Lay Advocacy Training

THE CONSTITUTION OF THE HO-CHUNK NATION
and Selected Laws

Ho-Chunk Nation Trial Judiciary
Associate Judge JoAnn Jones
Wa Ehi Hoci, W 9598 Hwy 54 E
Black River Falls, WI 54615
What is the role of the CONSTITUTION OF THE HO-CHUNK NATION?

✓ Promote sovereignty.
  ✓ See CONSTITUTION OF THE HO-CHUNK NATION (hereinafter CONSTITUTION), Preamble.
  ✓ We the People, pursuant to our inherent sovereignty, in order to form a more perfect government, secure our rights, advance the general welfare, safeguard our interests, sustain our culture, promote our traditions and perpetuate our existence, and secure the natural and self-evident right to govern ourselves, do ordain and establish this Constitution for the Ho-Chunk Nation

✓ The role of a CONSTITUTION is to provide scope for good government, while at the same time placing limitations on the powers of each branch of government.
What is the role of the CONSTITUTION OF THE HO-CHUNK NATION?

- The Ho-Chunk Nation possesses inherent sovereign powers by virtue of self-government and democracy. CONSTITUTION, ART. III, § 1
- The government of the Ho-Chunk Nation shall be composed of four (4) branches: General Council, Legislature, Executive, and Judiciary. CONST., ART. III, § 2.
- No branch of the government shall exercise the powers or functions delegated to another branch. CONST., ART. III, § 3.
  - governance systems that employ a separation of powers need a way to balance each of the branches, accomplished through a system of "checks and balances."
- This Constitution shall be the supreme law over all territory and persons within the jurisdiction of the Ho-Chunk Nation. CONST., ART. III, § 3.
The People of the Ho-Chunk Nation . . . grant all inherent sovereign powers to the General Council. . . . All eligible voters of the Ho-Chunk Nation are entitled to participate in General Council. CONST., ART. IV, § 1.

The General Council delegated some of its authority.

. . . hereby authorizes the legislative branch to make laws and appropriate funds in accordance with Article V . . . the executive branch to enforce the laws and administer funds in accordance with Article VI . . . the judicial branch to interpret and apply the laws and Constitution of the Nation in accordance with Article VII. CONST., ART. IV, § 2.
THE GENERAL COUNCIL RETAINS...

• the power to set policy for the Nation . . . retains the power to review and reverse actions of the Legislature except those enumerated in Section 4 of this Article (hiring and firing of personnel) . . . retains the power to review and reverse decisions of the Judiciary which interpret actions of the Legislature. The General Council does not retain the power to review and reverse decisions of the Judiciary which interpret this Constitution . . . retains the power to propose amendments in accordance with Article XIII (Elections), including those which reverse decisions of the Judiciary interpreting this Constitution . . . retains the power to establish its own procedures in accordance with this Constitution . . . retains the power to call a Special Election. . .

• Actions by the General Council shall be binding.
  – CONST., ART. IV, § 3.
The Legislature is unicameral.

The Legislature maintains 24 powers under the CONSTITUTION, including the power . . .

- to make laws (codes, ordinances, resolutions, and statutes);
- to establish executive departments and delegate legislative powers to the executive branch);
- to authorize expenditures by law and appropriate funds to the various Departments in an annual budget;
- to raise revenue, including the power to levy and collect taxes and license fees;
- to set the salaries, terms and conditions of employment for all governmental personnel;
- to negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals;
- to acquire or purchase lands for the benefit of the Nation and its members; and
- to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

CONST., ART. V, § 2.
The Executive power . . . shall be vested in the President of the Ho-Chunk Nation. CONST., ART. VI, § 1(a).

