On Sunday, December 8, 2002, at 10:31 a.m. E.S.T., TIME magazine posted a Special Report online concerning Indian Gaming and Casinos. The article bore the title, “Wheel of Misfortune” written by Donald L. Barlett and James B. Steele. The overall article purported to display the inequities and faults of the entire Indian Gaming System through a handful of examples. This article has disturbed many in Indian Country as it opens negative discourse on the nexus between tribes and gaming. This Court would like to respond to a number of assertions contained within the article. As the Ho-Chunk Nation Judiciary, this body cannot comment or respond to the article in its entirety. Such action by this Court would appear outside the judicial scope of competence. However, the Judiciary can respond to certain comments provided that those chosen phrases relate to judicial functions. Readers must note that the article does not mention tribal courts at any point. The Judiciary shall do so and now begins what it hopes will become a positive discourse on the nexus between tribes, gaming, and the judiciary.

According to the article, tribes seeking to build prosperous casinos are creating the habit of buying land in new states where they have never lived. See Wheel of Misfortune, http://www.time.com, (Dec. 8, 2002). The Ho-Chunk Nation has never used such a procedure. Continued on page 10.
A FAMILIAR FACE IN THE STREETS OF BLACK RIVER FALLS: ATTORNEY MARK RADCLIFFE.

The author of this article, Rebecca Tavares, is the Law Clerk for the Ho-Chunk Trial Court and graduated from the University of Minnesota. Of Wyandot and Portuguese descent, Ms. Tavares held a previous clerkship with Judge Thorwald Anderson of the State of Minnesota’s Fourth Judicial District. Before coming to Black River Falls, she lived in Minneapolis as a student and member of the University of Minnesota chapter of the American Indian Law Students’ Association. Ms. Tavares shall spend one year with the Trial Court and the people of Black River Falls.

NOTE: The subject chosen for this personal interview feature was selected at random from a pool of active members of the Ho-Chunk Nation Bar. Future feature articles regarding bar members shall use the same selection process. This feature is not meant as an advertisement for Ho-Chunk Nation Bar members, nor should it be construed as an endorsement of any legal counsel.

Radcliffe Law Office has a Ho-Chunk Nation Bar member on its staff. Mark Radcliffe became a member of the Ho-Chunk Nation Bar in 1999. Outside of law, Mr. Radcliffe plays golf with his son at the Skyline golf club. Surprisingly enough, Mark Radcliffe had not decided to become a lawyer until after he finished college. He had obtained his degree from the University of Wisconsin at Stevens Point before turning his eyes to law school. Initially, Mr. Radcliffe attended Oklahoma City University for law school, but later transferred to Hamline University in St. Paul, Minnesota to finish his degree.

At Hamline University, Mark Radcliffe met a very influential person that had a tremendous impact on his legal career: Chief Justice Mary Jo B. Hunter. Mr. Radcliffe refers to her as an impressive lady and asserts that members of the Ho-Chunk Nation are lucky to have her as the Chief Justice for the Ho-Chunk Nation Supreme Court. Chief Justice Hunter helped Mr. Radcliffe obtain his first job outside of law school. He worked for S.M.U.R.L.S., a legal services organization, and was stationed in Winona, MN. Something that shocked him as a young associate was the need for low-income citizens to have affordable, decent access to the legal system. Even some citizens seeking legal assistance at his office did not qualify financially for services. “A lot of people had to be turned away and you knew they wouldn’t find another attorney.”

Mark Radcliffe’s first experience with the Ho-Chunk Nation Court System was a positive one. Mr. Radcliffe also mentioned that coming into this Court was no surprise, as Chief Justice Hunter had already assured him of the respectability of this Court. He did note that the rules and the deadlines are big differences between the state courts and the Nation’s Court. He also stated that the case law is more limited in the Nation’s Court, making it possible for attorneys to argue more novel issues and be a part of the creation of new laws.

As a solo practitioner, his cases before the Court are sporadic. Mr. Radcliffe notes that the use of the federal rules and the different deadlines sometimes make him hesitant to take cases before this Court. However, he has taken what he considers truly egregious cases that require immediate attention. As for advice to young attorneys starting out in various legal fields, Mr. Radcliffe had this to say, “Always go in overprepared, because when you don’t is the time you get caught.”
Recent Decisions

Decisions are separated between Trial Court and Supreme Court decisions and categorized by subject matter and date (from oldest to most recent). The following are summaries prepared by the Staff Attorney for the reader’s benefit. They should in no way be used as substitution for citations to the actual court opinion.

Within the Trial Court, cases are categorized and docketed as one of the following: Child Support (CS or if filed prior to 1998, CV), Civil (CV), Criminal (CR), Custody (CU), Domestic Violence (DV), or Juvenile (JV). Within this index, case citations will appear in one of these categories and, in the event it may be helpful to the reader as a research tool, the cases may also be summarized in a separate topic area. In some instances a decision may touch upon other topics which may not warrant a summary in this index, but the editor will use the indicator “other topic(s) covered,” as a research aid for the reader.

Recent Decisions and Recent Filings both begin with the date where the previous Court Bulletin left off.

Trial Court

Child Support

DECEMBER 5, 2002
The Court had to determine whether or not to enforce a standing foreign child support order against the respondent. The respondent failed to respond within the specified time period. The Court granted the petitioner’s uncontested request for child support.

DECEMBER 6, 2002
The Court received a motion to cease per capita withholding in the instant case. The motion indicated that the respondent had paid all child support and arrears in full. The petitioner substantiated the allegation by attaching copies of county forms and a payment history indicating complete payments. This Court granted the request and ceased withholding for child support.

DECEMBER 9, 2002
The Court had to determine whether or not to enforce another standing foreign child support order against the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment in favor of the plaintiff.

On November 30, 2001, the Court suspended withholding for child support arrears in the instant case. On December 4, 2002, the Sauk County Child Support Agency requested a reinstatement of per capita disbursement toward arrears. The respondent failed to respond within the specified time period, and the Court granted the request.

The petitioner requested that the Court recognize an amendment to the original child support order made by Jackson County Circuit Court. The respondent failed to respond within the specified time period. This Court recognized this change to the original order and directed the Ho-Chunk Nation Department of Treasury to comply.
Eldon Powless, Eldon Powless v. Rebecca Nunway, Margaret A. King v. Eldon Powless, CV 96-93, CS 99-17, 23, 22 Order (Renewing Arrearage Withholding) (HCN Tr. Ct., Dec. 9, 2002). (Matha, T).

The Court had suspended withholding for Case No.: CS 99-22. The petitioner in that case requested that the Court reinstate arrears and continue withholding. The respondent failed to respond to the motion in the specified time frame, thereby allowing the Court to grant the uncontested motion.

DECEMBER 10, 2002


The Court had to determine whether or not to enforce a standing foreign child support order against the respondent. The respondent failed to respond within the specified time frame. The Court granted the request and withheld for arrears.

Jackson County Foster Care, Eunice Greengrass and Carmella Root v. Karla Greengrass, CV 96-81 (Ceasing Withholding and Intent to Close) (HCN Tr. Ct., Dec. 10, 2002). (Matha, T).

The petitioner requested that the Court cease withholding from the respondent’s per capita. The petitioner asserted that the child support was paid in full and presented evidence of this fact. The Court directed the Treasury Department to cease withholding.

DECEMBER 11, 2002

Kathleen Waukau by the State of Wis., Shawano County v. Eldon Powless, Patricia C. Martinez v. Eldon Powless, Eldon Powless v. Rebecca Nunway, Margaret A. King, CV 96-93, CS 99-17, 23, 22 Erratum Order (HCN Tr. Ct., Dec. 11, 2002). (Matha, T).

The Court issued this Erratum Order to correct a clerical error.

DECEMBER 12, 2002


The Court informed the parties of Case No. CV 97-02 that the minor child, Cody Jo Greendeer, would turn eighteen (18) years of age on January 31, 2003. The parties of that case must bring forth evidence of the child’s enrollment in high school. Failure to comply with this Court’s decision could result in a cessation of withholding for child support.


The Court informed the parties that the minor child, Rory E. Thundercloud, would turn eighteen (18) years of age on January 9, 2003. The parties must bring forth evidence of the child’s enrollment in high school. Failure to comply with the Court’s decision could result in a cessation of withholding for child support.


The Court informed the parties that the minor child, Alison Kay Funmaker, would turn eighteen (18) years of age on December 11, 2002. The parties must bring forth evidence of the child’s enrollment in high school. Failure to comply with the Court’s decision could result in a cessation of withholding for child support.


The Court informed the parties that the minor child, K.N.L., would turn eighteen (18) years of age on November 4, 2002. The parties must bring forth evidence of the child’s enrollment in high school. Failure to comply with the Court’s decision could result in a cessation of withholding for child support.

JANUARY 3, 2003

The respondent previously requested a cessation of child support concerning one child that allegedly did not live at home. The Court requested further documentation to support the respondent’s claim. As the Court has not received such documentation, the Court now directs the respondent to file by January 13, 2003 or risk the denial of such Motion.

The petitioner requested funds from the minor’s trust fund for a professional tutoring program. The Court used its four-prong test to determine the petitioner’s eligibility to access the funds. The Court found the petitioner’s claim meritorious and granted the request.

**Children’s Trust Fund (CTF)**

**DECEMBER 10, 2002**
Cassandra Little Bear, DOB 09/06/80 v. HCN Office of Tribal Enrollment, CV 02-79 Order (Denying Petition in Part and Granting Petition in Part with Conditions) (HCN Tr. Ct., Dec. 10, 2002). (Bossman, W).
The petitioner requested funds from her CTF account for past due bills and the purchase of a motor vehicle. The Court used its four-prong test in order to determine her eligibility to obtain the funds. The Court felt that the requests for bills met the second prong of the test, but the request for a motor vehicle did not. In addition, the petitioner did not satisfy the last prong of the test, requiring her to exhaust all other forms of financial assistance, in her request for a vehicle. Also, the petitioner did not provide proper addresses for each payee that must receive the funds as payment of past bills. Within thirty (30) days, the petitioner must bring forth documentation and invoices showing the bills paid in full to this Court.

**DECEMBER 11, 2002**
In the Interest of Minor Child: V.B., DOB 03/04/92, by April Daniels v. HCN Office of Tribal Enrollment, CV 02-113 Order (Petition Granted) (HCN Tr. Ct., Dec. 11, 2002). (Matha, T).
The petitioner requested funds from the minor’s CTF account for orthodontic procedures. The Court used its four-prong test to determine that the petitioner did qualify for a release of funds. The Court granted the release of funds with the reminder that the petitioner must provide receipts at a later date.

In the Interest of Minor Child: W.E.T., DOB 06/30/88, by Bonnie Tech v. HCN Office of Tribal Enrollment, CV 02-114 Order (Petition Granted) (HCN Tr. Ct., Dec. 11, 2002). (Matha, T).
The petitioner requested funds from the minor’s trust fund for orthodontic work. In its previous decision, the Court released funds with the admonishment that the petitioner must come forward with an accounting of how he disbursed the funds. As the accounting is four (4) weeks late, the Court now requests such accounting by January 1, 2003.

**Incompetent’s Trust Fund (ITF)**

**DECEMBER 9, 2002**
The petitioner/guardian requested funds on behalf of the tribal member. The Court used its four-prong
test to determine the eligibility of the petitioner to access funds. However, the Court also noted that the tribal member had retained excess funds leftover from a previous release and had not returned such to the court. The Court granted the current request minus the leftover funds that were not returned to the trust account.

**JANUARY 2, 2003**


The petitioner requested ITF funds for expenses associated with cancer treatment. The defendant requested an inquiry into the exhaustion of assistance prong. The Court made the requisite inquiries and found that funding was available for cancer treatment assistance, but not within the time frame needed by the petitioner. Therefore, the Court granted the release of funds.

**CIVIL CASES (ALL CATEGORIES)**

**NOVEMBER 27, 2002**

*Dennis Alt v. Ho-Chunk Table Games Department, CV 02-92 Scheduling Order (HCN Tr. Ct., Nov. 27, 2002).* (Bossman, W).

The Court issued this *Scheduling Order* to establish dates and deadlines for the instant case up to and including trial.

**DECEMBER 2, 2002**

*Ho-Chunk Housing Authority v. Adriane Walker, CV 02-83 Scheduling Order (HCN Tr. Ct., Dec. 2, 2002).* (Bossman, W).

The Court issued this *Scheduling Order* to establish dates and deadlines for the instant case up to and including trial.

**DECEMBER 3, 2002**

*Debra Hall-Shoemaker v. Ho-Chunk Nation and Sandy Plawman, in her official and individual capacities, CV 02-41; 02-77 Stipulation and Order to Change Status/Motion Hearing to December 6, 2002 (HCN Tr. Ct., Dec. 3, 2002).* (Matha, T).

The Court granted the request of the parties in the instant case to reschedule the *Status Hearing* for a later date.

**DECEMBER 9, 2002**

*Majestic Pines Hotel, Division of the Ho-Chunk Nation v. Troy Whiteagle, CV 02-103 Order (Granting Leave to Amend) (HCN Tr. Ct., Dec. 9, 2002).* (Bossman, W).

The plaintiff requested leave to amend the *Complaint*. The defendant had not yet responded to the pleading. Given the set of circumstances, the Court granted the plaintiff’s request.

*Francis L. Williams v. Alex B. Crown, Marketing Director of Majestic Pines Casino, and the Ho-Chunk Nation, CV 02-78 Order (Motion Hearing) (HCN Tr. Ct., Dec. 9, 2002).* (Bossman, W).

The defendant requested a *Motion Hearing* to argue its *Motion to Dismiss* in the instant case. The plaintiff must file a *Response* to the *Motion* at least one (1) day before the hearing. The Court shall hear arguments concerning the *Motion* at the December 18, 2002 *Pre-Trial Conference*.


For summary, see *Incompetent’s Trust Fund (ITF) cases* within this index.
Personnel Department and Ho-Chunk Nation Health and Human Services Department, CV 02-52 Order (Motion Hearing) (HCN Tr. Ct., Dec. 10, 2002). (Bossman, W).

The defendants have requested an opportunity to argue their Motion for Summary Judgment. The plaintiff must file a Response to the Motion at least one (1) day before the hearing. The Court shall hear arguments concerning the Motion at the December 18, 2002 Pre-Trial Conference.

Ho-Chunk Nation Department of Housing, Property Management Division v. Lacy BigJohn, CV 02-89 Order (Satisfaction of Judgment and Intent to Close) (HCN Tr. Ct., Dec. 10, 2002). (Matha, T).

The Court issued a Judgment in favor of the plaintiff for $2,095.00. The plaintiff filed a Satisfaction of Judgment acknowledging full payment. The Court recognizes that the debt was paid in full and informs the parties of its intent to close the file.

Shane Steele v. Dion Thompson and Terri Thompson, CV 02-87 Order (Granting Recognition of Foreign Judgment) (HCN Tr. Ct., Dec. 10, 2002). (Bossman, W).

The plaintiff initiated the current action by filing a Petition to Register and Enforce a Foreign Judgment. The plaintiff attached a certified copy of the foreign order. The Court recognized the order and insisted that the defendants pay the assessed fees within three (3) months or risk an accrual of interest. The plaintiff may also request an execution of judgment and the imposition of fines or garnishment.

Troy S. Westphal v. Ho-Chunk Nation and Ho-Chunk Casino, CV 02-75 Scheduling Order (HCN Tr. Ct., Dec. 10, 2002). (Matha, T).

The Court issued this Scheduling Order to establish dates and deadlines for the instant case up to and including trial.

Cassandra Little Bear, DOB 09/06/80 v. HCN Office of Tribal Enrollment, CV 02-79 Order (Denying Petition in Part and Granting Petition in Part with Conditions) (HCN Tr. Ct., Dec. 10, 2002). (Bossman, W).

For summary, see Children’s Trust Fund (CTF) cases within this index.

DECEMBER 11, 2002
Hoon-Chun Nation v. Bank of America Corporation, CV 02-93 Order (Setting Motion Hearing and Related Deadlines) (HCN Tr. Ct., Dec. 11, 2002). (Bossman, W).

The Court set specific dates and deadlines for the defendant’s Motion to Dismiss and any response brief that the plaintiff may wish to file. The actual brief in support of the Motion is due on January 10, 2003, necessitating a response deadline of January 20, 2003. The actual Motion Hearing shall commence on February 17, 2003, 1:30 P.M.

In the Interest of Minor Child: V.B., DOB 03/04/92, by April Daniels v. HCN Office of Tribal Enrollment, CV 02-113 Order (Petition Granted) (HCN Tr. Ct., Dec. 11, 2002). (Matha, T).

For summary, see Children’s Trust Fund (CTF) cases within this index.


For summary, see Children’s Trust Fund (CTF) cases within this index.

In the Interest of Minor Child: W.E.T., DOB 06/30/88, by Bonnie Tech v. HCN Office of Tribal Enrollment, CV 02-114 Order (Petition Granted) (HCN Tr. Ct., Dec. 11, 2002). (Matha, T).

For summary, see Children’s Trust Fund (CTF) cases within this index.

DECEMBER 12, 2002

The Court issued an Order (Default Judgment) in favor of the plaintiff. The plaintiff filed a Satisfaction of Judgment and attached a copy of the final payment. The Court recognizes that the debt was paid in full and closes the case.
Kathy A. Stacy v. HCN Legislature, CV 02-40 Pre-Trial Order (HCN Tr. Ct., Dec. 12, 2002). (Bossman, W).
The Court sequestered the witnesses for the instant case, excluding HCN Legislators George Lewis and Christine Funmaker Romano. Motions are due on January 3, 2003, while exhibits must be exchanged by January 9, 2003. The Court set the deadline for trial briefs upon January 13, 2003. The trial is set for January 16-17, 2003.

In the Interest of Adult CTF Beneficiary, Roger L. Houghton, Jr., DOB 12/19/81 v. HCN Office of Tribal Enrollment, CV 02-15 Order (Requesting Accounting) (HCN Tr. Ct., Dec. 12, 2002). (Matha, T).
For summary, see Children’s Trust Fund (CTF) cases within this index.

December 17, 2003
This writ restores the property known as E11205 Littlegeorge Rd., Baraboo, WI 53913 to the plaintiff, Ho-Chunk Housing Authority. Sheriffs are to assist in the removal of persons in unlawful possession of the premises. This writ is effective as of January 2, 2003.

Ho-Chunk Housing Authority v. Karen Lipski, CV 02-102 Eviction Order (Restitution and Relief) (HCN Tr. Ct., Dec. 17, 2002). (Matha, T).
The plaintiff requested a Writ of Restitution against the defendant and a claim against the defendant’s future per capita distributions for past due rent. The plaintiff filed a proper Complaint with the Court, detailing its arguments, which were not responded to by the defendant. The Court granted the request of the plaintiff.

December 20, 2002
Rae Anna Garcia v. Joan Greendeer-Lee, Loa Porter, Hattie Walker, and Greg Garvin, as Officials of the Ho-Chunk Nation; Ho-Chunk Nation Personnel Department and Ho-Chunk Nation Health and Human Services Department, CV 02-52 Order (Granting Motion for Summary Judgment) (HCN Tr. Ct., Dec. 20, 2002).
The plaintiff asserted that she was wrongfully denied Waksik Wosga Leave. The defendants requested summary judgment and asserted that no material fact was in dispute. The Personnel Manual clearly indicates the religious events that qualify for religious leave. The plaintiff’s asserted holiday did not qualify, and the Court granted summary judgment.

January 2, 2003
Helen M. Willson v. Ho-Chunk Nation and Any Peterson in her official capacity, CV 02-88 Motion to Amend Scheduling Order, Stipulation, and Order to Amend Scheduling Order (HCN Tr. Ct., Jan. 2, 2003). (Matha, T).
Plaintiff’s counsel requested leave to amend the dates of the Scheduling Order. The defendant had no objection. The Court then agreed to amend the Scheduling Order.

For summary, see Incompetent’s Trust Fund (ITF) cases within this index.

Juvenile
December 23, 2002
In the Interest of J.G.G., DOB 01/12/89, and T.P.G., DOB 03/09/90, JV 02-22-23 Dispositional Order (HCN Tr. Ct., Dec. 23, 2002).
The Court entered this order for compliance in connection with above-named case.

Supreme Court
December 12, 2002
Kathy A. Stacy v. Ho-Chunk Nation and Clarence Pettibone, former Vice President of the Ho-Chunk Nation.
Nation and Wade Blackdeer, present Vice President of the Ho-Chunk Nation, in their individual and official capacities, SU 02-05 Decision (HCN S. Ct., Dec. 12, 2002).
The Supreme Court decided the issues of whether an appointed position on a regulatory Commission is a promotion and whether the Trial Court abused its discretion in ruling that the respondent acted within the scope of his authority. The Supreme Court decided that the issues involved were issues of law, not fact, thereby altering the review process used. Upon review of the record below, the Supreme Court upheld the decision of the Trial Court. Under the laws of the Nation, and the job description for the contested position, the Supreme Court could not determine that the position was superior to others, constituting a promotion. Furthermore, each party acted under reasonable assumptions and could not be said to have attempted to abuse their authority.

**Recent Filings**

**Trial Court**

**Child Support**

**DECEMBER 3, 2002**

State of Wisconsin/Josie Trepanier v. Tyrone L. Walker, CS 02-60. (Matha, T).

**DECEMBER 5, 2002**

State of Wisconsin v. Margaret A. Oliver, CS 02-61. (Matha, T).

**DECEMBER 20, 2002**


**Civil Cases**

**DECEMBER 5, 2002**

In the Interest of Minor Child: T., W.E., DOB 06/30/88, by Bonnie Tech v. HCN Office of Tribal Enrollment, CV 02-114. (Matha, T).

**DECEMBER 13, 2002**

In the Interest of Adult CTF Beneficiary, Justina Littlegeorge, DOB 12/23/83 v. HCN Office of Tribal Enrollment, CV 02-115. (Bossman, W).

**Recent Filings**

**DECEMBER 20, 2002**

In the Interest of Minor Child: P.S., DOB 04/10/87, by Pearl Lightstorming v. HCN Office of Tribal Enrollment, SU 02-07 Order (Denying Appeal) (HCN S. Ct., Dec. 20, 2002).
The Supreme Court based its decision to deny the appeal on the Court’s review process. Any appeal made before the Supreme Court must follow the HCN Rules of Appellate Procedure. In addition the laws and Constitution of the Ho-Chunk Nation, direct the appellate statement to make a legal determination and not a factual one. The Supreme Court did not find a legal basis for the appeal in this instant case. The concurrence attached to the opinion asserted a de novo review for the instant case, possibly signaling a departure from previous review standards.

**DECEMBER 20, 2002**

**Domestic Cases**

**DECEMBER 30, 2002**

Deana DeMarrias v. Allen Willis, DV 02-04.
**Supreme Court**

**DECEMBER 12, 2002**  
Kathy A. Stacy v. Ho-Chunk Nation and Clarence Pettibone, former Vice President of the Ho-Chunk Nation and Wade Blackdeer, present Vice President of the Ho-Chunk Nation, in their individual and official capacities, SU 02-05 (HCN S. Ct., Dec. 12, 2002).

**DECEMBER 20, 2002**  
*In the Interest of Minor Child: P.S., DOB 04/10/87, by Pearl Lightstorming v. HCN Office of Tribal Enrollment*, SU 02-07 (HCN S. Ct., Dec. 20, 2002).

**TIME ARTICLE**

With a complete disregard for tribal institutions and tribal judiciaries, the article pronounces the following claim:

Some long-dispersed tribes, aided by new, non-Indian funded financial godfathers, are regrouping to benefit from the gaming windfall. Others are seeking new reservations—some in areas where they never lived, occasionally, even in other states—solely to build a casino. And leaders of small, newly wealthy tribes now have so much unregulated cash and political clout that they can ride roughshod over neighboring communities, poorer tribes, and even their own members. See [http://www.time.com](http://www.time.com) (Dec. 8, 2002).

