule 33. Depositions.

A party may take a deposition (testimony, under oath and recorded) of a deponent (another party or a witness) after giving at least five (5) calendar days notice of the time and place where the deposition will occur to all parties and the deponent. All parties may ask the deponent questions. Depositions may take place by telephone and be recorded stenographically, by tape recording or by other means if the parties agree or the Court so orders.

Rule 34. Requests for Documents and Things.

A party may request another party to produce any documents or things within his/her possession or control for the purpose of inspection and/or copying. This includes permission to enter onto land for testing. The responding party must make the documents or things available to the requesting party within twenty-five (25) calendar days of the date of receiving the request.

Rule 35. Ongoing Obligation.

There is an ongoing obligation by any party subject to a discovery request, which continues up to and through the trial, to supplement any response previously answered if new or freshly discovered material previously unavailable is discovered or revealed to them.

Rule 36. Protective Orders.

For good cause, the Court on its own motion or at the request of any party or witness, may enter an *Order* to protect a party or other person from undue annoyance, embarrassment, oppression or undue burden or expense.

Rule 37. Non-Compliance.

If a party fails to appear or respond as requested under these rules, a party may request or the Court may *sua sponte* issue an *Order* requiring a response and imposing costs, attorney's fees, and sanctions as justice requires in order to secure compliance.

Rule 38. Power to Compel.

The Court retains the inherent authority to compel disclosure of material it has cause to believe is relevant to the matter before it.

Reserved 39-41.

VI. TRIALS

Rule 42. Scheduling Conference.

Scheduling Order. The Court may enter a scheduling order on the Court's own motion or on the motion of a party. The *Scheduling Order* may be modified by motion of a party upon showing of good cause or by leave of the Court.

Rule 43. Pre-Trial Conference.

The Court may hold conferences with the parties, or their counsel when the party is represented. Notice of the time, place and purposes must be given far enough in advance to allow all parties to attend. The purposes of a conference may be to foster a resolution of the action without trial; to schedule discovery, motions and hearings to expedite the action; and to formulate a plan for the trial, identifying witnesses to be called, evidence to be presented, unresolved factual and legal issues, and for discussion of any other matter among the parties. A party may be sanctioned for failing to attend a conference if they received at least ten (10) calendar days notice and do not show good cause for failing to attend.

Rule 44. Presence of Parties and Witnesses.

(A) Subpoenas. *Subpoenas* may be used to cause a witness to appear and give testimony. If a party wishes to have a subpoena issued by the Court, he/she shall furnish a properly prepared subpoena, including information necessary for service of process, at least ten (10) calendar days before trial. Service will be completed at least three (3) calendar days prior to hearing or trial. When service has been completed, the Court shall mail proof of service to all parties. When service of the subpoena will not be through the Court, the requesting party shall present the properly prepared subpoena to the Court for signature in time to ensure proper service before the hearing or trial and shall return proof of service to the Court prior to the trial. If a party does not timely request a subpoena, he/she shall not be entitled to a postponement because of the absence of the witness. If the subpoena has been timely issued, the Court may, in its discretion, postpone the hearing or trial. A person who fails to appear after being subpoenaed may be held in contempt of court.

(B) Notice. At all times, the parties shall use diligent efforts to notify witnesses subpoenaed to appear in sufficient time so that they might make arrangements needed to appear.

(C) 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 judgment may be entered against the absent party, or the Court may proceed to hold the hearing or trial.

Rule 45. Postponement.

The Court may postpone a trial upon the request of a party, upon agreement of all parties, or at the Court's discretion for good cause and on such terms as the Court deems just.

Rule 46. Jury Trial.

Reserved. Rules and Procedures governing trial are in development.

Comment: The Bill of Rights of the CONSTITUTION OF THE HO-CHUNK NATION, ART. X, sec. 1(a)(10) permits trial by jury of no less than six (6) persons for offenses punishable by imprisonment.

Rule 47. Consolidation and Separation of Action.

(A) **Consolidation.** When actions involving a common question of law or fact are pending before the Court, the Court may order a joint hearing or trial of any or all the matters in issue in the actions; the Court may order all the actions consolidated; and the Court may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(B) **Separation.** The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to judicial economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, or third-party claims, or issues.

Reserved 48-52.