- The Executive Branch shall be composed of any administrative Departments created by the Legislature, including a Department of the Treasury, Justice, Administration, Housing, Business, Health and Social Services, Education, Labor, and Personnel, and other Departments deemed necessary by the Legislature. Each Department shall include an Executive Director, a Board of Directors, and necessary employees. The Executive Director of the Department of Justice shall be called the Attorney General of the Ho-Chunk Nation. The Executive Director of the Department of the Treasury shall be called the Treasurer of the Ho-Chunk Nation. CONST., ART. VI, § 1(b).
EXECUTIVE

✓ The President maintains twelve powers, including the power

- To execute and administer the laws of the Ho-Chunk Nation; To make recommendations to the Legislature on matters of interest or benefit to the Nation; To propose legislation and an annual budget to the Legislature; To administer all Departments, boards, and committees created by the Legislature; To nominate the Executive Directors of each Department subject to . . . ; To remove an Executive Director of a Department or to reassign an Executive Director to another position; To select and hire personnel in accordance with applicable law; To preside over meetings of the Legislature; To cast the deciding vote in the Legislature in case of a tie; To call Annual and Special Meetings of the General Council; To represent the Ho-Chunk Nation on all matters that concern its interests and welfare; To execute, administer, and enforce the laws of the Ho-Chunk Nation necessary to exercise all powers delegated by the General Council and the Legislature, including but not limited to the foregoing list of powers.

CONST., ART. VII, § 2.
JUDICIARY

– The Judiciary is charged with the interpretation and application of tribal laws by the General Council. See CONST., ART. IV, § 2.

– “The Trial Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Constitution, laws, customs and traditions of the Ho-Chunk Nation . . . .” See CONST., ART. VII, § 5(a); see also Ho-Chunk Nation Judiciary Establishment & Organization Act (hereinafter Judiciary Act), 1 HCC § 1.4.
 ARTICLE VII -

Section 1. Composition of the Judiciary.

There shall be a Supreme Court of the Ho-Chunk Nation, a Trial Court of the Ho-Chunk Nation, such other lower courts of special jurisdiction as deemed necessary by the Legislature, and other forums of special jurisdiction for traditional dispute resolution as deemed necessary by the Legislature.
POWERS OF TRIAL COURT

(a) The Trial Court shall have the power to make findings of fact and conclusions of law. The Trial Court shall have the power to issue all remedies in law and equity including injunctive and declaratory relief and all writs including attachment and mandamus.

(b) The Trial Court shall have the power to declare the laws of the Ho-Chunk

See CONST., ART. VII, § 6
WHAT IS THE ROLE OF THE SUPREME COURT?

The Supreme Court presides over appeals of Trial Court decisions. See CONST., ART. VII, § 7(a), 14.

The Supreme Court also possesses authority to create rules for the Judiciary. See CONST., ART. VII, § 7(b), Judiciary Act, 1 HCC § 1.5d.
WHAT IS THE ROLE OF THE TRADITIONAL COURT?

The Traditional Court may adjudicate matters brought voluntarily by both parties to a dispute. *Judiciary Act*, 1 HCC § 1.12; see also *Ho-Chunk Nation Rules of Civil Procedure* (hereinafter *HCN R. Civ. P.*), Rule 70.

The Traditional Court may also articulate custom and tradition, which subsequently may form the basis for the Trial Court's exercise of subject matter jurisdiction over a case or controversy. CONST., ART. VII, § 5(a).

In addition, the Traditional Court serves as an accessible and invaluable fount of knowledge for the other branches of tribal government and external governmental and private agencies.
Traditional Dispute Resolution. The Judiciary shall provide for the establishment, operation, and funding of the Nation’s Traditional Court to assist the Judiciary whenever possible with the resolution of cases or controversies involving Tribal members.
Ho-Chunk Nation
Rules of Civil Procedure

✧ 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.
Ho-Chunk Nation
Rules of Civil Procedure

✧ 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.
The Ho-Chunk Nation Contract Principles


– . . . the Court certified a question of law to the Ho-Chunk Nation Traditional Court, inquiring as to whether Ho-Chunk Nation custom and tradition recognized agreements analogous to the modern day “contract.” The Traditional Court informed the Trial Court that in the tradition and custom of the Ho-Chunk Nation, agreements between parties for the exchange of goods or services were recognized as binding, and that it was wrong for one party to keep a benefit obtained from an agreement without providing the agreed upon compensation. This legal precedent is a source of law recognized by the HCN CONSTITUTION and Judiciary Act as conferring subject matter on the Ho-Chunk Nation Trial Court.
The Ho-Chunk Nation Contract Principles

 Arnett et al. v. Ho-Chunk Nation Department of Administration et al., CV 00-60, 00-65 (HCN Tr. Ct., Jan. 8, 2001).