The Ho-Chunk Nation has always resided in the State of Wisconsin. A period of approximately fifty (50) years from 1828-1875 consisted of forced removal for the Ho-Chunk Nation. However, the Nation’s members defied the United States’ plan for removal and continually returned to their homeland. Finally, the United States government acquiesced and returned scattered portions of the Nation’s tribal homeland to the members. See 1 HCN Rep. i (Tr. Ct., 1995). The Ho-Chunk Nation built its Casinos on traditional tribal land and never considered otherwise. This Nation is not alone in its decision, and therefore the article in TIME cannot be considered a correct statement of general applicability.

Another assertion within the article suggested that key leaders within each tribe have become so powerful that they have attained a status that enables them to abuse their power and tribal members. See [http://www.time.com](http://www.time.com) (Dec. 8, 2002). The judiciary of the Ho-Chunk Nation has not allowed such an occurrence, nor will it ever allow such an occurrence. The Nation’s judiciary allows for redress of grievance and judicial recourse.

In general, the Ho-Chunk Nation Constitution established a Judiciary consisting of a Supreme Court, a Trial Court, and a Traditional Court. The Trial Court is imbued with the power to make findings of fact and conclusions of law, while issuing all remedies in law and equity. The Supreme Court has the power to interpret the Constitution, issues conclusions of law, and prescribe written rules for the Judiciary as a whole. The Constitution gives all members of the Nation a right of redress for grievances and the ability to appeal to the Courts. See HCN CONST. ART. VIII. Furthermore, the Constitution gives all members a set Bill of Rights that protects their interests and fundamental liberties from abuse at the hands of any other member or governmental body. See HCN CONST. ART. X. The Ho-Chunk Nation Bill of Rights protects the rights of all its members by enjoining the government from infringing on freedoms such as free speech, freedom of assembly, and free exercise of religion. *Id.* The Bill of Rights prevents the government from illegally seizing the person or property of a tribal member. *Id.* That same provision protects citizens from double jeopardy and self-incrimination. *Id.* All persons are protected through an equal protection clause and a provision against ex post facto laws. *Id.* Many other provisions and laws protect the rights of
citizens and non-citizens within the Nation, but the examples listed above illustrate the point more fully. The Judiciary of the Ho-Chunk Nation would not enable a government body or person within government to “ride roughshod” over the members as described by the TIME article.

Further proof of the assertion that the TIME article statement is invalid when compared against this Nation can be found within the actual cases and precedent set by this Judiciary. A prime example can be found in any cases involving employee grievances before this Court. Under the laws of the Ho-Chunk Nation, a Nation’s member must be heard when property, including money or a job, could be taken. See Margaret G. Garvin v. HCN and Donald Greengrass in his official capacity, CV 00-10, 38 Order (Final Judgment) (HCN Tr. Ct., Nov. 16, 2001) at 10. In Garvin, the Court considered issues of due process and standing in order to more fully ascertain the protection of citizens’ rights. Id. at 1. While an employee must have an opportunity to be heard for potential termination, the Court found that such safeguards of citizens’ rights did not manifest in that case. Id. at 10. Furthermore, the retention of counsel for proceedings in which an employee may be heard does not legally impede the discussion. Id. at 11. In other words, retention of counsel at such hearings is not an act of hostility that bars further communication. In fact, the Court insisted that supervisors have an affirmative duty to attempt resolution under the PERSONNEL MANUAL. Id. at 12. The Court has also considered the issue of what constitutes progressive discipline in order to ascertain the property rights of tribal employees. See Cheryl K. Smith v. Ho-Chunk Nation, Rainbow Casino, CV 98-66, 99-04 Judgment (HCN Tr. Ct., Dec. 19, 2002). The Nation has a policy of progressive discipline in certain instances of employee misconduct under the PERSONNEL MANUAL. Id. However, in Smith, the Court found a lack of such progression. Id. at 11. In fact, the Court protected the employee’s rights by stating that suspension without allowance for a previously agreed upon explanation or documentation was an arbitrary decision. Id. at 12. Yet, the Judiciary has not only protected the rights of employees, but the Constitutional rights of all members.

In another fit of pique and generalization, the TIME magazine article asserted broad based concerns of corruption in Tribal governments. In a subsection titled, “Fraud, Corruption, Intimidation,” the writers asserted the following:

Tribal leaders sometimes rule with an iron fist. Dissent is crushed. Cronyism flourishes. Those who question how much the casinos really make, where the money goes, or even tribal operations in general may be banished. Indians who challenge the system are often intimidated, harassed and threatened with reprisals or physical harm. They risk the loss of their jobs, homes and income. See http://www.time.com (Dec. 8, 2002).

This assertion does not ring true for the Ho-Chunk Nation. The Judiciary has never allowed a few persons to disregard the Constitution or disenfranchise the voting population. In fact, the Judiciary has protected the Constitution and the rights contained within in a number of cases. For example, the Court has upheld the right of redress for citizens that grieve against the government. See Jacob Lonetree et al. v. Robert Funmaker et al., CV 00-105 Denial of Preliminary Injunction (HCN Tr. Ct., Nov. 16, 2000). In the aforementioned case, the President of the Ho-Chunk Nation challenged his removal by a vote of the General Council. Id. at 1. The president received notice of the quest for his removal and an opportunity to explain his actions at the next General Council meeting. Id. at 3. The President then brought an action challenging his removal. Id. at 8. A member of the Nation may indeed call for the removal of a government official at General Council and without the approval of a formal body. Id. at 10. Furthermore, the plaintiffs did not have established residency in the disputed areas and thus could not establish legal standing. Id. at 11. This very case runs contrary to the proposition of corruption and fraud that TIME asserts as a rampant problem in Indian Country.
Another example is seen in this Court’s decision that a Vice President assuming the office of President pro tempore may later assume his usual post and title and has standing to sue if a dispute arises. See Clarence Pettibone v. HCN Legislators Kathyleen Whiterabbit, et al., CV 01-84 Order (Granting Plaintiff’s Motion for Summary Judgment) (HCN Tr. Ct., May 15, 2002). Initially, any potential plaintiff wishing to bring a grievance before the Court must have an actual case or controversy. HCN CONST. ART. VII. In other words, without an actual fact or issue to contest, there is nothing for the Court to decide or mediate. Id. at 8. In order for the Court to determine whether or not the plaintiff has an actual case before the bench, the Court must consider first whether the plaintiff has standing to sue. Id. at 9. The plaintiff must be able to exhibit three points in order to prove standing. In a nutshell, the plaintiff must be able to show that s/he was actually injured, that there is a definite nexus between the injury and the actions of the government, and redress is available through the court system. Id. at 10. In Pettibone, the Court had to consider the added wrinkle of whether or not to apply prudential considerations to the first issue of injury when determining standing. Id. In the United States Supreme Court, parties claiming injury under the first prong of standing must assert their own interests as protected or regulated by law. Warth v. Seldin, 422 U.S. 490, 499 (1957). Since not all cases can prove the requisite prudential consideration, the insistence on a concrete injury stemming from an expansive category of interests has stemmed the flow of cases to the Supreme Court. Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992). However, this Court does not entertain the added notion of prudential considerations. Pettibone, CV 01-84 at 24. The benefit of a lighter caseload from the use of prudential considerations is not one that this Court feels the need to follow. The association between a tribal member and his/her government is close enough to warrant the hearing of any grievance that satisfies the three prongs of standing without prudential considerations. Id. at 26. Any member of the Nation with a grievance that satisfies the basic elements of standing, and no waiver is involved, may proceed with their grievance against the government. This Court does not protect persons in a position of power beyond the confines of our Nation’s laws. Any assertion to the contrary, from TIME magazine or elsewhere, would be false.

In addition, this Court has protected the interests of the Nation’s citizens in the area of voting rights. Chloris Lowe, Jr., Stewart J. Miller v. HCN Legislature Members Elliot Garvin, et al., CV 00-104 Order (Determining the Constitutionality of the Proposed Redistricting/Reapportionment Scenario) (HCN Tr. Ct., Nov. 19, 2001). In Lowe, voters faced several proposals for redistricting in voting. In that case, the Court reviewed the final proposal for redistricting in order to determine its constitutionality and fairness to voters. Id. The Court reviewed the proposal in light of the Supreme Court’s insistence on one person/one vote. Decision, SU 00-17 (HCN S. Ct., Mar. 13, 2001). The HCN Judiciary protects the interests of all tribal members and does not tolerate abuse of the system or of members. Once again, the assertions of the TIME magazine article, when compared with the unmentioned and unnoticed Ho-Chunk Nation Judiciary, stand false.

Finally, the article in TIME made one last general assertion indicating that tribal governments, eager to exclude others from having a potential stake in casino earnings, would set arbitrary rules for exclusion for membership. According to the article:

Tribal leaders are free to set their own whimsical rules for admission, without regard to Indian heritage. They may exclude rivals, potential whistle-blowers and other legitimate claimants. See http://www.time.com (Dec. 8, 2002).

The Judiciary has an affirmative duty to uphold the laws of the Nation, and the Constitution would not permit arbitrary and unfair rules for membership in order to further the goals of a few key persons. In fact, the Court has already dealt with concerns over blood quantum and membership. In Theresa Lynn Hendrickson v. HCN Office of Tribal Enrollment, CV 99-10 Judgment (HCN Tr. Ct., Aug. 5, 2002), the Court heard argument on the removal of a tribal
member. The plaintiff was enrolled for many years before the error was noticed and her name could be removed from the roll. *Id.* at 1. The Court insisted on a review of the entire record of removal proceedings and used the standard of substantial evidence leading to a decision that is not arbitrary or capricious. *Id.* at 2. According to the laws of the Nation, removals must be conducted with the proper procedures and an opportunity to be heard and to appeal. *Id.* at 11. In order to begin the removal process, members must present three (3) signed affidavits attesting to their reasons for the removal. The Enrollment Committee then conducts a formal investigation where the person selected for removal may provide an explanation and be represented by counsel. At this stage, the Committee may utilize DNA testing. If the person selected for removal is displeased with the Committee’s decision, they can appeal and bring suit in Trial Court. If the decision of the Trial Court is unsatisfactory, a party may appeal to the Supreme Court. Finally, the General Counsel has the power to affirm or overturn decisions of the court through a majority vote at a quorum meeting. Furthermore, the Tribal Enrollment Office may remove any member that has obtained such membership through fraud, deceit or misrepresentation. *Id.* The Court read other conflicting laws in connection with the case, but determined that no fraud or misrepresentation occurred within this case. *Id.* at 14. However, as previously mentioned, the Trial Court is not the last word on this matter. The decision is currently on appeal before the Supreme Court. In addition, if the defense does obtain a reversal in the Supreme Court, the case could be remanded back to the Trial Court or overturned by the General Council. However, the trial court opinion stands for the proposition that a claimant may bring their case against the Nation when due process was not given to their case. This Court defends the general right to be heard when property interests are at stake and does not permit arbitrary or capricious decision-making in its administration. Furthermore, this Nation’s standard for enrollment has always relied on twenty-five percent blood quantum. The Court has dismissed cases involving removal where DNA results revealed that the plaintiff did not have the requisite blood quantum. See Melissa Sue Decorah v. HCN Enrollment Committee, et. al, CV 99-14a Order (Granting Dismissal) (HCN Tr. Ct., Aug. 9, 1999). However, this lack of blood quantum does not constitute a lack of standing and still permits a claimant to come forward and request retesting. *Id.* at 5. Therefore the interests of members and non-members alike are protected through the laws upheld by this Judiciary.

Thus, in regards to the TIME magazine article, none of the assertions quoted above hold true for this Nation. Painting all tribes with such a broad brush is dangerous indeed and invites error. As for the Ho-Chunk Nation, the Judiciary provides all members with protection from the assertions of abuse as recounted by TIME. Members of the Nation need not fear the nightmarish depictions from that article, nor pay such inferences any heed. With such disregard of a nation’s laws and judiciary, generalizations and fabrications such as those seen in the TIME article are possible. Yet, once the true legal history of a nation is revealed, such fabrications are dissolved in a solution of truth and justice.*

* All trial court opinions cited within the text are available online at the Ho-Chunk Nation’s website: www.ho-chunknation.com/government/judicial/case_index2.htm

**Article written by Rebecca Tavares, HCN Law Clerk/Staff Attorney**

**CONGRATULATIONS!**

On December 8, 2002, the Honolulu Marathon took place. Over thirty thousand people participated in the event and twenty-four thousand finished. The Judiciary takes this opportunity to congratulate all Ho-Chunk Nation members who participated in this grand event. The Judiciary would also like to congratulate Dr. Tom Walker, a Ho-Chunk Nation member, for finishing with a record of six hours, two minutes and two seconds. Dr. Walker finished 1,326 in his division and 15,725 overall. The Judiciary is very proud and again thanks all those who represented the Nation at this event.
SAY HELLO TO OUR NEW SUPREME COURT CLERK!

Here is Bryan Dietzler hard at work, crafting and honing the Supreme Court opinions. Photo taken: Jan. 3, 2003.

The author of this article, Rebecca Tavares, is the Law Clerk for the Ho-Chunk Trial Court and graduated from the University of Minnesota. Of Wyandot and Portuguese descent, Ms. Tavares held a previous clerkship with Judge Thorwald Anderson of the State of Minnesota’s Fourth Judicial District. Before coming to Black River Falls, she lived in Minneapolis as a student and member of the University of Minnesota chapter of the American Indian Law Students’ Association. Ms. Tavares shall spend one year with the Trial Court and the people of Black River Falls.

The Ho-Chunk Nation Supreme Court welcomed a new person to the staff this month with the addition of Bryan Dietzler, the new Supreme Court Law Clerk. Originally from North Dakota, Brian refers to Iowa as his home. “I lived there almost twelve years.” He graduated from Central Community High School in Elkader, IA and went on to the military. According to Bryan, he did not “buckle down” to his studies until his sophomore year of high school, but his excellent scores on exams earned him the recommendation to enter Army Intelligence.

He entered the Army in August 25, 1991 and went active April 5, 1995. Bryan focused on foreign law, studying the American government and legal system and comparing such to Middle Eastern countries. His comparative studies began in the 121st division Judge Advocate General’s office at Fort Knox. At this point, Bryan spent part of his time in the 3rd Federal District in Louisville, KY working in a paralegal capacity and doing investigations. He later obtained a graduate degree in foreign government from Kansas State University. Bryan received a medical discharge on June 16, 1999, from the military after he was attacked in the Middle East.

Bryan and his fiancé, Stephanie Littlegeorge plan to wed on April 12th or 19th of this coming year. Stephanie has a son from a previous relationship, named Ryan. Bryan has an adopted daughter from a previous relationship. The happy couple are expecting a baby on Monday, January 13, 2003.

As for his new place of residence, Bryan is enjoying his new community. As he previously conducted business all over the Midwest, Bryan feels comfortable with the area. He asserted that he really enjoyed talking with the elders of the community and felt that he had found a place where, “you could really count on people.” Bryan is very excited about his work in the Supreme Court and his new home in Black River Falls. As for his spare time, Bryan and Stephanie go shopping, play at the casino, and take in movies. When alone, Bryan keeps abreast of the latest Supreme Court and Appellate Court opinions or interacts with computers. Once again, the Court bids welcome to our newest member and wishes him all the best.
Ho-Chunk Nation Court System

Judiciary and Staff
Supreme Court – Mary Jo B. Hunter, Chief Justice
Mark D. Butterfield, Associate Justice
Jo Deen B. Lowe, Associate Justice

Traditional Court – Wallace Blackdeer
Donald Blackhawk
Dennis Funmaker
Orville Greendeer
Douglas Greengrass
Owen Mike
Gavin Pettibone
Douglas Red Eagle
Preston Thompson, Jr.
Eugene Thundercloud
Morgan White Eagle
Clayton Winneshiek

Trial Court – William H. Bossman, Chief Judge
Todd R. Matha, Associate Judge
Clerk of Court, Supreme Court – Bryan Dietzler
Clerk of Court, Trial Court – Marcella Cloud
Assistant Clerk of Court, Trial Court – Selina Joshua
Bailiff/Process Server – Willa RedCloud
Administrative Assistant – Jeanne Colwell
Staff Attorney – Rebecca Tavares

Office of Public Advocacy – Dennis Funmaker, Administrator

* The Ho-Chunk Nation Judiciary and its officers are active participants in the following organizations:

Wisconsin Tribal Judges Association
(Eleven federally recognized tribes within the State of Wisconsin)

Native American Indian Court Judges Association
(Region 5—Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, South Dakota, North Dakota, and Wisconsin)

HCN Court System Fee Schedule

- Filing Fees ................. $50.00*
  "With the exception of petitions to register child support orders – this fee remains at $20.00 as previously ordered by the Supreme Court.
  Note: Filing Fee now includes Summons fee.

- Filing Fees for Petitions to Register and Enforce Foreign Judgment/Order ........... $20.00

Copying ....................... $0.10/per page
Faxing .................. $0.25/per page (sending and receiving)
Tapes of Hearings ............ $10.00/per tape
CD of Hearing ................ $12.50/per tape
Deposition Videotape ............ $10.00/per tape
Certified Copies ............... $0.50/per page
Equipment Rental ............ $5.00/per hour
Appellate filing fees ............ $35.00
Admission to Practice .......... $50.00
Pro Hac Vice Appearance ....... $35.00

Legal Citation Form

The following are example citation forms by legal reference and citation description.

Ho-Chunk Nation Constitution
Constitution, Article Number, Section, and Subsection.
HCN Const., Art. II, Sec. (or §) 1(a).
HCN Const., Art. XI, Sec. (or §) 7.

HCN Ordinances
Ordinance Name, Chapter number, Section/Part/Clause, page.
PERSONNEL POLICIES AND PROCEDURE MANUAL, Ch. 12,
Part B, p. 82.
CLAIMS AGAINST PER CAPITA, Sec. (or §) 6.01(b).

HCN Supreme Court Case Law
Case Name, Case No. (HCN S. Ct., month, day, year).


HCN Trial Court Case Law
Case Name, Case No. (HCN Tr. Ct., month, day, year).

Rules of Civil Procedure
HCN R. Civ. P. 19(B).
Recent events have raised some questions regarding garnishments and how the Nation handles these matters. This article shall attempt to clarify the discussion on garnishments overall and the Court’s judicial procedures. The Judiciary has dealt with a limited number of instances where garnishment of per capita stands at issue. The HCN Legislature allows for garnishment in the following instances: child support, federal income tax levies, debts owed to the Nation and to the Hocąk Credit Union. In the matter of civil garnishments, the claims that fall outside the allowed exceptions contained within the CLAIMS AGAINST PER CAPITA ORDINANCE are not payable through per capita, but may be satisfied through wage withholding. The Judiciary shall now explain each of the aforementioned garnishment topics in greater detail, focusing on the legal reasons for garnishment. Please note that as the judicial branch of the Ho-Chunk Nation, this body cannot render advisory opinions and will refrain from such in this article. Such action by this Court would prove improper due to the absence of a justiciable case or controversy.

The Court has established a history of garnishing per capita for current and back child support. Continued on page 14.
ANOTHER LOOK AT HCN BAR MEMBERS: PHILLIP BRADBURY

The author of this article, Rebecca Tavares, is the Law Clerk for the Ho-Chunk Trial Court and graduated from the University of Minnesota. Of Wyandot and Portuguese descent, Ms. Tavares held a previous clerkship with Judge Thorwald Anderson of the State of Minnesota’s Fourth Judicial District. Before coming to Black River Falls, she lived in Minneapolis as a student and member of the University of Minnesota chapter of the American Indian Law Students’ Association. Ms. Tavares shall spend one year with the Trial Court and the people of Black River Falls.

NOTE: The subject chosen for this personal interview feature was selected at random from a pool of active members of the Ho-Chunk Nation Bar. Future feature articles regarding bar members shall use the same selection process. This feature is not meant as an advertisement for Ho-Chunk Nation Bar members, nor should it be construed as an endorsement of any legal counsel.

Mr. Bradbury came before this Court in connection with the case, HCN v. B & K Builders et al., CV 00-91 (HCN Tr. Ct., June 21, 2001). His cases before this Court consist primarily of construction matters and working with tribal contracts. His initial impression of the Ho-Chunk Nation Court System was one of good organization and professionalism. Mr. Bradbury cited his first experience with the Court as a positive one, noting that he found nothing wholly unusual or out of the ordinary with the operation of the Ho-Chunk Nation Trial Court. In fact, he noted that smaller court systems are often more personable. Finally, Mr. Bradbury had this advice for attorneys beginning practice in any area of law, “listen well and seek advice from a variety of people.”

After graduation, Mr. Bradbury followed his inclination and practiced law dealing with business transactions and litigation. Phillip Bradbury became a member of different firms over the course of his career, including a period where he worked out of his own practice for business litigation. When asked about the beginning of his career, Mr. Bradbury stated that he was shocked by the lack of respect and congeniality among some lawyers in the field.

Mr. Bradbury chose the legal profession for the hope of variety. “The legal practice is one where you could get a variety of experiences working with different peoples and issues, in an attempt to accomplish multiple goals.” He obtained his degree from the University of Wisconsin Law School in 1984.

Melli, Walker, Pease & Ruhly, S.C. has a Ho-Chunk Nation Bar member on its staff. Phillip Bradbury became a member of the Ho-Chunk Nation Bar shortly after its inception. In his spare time, Mr. Bradbury is the father of two teenagers. He plays golf, enjoys gardening, and sits as the President of the Village of Maple Bluff.
Recent Decisions

Decisions are separated between Trial Court and Supreme Court decisions and categorized by subject matter and date (from oldest to most recent). The following are summaries prepared by the Staff Attorney for the reader’s benefit. They should in no way be used as substitution for citations to the actual court opinion.

Within the Trial Court, cases are categorized and docketed as one of the following: Child Support (CS or if filed prior to 1998, CV), Civil (CV), Criminal (CR), Custody (CU), Domestic Violence (DV), or Juvenile (JV). Within this index, case citations will appear in one of these categories and, in the event it may be helpful to the reader as a research tool, the cases may also be summarized in a separate topic area. In some instances a decision may touch upon other topics which may not warrant a summary in this index, but the editor will use the indicator “other topic(s) covered,” as a research aid for the reader.

Recent Decisions and Recent Filings both begin with the date where the previous Court Bulletin left off.

Trial Court

Child Support

JANUARY 7, 2003

The Court had to determine whether or not to enforce a standing foreign child support order against the respondent’s future per capita distributions. The respondent failed to respond to the Petition with the specified time frame. The Court issued a default judgment against the respondent.

JANUARY 8, 2003

The Court had to determine whether to enforce another standing foreign order against the respondent’s per capita distribution. The respondent failed to respond within the necessary time frame. The Court granted a default judgment and subsequent equitable distribution.


This action stems from an admonition the Court made to the parties in a previous action. See Order (Releasing Impound and Enforcing Child Support) (HCN Tr. Ct., Oct. 11, 2002) at 25 n.5. The petitioners brought forth updated arrears statements in order for the Court to perform a proper equitable adjustment. The subsequent action reflects the proper equitable distribution of the respondent’s per capita for the payment of arrears.


The petitioner brought a motion requesting that the Court amend the current Order to reflect a change made by Jackson County. The respondent failed to respond within the necessary time frame. The Court granted the motion to amend the decision.


The petitioner brought a motion requesting that the Court amend the current Order to reflect a change made by Jackson County. The respondent failed to respond within the necessary time frame. The Court granted the motion to amend the decision.
The petitioner brought a Motion to Modify, requesting that the Court amend the child support and update the existing arrearage amount. The respondent failed to respond within the necessary time frame. The Court granted the uncontested motion.

The petitioner filed a Motion to Suspend Per Capita Withholding in the instant case. The petitioner alleged that the respondent had custody of the children. The Court granted the request.

The petitioner brought a motion to modify, requesting that the Court recognize a Statement of Arrears in connection with the case. The respondent failed to respond within the necessary time frame. The Court granted this request.