VII. JUDGMENTS AND ORDERS

Rule 53. Relief Available.

Except in a *Default Judgment*, the Court is not limited to the relief requested in the pleading and may give any relief it deems appropriate. The Court may only order such relief to the extent allowed by the Ho-Chunk Nation enactments. The Court may order any party to pay costs, including attorney's fees, filing fees, costs of service and discovery, jury and witness costs. Findings of fact and conclusions of law shall be made by the Court in support of all final judgments.

Rule 54. Default Judgment.

(A) **General.** A *Default Judgment* may be entered against a party who fails to answer if the party was personally served in accordance with Rule 5(C)(1)(a)(i) or 5(C)(1)(a)(ii) or informed through other means of judicially authorized service such as publication or if a party fails to appear at a hearing, conference or trial for which he/she was given proper notice. A *Default Judgment* shall not award relief different in kind from, or exceed the amount stated in the request for relief. A *Default Judgment* may be set aside by the Court only upon a timely showing of good cause.

(B) **Citations.** If a defendant who has been properly issued and served a *Citation* fails to appear on the date and time certain stated in the *Citation* for the *Preliminary Hearing* or otherwise pay the fine or penalty in accordance with these Rules, the Court shall enter a *Default Judgment* against the defendant.

1. If a *Default Judgment* is entered against the defendant, the Court must enter an order stating that the defendant must pay the judgment by a date certain, which shall not be less than fourteen (14) days after the date of the judgment. The order shall state that the judgment shall constitute a debt to the Nation and that failure to pay the judgment may result in proceedings for contempt.
2. If a defendant fails to pay the fine or penalty within the time allowed by the order for a *Default Judgment*, the Court shall enforce the judgment against

the defendant's per capita distribution as a debt to the Nation if the defendant is an enrolled member of the Nation, and/or find the defendant in contempt.

Rule 55. Summary Judgment.

Any time after the date an *Answer* is due or filed, a party may file a *Motion for Summary Judgment* on any or all of the issues presented in the action. The Court will render summary judgment in favor of the moving party if there is no genuine issue as to material fact and the moving party is entitled to judgment as a matter of law.

Rule 56. Dismissal of Action

(A) Voluntary Dismissal. A plaintiff may file a *Notice of Dismissal* any time prior to the filing of an *Answer*. The *Complaint* will be dismissed without prejudice.

(B) Involuntary Dismissal. After an *Answer* has been filed, a party must file a *Motion to Dismiss*. A *Motion to Dismiss* will be granted at the discretion of the Court. A *Motion to Dismiss* may be granted for lack of jurisdiction; if there has been no order or other action in a case for six (6) months; if a party substantially fails to comply with these rules; if a party substantially fails to comply with an order of the Court; if a party fails to establish the right to relief following presentation of all evidence up to and including trial; or, if the plaintiff so requests.

(C) *Sua Sponte* Dismissal. The Court, on its own motion, may move to dismiss an action if there has been no filing or other activity on the record for six (6) months, if a party substantially fails to comply with these rules, or if a party substantially fails to comply with an order of the Court. The Court shall give written *Notice* to all parties that the action will be dismissed after thirty (30) calendar days unless good cause is shown in writing prior to the end of the thirty (30) day period. No further notice is necessary for the Court to enter a dismissal.

Rule 57. Entry and Filing of Judgment.

All judgments must be signed by the presiding Judge. All signed judgments shall be deemed complete and entered for all purposes after the signed judgment is filed with the Clerk. A copy of the entered judgment shall be mailed to each party within two (2) calendar days of filing. The time for taking an appeal shall begin running from the date the judgment is filed with the Clerk. Interest on a money judgment shall accrue from the date the judgment is filed with the Clerk at a set rate by the Legislature or at five percent (5%) per year if no rate is set.

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

(A) Relief for Judgment. A *Motion to Amend* or for relief from judgment, including a request for a new trial shall be made within ten (10) calendar days of the filing of the judgment. The *Motion* must be based on an error or irregularity that prevented a party from receiving a fair trial or a substantial legal error that affected the outcome of the action.