– The Court . . . lacks subject matter jurisdiction over a promissory estoppel claim as such a concept arises solely within the statutory and common law of foreign jurisdictions.
  • The underlying law, PERSONNEL MANUAL, did not identify promissory estoppel as a recognized cause of action.

– EXAMPLE: My Nani promises to give me $10,000.00 to buy a car. I buy my car, but my uncle refuses to pay any money. Western concepts of promissory estoppel state that I am entitled to $10,000.00 (the amount promised).
The Ho-Chunk Nation
Domestic Abuse Law

  
  – The traditional laws of the Ho-Chunk Nation require respect between all people. This mandate includes a prohibition against physical violence and intimidation.

✧ Domestic Abuse Act of 2001
  
  – 4 HCC § 5.3 is the purpose and construction.
  
  ✧ The purpose of this Act is to establish law prohibiting domestic abuse by or against any Tribal member within the jurisdiction of the Ho-Chunk Nation and to delegate to the nation’s Departments of Justice and Social Services the power to create and implement the administrative rules and procedures needed to enforce this Act…
The Ho-Chunk Nation Elder Abuse Law

Mike v. Mike, CV 99-42 (HCN Tr. Ct., July 9, 1999).

- The Ho-Chunk Nation lacks an elder abuse statute. Therefore, the Court took testimony from [regarding] ‘respect for elders.’ . . . [R]espect for elders is considered a type of law. It is one of the more important customs of the Tribe. This is due to several factors. The elders have fostered us, our knowledge of customs come from their knowledge of the past and what has been passed down. The elders have taken care of us from before. They are to be respected for this and held in a place of honor. It is the duty of the younger generation to take care of the elders. Elders are always served first at tribal events and are served by their younger relatives. They are given special care in seating and their disabilities are accommodated whenever possible.
The Ho-Chunk Nation Elder Abuse Law

/slick Mike v. Mike, CV 99-42 (HCN Tr. Ct., July 9, 1999).

- The punishment for mistreatment of an elder under custom varied from banishment from the village to having the Bear Clan, the “warukos” of the village, take away or destroy the property of the person who abused the elder.

- Ms. Pauline B. Mike is an elder of some 80 years who belongs to a respected family. She has a right under tradition and custom to live in her own home without fear and feeling intimidated by a minor grandson. She has a right to live in clean and sanitary conditions.

- The Court further orders that J.T.M. and Loylee Mike must attend counseling before the HCN Traditional Court prior to being allowed to return to the Pauline B. Mike home.
The Ho-Chunk Nation Elder Abuse Law

♦ ELDER PROTECTION ACT OF 2001

- 4 HCC § 1.2. Purpose. The purpose of this Act is to establish Tribal law to protect the Elders of the Ho-Chunk Nation from abuse, neglect, and exploitation. The Ho-Chunk Nation honors, respects, and protects its Elders. Our Elders possess unique and irreplaceable stores of knowledge, skill, and experience that enhance and enrich the lives of the entire Nation. The interests of the Nation, now and in the future, are advanced when our Elders can be confident they are protected from abuse, neglect, and exploitation and are free to fully participate in the activities and proceedings of the Nation.
ARTICLE IX - REMOVAL, RECALL AND VACANCIES

• Section 1. General Council Removal of Legislators.
  – The General Council may remove any member of the Legislature for malfeasance. No vote by the General Council to remove a member of the Legislature shall take place before such Legislator has been given reasonable notice of the impending action and has had a reasonable opportunity to be heard.

• Section 2. General Council Removal of the President.
  – The General Council may remove the President for malfeasance. No vote by the General Council to remove the President shall take place before such President has been given reasonable notice of the impending action and has had a reasonable opportunity to be heard.
ARTICLE IX - REMOVAL, RECALL AND VACANCIES

- Section 3. Legislative Removal of Legislators.
  - The Legislature may remove a member of the Legislature for good cause. Any member of the Legislature subject to removal shall be informed of the charges, be given adequate notice of the impending removal action, and given an opportunity to prepare and present a defense including presenting witnesses and other evidence. An affirmative vote of three-fourths (3/4) of the entire Legislature shall be required for all Legislative removal actions under this Section. The Legislator subject to removal shall not vote.
ARTICLE IX - REMOVAL, RECALL AND VACANCIES