The Court had to determine whether or not to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the necessary time frame. The Court granted a Default Judgment against the respondent.

The petitioner brought a motion to modify, requesting that the Court recognize a Statement of Arrears in connection with the case. The respondent failed to respond within the necessary time frame. The Court granted this request.

The petitioner brought a Motion to Modify, requesting that the Court amend the current Order to reflect a change made by Monroe County. The respondent failed to respond within the necessary time frame. The Court granted the uncontested motion.

The Court had to determine whether or not to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the necessary time frame. The Court granted the uncontested motion.

The petitioner brought a Motion to Amend Order to reflect a change made by Jackson County. The respondent failed to respond within the necessary time frame. The Court granted the uncontested motion.

The petitioner brought a Motion to Modify the current per capita distribution to reflect a change made by Sauk County. The respondent failed to respond within the necessary time frame. The Court granted the uncontested motion.

The Court had to determine whether or not to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the
necessary time frame. The Court granted a Default Judgment against the respondent.

The petitioner brought a Motion to Amend Order to reflect a change made by Jackson County. The respondent failed to respond within the necessary time frame. The Court granted the uncontested motion.

The petitioner filed a Motion to Suspend Current Child Support. The petitioner and the respondent currently reside together with the child. The Court granted the uncontested motion.

JANUARY 13, 2003
The Court convened a Fact-Finding Hearing to determine the nature and origin of the numbers appearing in a recent KIDS Account Statement. Neither party could explain the existence of the numbers, which appeared contradictory to the Court’s own payment history. Without further justification concerning the mismatched amounts, the Court suspended the withholding for arrearages and closed the case.

The Court had to determine whether or not to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the necessary time frame. The Court granted the uncontested motion.

Jackson County filed a Motion to Amend asking the Court to cease withholding for child support in the instant case. The county stated that the parties now reside together with their child. The Court granted the uncontested motion.

The Court had to determine whether or not to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the necessary time frame. The Court granted the uncontested motion.

The respondent asserted that a change in circumstances ended his child support obligation for the first case. Initially, the Court impounded these contested funds and awaited further documentation to either negate or confirm the allegations. In addition, she brought a motion to modify, requesting the Court to amend the figure of the second case to a dollar figure. Neither petitioner responded to the respondent’s motions. The Court granted the motions and released all impounded funds.

The petitioner filed a Petition to Recognize Foreign Child Support Orders on October 1, 2002. The respondent filed a response with the Court indicating that paternity was still in question. The respondent’s attorney filed a copy of a court order indicating that both sides were required to undergo DNA testing on January 8, 2003. Given the circumstances, the Court impounds the contested portion of the respondent’s per capita distributions until further notice.

The petitioner filed a Petition to Recognize Foreign Child Support Orders on October 1, 2002. The respondent filed a response with the Court indicating that paternity was still in question. The respondent’s attorney filed a copy of a court order indicating that both sides were required to undergo DNA testing on January 8, 2003. Given the circumstances, the Court impounds the contested portion of the respondent’s per capita distributions until further notice.

The petitioner filed a motion requesting that the Court suspend current child support in the instant case. The petitioner asserted that the respondent had custody of the child in the latter case. The Court ceased withholding for the latter case and continued support in the former case as per a previous Court order.

JANUARY 15, 2003

In Case No. CV 97-02, the Court received a correspondence from the Flandreau Indian School. This letter indicated that Cody Greendeer is currently enrolled at that school. Therefore, the May 2003 per capita distribution will be the last time child support is withheld for this child.


The Court had to determine whether or not to enforce a standing foreign child support order against the respondent’s future per capita distributions. The respondent failed to respond within the necessary time frame. The Court granted a default judgment in favor of the petitioner.

JANUARY 16, 2003

The parties received a Notice (Child Turning 18) from the Court on December 12, 2002. The parties were informed that, in accordance with Wisconsin law, and without proof of high school enrollment, the respondent’s support obligation for the minor child in question would end. The parties failed to provide proof of enrollment by the deadline. The respondent maintains arrears and a support obligation for another minor child. Thus, the Court ordered the Treasury Department to cease withholding for one child and maintain withholding for another and for arrears.

JANUARY 17, 2003

On January 9, 2003, the plaintiff filed a Termination request with the Court. While the ten (10) day response period had not lapsed, the decision would not prejudice the respondent. Therefore, the Court suspended the withholding for current child support in the instant case.
Children’s Trust Fund (CTF)

NOVEMBER 26, 2002

In the Interest of Minor Child: B.L., DOB 11/22/96, by Michelle Lewis v. HCN Office of Tribal Enrollment, CV 02-86 Order (Petition Granted) (HCN Tr. Ct., Nov. 26, 2002). (Bossman, W).
The petitioner requested funds from the minor child’s CTF account for private school tuition. The petitioner provided evidence of a learning disability which required more care than a public school facility could provide. Because of the extraordinary circumstances of the case, and the fact that the petitioner satisfied all four (4) prongs of the Court’s test, the Court released the funds.

JANUARY 6, 2003

The Court convened a Fact-Finding Hearing in the instant case. The plaintiff failed to appear or explain her absence. The Court then dismissed the action without prejudice.

JANUARY 7, 2003

The petitioner requested funds for orthodontic procedures. The Court uses a four-prong test to determine a petitioner’s eligibility to receive CTF funds. The Court granted this request.

JANUARY 28, 2003

The petitioner filed a request for CTF funds with the Court on December 13, 2002. The defendant raised several issues in its Answer and requested documentation of claims in the Petition. The Court directs the petitioner to present such documentation to the Court on or before March 7, 2003.

JANUARY 29, 2003

The petitioner filed a request for CTF funds with the Court on December 13, 2002. The defendant raised several issues in its Answer and requested documentation of claims in the Petition. The Court directs the petitioner to present such documentation to the Court on or before March 7, 2003.

JANUARY 30, 2003

The Court released CTF funds for educational needs of the child on November 26, 2002. The Court demanded an accounting at that time. The Court now accepts an accounting of the expenditures.

Incompetent’s Trust Fund (ITF)

JANUARY 27, 2003

The guardian for Mr. O’Brien requested ITF funds for his use. The petitioner demonstrated all four prongs of the Court’s test for the release of funds. Therefore, the Court released the requested funds.

JANUARY 30, 2003

The Court released funds from the ITF account on October 29, 2002. The Court requested an
accounting at that time. The Court now accepts an accounting of the expenditures.

The Court released funds from the ITF account on May 22, 2002. The Court requested an accounting at that time. The Court now accepts an accounting of the expenditures.

Civil Cases (all categories)

NOVEMBER 22, 2002
Ho-Chunk Housing Authority v. Cheri Crain, CV 00-87 Order (Dismissal with Prejudice) (HCN Tr. Ct., Nov. 22, 2002). (Bossman, W).
The plaintiff filed a Complaint on September 11, 2002. On October 21, 2002, the plaintiff filed a Motion to Dismiss, explaining that they no longer wished to pursue the case. The Court granted the Motion and dismissed the case with prejudice.

NOVEMBER 26, 2002
In the Interest of Minor Child: B.L., DOB 11/22/96, by Michelle Lewis v. HCN Office of Tribal Enrollment, CV 02-86 Order (Petition Granted) (HCN Tr. Ct., Nov. 26, 2002). (Bossman, W).
For summary, see Children’s Trust Fund (CTF) cases within this index.

Morning Star Leonard v. Julie Nakai, as Floor Manager of Ho-Chunk Bingo and the Ho-Chunk Nation, CV 02-45 Pre-Trial Order (HCN Tr. Ct., Nov. 26, 2002). (Bossman, W).
The Court held a Pre-Trial Conference on November 26, 2002. In this conference, the Court amended the Scheduling Order. Neither side objected to the changes in the Scheduling Order.

NOVEMBER 27, 2002
In the Matter of Case Numbering, Administrative Order 02-03 Civil Garnishment (HCN Tr. Ct., Nov. 27, 2002). (Bossman, W).
From now on, the civil garnishment cases before this Court that do not pertain to per capita distributions for child support will be designated CG.

DECEMBER 6, 2002
Ho-Chunk Nation v. Bank of America Corp., CV 02-93 Order (Granting Telephonic Appearance) (HCN Tr. Ct., Dec. 6, 2002). (Bossman, W).
On December 5, 2002, both parties filed a Motion to Appear Telephonically for the December 11, 2002 Scheduling Conference. The Court granted the joint request. The telephonic appearances must be timely and by way of the Court’s main number.

DECEMBER 17, 2002
Ho-Chunk Housing Authority v. Karen Lipski, CV 02-102 Eviction Order (Restitution and Relief) (HCN Tr. Ct., Dec. 17, 2002). (Matha, T).
The Court had to determine whether or not to evict the defendant for housing violations contained in her lease. The defendant did not respond to the Complaint, thereby allowing the Court to grant a default judgment against her. Thus, the Court restored the rental property to the plaintiff along with a money judgment awarding back rent payable to the plaintiff.

The Court restored the rental property to the plaintiff. The Court then directed law enforcement to assist in the removal of the defendant and the restoration of the property to the plaintiff. The Court gave a general description of the property in order to assist law enforcement.

DECEMBER 31, 2002
The Court ruled in favor of the defendant due to a lack of any case or controversy on the part of the
plaintiff. The parties argued various legal positions ranging from equal protection to ex post facto laws and the doctrine of laches. Before the Court can consider arguments under any of these legal headings, it must determine whether it has personal and subject matter jurisdiction. Once such a determination is made, the Court then moves on to consider whether the matter is justiciable. One component of justiciability is whether the plaintiff has standing. The Court found that the plaintiff had no standing for this action, and therefore the Court did not need to reach an answer to the legal claims raised. In order to show standing, the plaintiff must show concrete injury, ability to redress, and a nexus between the injury and the body being sued. At this time, the plaintiff could not prove concrete injury to maintain standing in this action.

JANUARY 6, 2003
For summary, see Children’s Trust Fund (CTF) cases within this index.

The Court convened a Hearing to consider the defendant’s Motion to Dismiss. The plaintiff filed no response contesting the defendant’s Motion to Dismiss. In addition, the plaintiff failed to appear for the Hearing, causing the Court to grant the defendant’s Motion.

JANUARY 7, 2003
For summary, see Children’s Trust Fund (CTF) cases within this index.


On August 27, 2001, the Court issued a judgment in favor of the plaintiff. On September 17, 2002, the plaintiff filed a Satisfaction of Judgment. The Court recognizes this debt as paid in full and closes the case.

Francis L. Williams v. Alex B. Chown, Marketing Director of Majestic Pines Casino, and the Ho-Chunk Nation, CV 02-78 Order (Granting Motion to Dismiss) (HCN Tr. Ct., Jan. 7, 2003). (Bossman, W).
The defendants moved to dismiss the case for failure to state a claim on which relief can be granted. The plaintiff claimed insufficient notice of a layoff, citing provisions that gave no notice requirement for layoffs. The Court granted the motion.

JANUARY 9, 2003
Tara L. Blackdeer v. Vaughn Pettibone, CV 02-76 Order (Denying Motion to Dismiss, Granting Attorney Fees and Costs and Setting Deadlines) (HCN Tr. Ct., Jan. 9, 2003). (Bossman, W).
The defendant filed a Motion to Dismiss for failure to prosecute. The plaintiff did not appear for the Hearing. The Court denied the motion but permitted the imposition of attorney fees and costs against the plaintiff for her failure to take action and to appear.

JANUARY 13, 2003
The petitioner brought an action for reinstatement to his former position and lost wages. The plaintiff was terminated for violations of the POLICY AND PROCEDURES MANUAL. The Court found that the evidence as a whole supported the plaintiff’s termination as reasonable. Because the plaintiff could not show that he was wrongfully terminated, the Court granted Judgment to the defendants.

JANUARY 14, 2003
The plaintiff filed this action for the back rent owed by the defendant. The defendant failed to respond
within the necessary time frame. The Court granted a Default Judgment against the defendant.

_Ho-Chunk Housing Authority v. Elliot Walker, CV 01-155 Order (Damages) (HCN Tr. Ct., Jan. 14, 2003). (Bossman, W)._ The Court previously issued an Eviction Order in the instant case on May 1, 2002. The plaintiff requested that back rent and damages be withheld from the defendant’s per capita. Without objection from the defendant, the Court granted the request.

_JANUARY 15, 2003_  
_Ho-Chunk Housing Authority v. Tyrone Walker, CV 01-44 Order (Damages) (HCN Tr. Ct., Jan. 15, 2003). (Bossman, W)._ The Court previously issued an Eviction Order in the instant case on May 1, 2002. The plaintiff requested that back rent and damages be withheld from the defendant’s per capita. Without objection from the defendant, the Court granted the request.

_JANUARY 16, 2003_  
_Richard Walker v. Jonette Pettibone, CV 01-122 Order (Dismissal with Prejudice and Assessment of Costs and Fees) (HCN Tr. Ct., Jan. 16, 2003). (Matha, T)._ The Court assessed costs and fees against the plaintiff for failure to appear at the Pre-Trial Conference and the Trial. The plaintiff failed to inform the Court or the defendant of his intention to abandon the case. The defendant filed a formal motion requesting costs, to which the plaintiff never responded. Thus, the Court granted the motion in favor of the defendant.

_JANUARY 17, 2003_  
_Majestic Pines Hotel, Division of the Ho-Chunk Nation v. Troy Whiteagle, CV 02-70 Order (Default Judgment) (HCN Tr. Ct., Jan. 17, 2003). (Bossman, W)._ The plaintiff filed a Complaint on October 23, 2002. The plaintiff subsequently filed an Amended Complaint on November 26, 2002. The defendant did not file a response to either pleading in the necessary time frame. Thus, the Court granted a default judgment in favor of the plaintiff.

_Robert A. Mudd v. HCN Legislature: Elliot Garvin, Clarence Pettibone, Tracy Thundercloud, Wade Blackdeer, Dallas Whitewing, Gerald Cleveland, Sr., Christine Romano, Myrna Thompson, George Lewis, Kathyleen Whiterabbit, Sharyn Whiterabbit; and the Ho-Chunk Nation, CV 03-01 Order (Preliminary Injunction Hearing) (HCN Tr. Ct., Jan. 17, 2003). (Matha, T)._ The plaintiff in the instant case properly requested a preliminary injunction after filing an Amended Complaint on January 15, 2003. The defendants must answer the pleading on or before January 27, 2003. The Court shall schedule a Preliminary Injunction Hearing to determine whether to grant the plaintiff’s request.

_Helen M. Willson v. Ho-Chunk Nation and Amy Peterson, in her official capacity, CV 02-88 Order (Motion Hearing) (HCN Tr. Ct., Jan. 17, 2003). (Matha, T)._ The Court decided to convene a hearing in order to allow the defendants to argue their Motion to Dismiss for Failure to State a Claim upon which Relief Can Be Granted. The plaintiff may respond in writing at least one (1) day prior to the hearing. The Court shall hear arguments at the Pre-Trial Conference.

_JANUARY 20, 2003_  
_Cassandra Littlebear v. HCN Office of Tribal Enrollment, CV 02-79 Order (Notice of Intent to Dismiss) (HCN Tr. Ct., Jan. 20, 2003). (Bossman, W)._ The Court issued its Order (Denying in Part and Granting in Part With Conditions) on December 10, 2002. In this opinion, the Court requested documents of the plaintiff to establish her case. The plaintiff failed to file these documents with the Court, and the Court intends to dismiss the case.

_Majestic Pines Hotel, Division of the Ho-Chunk Nation v. Troy Whiteagle, CV 02-103 Erratum Order (HCN Tr. Ct., Jan. 20, 2003). (Bossman, W)._ The Court entered this Erratum Order to correct a clerical error.

_JANUARY 22, 2003_  
_Mary J. Mayek v. Esteban M. Blackhawk, Sr., Thelma S. Garcia v. Esteban M. Blackhawk, Sr., Rhonda Oas v. Esteban M. Blackhawk, Sr., CS 02-
The Court entered this Erratum Order to correct a clerical error.

**JANUARY 23, 2003**

The plaintiff moved to continue a Scheduling Conference set on October 9, 2002 to November 1, 2002. The appointed day came, the plaintiff failed to appear. The plaintiff did not inform the Court of his inability to appear, and the Court dismisses the case.

*Ho-Chunk North (Wittenberg, Wisconsin), a Division of the HCN Department of Business; and Ho-Chunk Nation v. Wayne’s Transport, Inc., a/k/a Wayne’s Trucking, Inc.; Wayne L. Hirt and Lisa Hirt, CV 02-14 Order (Dismissal without Prejudice)* (HCN Tr. Ct., Jan. 23, 2003). (Matha, T).
The plaintiffs requested that the Court dismiss the current action without prejudice. The Court granted this request. The plaintiffs may re-file this action in the event of a change in circumstances.

**JANUARY 27, 2003**

For summary, see **Incompetent’s Trust Fund (ITF) cases** within this index.

The plaintiff brought an action to recover money for unpaid rent and rental damages. The defendant admitted some claims at trial. The Court awarded judgment to the plaintiff.

*George R. Davis, Jr. v. Ho-Chunk Casino Slot Department, CV 02-72 Order (Motion Hearing)* (HCN Tr. Ct., Jan. 27, 2003). (Bossman, W).
The Court convened a Motion Hearing to allow the defendant a chance to argue its Motion to Dismiss. The plaintiff must file any response to the motion at least one (1) day before the hearing. Arguments shall be heard at the Pre-Trial Conference on February 6, 2003.

The Court issues this Scheduling Order to establish dates and deadlines for the instant case up to and including trial.

The plaintiff filed a Satisfaction of Judgment with this Court. The Court accepts the filing with proof of satisfaction. The Court now closes the case absent objections from the parties.

**JANUARY 28, 2003**

The Court issued this Scheduling Order to establish dates and deadlines for the instant case up to and including trial.

For summary, see **Children’s Trust Fund (CTF) cases** within this index.

**JANUARY 29, 2003**

For summary, see **Children’s Trust Fund (CTF) cases** within this index.

The Court issued this *Scheduling Order* to establish dates and deadlines for the instant case up to and including trial.

**JANUARY 30, 2003**


For summary, see **Children’s Trust Fund (CTF) cases** within this index.


For summary, see **Incompetent’s Trust Fund (ITF) cases** within this index.

*In the Interest of Claude Payer, DOB 12/19/61, by Dorothy Will v. HCN Office of Tribal Enrollment, CV 02-31 Order (Accepting Accounting) (HCN Tr. Ct., Jan. 30, 2003).* (Bossman, W).

For summary, see **Incompetent’s Trust Fund (ITF) cases** within this index.

*Robert A. Mudd v. HCN Legislature: Elliot Garvin, Clarence Pettibone, Tracy Thundercloud, Wade Blackdeer, Dallas Whitewing, Gerald Cleveland, Sr., Christine Romano, Myrna Thompson, George Lewis, Kathyleen Whiterabbit, Sharyn Whiterabbit; and the Ho-Chunk Nation, CV 03-01 Order (Requiring Traditional Court Consultation) (HCN Tr. Ct., Jan. 30, 2003).* (Matha, T).

The defendants argued a lack of standing in their January 27, 2003 Answer. The plaintiff responded with a cultural argument suggesting that the eldest male of a family may speak for all the members. In addition, the plaintiff asserted that a combat veteran may also assert standing as an elevated member of the community speaking on community issues. The Court insisted that the parties seek the advice of the Traditional Court before proceeding with the case in the Trial Court.

**Juvenile**

**DECEMBER 6, 2002**

*In the Interest of Minor Child: I.J.W., DOB 08/02/95, JV 01-04 Order (Terminating Guardianship) (HCN Tr. Ct., Dec. 6, 2002).* (Bossman, W).

This Order terminated guardianship in the instant case.

**DECEMBER 17, 2002**

*In the Matter of the Child: C.M.S., DOB 06/07/85, JV 02-24 Order (Formal Hearing) (HCN Tr. Ct., Dec. 17, 2002).* (Bossman, W).

The Court conducted a *Formal Trial* in the instant case in order to discuss the details of the case.

**JANUARY 7, 2003**


The Court terminated its jurisdiction in the instant case.

**JANUARY 14, 2003**


This Court *Order* compels the parties to undergo DNA testing.

**JANUARY 20, 2003**

*In the Interest of Minor Child: S.L.S., DOB 01/03/86, JV 00-19 Order (Appointment of Permanent Guardian) (HCN Tr. Ct., Jan. 20, 2003).* (Matha, T).

The Court appointed a permanent guardian for the minor child in question.

**JANUARY 24, 2003**

*In the Interest of Minor Child: J.J.F., DOB 11/01/00, JV 02-27 Order (Entrance of Plea) (HCN Tr. Ct., Jan. 24, 2002).* (Bossman, W).
The Court convened a *Plea Hearing* in the instant case.

**JANUARY 28, 2003**  

The Court permitted a rescheduling of the next *Hearing* and a telephonic appearance.

**JANUARY 29, 2003**  

The Court granted the party’s request to reschedule the next *Hearing*.


The Court appointed Attorney William Gardner as *Guardian ad Litem* for the minor child.

### Supreme Court

**JANUARY 7, 2003**  

The Court issued this *Amended Scheduling Order* to inform the parties that oral arguments would commence on January 22, 2003, at 9:00 a.m.

**JANUARY 24, 2003**  

The Court issued this *Scheduling Order* to establish dates and deadlines for the instant case.

### Recent Filings

#### Trial Court

**Child Support**

**JANUARY 7, 2003**  

**JANUARY 14, 2003**  
*State of Wisconsin v. Brian LaMere*, CS 03-02. (Matha, T).

*State of Wisconsin v. Christopher Littlewolf*, CS 03-03. (Matha, T).

#### Civil Garnishment

**JANUARY 13, 2003**  
*Gerry Geishart v. Norah Shortell*, CG 03-01. (Matha, T).

#### Civil Cases

**JANUARY 2, 2003**  
*Robert A. Mudd v. HCN Legislature and HCN*, CV 03-01. (Matha, T).

**JANUARY 6, 2003**  
*HCN Department of Education v. Gail Leigh Funmaker*, CV 03-02. (Matha, T).

**JANUARY 7, 2003**  
*Charles L. Stands v. Stefanie Lewis*, CV 03-03. (Bossman, W).

**JANUARY 13, 2003**  
*In the Matter of the Minor Child: F., T.*, DOB 03/18/93, by Toni Funmaker v. HCN Office of Tribal Enrollment, CV 03-04. (Matha, T).

#### Juvenile

Nothing to report at this time.

#### Domestic Cases

Nothing to report at this time.

### Supreme Court

Nothing to report at this time.
The origin of this decision is found within the Claims Against Per Capita Ordinance and the Recognition of Foreign Child Support Orders Ordinance. If and when the Nation chooses to distribute per capita income to its members, any and all members have the right to such income. When the checks are distributed into the mail, that money then belongs to the designated tribal member. However, before this point in time, the money still belongs to the Nation. In that instance, a creditor may request garnishment where the legislature has waived sovereign immunity. As to laws of general applicability, the question remains unresolved and could affect future claims against per capita from new creditors. A law of general applicability is one that is meant to apply to the United States as a Nation. However, many of these laws do not specifically mention tribes and thus, an issue of sovereign immunity arises. Once a law is considered to be a law of general applicability, the United States Supreme Court, or in our case the United States federal Court of Appeals for the 7th Circuit, would have to determine whether this law would apply to the Ho-Chunk Nation. The only specific instances where the legislature has waived such immunity are found in the aforementioned ordinances. Thus, garnishment of per capita may take place for child support, back federal taxes, and debts owed to the Nation.

Garnishment of wages for child support and other areas of civil garnishment have recently become a more pressing issue for the Trial Court. While the Court did not handle these matters to a great extent previously, the full faith and credit clause within the Ho-Chunk Nation Rules of Civil Procedure allows for such determinations. As the subject matter of such orders deals with wages and not per capita distributions, the Court has not faced issues of sovereign immunity. The Nation does not have the same interest in wage garnishment as it does in the garnishment of per capita. The reason these new civil garnishment cases have come to the Court has its origins in the General Council meeting of November 12, 2002, and a preceding legislative motion.