(B) Motion for Reconsideration. Upon motion of the Court or by motion of a party made not later than ten (10) calendar days after entry of judgment, the Court may amend its findings or conclusions or make additional findings or conclusions, amending the judgment accordingly. The motion may be made with a motion for a new trial. If the Court amends the judgment, the time for initiating an appeal commences upon entry of the amended judgment. If the Court denies a motion filed under this Rule, the time for initiating an appeal from the judgment commences when the Court denies the motion on the record or when an order denying the motion is entered, whichever occurs first. If within thirty (30) days after the filing of such motion, and the Court does not decide a motion under this Rule 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*.

- A *Motion for Reconsideration* may be filed by a party within ten (10) business days after receipt of judgment in cases involving the HOCAK NATION CHILDREN AND FAMILY ACT.

(C) Motion to Modify. After the time period in which to file a *Motion to Amend* or a *Motion for Reconsideration* has elapsed, a party may file a *Motion to Modify* with the Court. The *Motion* must be based upon new information that has come to the party's attention that, if true, could have the effect of altering or modifying the judgment. Upon such motion, the Court may modify the judgment accordingly. If the Court modifies the judgment, the time for initiating an appeal commences upon entry of the modified judgment. If the Court denies a motion filed under this Rule, the time for initiating an appeal from the judgment commences when the Court denies the motion on the record or when an order denying the 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 Re-issuance 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 that could not reasonably have been discovered in time to request a new trial; 2) fraud, misrepresentation or serious misconduct of another party to the action; 3) good cause if the requesting party was not personally served in accordance with Rule 5(c)(1)(a)(i) or (ii), did not 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.

Rule 59. Satisfaction of Judgment.

(A) Complete. The person owing money under a judgment must file proof of satisfaction of judgment with the Court stating the amount and date of payment and whether the

payment was a full or partial satisfaction of the judgment. The satisfaction must be signed by the person who was owed the money.

(B) Partial. A partially satisfied or unsatisfied judgment continues in effect for eight (8) years or until satisfied. The judgment may be renewed for additional eight (8) year periods upon request by any party.

**Rule 60. Emergency Order, Temporary Restraining Order and Ex Parte
Temporary Restraining Order.**

(A) Emergency Order. The Court may enter an *Emergency Order* without a hearing if it appears from the *Complaint*, affidavits and sworn testimony that irreparable harm will result without the *Order*. The *Order* will expire in thirty (30) calendar days unless extended by the Court for good cause. A hearing on the matters contained in the *Order* will be held prior to its expiration. The removal of a child from its residence by the Department of Social Services or equivalent agency and the imminent destruction of records or property essential to the case are examples of matters that may require an *Emergency Order*.

(B) Temporary Restraining Order. When it appears from a party's pleading that a party is entitled to judgment and any part thereof consists in restraining some act, the commission or continuance of which during the litigation would injure the party, or when during the litigation it shall appear that a party is doing or threatens or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act.

(C) Procedure. The application for an injunction or restraining order made to the Court shall not be heard except upon notice to such other persons as may be defendants in the action, unless the Court is of the opinion that irreparable loss or damage will result to the applicant unless a temporary restraining order is granted.

(D) Time. The Court may grant such temporary restraining order at any time before a hearing and determination of the application for an interlocutory injunction. However, such temporary restraining order shall be effective only for thirty (30) calendar days unless extended after notice and hearing thereon, or upon written consent of the parties or their attorneys.

Rule 61. Appeals.

Any final *Judgment* or *Order* of the Trial Court may be appealed to the Supreme Court. The *Appeal* must comply with the *Rules of Appellate Procedure*, specifically *Rules of Appellate Procedure*, Rule 7, Right of Appeal. All subsequent actions of a final *Judgment* or Trial Court *Order* must follow the *Rules of Appellate Procedure*.

Rule 62. Judgment on the Pleadings.

After the pleadings are closed, but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings,

matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 55, and all parties shall be given reasonable opportunity to present all material pertinent to such a motion by Rule 55.

Rule 63. Judicial Review of Administrative Adjudication.

(A) Any person aggrieved by a final agency decision may request that the Ho-Chunk Nation Trial Court review such decision by filing a *Petition for Administrative Review* with the Court within the statutorily delineated timeframe, or within thirty (30) calendar days of the final decision if the applicable statute does not include a filing deadline.

