



**HO-CHUNK NATION CODE (HCC)
TITLE 2 – GOVERNMENT CODE
SECTION 5 – CONTEMPT ORDINANCE**

ENACTED BY LEGISLATURE: JULY 20, 2005

CITE AS: 2 HCC § 5

*This Act supersedes HCC 98-004, Ho-Chunk Nation Contempt Ordinance enacted by
Legislative Resolution 9/29/98A.*

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1. Authority.

a. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.

2. Purpose. The purpose of this Act is to establish the substantive and procedural requirements of the Nation’s Courts contempt power within its subject matter and personal jurisdiction.

3. Declaration of Policy. The Ho-Chunk Nation, mindful that the Judiciary represents a fundamental aspect of Tribal sovereignty, recognizes that the Nation’s Courts retain the inherent authority to exercise the power of contempt. The contempt power established herein will preserve the dignity and decorum of the Judicial Branch, secure compliance with orders and procedures, and protect the due process rights of those appearing before the Courts.

4. Definitions. As used in this Ordinance, the following shall have the meaning provided here.

a. "Contemnor" means the party in contempt of court, who may be a person, group of persons, organization, corporation, or other legally cognizable entity.

b. "Contempt of Court" means any or all of the following:

(1) Misconduct in the presence of the Court which interferes with a court proceeding or with the administration of justice or which impairs the respect, dignity and decorum of the Court.

(2) Disobedience, resistance, or obstruction of the authority, process, or order of the Court.

(3) Refusal as a witness to appear, be sworn, or answer a question.

(4) Refusal to produce a document, record, or other object that impairs the ability of the Court to establish findings of fact.

c. "Punitive Sanction" means a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the Court, regardless of whether or not the underlying action has ended or is ongoing.

d. "Remedial Sanction" means a sanction imposed for the purpose of terminating an ongoing contempt of Court that is purgeable upon compliance with the process, order, or directive of the Court.

e. "Sanction" means any monetary fine or equitable order issued by the Court for the purpose of punishing past contempt (punitive) or terminating an ongoing contempt (remedial).

5. Requirements of the Contempt Process.

a. Standing.

(1) A Show Cause Hearing shall be requested upon Motion by any of the following:

(a) A party whose interests are harmed by the alleged contemnor.

(b) The Court.

(c) A Special Prosecutor of the Nation, or in its absence the Nation's Department of Justice unless the Department of Justice is or represents the alleged contemnor.

(2) A Summary Procedure may only be convened by the Court in which the contempt occurred.

b. Prima Facie Burden of Proof.

(1) The movant must demonstrate the presence of an otherwise valid process, order, or directive of the Court.

(2) The movant must show that the alleged contemnor had actual or constructive knowledge of the process, order, or directive.

(3) The movant must demonstrate that the authority, process, order, or directive of the Court has been violated by the alleged contemnor through clear and convincing evidence.

(4) The movant need not prove the alleged contemnor's state of mind.

(5) The Court may establish reasonable findings of fact and conclusions of law from available information only if it is constitutionally capable of doing so.

c. Opportunity to Be Heard.

(1) If the alleged contempt occurs in the presence of the Court, the presiding Judge or Justice may suspend the immediate proceedings and enter into a Summary Procedure to determine punitive sanctions, but only for the purpose of preserving the order, authority, and dignity of the Court. Notice of the subject matter of the contempt and notice of the availability of an immediate opportunity to be heard in a Summary Procedure shall be imputed.

(2) If the alleged contempt occurs out of the presence of the Court, the presiding Judge or Justice may schedule a Show Cause Hearing to be set at a reasonable date and time in the future in order for the Court to consider available defenses and appropriate punitive or remedial sanctions. Proper notice in accordance with the Nation's Rules of Civil Procedure shall be provided, although expedited measures may be taken.

(3) The Court may consider motions for punitive and remedial sanctions for alleged contempt of Court during the same proceeding.

(4) The alleged contemnor retains the right of legal representation at his or her own expense at a Show Cause Hearing.

(5) No right to a jury trial exists under this Ordinance.

d. Burden of Contemnor. Either during the Summary Procedure or at the Show Cause Hearing, the alleged contemnor bears the burden of establishing that he or she should not be held in contempt because:

(1) He or she can demonstrate a reasonable inability to comply;

(2) He or she can show that the underlying order is ambiguous; or

(3) He or she can demonstrate reasonable and diligent efforts of compliance.

e. Disqualification of Judges/Justices. If the alleged contempt of Court involves the criticism of the presiding Judge or Justice, the Judge or Justice shall be disqualified from presiding over the contempt proceeding unless the alleged contemnor provides express consent to the contrary. If the alleged contempt occurs in the presence of the Court, the presiding Judge or Justice shall be disqualified and a Show Cause Hearing shall be scheduled.

6. Authorized Sanctions.

a. Kinds of Sanctions.

(1) Payment of a sum of money sufficient to compensate a party for a loss or injury suffered as a result of the contempt of court.

(2) Payment of a sum of money to the Court not to exceed \$100 for each day the contempt of court continues.

(3) An order designed to redress past disobedience with a prior order of the Court.

(4) An order designed to ensure compliance with an ongoing order of the Court.

(5) Any other appropriate sanction or order if the Court expressly finds that paragraphs (1) thru (4), above, would be ineffective to address, terminate, or otherwise ensure compliance in a past or continuing contempt of court.

b. Appropriate Sanctions.

(1) A Court may impose punitive sanctions for past conduct which was a contempt of court even though:

(a) Similar conduct is a continuing contempt of Court.

(b) Other remedial and/or punitive sanctions are pending and/or have been issued against the contemnor.

(c) The underlying cause of action has been decided, settled, or otherwise terminated.

(2) A Court may impose remedial sanctions for ongoing conduct which is a contempt of court even though:

(a) Similar conduct is a past contempt of court.

(b) Other remedial and/or punitive sanctions are pending and/or have been issued against the contemnor.

c. Uniformity Clause. Any other provision of Nation's law providing for the exercise of contempt shall comply with the substantive and procedural requirements of this Ordinance.

7. Appeal of Contempt Order.

a. Nature of Sanctions. In any appeal of an order for contempt, the Court which issued the order shall be the named Appellee. Due to the necessarily ongoing nature of a remedial sanction, any findings of the Court in such proceedings are not final. As punitive sanctions are issued for past contempt, they shall be considered final orders.

b. Applicable Law. All appeals of a finding of contempt shall follow the Nation's Rules of Appellate Procedure.

c. Limited Issues on Appeal. In the event the alleged contemnor fails to respond or challenge the merits of underlying process, order, or directive to the Court which issued the contempt, a challenge to the validity of the process, order, or directive is barred on appeal. The only appealable question in such cases shall be the validity of the contempt order itself.

d. Representation.

(1) The contemnor shall retain all rights to legal representation upon appeal at his or her own expense.

(2) The Court which issued the Order of Contempt shall be represented on appeal by a Nation Special Prosecutor, legal counsel appointed by the Legislature, or the Department of Justice unless the Department of Justice is or represents the contemnor.

Legislative History:

9/29/98	Legislature enacts Contempt Ordinance (HCC 98-004) by Legislative Resolution 9/29/98A.
11/24/04	Legislature places Contempt Ordinance out for Executive Review and Coordination as a Proposed Bill.
5/17/05	Legislature places Draft Contempt Ordinance out for 45-Day Public Review.
7/8/05	45-Day Public Review period ends without comments.
7/20/05	Enacted by Legislative Resolution 7/20/05I.