At the General Council meeting, Mr. Sheridan Pollack, #2869, described his mother’s condition and her beleaguered state as she was beset with medical bills and payments. This led to a motion by Monica Cloud, #1635 and Nyree Kedrowski, #2265, that creditors should leave per capita alone. The final written resolution stated the following: “The General Council hereby directs the HCN Legislature to establish restrictions on garnishment of employee wages and Tribal Member per capita distributions that are not a result of Tribal Court orders. Be it further resolved, that the HCN Department of Treasury shall only garnish employee wages and Tribal Member per capita distributions allowable by law.” Gen. Council Res. 11-16-02-0007. Essentially, this resolution does not change the end result of certain creditors, through legal exceptions, being able to garnish wages and per capita. Again, the reader must note that creditors cannot garnish per capita distributions of any member unless such garnishment falls under the exceptions discussed in this article. The laws concerning bankruptcy are laws of general applicability, which could mean that the Nation cannot refuse to let creditors consider per capita payments without violating federal law. Still, this assertion is not yet established. Bankruptcy is an unusual topic in and of itself. This topic warrants further discussion, and this article shall address that at a later point.

As stated earlier, per capita may also be garnished for back taxes that a tribal member owes to the federal government. This allowance is not only found in the laws of the Ho-Chunk Nation, but was allowed by the pre-emptive actions of the Legislature. However, some readers may note at this point that revenue decisions involving a tribal member’s per capita do not go through the Court. The reason for this is that revenue decisions are done administratively and do not utilize a formal adjudicative process. The Court has not decided at this juncture to provide full faith and credit to these decisions. Until the Court modifies the Ho-Chunk Nation Rules of Civil Procedure, revenue decisions...
may be handled administratively by the Treasury Department without any Court processing.  

The last per capita garnishment that this article shall discuss is the subject of bankruptcy. Bankruptcy can be broken down into two different categories: requests for wages and requests for per capita. Requests for garnishment of wages in a bankruptcy case have gone to the Treasury Department without passing through the Court. Bankruptcy garnishments that deal with per capita distributions would have to come through the Court before passing onto another agency. Now some would question whether the Nation even needs to consider the issue of paying per capita for bankruptcy cases. The following is a very general discussion of bankruptcy and how the current law affects the Nation.  

The current case law on per capita and its relation to bankruptcy exists in In re Nicholas Joseph Kedrowski et al., 284 B.R. 439 (W. Dis. Wis. Aug. 28, 2002). When considering the issues presented, the bankruptcy court dealt with per capita in the following way. The case dealt with a Ho-Chunk tribal member that wanted to declare bankruptcy, while reserving her per capita for income and excluding it from potential payment to investors. The Court had to determine whether per capita was a viable property right that could attach to the bankruptcy estate of a person in the process of declaring bankruptcy. Kedrowski, 284 B.R. at 441. In its analysis of per capita and its uses among tribal members, the Court indicated that per capita is considered income for tax purposes and as such is subject to income tax. Id. at 450. In addition to this analysis, the Court concluded that per capita is legal property in the general sense, because it is a future interest. Id. at 441. The reason that per capita is considered a future interest is that the right to per capita for tribal members is contingent on the legislature’s grant of per capita. Id. at 16. When the legislature grants per capita distributions to the members, the rights of all those members then vests and becomes a general intangible interest in property. Id. at 10. The Court can attach a future interest to a bankruptcy estate even though the future interest is not a tangible piece of property such as an actual check. Id. at 15. The reason for this assertion is that “property of the estate” is defined as “all legal or equitable interests of the debtor in property.” Id. at 15. Therefore, current bankruptcy law indicates that per capita may be used to determine assets and property for a bankruptcy estate before the final declaration is made. In short, a tribal member’s per capita could be attached to pay creditors in a bankruptcy judgment. Id. at 26-7.  

Our own Supreme Court case law makes similar assertions. In Debra Knudson v. HCN Treasury Department, SU 98-01 (HCN S. Ct., Dec. 1, 1998), the appellant protested her termination for mishandling per capita checks. Knudson, SU 98-01 at 7. In dicta for its decision, the Court discussed the serious results of any mishandling of per capita checks. Id. The Court insisted that per capita money is technically still the property of the Nation until it is mailed, but members have a vested right and expectation of receiving those funds.  

In another case, the Ho-Chunk Nation Supreme Court agreed with the aforementioned bankruptcy case in its determination that per capita is income. See In the Interest of Minor Children: V.D.C., DOB 10/03/83 et al., by Debra Crowe v. HCN Office of Tribal Enrollment, SU 00-09 (HCN S. Ct., Oct. 12, 2000). In Crowe, the Court mentioned that per capita distributions entered in trust funds are protected from creditors, but creditors that fall under the exceptions in our CLAIMS AGAINST PER CAPITA ORDINANCE cannot be turned away by stating that per capita is not income. Id. at 5. While this decision settles the matter on whether per capita is income, other Supreme Court decisions can lead to disagreement over the nature of per capita. In one particular case, the Court discussed altering a payment plan for a defendant that owed back rent in order to make equitable payments for someone that lived entirely on per capita. See HCN Department of Housing, Property Management Division v. Sarah Dobbs, SU 00-10 (HCN S. Ct., Oct. 24, 2000). In that case, the defendant made assertions that could be construed to suggest that per capita could be similar to welfare. Such an assertion, if found to be true by our Supreme Court, could create the claim that per capita is an exempt form of income, like welfare,
for the purposes of bankruptcy. This decision suggests an ambiguity in the current law. In a later decision, the Court identified and discussed the nature of per capita at length. See Joan Marie Whitewater et al. v. HCN Office of Tribal Enrollment et al., SU 01-06 Decision (HCN St. Ct., Oct. 31, 2001). In Whitewater, the plaintiffs became eligible for per capita when their applications were approved for membership. Whitewater, SU 01-06 at 3. The plaintiffs asserted that their applications should have been approved at an earlier date, thereby entitling them to retroactive per capita. Id. However, the Court felt that the plaintiffs’ rights only vested when they became fully enrolled members. Id. at 5. Until the right vests and the person becomes a full member of the Nation, they have only an expectation of a property right and not an actual property right itself. Id. at 5. The Court definitively announced that:

Based on the conclusion that the plaintiff’s rights to tribal membership and per capita payments vested on the date of the adoption of the HCN Constitution, the Trial Court found Section 6(f) of the Membership Act to be unconstitutional because it denied the plaintiffs certain property rights. However, no property rights to per capita payments vested in 1994 through 1995, and until June, 1996 (the date of their approval for membership) the plaintiffs’ rights were anticipatory at best. The plaintiffs has an expectation of a property right, but the expectation does not give right to a due process claim for the six per capita payments after November 1, 1994.

Id. Therefore, this opinion strongly rebuts the preceding opinion that the nature of per capita is one of income and property, not welfare or any source of income that can be considered exempt from bankruptcy claims.

The final question here is what all of this analysis means for Ho-Chunk Nation members considering their options in bankruptcy. According to a decision rendered in the Ho-Chunk Nation Trial Court:

A per capita payment does not vest to the tribal member until “checks for some or all Per Capita Shares, other than those which may be affected by claims hereunder, are placed in the U.S. Mail or delivered to another independent delivery service” Ho-Chunk Nation Claims Against Per Capita Ordinance, § 101(d). Otherwise, the monies “retain their character as property of the Nation…, provided that nothing…preclude[s] an action in the Trial Court of the Nation seeking to require any official or body of the Nation to perform any administrative or ministerial duty required of him, her or them under the then effective Per Capita Distribution Ordinance.” Id. § 102.

Now the question remains whether the Bankruptcy Court can request garnishment of a per capita check before it is received by tribal members. Unfortunately, there are two potential avenues of discussion concerning this issue and each one is unclear as to its conclusion. However, this Court cannot give an advisory opinion on such matters and will have to content itself with the following explanations.

Bankruptcy garnishments involving wages do not necessarily include the problem of whether sovereign immunity is at issue, because the property interest at stake for the Nation is not the same as that for per capita. Therefore, bankruptcy decisions that deal only with wages may be handled solely by HCN Administration. The reason that the administration may choose to deal with bankruptcy claims at all is because bankruptcy laws are laws of general applicability and are potentially binding on Indian tribes. While such assertions have not been resolved in the 7th Circuit Court of Appeals, or the
U.S. Supreme Court, at least one other circuit presumed that the Bankruptcy Act was applicable to tribes. Bankruptcy claims dealing with per capita, however, are another matter unto themselves. See HCN Department of Housing et al. v. Edward Perry, d/b/a Perry Construction, CV 00-92 (HCN Tr. Ct., July 31, 2001) at 13-15 (discussing In re Greene, 980 F.2d 590 (9th Cir. 1992), cert. denied, 510 U.S. 1039 (1994)).

When bankruptcy claims involve per capita distributions, there is an issue of sovereign immunity and waiver. Issues of sovereign immunity and waiver exist where the money initially belongs to the Nation and only becomes the property of tribal members once the right to such property vests. Given the fact that sovereignty issues arise in connection to per capita and bankruptcy, any bankruptcy claims involving per capita would have to come through the Court for processing. Yet, there exists a school of thought which insists that the Court need not grant early garnishment to bankruptcy claims involving per capita. This theory involves the idea that the CLAIMS AGAINST PER CAPITA ORDINANCE provides the only exceptions allowed by our legislators in law whereby a creditor may seek per capita. Therefore, without explicit mention within the ordinance, creditors could not seek garnishment of per capita prior to a tribal member’s receipt of property. Under this interpretation, a tribal member seeking to declare bankruptcy would still find any per capita checks sent to him or her available for the bankruptcy estate. However, such checks would not be garnished before the member received them. The member would have to deal with the bankruptcy court decision on their own.

Another view of the connection between bankruptcy and per capita is the idea that bankruptcy creditors could ask for early garnishment of per capita. However, this assertion then begs the question as to how the Nation should handle such garnishments. Another suggestion is to enable the legislature to provide express permission for the earmarking of funds for bankruptcy garnishments. However, once again the issue of sovereignty arises when handling funds that are still the property of the Nation. Therefore, this avenue of reasoning and how to handle bankruptcy garnishments for per capita remains unclear. The only case this Court has considered in connection to bankruptcy was the aforementioned Perry decision. Id. In this case, the Nation acted as a creditor seeking money from a tribal member. The Nation did not file a proof of claim in Bankruptcy Court. Therefore, the Nation did not avail itself to the bankruptcy court’s jurisdiction or waive its sovereign immunity. Perry, CV 00-92 at 14. Federal precedent requires that Congress explicitly mention Indian Tribes when claiming to waive sovereign immunity. Id. at 21. Congress manifested no such intent in relation to the bankruptcy code. Id. at 25. Thus, when the Nation acts as a creditor seeking money, and it files no proof of claim to avail itself of a bankruptcy court’s jurisdiction, the Nation may still collect its money. The tribal member seeking relief from debt cannot consider themselves exempt from debts owed to the Nation even after bankruptcy.

This information may be summed up in the following ways. First, the Court only handles adjudicated claims. The Court lacks a procedural mechanism to accord full faith and credit to claims that are not formally adjudicated. Thus, claims of an administrative nature must be handled through administration, if at all, or somehow reduced to a judgment. Adjudicated claims fall into two categories: claims involving wages and claims involving per capita. If a question of sovereign immunity exists, the Court must ask whether this claim is one that the legislature has permitted under the CLAIMS AGAINST PER CAPITA ORDINANCE. If the claim cannot be found under this ordinance, then the next step is to discover whether the applicable law is considered a law of general applicability and whether an explicit Congressional waiver of sovereign immunity appears on the face of such law. If the claim arises under none of these, then the Court need not honor the claim against per capita. While the issue of bankruptcy is a matter still debated, the Court is secure in the knowledge that a plan of action is forthcoming.
HO-CHUNK NATION COURT SYSTEM

JUDICIARY AND STAFF

Supreme Court – Mary Jo B. Hunter, Chief Justice
   Mark D. Butterfield, Associate Justice
   Jo Deen B. Lowe, Associate Justice
   Clerk of Court, Supreme Court – Bryan Dietzler

Traditional Court – Wallace Blackdeer
   Donald Blackhawk
   Dennis Funmaker
   Orville Greendeer
   Douglas Greengrass
   Owen Mike
   Gavin Pettibone
   Douglas Red Eagle
   Preston Thompson, Jr.
   Eugene Thundercloud
   Morgan White Eagle
   Clayton Winneshiek

Trial Court – William H. Bossman, Chief Judge
   Todd R. Matha, Associate Judge

Clerk of Court, Trial Court – Marcella Cloud
   Assistant Clerk of Court, Trial Court – Selina Joshua
   Bailiff/Process Server – Willa RedCloud
   Administrative Assistant – Jeanne Colwell
   Staff Attorney – Rebecca Tavares

Office of Public Advocacy – Dennis Funmaker, Administrator

* The Ho-Chunk Nation Judiciary and its officers are active participants in the following organizations:

WISCONSIN TRIBAL JUDGES ASSOCIATION
(Eleven federally recognized tribes within the State of Wisconsin)

NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION
(Region 5—Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, South Dakota, North Dakota, and Wisconsin)

HCN Court System Fee Schedule

- Filing Fees .................................................. $50.00*
  *With the exception of petitions to register child support orders – this fee remains at $20.00 as previously ordered by the Supreme Court.
  Note: Filing Fee now includes Summons fee.

- Filing Fees for Petitions to Register and Enforce Foreign Judgment/Order .............................. $20.00

Copying ................................. $0.10/per page
Faxing ............................... $0.25/per page (sending and receiving)
Tapes of Hearings ........................ $10.00/per tape
CD of Hearing ............................. $12.50/per tape
Deposition Videotape .................... $10.00/per tape
Certified Copies ........................ $0.50/per page
Equipment Rental ........................ $5.00/per hour
Appellate filing fees ........................ $35.00
Admission to Practice ........................ $50.00
Pro Hac Vice Appearance ...................... $35.00

Legal Citation Form

The following are example citation forms by legal reference and citation description.

Ho-Chunk Nation Constitution
Constitution, Article Number, Section, and Subsection.
HCN CONST., Art. II, Sec. (or §) 1(a).
HCN Const., Art. XI, Sec. (or §) 7.

HCN Ordinances
Ordinance Name, Chapter number, Section/Part-Clause, page.
PERSONNEL POLICIES AND PROCEDURE MANUAL, Ch. 12, Part B, p. 82.
CLAIMS AGAINST PER CAPITA, Sec. (or §) 6.01(b).

HCN Supreme Court Case Law
Case Name, Case No. (HCN S. Ct., month, day, year).

HCN Trial Court Case Law
Case Name, Case No. (HCN Tr. Ct., month, day, year).

Rules of Civil Procedure
HCN R. Civ. P. 19(B).
THE NUTS AND BOLTS OF FILING AN APPEAL

The question of when to file an appeal and how one goes about the process, has become a popular question in recent times. To ease the minds of inquisitive individuals, and for the general edification of the public, the Judiciary presents this discussion on the mechanism for appeal. The first question an individual faces when considering an appeal is whether or not the Court has jurisdiction to hear the case. Under the Ho-Chunk Nation Rules of Appellate Procedure (hereinafter HCN R. App. P.), Rule 6 states that the Ho-Chunk Nation Supreme Court has jurisdiction over cases involving the Constitution and discussions involving conclusions of law. In other words, if any party considers these matters unresolved by the Trial Court, or not resolved to the satisfaction of that party, that person may file an appeal with the Supreme Court. The Court may review any factual or legal findings of the lower court in order to make their determination. However, parties seeking to appeal to the Supreme Court may only appeal final decisions of the lower court. The special exception to this idea comes in the form of interlocutory appeals, which is a subject that this article shall discuss later in greater detail. If the Supreme Court renders a decision on appeal that is still not satisfactory to the parties, they may seek the review of the General Council. However, the General Council may not review Court opinions that interpret the Constitution.

Once a party determines that they can and wish to proceed with an appeal, they must ensure that their appeal conforms to the appellate rules for structure and timing. Continued on page 10.
FRIEND OF THE COURT: ROBERT OLSHER

Chief Judge William Bossman greets a friend of the Court, Robert Olsher at the HCN Trial Court Building on March 5, 2003.

The author of this article, Rebecca Tavares, is the Law Clerk for the Ho-Chunk Trial Court and graduated from the University of Minnesota. Of Wyandot and Portuguese descent, Ms. Tavares held a previous clerkship with Judge Thorwald Anderson of the State of Minnesota’s Fourth Judicial District. Ms. Tavares spends her free time reading and exercising. Ms. Tavares has spent one year with the Trial Court and her contract shall end in June 2003.

Sherman, Olsher & Sherman has a Ho-Chunk Nation Bar member on its staff. Robert Olsher is not just a well-known attorney in Black River Falls, but almost a household name associated with everything positive in the legal field. The Staff Attorney caught up with Robert at the Court Building to talk about work, family and life. Robert Olsher was born in Chicago, but raised in Waupaca, WI. He graduated from University of Wisconsin Law School, Madison in 1976. Prior to his obtaining a law degree, Mr. Olsher graduated with an undergraduate degree in political science and served in the United States Navy as part of their Naval Intelligence from 1969-1973.

After reaching Black River Falls, Mr. Olsher worked in various areas of the law and gained valuable experience with a number of legal pursuits. At one point, Robert Olsher was an Assistant District Attorney for Jackson County and organized the Jackson County Child Support Agency under Title IV-D. Mr. Olsher was a City Attorney for Black River Falls and still maintains his position as City Attorney for Merrillan. He currently practices general law with a focus on municipal law. Among his most memorable cases, Robert Olsher recounts the prosecution of an attempted murder and the defense of a client later convicted of second degree murder. In the latter case, the victim had a BAC of .42. Another memorable case involved issues of sexual assault and battered women’s syndrome. When asked about the Ho-Chunk Nation Court System, Mr. Olsher had this to say:

“I am extremely impressed with the Ho-Chunk Nation Court System. I am impressed with the thoroughness and thoughtfulness of the decisions. I find it so interesting to be involved in a judicial system as it is being created.”

Mr. Olsher has a wife, three daughters and four grandchildren. He met his wife in New York. According to him, she and her friend were “chasing sailors.” Mr. Olsher’s best friend met, and fell in love with, her friend. Robert Olsher met the soon-to-be Mrs. Olsher at the wedding reception. Mr. Olsher insists that his family comes before his work. He enjoys playing golf and various sorts of community involvement. Robert Olsher was an Eagle Scout and became the Top Boy Scout in Wisconsin in 1962. The tradition of community service has continued throughout the years with his involvement with the Amvets and other service organizations. His time spent with his family are among Robert Olsher’s greatest memories. In the realm of advice for young attorneys, Mr. Olsher had this to say:

“Like many attorneys, when I came out of law school, I didn’t have much confidence, because I felt I didn’t have enough knowledge. Later, I read an article by an elderly country lawyer who said, ’what a wonderful profession we have, because we learn so much about other people’s business.’ After I read that, I realized that I’m not expected to know everything when a client comes in. It gave me confidence and made me a better lawyer.”
Recent Decisions

Decisions are separated between Trial Court and Supreme Court decisions and categorized by subject matter and date (from oldest to most recent). The following are summaries prepared by the Staff Attorney for the reader’s benefit. They should in no way be used as substitution for citations to the actual court opinion.

Within the Trial Court, cases are categorized and docketed as one of the following: Child Support (CS or if filed prior to 1998, CV), Civil (CV), Criminal (CR), Custody (CU), Domestic Violence (DV), or Juvenile (JV). Within this index, case citations will appear in one of these categories and, in the event it may be helpful to the reader as a research tool, the cases may also be summarized in a separate topic area. In some instances a decision may touch upon other topics that may not warrant a summary in this index, but the editor will use the indicator “other topic(s) covered,” as a research aid for the reader.

Recent Decisions and Recent Filings both begin with the date where the previous Court Bulletin left off.

Trial Court

Child Support

FEBRUARY 3, 2003


Jackson County filed a request to establish arrears for one of the aforementioned cases. The respondent failed to respond within the specified time frame. The Court granted the request to recognize arrears.

FEBRUARY 20, 2003


The Court had to determine whether to release impounded funds and enforce a standing foreign child support order against the respondent. The Court received a *Petition to Recognize a Foreign Child Support Order* on October 1, 2002. The Court received a written statement from the respondent on October 18, 2002, indicating a question of paternity. The Court impounded the funds until further notice. On January 31, 2003, the Court received documents resolving the question of paternity. The Court then released the funds for current child support and arrears in the instant case.

FEBRUARY 24, 2003


The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to provide the Court with a response within the specified time frame. The Court granted a default judgment in favor of the petitioner.


On February 5, 2003, the Court received a *Motion to Suspend Withholding* in the instant case. All current support and arrears were paid in full. The Court ordered the Treasury Department to cease withholding and informed the parties of its intent to close the case.


The Court had to determine whether to grant the petitioner’s *Motion to Modify,* requesting an amendment of child support and arrearage. The respondent failed to respond within the specified
time frame. The Court granted the petitioner’s request.

MARCH 5, 2003
Eau Claire County Child Support Agency requested that this Court grant full faith and credit to its foreign judgment. The respondent failed to respond within the appropriate amount of time. The Court granted Eau Claire’s request.

Children’s Trust Fund (CTF)
FEBRUARY 17, 2003
The Court denied the Petition in the instant case due to insufficient pleading. The declared minor had already reached the age of majority, thereby divesting the alleged guardian of any power over the other. In the case of an adult CTF beneficiary, the adult CTF beneficiary must bring the Petition, unless other documents show a continuation of legal guardianship.

FEBRUARY 20, 2003
On June 28, 2003, the Court released funds from the CTF account of the aforementioned minor. The Court directed Montgomery Green to maintain and produce an accounting for the expenditures. The timeline for the requested documents has passed, and the Court now reminds Mr. Green of his obligation.

On October 21, 2002, the Court released funds from the CTF accounts of the aforementioned minors. The Court directed Gary Lonetree to maintain and produce an accounting for the expenditures. The timeline for the requested documents has passed, and the Court now reminds Mr. Lonetree of his obligation.

On August 29, 2002, the Court released funds from the CTF account of the aforementioned minor. The Court directed Michelle Gulbronson to maintain and produce an accounting for the expenditures. The timeline for the requested documents has passed, and the Court now reminds Ms. Gulbronson of her obligation.

On March 13, 2002, the Court released funds from the CTF account of the aforementioned minor. The Court directed Melody Whiteeagle-Fintak to maintain and produce an accounting for the expenditures. The timeline for the requested documents has passed, and the Court now reminds Ms. Whiteeagle-Fintak of her obligation.

The petitioner requested funds from the minor’s trust account for orthodontic procedures. The respondent gave its assent to the release of funds.
The Court granted the request for the use of such finds for orthodontics.

**MARCH 5, 2003**


On June 28, 2002, the Court released funds from the CTF accounts of the aforementioned minors for orthodontics. The Court insisted that the petitioner submit a required accounting of the expenditures. The Court now accepts such an accounting and closes the case.

**Civil Garnishments**

**FEBRUARY 18, 2003**

*Jeane Smith for Cash Data v. Christine Brown and Dean Brown, CG 03-02 Order (Default Judgment) (HCN Tr. Ct., Feb. 18, 2003).* (Matha, T).

The Court had to determine whether to grant full faith and credit to the foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

**FEBRUARY 19, 2003**


The Court had to determine whether to grant full faith and credit to the foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

**MARCH 5, 2003**

*Creditor Recovery Service LLC, Agent for Doctors’ Clinic SC v. Wendy Hanneman, CG 03-08 Order (Default Judgment) (HCN Tr. Ct., Mar. 5, 2003).* (Matha, T).