(B) The *Petition for Administrative Review* shall identify the petitioner making the request by name and address. The *Petition for Administrative Review* must also contain a concise statement of the basis for the review, i.e., reason or grounds for the appeal, including a request to supplement the evidentiary record pursuant to *HCN R. Civ. P.* 63(D)(1)(a-b), if applicable. The statement should include the complete procedural history of the proceedings below. The petitioner must attach a copy of the final administrative decision to the *Petition for Administrative Review*.

(C) The Court shall serve copies of the *Petition for Administrative Review* upon all parties to the action, and the relevant board, commission, or governmental agency.

(D) The relevant board, commission, or governmental agency must transmit the administrative record to the Court within fifteen (15) calendar days after the filing of the *Petition for Administrative Review*. The administrative record shall constitute the sole evidentiary record for judicial review of the agency decision, unless the petitioner avails him or herself of the following exception:

1. The petitioner may request an opportunity to supplement the evidentiary record within an administrative appeal, provided that the petitioner demonstrates that the administrative record:
 - a. excludes relevant evidence as defined by the *Federal Rules of Evidence*, Rule 401; or
 - b. excludes evidence that could not reasonably have been discovered prior to the Administrative Review Process.

(E) Within thirty (30) calendar days of filing the *Petition for Administrative Review*, the petitioner shall file a written brief, an *Initial Brief*, unless the petitioner has sought an evidentiary modification pursuant to *HCN R. Civ. P.* 63(D)(1)(a-b). The respondent shall have thirty (30) calendar days after filing of the brief within which to file a *Response Brief*. After filing of respondent's *Response Brief*, the petitioner may file the *Reply Brief* within ten (10) calendar days.

1. If the petitioner alleges one of the conditions stated in *HCN R. Civ. P.* 63(D)(1)(a-b), then the Court shall convene a hearing to determine whether to include supplemental evidence in the administrative record. The Court shall

announce the briefing schedule, which shall resemble the schedule set forth in *HCN R. Civ. P.* 63(E), in a written decision after the hearing.

(F) The administrative record shall consist of all evidence presented to the agency, including but not limited to:

1. admitted exhibits, including an explanation for refusing any offered exhibits,
2. a transcript of the proceedings, which may be in digital or other electronically recorded format, sufficiently clear so that the Court may determine what transpired in the proceedings,
3. any other material relied on by the agency in making its determination: and/or
4. any supplemental evidence received pursuant to *HCN R. Civ. P.* 63(D)(1)(a-b).

(G) At the discretion of the Court, the Court may require an oral argument. The Court shall decide the order of the presentation, the length of time each party is permitted for their presentation, the issues to be addressed in oral argument, and such other matters as may be necessary. An order entitled, *Notice of Oral Argument*, shall include all such matters and shall be served on all parties at least ten (10) calendar days prior to the date set for argument.

(H) The Court shall decide all cases upon the administrative record, briefs, memoranda and statements filed plus the oral argument, if heard.

(I) The Court shall not set aside or modify any agency decision, unless it finds that the decision was arbitrary and capricious, unsupported by substantial evidence or contrary to law.

(J) The Court maintains discretion to grant continuances upon a showing of good cause.

(K) The Court shall issue a final written decision within ninety (90) calendar days after the conclusion of oral argument. If no oral argument is held, the timeframe for issuance of a decision begins after the expiration of time to file a *Response Brief* or *Reply Brief*, whichever is longer.

(L) Either party may appeal the Trial Court's decision to the Supreme Court.

Reserved 64-67.

VII. ENFORCEMENT AND REMEDIES

Rule 68. Stays Pending Appeal.

The Court may delay execution of the final *Order* or *Judgment* during the appeal on its own motion or on the request of either party if a bond is given or other conditions prescribed by the Court are met that protect the interests of the party in whose favor the final *Judgment* or *Order* is entered.

Rule 69. Who is Bound by Judgment.

All parties and interested persons who are within the jurisdiction of the Court and who had notice of the case pending before the Court are bound by the judgment whether or not they appeared.

Rule 70. Judgments in Traditional Court Resolution Proceeding.