• Section 4. Legislative Removal of Judges.
  – The Legislature may remove a Judge for good cause. A Judge subject to removal shall be informed of the charges, be given adequate notice of the impending removal action, and given an opportunity to prepare and present a defense including presenting witnesses and other evidence. An affirmative vote of three-fourths (3/4) of the entire Legislature shall be required for all legislative removal actions under this Section.
ARTICLE IX - REMOVAL, RECALL AND VACANCIES

• Section 5. Recall by General Council.
  – The President, Legislators, and Members of the Judiciary shall be removable by recall vote at a Special Election requested by the General Council. At the request of the General Council, the Election Board shall hold a Special Election not less than thirty (30) days and not more than ninety (90) days from the date of the General Council request. If the Election Board fails to hold such Special Election within ninety (90) days, any eligible voter of the Nation may request the Trial Court to order such Special Election. In any Special Election, no more than three (3) persons shall be subject to recall vote.
ARTICLE IX - REMOVAL, RECALL AND VACANCIES

• Section 6. District Recall of Legislators.
  – A member of the Legislature shall be removable by a recall vote called by a petition of thirty (30) percent of all eligible voters of the District which elected such member of the Legislature. A petition shall be submitted to the Election Board, which shall hold a Special Election not less than thirty (30) days and not more than ninety (90) days from the date a petition is duly submitted. If the Election Board fails to hold such Special Election within ninety (90) days, any eligible voter of the Nation may request the Trial Court to order such Special Election.
Recall of Legislators.


– The appellant appealed the decision from the Trial Court ruling that the recall election should be limited to Ms. Garvin’s district and that the election should be characterized as a recall and not a removal election.

ARTICLE IX - REMOVAL, RECALL AND VACANCIES

• **Section 9. Vacancy of the Office of the President.**
  • The Supreme Court reversed the Trial Court’s issuance of a preliminary injunction preventing the removal of President George Lewis by the General Council. The Supreme Court found the Trial Court should not have issued the preliminary injunction because the determination as to whether President Lewis had committed malfeasance is a political question, and thereby unfit to be decided by the judicial branch. The Supreme Court supplied guidance on remand for the Election Board regarding the ascension of the Vice President into the role of president *pro tempore*.

• **Section 10. Vacancies in the Legislature.**
BILL OF RIGHTS

✧ Section 1. Bill of Rights. (a) The Ho-Chunk Nation, in exercising its powers of self-government, shall not:

✧ (1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

✧ See Daniel Brown v. James Webster, as Executive Director of Bus., SU 06-03 (HCN S. Ct., Feb. 9, 2007

✧ (8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without the due process of law;
Employment – Due Process

- The Ho-Chunk Nation Supreme Court recognized that the Ho-Chunk Nation cannot detrimentally affect the property right of employment without providing sufficient notice to the employee. Louella A. Kelty v. Jonette Pettibone et al., SU 99-02 (HCN S. Ct., July 27, 1999) at 3; see also Debra Knudson v. HCN Treas. Dep’t, SU 98-01 (HCN S. Ct., Dec. 1, 1998) at 3-4. “Notice must at a minimum give an employee a sufficient understanding of the underlying facts so that the employee may consider whether or not to file a grievance with sufficient knowledge.” Kelty, SU 99-02 at 4. The Supreme Court indicated that an insufficient notice is tantamount to no notice, and therefore violative of procedural due process. Id.
Employment – Due Process

• The Court will generally defer to discretionary employment decisions provided that the employee has followed the appropriate grievance channels. *Lonnie Simplot et al. v. HCN Dep’t of Health*, CV 95-05, -26-27, (HCN Tr. Ct., Aug. 29, 1995).

Employment – Due Process

• An employee must receive a “meaningful opportunity to be heard before their property can be taken away.” Gary Lonetree, Sr. v. John Holst, as Slot Dir., et al, CV 97-127 (HCN Tr. Ct., Sept. 24, 1998) at 10, aff’d, SU 98-07 (HCN S. Ct., Apr. 29, 1999) (emphasis added).
Questions & Answers