The Court had to determine whether to grant full faith and credit to the foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.


The Court had to determine whether to grant full faith and credit to the foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

**Civil Cases (all categories)**

**JANUARY 31, 2003**

*Casimir T. Ostrowski v. Ho-Chunk Nation, HCN Personnel Department, HCN Casino, CV 02-82 Order (Postponing Trial) (HCN Tr. Ct., Jan. 31, 2003).* (Bossman, W).

The Trial was scheduled for February 4-5, 2003. The parties requested that the Court reschedule the Trial. The Court granted the request, and the Trial is now set for March 14 and 17, 2003.


The Court issued this Scheduling Order for the instant case to establish dates and deadlines up to and including trial.

**FEBRUARY 3, 2003**

*Dennis Alt v. HCN Table Games Department, CV 02-92 Order (Motion Hearing) (HCN Tr. Ct., Feb. 3, 2003).* (Bossman, W).

The Court convened a Hearing to allow the defendant an opportunity to argue its Motion to Dismiss. The Court insisted that the Motion to Dismiss should be argued at the February 13, 2003 Pre-trial Conference. The plaintiff may offer any written response to the Motion at least one (1) day prior to the Hearing.

*Stewart Miller v. Clarence Pettibone et al., CV 99-22 Order (Allowing Parties Time to Request New*
On August 19, 1999, Pro tem Judge Rebecca Weise presided over the trial for the instant case. Despite numerous attempts at contact, the Pro tem Judge has not provided the Court with a decision in this matter. On January 28, 2003, the case was reassigned to Judge William Bossman. The Court shall permit the parties thirty (30) days to formally request a new trial and a new Pro tem Judge.

**FEBRUARY 4, 2003**

The plaintiff filed exhibits on December 13, 2002. One (1) exhibit appears to be a letter or memo between the parties, yet cannot be read or deciphered. In order for the Court to be adequately informed and prepared, the Court ordered the plaintiff to file a legible copy of the aforementioned exhibit.


The plaintiff brought an action for unlawful demotion, requesting reinstatement and back pay as damages. The plaintiff’s primary assertion rested on a late employee evaluation. However, the Court found that the employee evaluation was a required task and the completion of such tasks, irrespective of deadlines, is not unlawful. Without evidence of more, the plaintiff could not prove the allegations of her case, and the Court found in favor of the defendants.

**FEBRUARY 7, 2003**
*George R. Davis, Jr. v. HCN Slot Department*, CV 02-02 Order (Granting Motion to Dismiss) (HCN Tr. Ct., Feb. 7, 2003). (Bossman, W).

The plaintiff claimed that the Slot Department gave him an improper demotion. However, the defendant filed a Motion to Dismiss and asserted that the plaintiff did not file in a timely fashion. The general Statute of Limitations is thirty (30) days, and the plaintiff filed well after such a deadline. The Court granted the request to dismiss.

**FEBRUARY 11, 2003**

The Court issued this Scheduling Order to establish dates and deadlines for the instant case up to and including trial.


The Court issued this Scheduling Order to establish dates and deadlines for the instant case up to and including trial.

**FEBRUARY 13, 2003**

The question before the Court contained issues of redistricting/reapportionment, standing, and sovereign immunity. The Court had to consider whether the Constitution permits a gradual phase-in of redistricting. In its final decision, the Court decreed that the Constitution does not allow for a gradual phase-in of redistricting.

The plaintiff satisfied the long-standing three (3) part test for standing in a cause of action. The plaintiff also introduced tradition and customs into the standing inquiry, giving the plaintiff another separate set of grounds for standing. Therefore, the Court found standing under both a three-part test and under traditions and customs. The next issue preceding the Court’s decision was whether the defendants had sovereign immunity from suit. The Court had previously stated that suits asserting the misdeeds of an individual working in their official capacity must name that individual over the Nation. *Chloris A. Lowe, Jr. v. Ho-Chunk Nation et al.*, SU 97-01 (HCN St. Ct., June 13, 1997) at 4. However, a plaintiff may also seek declaratory or injunctive relief if that plaintiff specifically asserts that the defendants, in their official capacities, exceeded the scope of their

Finally, the Court entertained arguments for and against the idea of phasing-in redistricting over time. The Court determined that the argument for phasing-in redistricting was unreasonable and contrary to the language of the Constitution. The phasing-in of redistricting would serve to diminish and dilute the power of the right to vote. In addition to the arguments above, the Court noted that the voting public received improper notice of the gradual phase-in before they voted. Given the unconstitutional implications of the gradual phase-in, the Court directed the Election Board to decline further applications for legislative seats. The current legislators shall assume their seats according to the redistricting and vacant seats shall be up for election under the new redistricting.

FEBRUARY 17, 2003

The parties agreed through stipulation that the instant case be remanded back to the Health Insurance Review Commission. This agreement between the parties does not suggest admission by any party or waiver of any defenses. The case is remanded, and the parties retain all rights and claims.

FEBRUARY 19, 2003
Dennis Alt v. HCN Table Games Department, CV 02-92 Order (Granting Motion to Dismiss) (HCN Tr. Ct., Feb. 19, 2003). (Bossman, W).

The plaintiff claimed that he was improperly demoted from his position in the Table Games Department. The defendant asserted that the plaintiff had failed to file in a timely fashion. Given that the general Statute of Limitations is thirty (30) days, the plaintiff filed far beyond this deadline. The Court granted the defendant’s Motion to Dismiss.

FEBRUARY 20, 2003

On June 4, 2002, the plaintiff requested that the Court dismiss the matter with prejudice. The Court granted this request under HCN R. Civ. P. 56(B). The plaintiff may not re-file this action despite a future change in circumstances.


Due to the death of the defendant, the Court closes this case. The Court extends its sympathies to the defendant’s family at this time.


On January 31, 2003, the plaintiff requested that the Court dismiss the instant case. The Court grants this request and dismisses the case without prejudice. The plaintiff may re-file this action in the event of a future change in circumstances.


The plaintiffs requested a court Order to compel DNA testing on their son. The plaintiffs requested this action for the sake of an enrollment application for their grandson. Their son is currently incarcerated at a correctional facility, and the facility required a court Order before they would extend permission for the testing. The respondent gave his written assent to the procedure, and the Court granted the Petition.

MARCH 5, 2003

The Court issued this Scheduling Order to establish dates and deadlines for the instant case up to and including trial.
Juvenile

FEBRUARY 20, 2003

The Court granted the parties’ request for the appointment of a psychologist in the instant case.

The Court granted the request to schedule a Hearing in order to allow the parties to argue filed Motions.

The opinion in the instant case memorializes decisions made at the February 12, 2003 Hearing.

FEBRUARY 28, 2003

The Court convened this Emergency Hearing to inform the parties of the legal and procedural status of this action involving the aforementioned minors.

The Court convened this Emergency Hearing to inform the parties of the legal and procedural status of this action involving the aforementioned minors.

MARCH 4, 2003

The Court appointed a permanent guardian for the aforementioned minor, finding this decision to be within the minor’s best interests.

The Court appointed Attorney JoAnn Jones as Guardian ad Litem for the aforementioned minors in the instant case.

The Court appointed Attorney JoAnn Jones as Guardian ad Litem for the aforementioned minors in the instant case.

Supreme Court

FEBRUARY 7, 2003

The appellant filed a Motion for Extension of Time with the Supreme Court. There was no objection to the appellant’s motion. The Court then granted appellant’s motion.

FEBRUARY 19, 2003

The Court heard oral arguments in the instant case on January 22, 2003. The Court considered the issues involved of such paramount importance that
the Court shall give an additional thirty (30) days to write an opinion. This decree comes under the Ho-
Chunk Nation Rules of Appellate Procedure, Rule 15(c).

Recent Filings

Trial Court

Child Support

JANUARY 30, 2003
State of Wisconsin v. Frederick Greendeer, CS 03-05. (Matha, T).

FEBRUARY 11, 2003
Denise Amundson v. Robert White, CS 03-07. (Matha, T).

FEBRUARY 12, 2003
Eau Claire County Child Support Agency v. Cecil E. Head, CS 03-08. (Matha, T).

FEBRUARY 14, 2003
Ken Loose v. Jennifer Jones, CS 03-09. (Matha, T).

FEBRUARY 21, 2003

FEBRUARY 24, 2003

Civil Garnishment

JANUARY 27, 2003
Cash Data v. Christine Brown and Dean Brown, CG 03-02. (Matha, T).

FEBRUARY 5, 2003
Value Automart, Inc. v. Lionel Pettibone, CG 03-03. (Bossman, W).

FEBRUARY 6, 2003
Easton Motors v. Linda M. Frommare, CG 03-04. (Bossman, W).

FEBRUARY 12, 2003
Creditors Recovery Services/Steve’s Plumbing, Inc. v. Donna Pabst, CG 03-05. (Matha, T).

Creditors Recovery Services/Water Works and Lighting v. Terri Thompson, CG 03-06. (Matha, T).


Creditors Recovery Services/Doetin Clinic v. Wendy Hanneman, CG 03-08. (Matha, T).

FEBRUARY 17, 2003
St. Clair Hospital v. Thomas L. Raymond, CG 03-09. (Bossman, W).

Civil Cases

JANUARY 16, 2003
In the Matter of G., T.W., DOB 12/08/84, by Judy Schmidt v. HCN Office of Tribal Enrollment, CV 03-05. (Matha, T).

JANUARY 23, 2003
Jenna C. Littlegeorge v. HCN Office of Tribal Enrollment, CV 03-06. (Bossman, W).

JANUARY 27, 2003
Robert Yellowbank, Sr. v. Robert Yellowbank, Jr., CV 03-07. (Matha, T).

JANUARY 30, 2003
Joshua F. Smith, Jr. v. Adam Estes and Jonette Pettibone, CV 03-08. (Matha, T).

FEBRUARY 4, 2003
Faye Begay v. Jean Day, the HCN Department of Education, Greg Garvin, and the Office of the President, CV 03-09. (Bossman, W).

FEBRUARY 5, 2003
Ho-Chunk Housing Authority v. Marilyn and Randall White Eagle, CV 03-10. (Bossman, W).
**FEBRUARY 6, 2003**
Kristin WhiteEagle v. Amory Decorah and Ho-Chunk Casino, CV 03-11. (Bossman, W).

**FEBRUARY 11, 2003**
In the Matter of P., M.D., DOB 03/18/85, by Betty Phillips v. HCN Office of Tribal Enrollment, CV 03-12. (Matha, T).

**FEBRUARY 17, 2003**


**FEBRUARY 19, 2003**

HCN Housing, PMD v. Gregory and Barbara Gromoff, CV 03-16. (Bossman, W).

**FEBRUARY 26, 2003**
Vaughn Pettibone v. HCN Election Board et al., CV 03-17. (Matha, T).


**Domestic Cases**
Nothing to report at this time.

**Juvenile**
**FEBRUARY 28, 2003**

In the Interest of Minor Children: J.R.P., DOB 02/27/92, L.M.P., DOB 05/12/90, L.K.K., DOB 12/12/87, JV 03-01-03. (Matha, T).

**Supreme Court**

**FEBRUARY 27, 2003**
Robert A. Mudd v. HCN Legislature: Elliot Garvin, Clarence Pettibone, Tracy Thundercloud, Wade Blackdeer, Dallas Whitewing, Gerald Cleveland, Sr., Christine Romano, Myrna Thompson, George Lewis, Kathyleen Whiterabbit, Sharyn Whiterabbit, SU 03-02.

**APPEALS cont’d**

An attorney or party wishing to appeal a case must do so within thirty (30) days of the Trial Court’s final decision in order to conform to HCN R. App. P. 7(a). The appellant must also submit a thirty-five dollar check to the Clerk of the Supreme Court with his written notice of appeal. The filing fee may be waived by filling out the Court designated Affidavit of Waiver, a standard form supplied by the Court. A tribal enterprise or board with delegated powers cannot waive the filing fee. If the waiver is denied, the appellant has ten (10) days to pay the filing fee.

Currently, the Court does not have a standard form for the notice of appeal. Within the notice of appeal, an appellant may choose to request a stay of execution. This request would be made if the appellant determines that the lower court’s ruling would be executed before the higher court’s ruling or in other cases where time is of the essence. A stay of execution is permissible where that party also executes a bond guaranteeing performance of the Trial Court’s judgment in the event that execution of such judgment becomes necessary. In other words, Rule 7 (c) permits a stay of execution with the understanding that the decision of the lower court shall go into effect in the event that the appellant loses their appeal. Appellants may also request an expedited hearing or an extension of time to file briefs and motions, but must do so in a timely manner, providing proof to all parties. Any requests for an extension of time shall require a demonstration of emergency circumstances under Rule 9.

Appellants that are denied an appeal by the Supreme Court shall be notified at the latest within
thirty (30) days of the filing for an appeal. Research of the last two (2) years worth of Supreme Court’s Scheduling Orders indicates that the aforementioned discussion conforms to the appellate rules. In practice, as it is further explained below, this does mean that attorneys and appellants must file briefs according to the ten (10) day structured deadline without knowing for certain whether the Supreme Court will accept the matter on appeal. One of the few cases that appears to diverge from this practice is Kathy Stacy v. Ho-Chunk Nation et al., SU 02-05 (HCN S. Ct., Aug. 16, 2002). In that case, the Court accepted the case on appeal and permitted the briefing schedule to begin almost one (1) month after the filing date. Appellant’s attorney for the case mentioned that this schedule appeared fair. While the actual reason for this change is unknown, the attorney hypothesized that perhaps briefing schedules become more flexible when an issue arises under which a Justice of the Court must recuse himself or herself. Barring that unusual circumstance, the history of the briefing schedules appears uniform in its adherence to the ten (10) day structure mandated under the rules.

Any appeal shall contain the case number of the Trial Court’s decision and the name of the final judgment. In addition, the appellant shall list the case name and all the parties for the Court’s convenience. Next the party appealing to the Court must give a short, plain statement of facts asserting their reason for the appeal and their legal arguments for why the Court must hear their case. While, the rules do not explicitly attest to the this requirement, the Court insists that any appellant assert the procedural posture of their case in full within their Notice of Appeal or their brief. See Chloris Lowe, Jr., Stewart J. Miller v. HCN Legislative Members et al., SU 01-05 (HCN S. Ct., May 4, 2001). Without the procedural posture of the case, the Supreme Court cannot be certain of extenuating circumstances that might alter the timeline for filing. The appellant must serve summons on all the parties, under their own power, and provide the Court with proof of service for each individual.

Sometimes the Court shall permit an interlocutory appeal under Rule 7.5. An interlocutory appeal occurs when a party is currently involved in a case that is still pending before the Trial Court. If certain issues within the case are decided before the Court entertains its final judgment, the unsatisfied party may file an interlocutory appeal with the Supreme Court. The appeal must be filed within ten (10) calendar days of the Trial Court’s interlocutory order. This appeal is called an Appeal by Permission. When drafting an interlocutory appeal for the Supreme Court, please include a short statement of facts and the controlling question of law that currently stands before the lower court. Next, an appellant must include the question they wish the Supreme Court to answer and a persuasive statement. This statement should explain why opinions differ on the question presented to the Supreme Court and why the resolution of this question on appeal would “materially advance the termination of litigation.” HCN R. App. P. 7.5. In other words, the appellant must persuade the Court of their viewpoint and be able to show that such a viewpoint would resolve the lower court case in their favor. However, a party seeking to appeal to the Supreme Court must keep in mind that interlocutory appeals arise on questions of law alone and not when a question of law is somehow intertwined with the facts to be decided within the lower court. See Maureen Arnett v. HCN Department of Administration, SU 01-01 (HCN S. Ct., Feb. 1, 2001). In addition, the Court can hear a matter brought forth on an interlocutory appeal, if the failure to do so would render the matter moot. See HCN Legislature v. Chloris A. Lowe, Jr., President of the Ho-Chunk Nation, SU 96-01 (HCN S. Ct., Feb. 28, 1996). An appellant in an interlocutory appeal must attach a copy of the trial court’s interlocutory order and permit opposing counsel ten (10) days to respond. While interlocutory appeals are not common, the subsequent scheduling for any appeal accepted by the Supreme Court is the same.

Rule 11 indicates that an appellant has ten (10) calendar days, after filing their Notice of Appeal, to file a memorandum of law in support of their appeal. This mandatory brief should exist as a persuasive piece that presents an appellant’s legal arguments to the Court. The filing must include three copies, as well as the original brief, presented
to the Clerk of the Supreme Court. An additional copy of the brief must be sent to the opposing counsel, which has ten (10) days to file a responsive brief. If the appellant receives permission of the Court, they may file a brief in reply to the responsive brief within ten (10) days of that filing. Rule 12 controls the format of memorandums of law. Under Rule 12, a memorandum of law requires a cover page containing the names of the parties, both case numbers, and the addresses and telephone numbers of the appellant and their attorney. Within the brief, the appellant must state their case before the Court. Thus, an appellant must explain the decision of the lower court and each legal issue that the appellant now presents to the Supreme Court. The brief can be no longer than twenty (20) pages and must include as attachments all cited laws and rules. Any responsive brief must include the same, but may only number six (6) pages or less. All briefs must be presented to the Court on 8½” by 11” size paper, double spaced with page numbers.

Once the Court chooses to take a case on appeal, the Court shall reiterate the deadlines for the memorandums of law and designate a time and place for oral arguments. See HCN R. App. P. 14. Unless the parties receive notice of an extension of time, the Court shall render a decision on the merits within thirty (30) days of the oral arguments. In addition to the points made above, any party considering an appeal before the Supreme Court must remember that the Court may fine any appellant for costs and fees if an appeal is deemed frivolous. See HCN R. App. P. 18. Furthermore, any representative of appellant parties must consider whether to move to appear Pro Hac Vice or become a bar member. If attorneys choose to appear Pro Hac Vice, they must choose this option in a written memo to the Court and present a $35 fee. This option is only available once for any attorney wishing to appear before the Court. Bar membership requires $50 and contact with the Supreme Court Clerk, Bryan Dietzler. Mr. Dietzler will provide any attorney seeking bar admission with a packet of information detailing the requirements for bar membership and maintenance. Mr. Dietzler may be reached at the Court’s number (715) 284-2722 for further questions on this matter and the preceding article.

This concludes the focus on appeals and the dynamics of filing before the Supreme Court. Briefs or memorandums of law are required and must conform to the structure and the schedule listed within the HCN Rules of Appellate Procedure. Requests for the Court to accept a matter on appeal must be stated in a coherent and cogent fashion with notice given to all respective parties. Anyone wishing to appeal to the Supreme Court must also consider whether the Statute of Limitations has run on the claim. Interested parties wishing to research Supreme Court opinions should go to www.ho-chunknation.com and turn to the Court System page. Otherwise, Supreme Court opinions are available in hard copy at the Court Building. Any other questions regarding appeals should be forwarded to the Supreme Court Clerk, Bryan Dietzler.

GROUNDBREAKING NEWS!

The Court is pleased to announce that the groundbreaking for the new HCN Court Building is tentatively set for the afternoon of Friday, March 21, 2003. The contract for construction is ready, and the initial materials required for the project are forthcoming. The Court asserts that the construction shall commence on the aforementioned date and end in approximately February 2004. The construction could take longer if the frost in the ground is too deep for the foundation’s construction. For further details regarding the construction of the new Court Building, see the article written by Staff Attorney Anetra Parks in the HCN Trial Court Bulletin published in July 2002.
CANDIDATES FOR PRESIDENT

Robert A. Mudd       George Lewis
Joyce Warner         Ona Garvin
Alvin Cloud          Robert Funmaker
Cecelia Kraus       John Blackdeer
Troy Swallow       Marguerite Whiteeagle
Write In Candidate ______________________

CANDIDATES FOR DISTRICT I LEGISLATOR—SEAT 2
CLOSED AND REASSIGNED BY REDISTRICTING

CANDIDATES FOR DISTRICT II LEGISLATOR

Wade Blackdeer  Timothy Hanson
Elmer Hanson, Jr. Write In Candidate________

CANDIDATES FOR DISTRICT III LEGISLATOR

Dallas WhiteWing  Leslie Decorah, Jr.
Barbara E. Long Write In Candidate________

CANDIDATES FOR DISTRICT IV LEGISLATOR—SEAT 2
CLOSED AND REASSIGNED BY REDISTRICTING

CANDIDATES FOR DISTRICT V LEGISLATOR—SEATS 1, 2, 3

Gregory Littlejohn – SEAT 1 Dwight Steele – SEAT 3
Write In Candidate__________ Write In Candidate__________

Kathyleen LoneTree-Whiterabbit – SEAT 2
Write In Candidate__________

CANDIDATES FOR ASSOCIATE SUPREME COURT JUSTICE

Mark Butterfield
Write In Candidate__________
Notice and Rules of GENERAL PRIMARY ELECTION APRIL 29, 2003

RECEIVES REDISTRICTING CHANGES EFFECTIVE FOR PRIMARY & GENERAL ELECTION Pleat 51 digital and paper filed at Ho-Chunk Nation Courthouse NEW REDISTRICTING

POSTING ELECTION RESULTS: The Election Board shall certify and post the official election results within three (3) days after the date of election.

CONTESTING OF ELECTION RESULTS: Any contestant of the Ho-Chunk Nation may challenge the results by filing a petition in the appropriate court within ten (10) days after the Election Board certifies the election results. The Petitioner shall pay all court costs incurred during the contest, or the court may order the losing candidate to pay all court costs. Time for filing a petition shall begin to run when the election results are posted.

ELECTION DATE: APRIL 29, 2003

TIME FOR ELECTION: 8:00 A.M - 7:00 P.M.

POLLS PLACES: BLACK RIVER FALLS, WI TOCHI, WI TAMA, WI BLACK RIVER FALLS, WI LACROSSE, WI WITTENBERG, WI WISCONSIN DELLS, WI

VOTING RAPIDS, WI MILWAUKEE, WI MILWAUKEE, WI MILWAUKEE, WI MINNEAPOLIS, MN MADISON, WI

GENERAL PRIMARY ELECTION APRIL 29, 2003

Post Notice of Election JANUARY 13, 2003

Eligible Voters List MARCH 28, 2003

Official Notice of Election Preliminary 4:00 p.m. - February 27, 2003

List of Candidates March 2, 2003

Handicapped Accessible Facilities MARCH 20, 2003

General Election April 20, 2003

Voting at the Post Office有效的日期为2003年3月14日
Office of Public Advocacy

- Assistance with finding free legal counsel for qualified applicants
- Assistance with legal concerns or questions
- Located conveniently within the HCN Court Building
- For further questions regarding the O.P.A., please call Dennis Funmaker at (715) 284-8514

HCN Court System Fee Schedule
- Filing Fees ...................................... $50.00*
  *With the exception of petitions to register child support orders – this fee remains at $20.00 as previously ordered by the Supreme Court.
  Note: Filing Fee now includes Summons fee.
- Filing Fees for Petitions to Register and Enforce Foreign Judgment/Order ........................... $20.00
  Copying ............................................ $0.10/per page
  Faxing .......................... $0.25/per page (sending and receiving)
  Tapes of Hearings .............................. $10.00/per tape
  CD of Hearing ................................. $12.50/per tape
  Deposition Videotape .......................... $10.00/per tape
  Certified Copies .............................. $0.50/per page
  Equipment Rental ............................. $5.00/per hour
  Appellate filing fees ........................... $35.00
  Admission to Practice ......................... $50.00
  Pro Hac Vice Appearance ..................... $35.00

Legal Citation Form
The following are example citation forms by legal reference and citation description.

Ho-Chunk Nation Constitution
Constitution, Article Number, Section, and Subsection.
HCN CONST., Art. II, Sec. (or §) 1(a).
HCN Const., Art. XI, Sec. (or §) 7.

HCN Ordinances
Ordinance Name, Chapter number, Section/Part/Clause, page.
PERSONNEL POLICIES AND PROCEDURE MANUAL, Ch. 12,
Part B, p. 82.
CLAIMS AGAINST PER CAPITA, Sec. (or §) 6.01(b).