Selection of the Traditional Court by a litigant forecloses the use of the Trial Court. All decisions of the Traditional Court will be summarized in writing by the Trial Judge. The decisions of the Traditional Court will not be appealable. The party selecting resolution by the Traditional Court must do so in writing and sign an acknowledgment that they understand that they will not be able to appeal the judgment to the Trial Court or Supreme Court. All parties appearing before the Traditional Court must appear voluntarily and consent in writing to the jurisdiction of the Traditional Court. The decisions of the Traditional Court apply only to the parties involved in that dispute, and will not be given any legal authority beyond that provided by the CONSTITUTION OF THE HO-CHUNK NATION.

Rule 71. Execution of Judgment.

(A) Judgment. *Judgments* may be executed through a writ of execution on the property of a person against whom the money *Judgment* is entered. The party requests an execution of the judgment by filing a *Motion* and documenting the *Judgment* has not been fully satisfied.

(B) Hearing. When such a *Motion* is filed, the Court shall order the person owing the money to appear and *Answer* under oath describing his/her money, property, and income. Failure to appear may be deemed contempt of court and the Court may proceed with the execution of judgment without the person. Money and property may be seized by the Court and held to satisfy the *Judgment*. Any money, and property seized shall be held for thirty (30) calendar days before being turned over to the party to whom the money is owed. The Court, in its discretion, may release the money or property in less than thirty (30) days, if the release will not cause harm to either party.

(C) Satisfaction of Judgment. The person owing money may redeem whatever is seized by paying to the Court the full amount of the *Judgment*, plus interest and any costs to the other parties and the Court in executing the judgment. This includes the costs of storing and maintaining whatever is seized.

Rule 72. Garnishments and or Liens.

Garnishment/lien is a proceeding to obtain satisfaction of a judgment for money out of property or money in the possession or control of a third party. A judgment may be collected through a writ of execution on the income or other funds being held by someone other than the person owing the debt. The person requesting execution of a judgment shall ask the Court to serve the *Writ of Execution* and an order directed to the third party that requires them to turn over property or money in their possession or control belonging to the person owing the debt. The property or money shall be turned over to the Court and held as under the above Rule on execution of judgments.

Rule 73. Full Faith and Credit and Comity.

(A) Full Faith and Credit and Comity. Unless otherwise enacted by the Legislature, this Court will extend full faith and credit to the judicial records, orders and judgments of the

Courts of the State of Wisconsin, the Courts of other states, Federal Courts and other Tribal Courts to the same extent the other jurisdictions extend full faith and credit to the judicial records, orders, and judgments of this Court. In determining whether to extend full faith and credit, this Court will review the judicial record, order or judgment in question to assure that

- the foreign Court has jurisdiction over the subject matter and over the persons named;
- any judgment or order is final under the laws of the rendering Court;
- any judgment or order is on the merits and procured without fraud, duress or coercion; and
- any judgment or order was procured in compliance with the procedures required by the rendering court.

(B) Validity of Foreign Judgment or Order. No lien or attachment based on a *Judgment* or *Order* rendered by a court of another jurisdiction will be filed, docketed or recorded in this Court unless it has been given full faith and credit by the Ho-Chunk Nation Trial Court.

IX. SPECIAL RULES FOR ELECTION CHALLENGES

Rule 74. Application and Purpose; Sanctions; Definitions.

(A) Application. These *Special Rules for Election Challenges* shall apply to a proceeding where a party (or parties) seek(s) to challenge an election. Unless otherwise provided for in the *Special Rules for Election Challenges*, the *Rules of Civil Procedure* and the *Rules of Appellate Procedure* shall apply.

(B) Purpose. The *Special Rules for Election Challenges* conform to the special constitutional requirements and allow the Trial Judge to fairly hear and decide the case within the set time limits.

(C) Sanctions. Any failure by a party to comply with these Rules may result in sanctions. The Judge may order sanctions at the discretion of the Court. Sanctions may include finding against an absent party on the matter for which a hearing was held or dismissal of the case with prejudice.

(D) Definitions. The following definitions shall apply to the *Special Rules for Election Challenges*:

1. “Days” shall mean calendar days.
2. “Election” shall mean any general election or special election held by the authority of the CONSTITUTION OF THE HO-CHUNK NATION, ART. VIII.

Rule 75. Initiating an Election Challenge; Fees, Time; Service of Process; Required Attached and Information.

(A) Initiating an Election Challenge. A party may initiate an action in the Court by filing the required *Complaint* along with a fifty-dollar (\$50.00 U.S.) filing fee.

(B) Time. The action must be initiated within ten (10) days after the Election Board certifies the election results.

(C) Service of Process. The *Complaint*, *Summons* and any *Notice* of a hearing shall be made on the Attorney General of the Ho-Chunk Nation and on the Chair Person of the Election Board within two (2) calendar days of the date of filing in the Court and shall be accompanied by overnight, certified mail. The filing party shall pay such overnight, certified mailing costs. Service may be accomplished by facsimile transmission with leave of the Court and if such service will not prejudice any party. Should a party other than the Ho-Chunk Nation and Election Board be named, service of process shall be accompanied by overnight, certified mail. The filing party shall pay such overnight, certified mailing costs.

(D) Required Attachments and Information. The plaintiff shall attach to the *Complaint* a list of contact information for the purposes of service of process. The list shall include the day telephone number, evening telephone number and address of all named plaintiffs and their counsel, if retained. Those parties not having access to a phone or fax are excused from providing a phone number or fax number, but must provide the Court with a reliable alternative means of contacting them.

(E) Appeal of Candidate Certification. Pursuant to the ELECTION ORDINANCE, 2 HCC § 6.6f(2), a candidate may appeal a determination of the Election Board not to certify or accept them as a candidate to the Court within five (5) days of the issuance of such decision. The candidate shall initiate the appeal by filing the required *Complaint* as stated in *HCN R. Civ. P. 75(A)*, which shall prompt service of process in the manner articulated in *HCN R. Civ. P. 75(C)*. Thereafter, the appellee, Election Board, shall file an *Answer* to the *Complaint* within two (2) calendar days of the filing of the *Complaint* in the Court, inclusive of weekends and recognized holidays, and comply with the relevant requirements set forth in *HCN R. Civ. P. 76(B)*. The appellee shall serve the *Answer* upon the appellant in accordance with *HCN R. Civ. P. 77*. Thereafter, the Court may convene a hearing in which event it shall provide notice in accordance with *HCN R. Civ.*

Rule 76. Answering an Election Challenge.

(A) The defendant shall file an *Answer* to the *Complaint* within five (5) calendar days of the filing of the *Complaint* in the Court.

(B) The Election Board, when filing its *Answer*, shall also file:

1. copies of any minutes of any relevant Election Board meetings;
2. copies of any relevant written rules regarding the conduct of the Election Board;
3. copies of any relevant written rules regarding the conduct of employees acting under the direction of the Election Board; and any other written documents relating to the disputed election.

Rule 77. Serving the *Answer*.

(A) On or before the day the *Answer* is filed, the defendants shall serve copies of the

Answer and all related documents on all opposing parties or their counsel. A *Certificate of Service* shall be completed and attached to the *Answer*.

(B) All responsive pleadings must be served upon the opposing party or parties required by *HCN R. Civ. P. 5(B)*.

Rule 78. Hearings, Notice of Hearings; Motion to Appear by Telephone.

(A) Hearing. The Court may hold as many hearings as necessary to expedite the proceeding, including pre-trial hearings, status conferences, show cause hearings and evidentiary hearings.

(B) Notice of Hearings. Notice of any hearings shall be in writing and served at least twenty-four (24) hours prior to the hearing. Parties may waive the twenty-four (24) hour notice and may accept services by facsimile.

(C) Motion to Appear by Telephone. Parties may participate by telephone, at their own expense, if the Court grants the motion to appear by telephone. The Court must find that a telephone appearance will not prejudice any party. Motions to appear by telephone must be in writing and made expeditiously to the Court.

Rule 79. Discovery.

All documents and things, answers to interrogatories, and responses to requests for admission requested during discovery shall be provided to the requesting party within three (3) calendar days unless otherwise ordered by the Court. Depositions will be conducted as the parties agree or as ordered by the Court.

Rule 80. Appeals.

(A) Appeals. The final judgment of the Trial Court is appealable to the Supreme Court. The Appellant and/or Appellee may obtain a copy of the trial transcript at their own expense.

1. The *Notice of Appeal* shall be filed and served within three (3) calendar days of entry of judgment.
2. The *Notice of Appeal* must state a basis for appeal based upon the laws and/or CONSTITUTION OF THE HO-CHUNK NATION.
3. A *Certificate of Service* and fifty dollar (\$50.00 U.S.) filing fee must accompany the *Notice of Appeal*.