HCN Supreme Court Case Law
Case Name, Case No. (HCN S. Ct., month, day, year).


HCN Trial Court Case Law
Case Name, Case No. (HCN Tr. Ct., month, day, year).

Rules of Civil Procedure
HCN R. Civ. P. 19(B).
GROUNDBREAKING NEWS.

The HCN Judiciary celebrates the beginning of construction on the new court building. In a ceremonially beginning, Chief Judge William Bossman (shown in the center) takes the first steps toward building. On his immediate right is Clarence Pettibone, HCN Legislative Representative, HCN President Tro Swallow, and Traditional Court Representative Dennis M. Funmaker. To Judge Bossman’s left are: Gregory Cashman, architect; William Yahnke, Owner of Olympic Builders Construction Co.; and Mary Jo B. Hunter, Chief Justice of the HCN Supreme Court. This photo was taken on March 21, 2003.

For details regarding the groundbreaking, please see pages 11-13.
MEET THE NEWEST MEMBER OF THE TRIAL COURT; STAFF ATTORNEY ROSE WECKENMANN.

The author of this article, Rebecca Tavares, is the Staff Attorney for the Ho-Chunk Nation Trial Court and graduated from the University of Minnesota. Of Wyandot and Portuguese descent, Ms. Tavares held a previous clerkship with Judge Thorwald Anderson of the State of Minnesota’s Fourth Judicial District. Before coming to Black River Falls, she lived in Minneapolis as a student and member of the University of Minnesota chapter of the American Indian Law Students’ Association. Ms. Tavares shall spend one year with the Trial Court and the people of Black River Falls.

Recently, the Court appointed a new Staff Attorney beginning July 1, 2003 and ending June 30, 2004. The Staff Attorney position is a one-year post assigned to former law students seeking to begin their careers in Indian Law. The Court takes this opportunity to say welcome to the new Staff Attorney, Rose Weckenmann.

Raised in Harrah, Oklahoma, Rose was drawn to issues of civil rights and Indian Law. While attending college, Rose became passionate about issues involving race, Colonialism, and civil rights. Among her strong stances, Rose insists on tribal self-governance, reparations, and land repatriation. Her background as a scholar of history, and her passion for the aforementioned issues, drew Rose to law school. She attended Widener University School of Law for her first year of study. Rose transferred to the University of Oklahoma College of Law for the rest of her tenure as a law student. While attending school, Rose excelled in coursework in Indian Law and all issues of tribal government. In addition to her studies, Rose worked as a title examiner for the American First Abstract Company. She later became an intern for the Office of Tribal Justice in Washington, D.C. Her last position before joining the Ho-Chunk Nation’s Judiciary was that of a law clerk for the Busey Law Office.

Rose still likes to read and watch movies. In her spare time, she makes jewelry, swims and attends aerobics classes. Currently, Rose considers the position as Staff Attorney for the Ho-Chunk Nation her greatest accomplishment to date. Due to her desire to work in the field of Indian Law, Rose sought to work for the Ho-Chunk Nation. In her time as the Staff Attorney, Rose expects to gain invaluable experience in the field. Rose plans to practice her skills in analyzing the legal issues within various cases, as well as develop her research and writing. Finally, she looks forward to working with the staff of the Ho-Chunk Nation Trial Court and getting acquainted with members of the community. The Court welcomes Rose for the new fiscal year.
Recent Decisions

Decisions are separated between Trial Court and Supreme Court decisions and categorized by subject matter and date (from oldest to most recent). The following are summaries prepared by the Staff Attorney for the reader’s benefit. They should in no way be used as substitution for citations to the actual court opinion.

Within the Trial Court, cases are categorized and docketed as one of the following: Child Support (CS or if filed prior to 1998, CV), Civil (CV), Criminal (CR), Custody (CU), Domestic Violence (DV), or Juvenile (JV). Within this index, case citations will appear in one of these categories and, in the event it may be helpful to the reader as a research tool, the cases may also be summarized in a separate topic area. In some instances a decision may touch upon other topics which may not warrant a summary in this index, but the editor will use the indicator “other topic(s) covered,” as a research aid for the reader.

Recent Decisions and Recent Filings both begin with the date where the previous Court Bulletin left off.

Trial Court

Child Support

FEBRUARY 26, 2003

The petitioner requested that the Court modify the current decision to reflect a new arrearage stemming from misdirected support payments. The respondent failed to respond within the specified time frame. The Court granted the request and modified the decision accordingly.

MARCH 11, 2003

On January 22, 2003, the Court suspended withholding for arrears in Case Nos. CS 02-14-15. See Erratum Order CS 02-14-15 (HCN Tr. Ct., Jan. 22, 2003). On February 21, 2003, the petitioner filed a motion to reinstate per capita garnishment toward arrears. The respondent failed to respond within the specified time frame, thereby allowing the Court to grant the uncontested motion.


The petitioner requested that the Court modify the current decision to reflect a change in the current support and arrearage amounts. The respondent failed to respond within the specified time frame. The Court granted the uncontested motion.

MARCH 12, 2003

The respondent filed several Motions with the Court concerning a Hearing, telephonic appearance, and extended time to seek counsel. The petitioner objected to these Motions, stating that the initial request from the petitioner was an ongoing one that needed no further court hearings. The Court disagreed with this assertion and granted the respondent’s Motions.

MARCH 19, 2003

A review of the file indicates that Stuart G. Beverly, DOB 04/22/85, is about to turn eighteen years of
age. The Court now requires the parties to furnish proof of high school enrollment. If no such proof is filed on or before April 11, 2003, the Court shall cease withholding for current child support.


A review of the file indicates that Cara Jean Rose Isham, DOB 03/02/85, is about to turn eighteen years of age. The Court now requires the parties to furnish proof of high school enrollment. If no such proof is filed on or before April 11, 2003, the Court shall cease withholding for current child support.


A review of the file indicates that Ryan J. Crain, DOB 03/06/85, is about to turn eighteen years of age. The Court now requires the parties to furnish proof of high school enrollment. If no such proof is filed on or before April 11, 2003, the Court shall cease withholding for current child support.


A review of the file indicates that Curtis W. Decorah, DOB 02/26/85, is about to turn eighteen years of age. The Court now requires the parties to furnish proof of high school enrollment. If no such proof is filed on or before April 11, 2003, the Court shall cease withholding for current child support.


The Court granted an arrearage request in the instant case on January 10, 2003. However, the Court now requests that the petitioner substantiate the arrearage amount using certified documentation. Failure to comply with this request shall force the Court to modify the current amount to reflect its own evidence.


The Court had to determine whether or not to enforce a standing foreign child support order against the respondent. The respondent failed to respond within the necessary time frame. The Court granted the petitioner’s request.


The Court had to determine whether or not to enforce a standing foreign child support order against the respondent. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.


The Court received indication that arrears for the instant case were paid in full. The respondent no longer has a child support obligation in the instant case. The Court shall close the current case absent an objection from either party.

MARCH 20, 2003


The Court received an inquiry that indicated the respondent had overpaid in arrears. The respondent’s current child support obligation would have ended after the next per capita cycle. Therefore, the Court considers the last per capita cycle as advance payment and now closes the case absent objections form either party.

MARCH 21, 2003


The petitioner requested that the Court enforce a foreign judgment against the respondent for a wage
garnishment of child support. The respondent failed to respond within the necessary time frame. The Court granted the petitioner’s request.

The petitioner requested that the Court enforce a foreign judgment against the respondent for per capita child support. The respondent failed to respond within the necessary time frame. The Court granted the petitioner’s request.

Civil Garnishment
MARCH 20, 2003
The petitioner requested that the Court recognize and enforce the foreign judgment against the respondent. The respondent failed to respond within the specified time frame. The Court granted the request of the petitioner.

Children’s Trust Fund (CTF)
FEBRUARY 25, 2003
On May 13, 2002, the Court released CTF funds from the aforementioned minor for orthodontics. See Order (Granting Release of CTF Monies) (HCN Tr. Ct., Nov. 21, 2002). Within the decision, the Court reminded the petitioner of her duty to provide the Court with an accounting of the expenditures. On February 25, 2003, the Court reminded the petitioner of her duty again and demanded the accounting by a specific date.

On May 31, 2002, the Court released CTF funds from the aforementioned minor for orthodontics. See Order (Granting Release of CTF in Part and Denying in Part) (HCN Tr. Ct., May 31, 2002). Within the decision, the Court reminded the petitioner of his duty to provide the Court with an accounting of the expenditures. On February 25, 2003, the Court reminded the petitioner of his duty again and demanded the accounting by a specific date.

MARCH 10, 2003
The petitioner filed a motion to request more time to seek legal counsel. The defendant responded with no objection to the request. The Court granted the request and gave the petitioner ten (10) days from the issuance of this decision.

MARCH 12, 2003
In the Interest of Minor Child: M.L., DOB 07/23/85, by Michelle Gulbronson v. HCN Office of Tribal Enrollment, CV 02-73 Order (Accepting

On August 29, 2002, the Court released funds from the aforementioned minor’s account for a computer. See Order (Petition Granted in Part and Denied in Part) (HCN Tr. Ct., Aug. 29, 2002). On February 20, 2003, the Court reminded the petitioner of her duty to provide the Court with an accounting of the expenditure. On March 11, 2003, the petitioner provided the Court with an acceptable accounting. The Court hereby closes the case.


On October 21, 2002, the Court released funds from the aforementioned minors’ accounts for orthodontics procedures. See Order (Petition Granted) (HCN Tr. Ct., Oct. 21, 2002). On February 20, 2003, the Court reminded the petitioner of his duty to provide the Court with an accounting of the expenditure. On March 11, 2003, the petitioner provided the Court with an acceptable accounting. The Court hereby closes the case.

In the Interest of Minor Children: M.D.P., DOB 03/18/85, by Betty Phillips v. HCN Office of Tribal Enrollment, CV 03-12 Order (Granting Telephonic Appearance) (HCN Tr. Ct., Mar. 26, 2003). (Matha, T).

The plaintiff requested to appear by telephone for the scheduled Hearing. No objection was heard from the defendant. The Court granted the request.

Incompetent’s Trust Fund Cases

MARCH 26, 2003


The petitioner requested the use of funds for daily living expenses. The Court heard no objection to this request. The Court released the funds to the petitioner.

MARCH 10, 2003


The petitioner initiated the current action on November 15, 2002. The petitioner failed to appear at the scheduled Fact-Finding Hearing, but indicated in a telephone conversation with the Staff Attorney that he wished to discontinue the action. The Court awaited the petitioner at the Hearing or some written indication of his intent to withdraw. Neither expectation came to fruition, and the Court now dismisses the case without prejudice under HCN R. Civ. P. 44(C).

Civil Cases (All Categories)

FEBRUARY 26, 2003


The petitioners requested a court order to enable their son, the defendant, to undergo DNA testing at his correctional facility. The defendant responded in a timely fashion with no objection to the request. The Court granted the request, thereby allowing the petitioners to continue their application with the HCN Office of Tribal Enrollment for their grandson’s status.

MARCH 10, 2003


The petitioner initiated the current action on November 15, 2002. The petitioner failed to appear at the scheduled Fact-Finding Hearing, but indicated in a telephone conversation with the Staff Attorney that he wished to discontinue the action. The Court awaited the petitioner at the Hearing or some written indication of his intent to withdraw. Neither expectation came to fruition, and the Court now dismisses the case without prejudice under HCN R. Civ. P. 44(C).


On April 16, 2002, the Court issued a decision in favor of the plaintiff awarding monetary damages. See Order (Final Judgment) (HCN Tr. Ct., Apr. 16, 2002). On March 7, 2003, the plaintiff filed a Satisfaction of Judgment with the Court. The Court
accepts this as satisfaction of the debt in full and closes the case.


On October 16, 2002, the Court issued a decision in favor of the plaintiff awarding monetary damages. See Order (Awarding Plaintiff’s Request for Relief) (HCN Tr. Ct., Oct. 16, 2002). On March 7, 2003, the plaintiff filed a Satisfaction of Judgment with the Court. The Court accepts this as satisfaction of the debt in full and closes the case.

MARCH 25, 2003
David Abangan v. HCN Department of Business, CV 01-08 Order (Granting Defendant’s Motion for Summary Judgment) (HCN Tr. Ct., Mar. 25, 2003). (Matha, T).

While the Court analyzed the arguments of both parties, it ruled in favor of the defendant for a lack of subject matter jurisdiction. The reason for this decision is that the controversial executive decision was not deemed a source of law upon which a plaintiff could bring court action. In prior rulings, the Court stated that pro tempore administrations are not subsequent administrations, but extensions of the former administration. Thus, the Court had to consider whether executive decisions created by the first administration were annulled by a pro tempore administration’s presence. The Court was not persuaded by such reasoning and held that executive decisions of former administrations continue whilst the pro tempore administration stands absent explicit revocation. Because the Court can only hear cases and controversies arising out of the laws of the Ho-Chunk Nation, the instant case lacks jurisdiction. In other words, executive decisions are determinations made without legislation and are not considered law in the strictest sense of the word.

Juvenile
MARCH 7, 2003

The Court convened this Dispositional Hearing in accordance with the HCN CHILDREN AND FAMILY CODE, ART. XIX.

MARCH 12, 2003

The Court issued this Order to insist that Attorney Edward Littlejohn file a memorandum of law in support of his Motion.

MARCH 24, 2003

The Court convened a Plea Hearing in the instant case to give the parent of the minor children an opportunity to contest the allegations of CFS.

MARCH 25, 2003

The Court conducted a Review Hearing to determine that status of the instant case.

MARCH 26, 2003
The Court conducted this **Review Hearing** to determine the status of the instant case.

**In the Matter of the Child:**  *S.G.D.*, **DOB** 12/19/00, **JV 02-01**  **Order (Granting Additional Time for Guardian ad Litem to Submit Report)** (HCN Tr. Ct., Mar. 26, 2003). (Bossman, W).

The Court granted the request of the Guardian ad Litem for additional time to present the report.

**MARCH 27, 2003**

**In the Interest of the Minor Child:**  *S.V.P.*, **DOB** 11/06/96, **JV 02-02**  **Order (Appointing Permanent Legal Guardian)** (HCN Tr. Ct., Mar. 27, 2003). (Bossman, W).

The Court appointed a permanent legal guardian of the minor child, S.V.P.

**MARCH 28, 2003**

**In the Interest of Minor Child:**  *J.J.F.*, **DOB** 11/07/00, **JV 02-27**  **Order (Referring Motion for Sanctions Against Attorney Fred D. Hollenbeck to the Ho-Chunk Nation Supreme Court)** (HCN Tr. Ct., Mar. 28, 2003). (Bossman, W).

The petitioner filed a motion for sanctions against the aforementioned attorney. The Supreme Court is the appropriate body to hear this request. The Court refers this matter to the Supreme Court.

**Supreme Court**

**MARCH 12, 2003**

Robert A. Mudd v. HCN Legislature:  Elliot Garvin, Clarence Pettibone, Tracy Thundercloud, Wade Blackdeer, Dallas Whitewing, Gerald Cleveland, Sr., Christine Romano, Myrna Thompson, George Lewis, Kathyleen Whiterabbit, and Sharyn Whiterabbit, SU 03-02  **Scheduling Order** (HCN S. Ct., Mar. 12, 2003). (Hunter, M.)

The appellant brought this case before the Court regarding a Trial Court decision.  **See Order (Final Judgment)** (HCN Tr. Ct., Feb. 13, 2003). Despite the appellee’s decision to withdraw from the case, the Court has agreed to decide the matter on appeal. In addition, the Court appointed John Wabaunee as Justice Pro Tempore.

**MARCH 19, 2003**

Robert A. Mudd v. HCN Legislature:  Elliot Garvin, Clarence Pettibone, Tracy Thundercloud, Wade Blackdeer, Dallas Whitewing, Gerald Cleveland, Sr., Christine Romano, Myrna Thompson, George Lewis, Kathyleen Whiterabbit, and Sharyn Whiterabbit, SU 03-02  **Amended Scheduling Order** (HCN S. Ct., Mar. 19, 2003). (Hunter, M.)

The Court discussed whether or not to allow separate oral arguments based on the **Motions** submitted by both parties. In this opinion, the Court amended the previous **Scheduling Order** to account for these additional filings. The Court decided to permit oral arguments on the **Motions**.

**MARCH 21, 2003**

Theresa Lynn Hendrickson v. HCN Office of Tribal Enrollment, SU 02-06  **Decision** (HCN S. Ct., Mar. 21, 2003).

The Trial Court had reversed a decision of the HCN Tribal Enrollment Committee that would remove the appellee from the tribal roster. The appellant asserted that the Trial Court committed an error of law by interpreting the Constitution, the Enrollment Ordinance and the Removal Procedures in **pari materia** (together). The Supreme Court was not persuaded by this line of reasoning and affirmed the lower court ruling.
MARCH 27, 2003
Robert A. Mudd v. HCN Legislature: Elliot Garvin, Clarence Pettibone, Tracy Thundercloud, Wade Blackdeer, Dallas Whitewing, Gerald Cleveland, Sr., Christine Romano, Myrna Thompson, George Lewis, Kathyleen Whiterabbit and Sharyn Whiterabbit, SU 03-02 Order (HCN S. Ct., Mar. 27, 2003).

The Court set oral arguments for the merits of the case. In addition, the Court denied the appellee’s Motion to Withdraw from suit. The Court denied this request that originated from a misunderstanding with the appellee. The appellee had thought that a recent ruling had destroyed his standing on the case. The recent ruling did not affect the appellee in this manner, and the Court denied the request. Furthermore, the Court denied the appellant’s Motion to Immediately Vacate the Trial Court Judgment and Dismiss the Case. The Court interpreted this request as stemming directly from the request made by the appellee. Given the Court’s decision on the appellee’s request, a denial was made for the appellant’s request.

Recent Filings

Trial Court

Civil Garnishment
FEBRUARY 18, 2003
Ronald Schwinefus v. Larry LaMere, CG 03-10. (Bossman, W).

FEBRUARY 26, 2003

MARCH 11, 2003


MARCH 12, 2003
State Collection Service v. Mike Garske, CG 03-16. (Matha, T).

Sears Roebuck & Co. v. Timothy Abbott, CG 03-17. (Matha, T).

MARCH 13, 2003
General Motors Acceptance Corp. v. Mike Knoble, CG 03-18. (Matha, T).

MARCH 18, 2003
Credit Recovery Service v. Terry Sherman, CG 03-19. (Bossman, W).


MARCH 20, 2003
Krohn Clinic v. Tracy L. Irvin, CG 03-21. (Bossman, W).

MARCH 24, 2003


Child Support
MARCH 11, 2003

MARCH 19, 2003


MARCH 24, 2003
Beltrami County v. Nadine Phyllis Hindsley, CS 03-16. (Matha, T).

State of Wisconsin/Brown County v. Sheila Snake, CS 03-17. (Matha, T).

**MARCH 27, 2003**

**Civil Cases**
**MARCH 7, 2003**
Tammy Ross v. Ho-Chunk Nation, CV 03-20. (Bossman, W).

**MARCH 10, 2003**


HCN Department of Housing, Property Management Division v. Summer Martin and Dustin Jackson, CV 02-23. (Matha, T).

**MARCH 12, 2003**

**MARCH 17, 2003**
In the Interest of the Minor Children: J.D., DOB 09/17/85, S.D., DOB 03/20/87, F.D., DOB 06/14/88, and B.D., DOB 11/22/89, by Cornelius Decorah v. HCN Office of Tribal Enrollment, CV 03-25. (Bossman, W).

**MARCH 20, 2003**
HCN Department of Housing, Property Management Division v. Cyndi Mann, CV 03-26. (Bossman, W).

**MARCH 21, 2003**
In the Interest of Elaine Marie Sine, DOB 02/01/55, by Cecilia Sine v. HCN Office of Tribal Enrollment, CV 03-27. (Bossman, W).

**Juvenile Cases**
**MARCH 20, 2003**
In the Interest of the Minor Child: K.B.M., DOB 10/29/93, JV 03-07. (Bossman, W).

In the Interest of the Minor Child: G.E.M., DOB 08/25/95, JV 03-08. (Bossman, W).

In the Interest of the Minor Child: A.D.M., DOB 04/25/97, JV 03-09. (Bossman, W).

In the Interest of the Minor Child: L.A.M., DOB 12/16/00, JV 03-10. (Bossman, W).

**MARCH 24, 2003**
In the Interest of the Minor Child: S.E.C, DOB 02/25/96, JV 03-11. (Matha, T).

In the Interest of the Minor Child: M.S.B, Dob 09/14/99, JV 03-12. (Matha, T).

**MARCH 27, 2003**
In the Interest of the Minor Child: Q.R.M., DOB 01/01/99, JV 03-13. (Matha, T).

In the Interest of the Minor Child: T.V.F., DOB 02/18/02, JV 03-14. (Matha, T).
THE OFFICE OF
PUBLIC ADVOCACY

The Office of Public Advocacy is a community outreach organization focused on helping low income members of the Nation find free legal counsel. The administrator for the Office of Public Advocacy helps potential clients contact Wisconsin Judicare, Inc. A tribal member can come to the office, located in the Trial Court Building, and fill out the Judicare application. The administrator, Dennis Funmaker, will help anyone fill out the form or answer questions about the office’s services. That person would then receive notice from Judicare directly concerning whether or not they financially qualify for Judicare. If the client becomes eligible for Judicare, the Office of Public Advocacy could then provide that person with a listing of attorneys in their area. If one of these attorneys accepts the case, that attorney shall be paid by Judicare and not the client.

Judicare is an office of legal advocacy for low income persons seeking counsel. Those seeking to learn if they qualify should know that a family size of one person with an income of $11,075 or lower qualifies for Judicare. This figure does not include an individual’s tribal per capita income. For each subsequent family member, add $3,850 more to the annual income that qualifies for Judicare services. Judicare handles cases involving family law, SSI, housing, health and Indian law. Judicare has attorneys and staff that can answer legal questions for clients. Clients are not expected to pay their attorney, but they are expected to pay any basic court costs and fees. Qualifying for Judicare does not automatically mean that an attorney will represent you. It does mean that if the attorney chooses to take your case, he or she shall be paid by Judicare. An applicant that is approved for Judicare receives a blue card. This card is good for one year, and then it expires.

GROUNDBREAKING

On March 21, 2003 at 1:00 p.m., the HCN Judiciary celebrated the beginning of construction for the new court building. The weather was cold and blustery, but spectators turned out for the momentous occasion. The housing staff erected a large tent to keep out the wind and any rain. Under the shelter of this tent, spectators were greeted with food and drinks. Spectators could view and study the plans for construction while admiring the final portrait of the court building. The staff made seating available to all and brought the flags out to wave in the breeze. The staff did their best to make the event festive and inviting. The ceremony began with opening remarks from Chief Trial Court Judge William Bossman and a fire from the Traditional Court representatives. Judge Bossman introduced the speakers and welcomed the audience with great warmth.
Traditional Court representatives build a fire and bless the area for the groundbreaking ceremony. Featured in this photo (l. to r.) are: James N. Funmaker, Sr., Donald Blackhawk, and Dennis M. Funmaker, Sr.

In the blessing for the groundbreaking ceremony, Donald Blackhawk explained to the audience the importance of the fire. He stated that in Tradition and Custom, the fireplace goes before the people for their care and protection. For this reason, beginning a fire, and caring for it, should be the first act at our building site. As the fire began, James Noah Funmaker, Sr. blessed the fire, the ground, and all those in attendance. He prayed for the construction workers and for the court staff. Nods of assent greeted him as he ended the blessing for this building and for the Nation.

The next speaker to praise the new construction was the Ho-Chunk Nation’s President, Troy Swallow. He called the construction of a new building necessary for a mature court. Furthermore, President Swallow stated that the people of the Nation deserve the building. He prayed that the Judiciary would continue to hold true to the Constitution and the laws of the Ho-Chunk Nation. He gave thanks to all those in attendance, all of the construction workers, and all the court staff. He reminded the people of the service that the Court staff provides to all Ho-Chunk members. Finally, President Troy Swallow said a few words of prayer for our brave soldiers in the field.