(B) Filing of Briefs. A *Certificate of Service* shall accompany all briefs.

1. *Appellant's Brief*. The appellant's brief shall be filed and served within five (5) calendar days of the *Notice of Appeal*.
2. *Appellee's Brief*. The appellee's responding brief shall be filed within five (5) calendar days of service of appellant's brief.
3. Further briefs may be permitted at the discretion of the Chief Justice of the Supreme Court.

(C) Oral Arguments. Oral arguments may be held at the discretion of the Chief Justice of the Supreme Court. Requests for oral argument should be made with the *Notice of Appeal* for the *Appellant's Brief* or with the *Appellee's Response Brief*.

(D) Written decisions. The Supreme Court shall hear and issue a written decision on the appeal within thirty (30) calendar days of the *Notice of Appeal*. The thirty (30) day requirement does toll, if and when, a recusal occurs and an appointment of a Justice *Pro Tempore* is sought from the Legislature.

X. GENERAL PROVISIONS

Rule 81. Forms.

Sample forms are available through the Trial Court and are intended to indicate the simplicity and brevity of statements contemplated by these Rules.

Rule 82. Title.

These Rules may be known and cited as the *Ho-Chunk Nation Rules of Civil Procedure*, and shall be abbreviated *HCN R. Civ. P.*

Rule 83. Effective Date.

These Rules will take effect on the first Court workday after the date these Rules are adopted by the Supreme Court. They will govern all proceedings brought on or after that date. They will govern all proceedings pending on that date unless, in the discretion of the Trial Court, their application would not be feasible or would work injustice to the parties in the proceeding. In that event, the Trial Court shall devise procedures as are necessary for a full, fair and expeditious resolution of the proceeding.

Rule 84. Business Hours.

The Court is open from 8:00 a.m. to 4:30 p.m. Monday through Friday, with the exception of legal holidays, closings due to inclement weather, or other unforeseen circumstances. For a document to be timely filed, it must be received and stamped by the Clerk of Court no later than 4:30 p.m. on or before the due date.

Rules of Civil Procedure; Adopted 5/11/96, Restated and Revised 02/22/97 by the Ho-Chunk Nation Supreme Court at the Ho-Chunk Nation Court Building in Black River Falls, Wisconsin from within the sovereign lands of the Ho-Chunk Nation. Rule 5(C)(6) amended 6/5/99, amended 1/31/02, amended 4/13/02, amended 10/29/05, amended 2/11/2006, amended 7/22/06, amended 4/28/07, amended 6/21/14

Adopted this 22nd day of February 1996.

HCN SUPREME COURT RULES OF CIVIL PROCEDURE APPENDIX I.

Costs and Fees:

The Ho-Chunk Nation Supreme Court amended the *Fees and Costs* (Supersedes June 26, 2002) at a regularly scheduled meeting on April 9, 2005 to reflect some changes in fees charged to the HCN Court System patrons.¹

The costs and fees formerly listed in an *Administrative Order* shall henceforth be placed in an Appendix of Costs and Fees and are subject to Amendment from time to time. Parties should consult the Court for periodic changes to the fee schedule to make sure they have the current fee schedule.

The Schedule of Fees and Costs are amended as:

Copying.....	\$.10 per page
Recording Tape.....	\$10.00 per tape CD
of Hearing.....	\$12.50 per CD Fax
(sending).....	\$.25 per page Fax
(receiving).....	\$.25 per page Certified
Copy of Court Order.....	\$.50 per page Registering a
Foreign Order.....	\$20.00
Filing Fee.....	\$50.00
Rental of Overhead Projector.....	\$5.00 per hour
Rental of LCD Display Equipment.....	\$5.00 per hour
Rental of Videotaping Equipment.....	\$5.00 per hour
Telephonic participation in a hearing.....	Actual Cost
Videotape of Depositions.....	\$10.00 per tape
Marriage License Fee.....	\$50.00

¹ The HCN Supreme Court adopted the previous fee schedule “[p]ursuant to [its] rulemaking authority...” *Order Allowing Fees* (HCN S. Ct. Mar. 16, 1998). The fees in this schedule supercede Admin Order 97-10. Revised April 9, 2005.