Clarence Pettibone, HCN Legislative Representative, said a few words of thanks to the Traditional Court and the people involved in the design and construction of the new court building. He implored the members of the Judiciary to continue their work of handing down fair-minded decisions for the benefit of the Nation. Mr. Pettibone also stated that the new building would imbue the members of the Nation with pride for its Judiciary. Mr. Pettibone then surrendered the floor to the Chief Justice of the Supreme Court Mary Jo B. Hunter. The Chief Justice gave her thanks to the Legislature and the Traditional Court, as well as to the architect and builders. She thanked Associate Justice Mark Butterfield for his vocalization of the need for a court building and the court staff for enduring in the twilight of the court’s construction. The Chief Justice ended with a discussion of the Nation as one unified entity with vast and proud traditions. At the end of her remarks, Judge Bossman invited the Chief Justice and others to help him dig a ceremonial hole in the construction site. Mr. Yanhke of Olympic Builders, Gregory Cashman the architect, Dennis Funmaker, President Troy Swallow and Clarence Pettibone aided the Judge and Justice in the dig. The ceremony ended with food and beverages among the audience. Everyone was in high spirits and appreciative of the efforts of all those involved in the building.
HCN Legislative Representative Clarence Pettibone gives a few remarks at the Groundbreaking Ceremony for the new Court Building.

President Troy Swallow addresses the crowd at the Groundbreaking ceremony for the Ho-Chunk Nation’s Judiciary.

President Troy Swallow and Legislative Representative Clarence Pettibone aid Chief Judge William Bossman and architect Gregory Cashman in the ceremonial dig. Not pictured but also aiding in the dig: Chief Justice Mary Jo B. Hunter, William Yahnke of Olympic Builders and Dennis Funmaker.

ANNOUNCEMENT!
GROUNDBREAKING AND CONSTRUCTION ON THE NEW COURT BUILDING BEGAN ON FRIDAY, MARCH 28, 2003.
Office of Public Advocacy

- Assistance with finding free legal counsel for qualified applicants
- Assistance with legal concerns or questions
- Located conveniently within the HCN Court Building
- For further questions regarding the O.P.A., please call Dennis Funmaker at (715) 284-8514

HO-CHUNK NATION COURT SYSTEM
JUDICIARY AND STAFF
Supreme Court – Mary Jo B. Hunter, Chief Justice
  Mark D. Butterfield, Associate Justice
  Jo Deen B. Lowe, Associate Justice
Traditional Court – Wallace Blackdeer
  Donald Blackhawk
  Dennis Funmaker
  Orville Greendeer
  Douglas Greengrass
  Owen Mike
  Gavin Pettibone
  Douglas Red Eagle
  Preston Thompson, Jr.
  Eugene Thundercloud
  Morgan White Eagle
  Clayton Winneshiek
Trial Court – William H. Bossman, Chief Judge
  Todd R. Matha, Associate Judge
Clerk of Court, Supreme Court – Bryan Dietzler
Clerk of Court, Trial Court – Marcella Cloud
Assistant Clerk of Court, Trial Court – Selina Joshua
Bailiff/Process Server – Willa RedCloud
Administrative Assistant – Jeanne Colwell
Staff Attorney – Rebecca Tavares

Office of Public Advocacy – Dennis Funmaker, Administrator

* The Ho-Chunk Nation Judiciary and its officers are active participants in the following organizations:

WISCONSIN TRIBAL JUDGES ASSOCIATION
(Eleven federally recognized tribes within the State of Wisconsin)

NATIVE AMERICAN INDIAN COURT JUDGES ASSOCIATION
(Region 5—Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, South Dakota, North Dakota, and Wisconsin)

HCN Court System Fee Schedule

- Filing Fees ...................................................... $50.00*
  *With the exception of petitions to register child support orders – this fee remains at $20.00 as previously ordered by the Supreme Court.
  
  Note: Filing Fee now includes Summons fee.

- Filing Fees for Petitions to Register and Enforce Foreign Judgment/Order: .................. $20.00

Copying ....................................................... $0.10/per page
Faxing ......................................................... $0.25/per page (sending and receiving)
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CD of Hearing .............................................. $12.50/per tape
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HCN Const., Art. XI, Sec. (or §) 7.

HCN Ordinances
Ordinance Name, Chapter number, Section/Part/Clause, page.
PERSONNEL POLICIES AND PROCEDURE MANUAL, Ch. 12, Part B, p. 82.
CLAIMS AGAINST PER CAPITA, Sec. (or §) 6.01(b).

HCN Supreme Court Case Law
Case Name, Case No. (HCN S. Ct., month, day, year).

HCN Trial Court Case Law
Case Name, Case No. (HCN Tr. Ct., month, day, year).

Rules of Civil Procedure
HCN R. Civ. P. 19(B).
NEWS FROM THE FEDERAL INDIAN LAW CONFERENCE.

On April 10-11, 2003, the Federal Bar Association held its annual Indian Law Conference in Albuquerque, NM. The conference attracted hundreds of attorneys and judges specializing in Indian Law, enticing them with the latest issues surrounding the field. The conference began with a paper by Robert Williams, Jr. entitled, “The Savage as the Wolf”: Indian Rights, the Rehnquist Court, and the Western Colonial Imagination. He examined the trust doctrine that came to fruition through the Marshall trilogy. Johnson v. McIntosh, Worcester v. Georgia and Cherokee Nation v. Georgia are referred to as the Marshall Trilogy. Johnson is known for its usage of the “doctrine of discovery,” asserting that Europeans could claim the land for themselves under this legal fiction. Cherokee Nation stood for the proposition that the States had to deal with the Federal government to ensure the full protection of Indian rights. In this case, the trust doctrine was born. Worcester protected Indian rights of self-government and property by asserting that State laws had no force on tribal land.

However, Mr. Williams asserted that the trust doctrine as it stands today is flawed. This flaw stems from the misunderstanding and mischaracterization of Indians within the opinions, i.e., that Indians were racially inferior. The flaw of these opinions is revealed in the myth that Indians think differently about

1 21 U.S. 543 (1823).
2 30 U.S. 1 (1831).
3 31 U.S. 515 (1832).
the concept of property. The example used to illustrate this point comes from the infamous sale of Manhattan for trinkets. Few people in this country are aware of the fact that the majority of treaties actually reveal a very savvy group of individuals creating irrevocable and perpetual agreements of protection for their people and their descendants. According to his presentation, Mr. Williams asserts that the indigenous tribes had asserted in each treaty a trust relationship of protection and mutual exchange between the tribe and the federal government. The idea of taking without sharing and helping no one else is a concept created by the federal government. Williams explains that many of the victories in Indian law were dimmed by the racial undertones present in the Marshall Trilogy. However, Mr. Williams ended on a positive note by asserting that under his analysis, the most recent case involving the trust doctrine, the White Mountain Apache Tribe was successful due to their departure from the racial language of the Marshall Trilogy.

The next speaker, Mary Christina Wood, spoke on environmental hazards created through reservation development. Ms. Wood decreed that the trust relationship could provide a framework to prevent further environmental destruction. Ms. Wood indicated that legal advocates should attempt to isolate the protection promise contained within the trust doctrine and craft their arguments to compel enforcement. Ms. Wood recommended using the principles of property law and the trespass or nuisance elements of tort law to craft the aforementioned arguments. In other words, she insisted on looking to the implied rights found in common law instead of looking to statutes. She argued that the majority of statutes are interpreted toward the interests of the majority and not those in Indian country. However, she did insist on one alternative setting to craft these arguments: the Administrative Procedures Act.

Under the APA, the speaker insisted that advocates could use an arbitrary and capricious standard to assert a violation of the trust relationship and environmental protection of tribal lands. Another alternative currently used by many advocates is to adhere to the Tucker Act to assert a claim for money damages against the BIA in the Federal Court of Claims. Unfortunately, this avenue of legal analysis requires explicit constitutional and statutory provisional proof of a violation. Further complicating the issue of which avenue of legal analysis to use is the confusion in the courts about whether these analyses are separate. According to Ms. Wood, the courts have recently confused the requirements under the Tucker Act with arguments made under the structure of the APA. The APA does not require the specifications that must be considered when using the Tucker Act. However, such confusion is starting to become law through the concept of *stare decisis*. The recent cases involving the Navajo Nation and the White Mountain Apache Tribe may be used to distinguish the claims made under the APA. Only continual advocacy and clear explanation of the separation of these concepts would protect these arguments and thus environmental claims on tribal land.

On a more general note, the renowned author Elizabeth Cook-Lynn spoke to a captivated audience regarding Indian law today. Among the themes of her work, Cook-Lynn asserted that in order for Indian country to see true progress in the law, legal advocates must work toward the complete disavowal of the legal fiction known as plenary power. The concept of plenary power, created through similar analysis to the trust doctrine, purports to give the federal government superior and overarching power over Indian Nations and policies concerning those nations. Cook-Lynn stated that until this legal fiction is destroyed, the suffering of American Indian people will continue at the hands of those that create federal law.

*Continued on page 16.*
Recent Decisions

Decisions are separated between Trial Court and Supreme Court decisions and categorized by subject matter and date (from oldest to most recent). The following are summaries prepared by the Staff Attorney for the reader's benefit. They should in no way be used as substitution for citations to the actual court opinion.

Within the Trial Court, cases are categorized and docketed as one of the following: Child Support (CS or if filed prior to 1998, CV), Civil Garnishment (CG), Civil (CV), Criminal (CR), Custody (CU), Domestic Violence (DV), or Juvenile (JV). Within this index, case citations will appear in one of these categories and, in the event it may be helpful to the reader as a research tool, the cases may also be summarized in a separate topic area. In some instances a decision may touch upon other topics that may not warrant a summary in this index, but the editor will use the indicator “other topic(s) covered,” as a research aid for the reader.

Recent Decisions and Recent Filings both begin with the date where the previous Court Bulletin left off.

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Trial Court

Child Support

**APRIL 3, 2003**


The Court had previously discontinued current support in that instant case. *See Order (Enforcing Child Support Arrears)* CS 99-21 (HCN Tr. Ct., Jan. 30, 2002). The Court was recently informed that the arrearage is now paid in full. Thus, the Court shall close the case absent objections from the parties.

**APRIL 7, 2003**


The Court consolidated the aforementioned cases pertaining to the same parents and different children. The petitioner requested that the Court recognize a foreign child support judgment against the respondent. The respondent failed to respond within the specified time period, and the Court granted the request.


The petitioner requested that the Court recognize a foreign child support order against the respondent’s wages and per capita. The respondent failed to respond within the specified timeframe. The Court wrote two (2) decisions, one (1) for wages and one (1) for per capita. The Court granted the petitioner’s request.


The Court received an arrearage statement to update its records. The update does not affect the withholding ordered by this Court. The parties may continue to request modifications of the withholding for arrears.


The petitioner requested that the Court enforce a foreign judgment for child support against the
respondent. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

**APRIL 9, 2003**

*Denise Amundson v. Robert White, CS 03-07 Order (Granting Telephonic Appearance) (HCN Tr. Ct., Apr. 9, 2003). (Matha, T).*

The defendant requested to appear by telephone at the next scheduled Hearing. The Court granted the request of the defendant. However, the Court reminded the defendant that he may not use the toll free number.

*State of Wisconsin/Sawyer County v. Roberta L. Crowe, CV 97-76 Order (Proof of High School Enrollment Filed) (HCN Tr. Ct., Apr. 9, 2003). (Matha, T).*

The Court issued a reminder to the parties concerning the impending emancipation of Curtis W. Decora, DOB 02/26/85, and the need for proof of high school enrollment in order to continue withholding for child support. The parties filed the required proof of enrollment on April 7, 2003. The Court accepted this proof of enrollment and continued to withhold for child support.

*Rachel Winneshiek v. James Beverly, CV 97-168 Order (Proof of High School Enrollment Filed) (HCN Tr. Ct., Apr. 9, 2003). (Matha, T).*

The Court issued a reminder to the parties concerning the impending emancipation of Stuart G. Beverly, DOB 04/22/85, and the need for proof of high school enrollment in order to continue withholding for child support. The parties filed the required proof of enrollment on April 7, 2003. The Court accepted this proof of enrollment and continued to withhold for child support.

**APRIL 14, 2003**


The petitioner requested that the Court recognize and enforce the amended decision of Clark County. The respondent failed to respond within the specified timeframe. The Court granted the request.


The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

**APRIL 15, 2003**

*Denise Amundson v. Robert White, CS 03-07 Order (Enforcing Child Support) (HCN Tr. Ct., Apr. 15, 2003). (Matha, T).*

The petitioner requested that the Court enforce a foreign judgment against the respondent’s per capita distributions. The respondent filed a timely response and requested a Hearing. The Court granted the petitioner’s request in light of the agreement made between the parties and submitted into evidence during the Hearing.

*Sheila Doucette v. Scott Hindes, CS 97-132 Order (Enforcing Arrears) (HCN Tr. Ct., Apr. 15, 2003). (Bossman, W).*

The petitioner requested that the Court recognize a foreign order awarding arrears. The respondent failed to respond within the appropriate time frame. The Court granted the request.


The petitioner brought a Motion to Register and Enforce a Foreign Child Support Order. The respondent failed to respond within the appropriate time frame. The Court granted the petitioner’s request. However, the Court also performed an equitable adjustment pertaining to the multiple requests that referenced the same respondent.


The petitioner requested that the Court amend the current withholding for arrears. The petitioner had
previously asked for a reinstatement of current withholding. The Court granted the new request.


The Court had reminded the parties to file the appropriate paperwork for children turning eighteen (18), or else the parties would risk the termination of their withholding. The child in the instant case had turned eighteen (18), and the Court did not receive evidence of continued high school education. The Court terminated the current withholding for that child.


The parties were notified by the Court that Cara Jean Rose Isham, DOB 03/02/85, was about to turn eighteen (18) years of age. Without proper documentation of her high school enrollment, current child support would cease. The parties failed to provide such documentation. The Court ceased withholding for the aforementioned child, but continued withholding for the minor child, Anthony W. Woller, DOB 05/19/88.

**APRIL 16, 2003**


The petitioner brought a Motion to Modify and asked the Court to recognize arrears. The respondent failed to respond within the specified time frame. The Court granted the request of the petitioner.


The petitioner requested that the Court recognize an updated amount for arrears. The respondent filed a timely response to the request and asked for a Hearing. The Court granted this request and heard the arguments of both sides. The Court then granted the petitioner’s original request.


The Court received information that the respondent had custody of one (1) of the children. The other child had previously become emancipated. Therefore, the Court ceased withholding for the instant case and notified the parties of its intent to close the file.


The Court had to determine whether to amend a previous Order. The petitioner requested the maximum amount allowed for current support and an updated arrears figure. The Court granted the latter request, but could not grant the former request as the respondent had two (2) child support obligations to satisfy out of the maximum withholding.


The Court received a Motion to Modify and a request to amend the arrears. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.


The petition brought a Petition to Recognize and Enforce a Foreign Child Support Order. The respondent failed to respond within the specified time frame. The Court granted the request. On a Motion to Reconsider, the respondent asserted that the physical custodian may not be the biological parent. The Court then explained via correspondence that State, Federal and Tribal Law afford a physical custodian child support, irrespective of their blood ties to the child.
Paternity issues must be settled in a foreign state court, which could then alter the physical custody of the child and child support.

The petitioner requested that the Court enforce arrears against the respondent. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

The respondent requested that the Court enforce a foreign order. The respondent understood the consequences of asking the Court to enforce the Judgment against her. The Court granted the petitioner’s request.

The petitioner filed a Petition to Recognize and Enforce a Foreign Child Support Order on March 5, 2003. The respondent failed to respond within the twenty (20) days allotted for an original response. The Court granted the petitioner’s request.

The petitioner brought a Petition to Recognize and Enforce a Foreign Order. In addition to its consideration of this request, the Court had to reinstate a previous support obligation that had suffered suspension. The respondent failed to respond within the specified time frame. The Court granted the support obligations.

On May 23, 2000, the Court withheld twenty-five percent (25%) for current child support. See Order (Enforcing Child Support) CS 00-16 (HCN Tr. Ct., May 23, 2003). On April 16, 2003, the Court received correspondence that the obligation had been suspended. The respondent has ten days to respond. To prevent unnecessary support payments, the Court impounded twenty-five percent (25%) of the respondent’s May 1, 2003 per capita distribution.

APRIL 28, 2003
Juneau County Child Support Agency requested a suspension of the current obligation for the respondent. Previously, the petitioner had filed a Petition to Recognize and Enforce a Foreign Child Support Order. The Court impounded the disputed portion of the respondent’s per capita distribution.

MAY 1, 2003
The Court received indication that the respondent’s obligation was suspended. The Court gave the parties an appropriate length of time to respond. The Court then released the impounded funds.

MAY 7, 2003
The petitioner filed a Petition to Recognize and Enforce a Foreign Child Support Order on April 10, 2003. The respondent failed to respond within the twenty (20) days allotted for an original response. The Court granted the petitioner’s request.

Civil Garnishment
APRIL 1, 2003
The petitioner requested that the Court enforce a Judgment against the respondent’s wages. The
respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

**APRIL 7, 2003**

The petitioner requested that the Court enforce a Judgment against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

The petitioner requested that the Court enforce a Judgment against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

The petitioner requested that the Court enforce a Judgment against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

The petitioner requested that the Court enforce a Judgment against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

**APRIL 9, 2003**

The petitioner requested that the Court enforce a Judgment against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

**APRIL 14, 2003**

The petitioner requested that the Court enforce a Judgment against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

The petitioner requested that the Court enforce a Judgment against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

**APRIL 15, 2003**

The petitioner requested that the Court enforce a Judgment against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

The petitioner requested that the Court enforce a Judgment against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

The petitioner requested that the Court enforce a Judgment against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.
**APRIL 16, 2003**  
The petitioner requested that the Court enforce a Judgment against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

**APRIL 28, 2003**  
The petitioner requested that the Court enforce a Judgment against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

The petitioner requested that the Court enforce a Judgment against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

*Creditor Recovery Service LLC, Agent for Maxine LeMieux dba Headin’ West v. Daniel Downing, CG 03-26 Order (Default Judgment) (HCN Tr. Ct., Apr. 28, 2003).* (Bossman, W).
The petitioner requested that the Court enforce a Judgment against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

**MAY 5, 2003**  
The petitioner requested that the Court enforce a Judgment against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

**APRIL 1, 2003**  
*Children’s Trust Fund (CTF)*

**APRIL 16, 2003**  
*In the Interest of Minor Child: R.T., DOB 01/09/85, by Roger Thundercloud v. HCN Office of Tribal Enrollment, CV 02-16 Order (Accepting Accounting) (HCN Tr. Ct., Apr. 1, 2003).* (Bossman, W).
The Court released funds to the petitioner on May 31, 2002. On March 12, 2003, the petitioner submitted a payment history indicating the proper expenditures. The Court accepted the accounting and closed the case.

*Justina Littlegeorge v. HCN Office of Tribal Enrollment, CV 02-115 Order (Denying Petition) (HCN Tr. Ct., Apr. 1, 2003).* (Bossman, W).
The petitioner requested the release of her entire trust fund before she had received her diploma. The petitioner had turned eighteen (18) and expected to graduate in June. The Court denied her request and insisted on the physical receipt of the diploma.

**APRIL 3, 2003**  
*In the Interest of Minor Child C.Y.B., DOB 05/04/92, by Charles A. Brown v. HCN Office of Tribal Enrollment, CV 02-104 Order (Denying Petition) (HCN Tr. Ct., Apr. 3, 2003).* (Bossman, W).
The petitioner requested the release of funds for school and household expenses. The petitioner failed to meet the four elements of the Court’s test. The Court denied the request.

**APRIL 4, 2003**  
The petitioner requested funds for school clothes for the children. The petitioner met the four part test on some of his requests. The Court granted those requests alone.

The Court released the funds from the minor’s trust account for orthodontics. The Court requested that the petitioner account for all expenditures. The Court has accepted the accounting and closes the case.

In the Interest of Minor Child: V.B., DOB 03/04/92, by April Daniels v. HCN Office of Tribal Enrollment, CV 02-113 Order (Requesting Accounting) (HCN Tr. Ct., Apr. 9, 2003). (Matha, T).

The petitioner requested funds from the trust account for orthodontics. The Court granted this request with the stipulation that the petitioner would provide an accounting of her expenditures within a given time frame. The Court now reminds her of that obligation within this decision.


The petitioner requested funds from the trust account for tutoring. The Court granted this request with the stipulation that the petitioner would provide an accounting of her expenditures within a given time frame. The Court now reminds her of that obligation within this decision.

In re the Children of Joni Munnell: D.J.M., DOB 12/26/87, A.S.W., DOB 01/24/89, J.S.W., DOB 01/24/89, D.W.W., DOB 07/06/92, S.G.W., DOB 06/26/93 v. HCN Office of Tribal Enrollment, CV 96-64 Order (Requesting Further Documentation) (HCN Tr. Ct., Apr. 11, 2003). (Matha, T).

The guardian of the estate submitted annual accounting reports for the trust instrument. However, further documentation was required for this trust. Therefore, the Court requires the guardian to file further documentation as specified in its decision.

In the Interest of Minor Child: J.L.F., DOB 04/16/93, by Jill A. Pettibone v. HCN Office of Tribal Enrollment, CV 02-65 Order (Requesting Accounting) (HCN Tr. Ct., Apr. 9, 2003). (Matha, T).

The petitioner requested funds from the trust account for orthodontics. The Court granted this request with the stipulation that the petitioner would provide an accounting of her expenditures within a given time frame. The Court now reminds her of that obligation within this decision.


The Court released funds for an orthodontics procedure. The petitioner was required to provide the Court with an accounting of the expenditures.
The Court has received such accounting and accepts the necessary documentation.

APRIL 16, 2003
The Court released funds from the account for orthodontics. The Court required the petitioner to file an accounting of the expenditures within a set time frame. The Court now reminds the petitioner of this obligation.

APRIL 22, 2003
In the Interest of Minor Child: B.L.W., DOB 03/14/90, by Lanette Walker v. HCN Office of Tribal Enrollment, CV 02-109 Order (Demanding Accounting) (HCN Tr. Ct., Apr. 22, 2003). (Bossman, W).
The Court released funds for orthodontics. The petitioner was required to produce documentation accounting for all expenditures. This is the second formal reminder from the Court regarding the petitioner’s obligation. Failure to heed such a reminder could result in a finding of contempt.

APRIL 23, 2003
The Court released funds for orthodontics. The Court required the petitioner to file an accounting of the expenditures within a set time frame. The Court now reminds the petitioner of this obligation.

APRIL 28, 2003
The Court released funds for orthodontics on December 21, 2001. On April 23, 2002, the petitioner filed an appropriate accounting. The petitioner requested further funds for ongoing orthodontic care. The Court granted the request.

Incompetent’s Trust Fund Cases
APRIL 1, 2003
In the Interest of Lucinda V. Littlesoldier, DOB 02/16/49, by Isabelle Mallory v. HCN Office of Tribal Enrollment, CV 00-106 Order (Demanding Accounting) (HCN Tr. Ct., Apr. 1, 2003). (Bossman, W).
The Court released funds from the aforementioned ITF account on September 19, 2002. The Court requested an accounting on January 7, 2003. The Court now demands an accounting of the expenditures or the petitioner risks an action under the CONTEMPT ORDINANCE.

APRIL 22, 2003
In the Interest of Lucinda V. Littlesoldier, DOB 02/16/49, by Isabelle Mallory v. HCN Office of Tribal Enrollment, CV 00-106 Order (Show Cause) (HCN Tr. Ct., Apr. 22, 2003). (Bossman, W).
The Court had previously granted release from the trust account of the aforementioned incompetent for living expenses. The Court required the petitioner to bring forth an accounting and documentation regarding the expenditures. The Court has formally reminded the petitioner in writing of her legal obligation. The Court now recommends a Hearing to determine whether the petitioner has violated the CONTEMPT ORDINANCE.

APRIL 23, 2003
The Court released funds from the ITF account for Christmas gifts. The petitioner had failed to account for a previous release. The Court released these funds with the stipulation that an accounting be made for both releases and no further release could be requested pending such accounting.

MAY 2, 2003
In the Interest of Lucinda V. Littlesoldier, DOB 02/16/49, by Isabelle Mallory v. HCN Office of Tribal Enrollment, CV 00-106 Order (Finding of Contempt) (HCN Tr. Ct., May 2, 2003). (Bossman, W).
On September 19, 2002, the Court released funds from the account of the aforementioned person. The Court made two formal written reminders indicating that the petitioner must provide a documented accounting of all expenditures. Due to the petitioner’s failure to comply with the Court’s formal written requests, the Court convened a Show Cause Hearing on May 2, 2003. The petitioner could not adequately account for the expenditures nor her failure to comply with previous requests. The Court found her in contempt and issued a fine payable through per capita.

**Civil Cases (All Categories)**

**March 31, 2003**

_Troy S. Westphal v. Bally Gaming, Inc., Ho-Chunk Nation and Ho-Chunk Casino, CV 02-75 Stipulation and Order to Amend Scheduling Order (HCN Tr. Ct., Mar. 31, 2003)._ (Matha, T).

The parties agreed amongst themselves to amend the Scheduling Order. The parties requested additional time on all filings. The Court granted the request.

**April 1, 2003**

_Ho-Chunk Nation Department of Housing, Property Management Division v. Brian Decorah, CV 01-89 Order (Satisfaction of Judgment) (HCN Tr. Ct., Apr. 1, 2003)._ (Matha, T).

The Court issued an Order (Granting Motion to Dismiss) after the plaintiff and defendant settled out of court. The defendant agreed to pay the plaintiff the amount owed. The plaintiff formally informed the Court of the debt’s final payment. The Court now closes the case.

_Vance Swallow v. HCN Office of Tribal Enrollment, CV 02-90 Order (Dismissal with Prejudice) (HCN Tr. Ct., Apr. 1, 2003)._ (Bossman, W).

The Court issued an Order (Requiring Submission of Documents) for the instant case. Months later, the defendant filed a Motion to Dismiss citing the plaintiff’s failure to comply with the previous court Order. The Court granted this request and dismissed the case.

**April 3, 2003**


The Court issued this Scheduling Order to establish dates and deadlines up to and including trial.

**April 4, 2003**

_Jenna C. Littlegeorge v. HCN Office of Tribal Enrollment, CV 03-06 Stipulation and Order for Dismissal (HCN Tr. Ct., Apr. 4, 2003)._ (Bossman, W).

The parties agreed to request a dismissal of this case concerning the potential removal of the petitioner from tribal rolls. The Court granted this request. The HCN Office of Enrollment may choose to reinstitute proceedings, thereby allowing the petitioner to renew her appeal in this Court.

**April 7, 2003**


The plaintiff requested funds from the per capita of the defendant for repayment of a bill incurred during the defendant’s stay. The laws of the Nation permit the garnishment of per capita for debts incurred to the Nation and its agencies. The respondent failed to respond within the appropriate time frame. The Court granted the request.

**April 9, 2003**

_Ho-Chunk Nation Department of Housing, Property Management Division v. Lewis Frogg, CV 02-59 Order (Satisfaction of Judgment and Intent to Close) (HCN Tr. Ct., Apr. 9, 2003)._ (Matha, T).

The Court entered an Order requiring the defendant to pay the plaintiff the money he owed. The plaintiff filed a Satisfaction of Judgment with the Court indicating payment in full. The Court accepted proof of the payment and closed the case.

_Ho-Chunk Nation Department of Housing, Property Management Division v. Larry Fanning, CV 02-60 Order (Satisfaction of Judgment and Intent to Close) (HCN Tr. Ct., Apr. 9, 2003)._ (Matha, T).

The Court entered an Order requiring the defendant to pay the plaintiff the money he owed. The plaintiff filed a Satisfaction of Judgment with the Court indicating payment in full. The Court accepted proof of the payment and closed the case.
**Ho-Chunk Nation Department of Housing, Property Management Division v. Angela Greendeer and Nicole Skenandore, CV 02-61 Order (Satisfaction of Judgment and Intent to Close) (HCN Tr. Ct., Apr. 9, 2003).** (Matha, T).

The Court entered an Order requiring the defendants to pay the plaintiff the money they owed. The plaintiff filed a Satisfaction of Judgment with the Court indicating payment in full. The Court accepted proof of the payment and closed the case.

**APRIL 16, 2003**

**Ho-Chunk Housing Authority v. Henrietta Funmaker, CV 02-104 Order (Satisfaction of Judgment and Intent to Close)** (HCN Tr. Ct., Apr. 16, 2003). (Bossman, W).

The Court entered an Order requiring the defendant to pay the plaintiff the money she owed. The plaintiff filed a Satisfaction of Judgment with the Court indicating payment in full. The Court accepted proof of the payment and closed the case.


The plaintiff requested funds from the defendants’ per capita for repayment of monies owed. The laws of the Nation allow for garnishment of per capita for debts owed to the Nation and its agencies. The defendants failed to respond in a timely manner. The Court granted the request of the plaintiff.

**APRIL 17, 2003**


Plaintiff’s counsel requested to appear by telephone for the next proceeding. The Court granted this request.

**APRIL 18, 2003**

**Vaughn Pettibone v. HCN Election Bd. and Michelle Decorah (HCN Election Board Chairperson) in her representative capacity, HCN Office of the President and Troy Swallow (HCN President) in his representative capacity, and Ho-Chunk Nation, CV 03-17 Order (Motion Hearing)** (HCN Tr. Ct., Apr. 18, 2003). (Bossman, W).

The plaintiff filed a Motion requesting a restraining order. The defendant filed a Motion to Amend the Complaint. The Court granted a Hearing to allow the parties to argue their Motions.

**Troy S. Westphal v. Ho-Chunk Nation and Ho-Chunk Casino, CV 02-75 Order (Motion Hearing)** (HCN Tr. Ct., Apr. 18, 2003). (Matha, T).

The Court scheduled a Status Hearing to deal with the Motion to Dismiss filed in the instant case and other numerous procedural questions. In this decision, the Court set deadlines for each side prior to the next Hearing. Oral arguments shall be entertained at the Hearing.

**APRIL 25, 2003**


The plaintiff filed with the Court in protest of his demotion with the Ho-Chunk Casino. He requested reinstatement and lost wages. The defendants presented evidence of misconduct to support the demotion. Based upon violations of the PERSONNEL MANUAL, the Court granted Judgment for the defendants.

**APRIL 29, 2003**


The defendant filed a Motion to Dismiss in the instant case. The Court shall grant a Hearing to allow the defendant a forum to argue the Motion. The Court issued this Order setting the framework and timelines surrounding the Motion Hearing.

**MAY 2, 2003**


The plaintiff requested repayment for monies owed. The defendant failed to respond within the appropriate time frame. The Court granted the plaintiff’s request.
MAY 5, 2003
The plaintiff requested that the Court restrain the defendant from entering the building grounds due to violations and potential damage. The Court granted the request. A Show Cause Hearing is scheduled to determine whether such remedy should continue.

MAY 6, 2003
The Court issued this Amended Scheduling Order to establish new dates and deadlines for the instant case up to and including trial.

MAY 7, 2003
The defendants requested that the Court dismiss the instant case. The plaintiff filed a similar response stating that she no longer wished to pursue the action. The Court granted the dismissal.

The Court issued the Scheduling Order to establish dates and deadlines in the instant case up to and including trial.

Vaughn Pettibone v. HCN Election Board, Michelle Decora, as Election Board Chairperson, and Troy Swallow, as HCN President, CV 03-17 Scheduling Order (HCN Tr. Ct., May 7, 2003). (Bossman, W).
The Court issued the Scheduling Order to establish dates and deadlines in the instant case up to and including trial.

Janette Smoke v. Steve Garvin, in the capacity of Table Games Manager, Majestic Pines Casino and Ho-Chunk Nation, CV 01-97 Order (Final Judgment) (HCN Tr. Ct., May 7, 2003). (Matha, T).

The issue in this case was whether the defendants had enacted and implemented the Unit Operating Rules in a manner that violated the PERSONNEL MANUAL. The defendants attempted to characterize the rules in question as a mechanism for scheduling job time only. The defendants asserted that these rules were not Unit Operating Rules. If they were considered such, the defendants asserted that these rules did not require approval by the Personnel Board of Directors. The Court insisted that these rules were Unit Operating Rules. In addition, the PERSONNEL MANUAL insists that such rules must not contradict anything in the MANUAL itself. The PERSONNEL ORGANIZATION ACT and the MANUAL must be read together. The PERSONNEL ORGANIZATION ACT decrees that the Personnel Board of Directors must approve Unit Operating Rules. Therefore, failure to do so results in a violation of the PERSONNEL MANUAL.

Ho-Chunk Nation Department of Housing, Property Management Division v. Cyndi Mann, CV 03-26 Order (Dismissal without Prejudice) (HCN Tr. Ct., May 7, 2003). (Bossman, W).
The petitioner requested that the Court dismiss the case. The defendant had no response. The Court granted the request.

Juvenile
MARCH 31, 2003
The Court conducted the Hearing to review the case and determine if further Court intervention is needed.

The Court convened this Hearing to allow the parents to contest the allegations.

APRIL 2, 2003
In the Interest of Minor Child: R.W.H., DOB 04/13/01 JV 01-09 Order (Appointment of
The Court appointed a temporary guardian for the
minor child.

In the Interest of Minor Child: R.W.H., DOB
04/13/01, JV 01-09 Order (Appointment of
The Court appointed Attorney William Gardner as the
Guardian ad Litem for the instant case.

APRIL 14, 2003
In the Interest of Minor Child: K.H., DOB
07/07/84, 92-CU-10 Order (Modification of Child
The Court had previously granted child support in
the instant case. The Court now modifies that support to reflect the change in circumstances.

APRIL 17, 2003
In the Interest of Minor Child: M.S.B., DOB
09/14/99, JV 03-02 Order (Request to Review
The Court granted the request of the GAL to review
the files for the case.

MAY 1, 2003
In the Interest of Minor Child: J.J.F., DOB
11/07/00, JV 02-27 Order (Formal Hearing) (HCN
Tr. Ct., May 1, 2003). (Bossman, W).
The Court issued this decision to illuminate the
details of the case disposition.

Supreme Court

APRIL 8, 2003
Robert A. Mudd v. HCN Legislature, Elliott Garvin,
Clarence Pettibone, Tracy Thundercloud, Wade
Blackdeer, Dallas Whitewing, Gerald Cleveland,
Sr., Christine Romano, Myrna Thompson, George
Lewis, Kathleen Whiterabbit and Sharyn
Whiterabbit, SU 03-02 Decision (HCN S. Ct., Apr.
8, 2003).
The petitioner had argued before the Trial Court
that the implementation of the current reapportionment plan violated the Nation’s
Constitution. The petitioner asserted that the
culmination of redistricting/reapportionment should have taken place six (6) months prior to the constitutionally mandated election. The Supreme
Court asked whether the Trial Court abused its
discretion by finding in favor of the plaintiff and
misinterpreting the laws of the Nation. The
Supreme Court did not find an abuse of discretion
for the Trial Court’s ruling on the plaintiff’s
standing to sue. However, the Court disagreed with
the Trial Court’s characterization of the elements in
question within the Constitution. The Supreme
Court asserted that the redistricting/reapportionment
structure created and implemented for the Election
Board was not unconstitutional.

APRIL 15, 2003
Rae Anna Garcia v. Joan Greendeer Lee et al., SU
03-01 Notice of Extension (HCN S. Ct., Apr. 15,
2003). The Court issued this Notice to remind parties of the
extension of time given to produce a decision concerning the instant case.

APRIL 23, 2003
In the Interest of Minor Child, C.Y.B., DOB
05/04/92, by Charles A. Brown v. HCN Office of
Tribal Enrollment, SU 03-03 Scheduling Order
(HCN S. Ct., Apr. 23, 2003).
The Court issued this Scheduling Order to establish
dates and deadlines for the instant case.

APRIL 30, 2003
Rae Anna Garcia v. Joan Greendeer Lee et al., SU
03-01 Decision (HCN S. Ct., Apr. 30, 2003).
The plaintiff asserted a grievance against her employer for its refusal to permit her to take Wąkšįk Wošga Leave for an event with the Jehovah’s Witness’ congregation. The plaintiff
asserted that this action violated her right to free
exercise of religion. The appellees asserted that the
appellant had a right to exercise her religion, but not
be paid for leaving work to attend such a function. The
Trial Court below had agreed with the view of the
appellees and granted summary judgment. The
plaintiff appealed to this Court and reasserted her argument, insisting that the Trial Court decision was in error. The Supreme Court asserted that the Trial Court did not abuse its discretion or improperly apply the laws of the Nation. The Court did not discuss the equal protection issues involved with this matter as the appellant could not be allowed to amend her pleadings and have the Court review an argument or point of law that was never addressed previously by the Trial Court in its case below. Thus, the Court affirmed the lower court ruling.

Recent Filings

**Trial Court**

**Civil Garnishment**

**APRIL 1, 2003**

**APRIL 3, 2003**


**APRIL 8, 2003**
*State Collection Services v. Charles Stands*, CG 03-29. (Matha, T).

**APRIL 10, 2003**

**APRIL 25, 2003**

*State Collection Service v. Vicki Browneagle*, CG 03-32. (Matha, T).

**APRIL 30, 2003**
*Check Advance v. Jesse Linhart*, CG 03-33. (Bossman, W).

**MAY 7, 2003**
*Drs. Delebo, Overman, Hegna & Reich v. Christine Brown*, CG 03-34. (Matha, T).

*Drs. Delebo, Overman, Hegna & Reich v. Brook A. Warrington*, CG 03-35. (Matha, T).


*Drs. Delebo, Overman, Hegna & Reich v. Gale S. White*, CG 03-37. (Matha, T).

**Child Support**

**APRIL 1, 2003**

**APRIL 2, 2003**


**APRIL 8, 2003**

**APRIL 23, 2003**
*Deana M. Quade v. Ronald W. Quade*, CS 03-23. (Matha, T).

**APRIL 30, 2003**


**MAY 6, 2003**
*County of Pine/Naomi J. Harris v. Terry L. Gourd*, CS 03-26. (Matha, T).

**Civil Cases**

**APRIL 1, 2003**
APRIL 2, 2003

APRIL 8, 2003


APRIL 14, 2003
Majestic Pines, a division of the Ho-Chunk Nation v. James Bugni et al., CV 03-32. (Bossman, W).

APRIL 17, 2003

APRIL 29, 2003
Vincent R. Hernandez v. Ho-Chunk Casino, CV 03-34. (Bossman W).

APRIL 30, 2003
In the Interest of Adriene Littlebear, DOB 04/06/85 v. HCN Office of Tribal Enrollment, CV 03-35. (Bossman, W).

MAY 1, 2003
Ho-Chunk Housing Authority v. Ronald D. Martin, CV 03-36. (Bossman, W).

Juvenile Cases
APRIL 1, 2003

APRIL 23, 2003
In the Matter of D.A.F., DOB 09/16/88, JV 03-16. (Matha, T).

In the Matter of K.V.F., DOB 01/15/90, JV 03-17. (Matha, T).

SUPREME COURT

APRIL 11, 2003
In the Interest of Minor Child: C.Y.B., DOB 05/04/92, by Charles A. Brown v. HCN Office of Tribal Enrollment, SU 03-03.

ALBUQUERQUE Cont’d

As the conference continued, speakers illuminated the crowd with strategies for advancing the causes of all tribes. Henry M. Buffalo, Jr. discussed the implementation of the Self-Determination and Self-Governance Acts. The creation of the Indian Self-Determination Act allowed tribes to contract with the federal government for programs that the tribe would operate independently. The Self-Governance Act allowed tribes to create fully realized self-governance compacts with the Secretary of the Interior. The added benefit of these compacts came in the guise of funding or block grants that the government would transfer to the tribes for operations. In analyzing the success of each act’s implementation, Mr. Buffalo noted some issues that have arisen that could complicate the overall success. First, he asserted that the scope of these programs has become a contested issue between the federal government and the participating tribes. In the beginning stages of these acts, the feeling of paternalism on the part of the BIA created a level of resentment and the idea that the federal government did not trust the tribes to govern themselves. Furthermore, leaders disagreed over the definition of self-determination, thereby causing contention over how the tribal programs should operate. According to Mr. Buffalo, tribal leaders have developed new oversight mechanisms to address these problems while maintaining the quality of the services provided. In addition, budgetary concerns still plague these agreements as both sides argue over which of them shall pay the majority of the expenses. Also, litigation has become a large indirect cost to tribes that many fear paying for with discretionary funds. In conclusion, Mr. Buffalo stated that an analysis of the overall process appears inconclusive. While full self-determination has not yet occurred, such an incident could compromise...
the trust responsibility. In the meantime, tribes continue to hold the government responsible for its duties under the trust doctrine.

While many other speakers addressed additional concerns such as water rights, not every presentation could be discussed in detail in this forum. The rest of the conference was punctuated with guest speakers and some relaxation time. The conference is not only a time to study the recent trends in Indian Law, but meet and greet familiar faces. Many guests were treated to the annual barbeque held at the Los Amigos Stables. I would also like to take this opportunity to say pinagigi to all the speakers for their presentations. I hope to see everyone next year at the conference.

**HO-CHUNK NATION COURT SYSTEM**
**JUDICIARY AND STAFF**

Supreme Court – Mary Jo B. Hunter, Chief Justice  
Mark D. Butterfield, Associate Justice  
Jo Deen B. Lowe, Associate Justice  

Traditional Court – Wallace Blackdeer  
Donald Blackhawk  
Dennis Funmaker  
Orville Greendeer  
Douglas Greengrass  
Owen Mike  
Gavin Pettibone  
Douglas Red Eagle  
Preston Thompson, Jr.  
Eugene Thundercloud  
Morgan White Eagle  
Clayton Winneshiek  

Trial Court – William H. Bossman, Chief Judge  
Todd R. Matha, Associate Judge  

Clerk of Court, Supreme Court – Bryan Dietzler  
Clerk of Court, Trial Court – Marcella Cloud  
Assistant Clerk of Court, Trial Court – Selina Joshua  
Bailiff/Process Server – Willa RedCloud  
Administrative Assistant – Jeanne Colwell  
Staff Attorney – Rebecca Tavares  

Office of Public Advocacy – Dennis Funmaker, Administrator  

* The Ho-Chunk Nation Judiciary and its officers are active participants in the following organizations:

**WISCONSIN TRIBAL JUDGES ASSOCIATION**  
(Eleven federally recognized tribes within the State of Wisconsin)  

**NATIVE AMERICAN INDIAN COURT JUDGES ASSOCIATION**  
(Region 5—Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, South Dakota, North Dakota, and Wisconsin)

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**HCN Court System Fee Schedule**

- **Filing Fees** ........................................... $50.00*  
  *With the exception of petitions to register child support orders – this fee remains at $20.00 as previously ordered by the Supreme Court.
  Note: Filing Fee now includes Summons fee.  

- **Filing Fees for Petitions to Register and Enforce Foreign Judgment/Order** .................. $20.00

Copying ........................................... $0.10/per page  
Faxing ...... $0.25/per page (sending and receiving)  
Tapes of Hearings ................... $10.00/per tape  
CD of Hearing ...................... $12.50/per tape  
Deposition Videotape .................. $10.00/per tape  
Certified Copies .......................... $0.50/per page  
Equipment Rental ...................... $5.00/per hour  
Appellate filing fees .................. $35.00  
Admission to Practice .................. $50.00  
Pro Hac Vice Appearance .............. $35.00

**Legal Citation Form**

The following are example citation forms by legal reference and citation description.

**Ho-Chunk Nation Constitution**  
Constitution, Article Number, Section, and Subsection.  
HCN CONST., Art. II, Sec. (or §) 1(a).  
HCN Const., Art. XI, Sec. (or §) 7.

**HCN Ordinances**  
Ordinance Name, Chapter number, Section/Part/Clause, page.  
PERSONNEL POLICIES AND PROCEDURE MANUAL, Ch. 12, Part B, p. 82.  
CLAIMS AGAINST PER CAPITA, Sec. (or §) 6.01(b).

**HCN Supreme Court Case Law**  
Case Name, Case No. (HCN S. Ct., month, day, year).  

**HCN Trial Court Case Law**  
Case Name, Case No. (HCN Tr. Ct., month, day, year).  

**Rules of Civil Procedure**  
HCN R. CIV. P. 19(B).
CONSTRUCTION UPDATE!

Once again, the Court would like to take this opportunity to update all interested parties on the progress of the new Court Building’s construction. The construction began in March with the site layout and the stripping/excavation portion of the project. In April, Olympic Builders, the construction crew working on the new building, began implementing the next phase of construction by preparing the footing and foundation. The power lines and plumbing were located and structured according to the plans from the architect, Mr. Greg Cashman. In May and June, the crew brought in the structural steel and roofing. The crew erected the steel and roofing, and progress began on pouring the slab. Anyone looking at the Courthouse now cannot miss the large building beside it that is slowly taking shape. As the crew pours the slab on the site, greater structural details will become noticeable. The crew should begin the drywall and electrical work within a month, adding windows and brick work shortly thereafter.
Our Staff Attorney takes some time to play in the dirt.

Olympic Builders constructs the archive section of the new building.

Judge Matha surveys the transition of the land.

The structural steel arrives as the new building takes form.

With the steel in place, workers can begin roofing.
Holding on for dear life, or just hanging around?

On June 11, 2003, Olympic Builders began pouring the slab for the court building’s foundation.

Olympic Builders survey the project and continue to fine-tune the construction.


The circular section will become the Traditional Court.
Recent Decisions

Decisions are separated between Trial Court and Supreme Court decisions and categorized by subject matter and date (from oldest to most recent). The following are summaries prepared by the Staff Attorney for the reader’s benefit. They should in no way be used as substitution for citations to the actual court opinion.

Within the Trial Court, cases are categorized and docketed as one of the following: Child Support (CS or if filed prior to 1998, CV), Civil Garnishment (CG), Civil (CV), Criminal (CR), Custody (CU), Domestic Violence (DV), or Juvenile (JV). Within this index, case citations will appear in one of these categories and, in the event it may be helpful to the reader as a research tool, the cases may also be summarized in a separate topic area. In some instances a decision may touch upon other topics that may not warrant a summary in this index, but the editor will use the indicator “other topic(s) covered,” as a research aid for the reader.

Recent Decisions and Recent Filings both begin with the date where the previous Court Bulletin left off.

Trial Court

Child Support

MAY 7, 2003
The petitioner filed a Petition to Recognize and Enforce a Foreign Child Support Order on April 10, 2003. The respondent failed to respond within the twenty (20) days allotted for an original response. The Court granted the petitioner’s request.

MAY 8, 2003

On April 18, 2003, Juneau County informed the Court of the suspension of the respondent’s child support obligation. The Court impounded the disputed funds and gave the petitioner ten (10) days to respond. The petitioner failed to respond, and the Court released the funds to the respondent.

MAY 13, 2003
The petitioner filed a Petition to Register and Enforce a Foreign Judgment for Child Support. Since the Court already had a case file in this action, the new filing was designated a formal Motion. Consequently, the Court rendered this Order to inform the respondent of his rights under the law.

MAY 29, 2003
The petitioner requested that the Court recognize and enforce a foreign child support order. This particular request dealt with wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

The petitioner requested that the Court recognize and enforce a foreign child support order. This particular request dealt with per capita. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

The petitioner requested that the Court recognize and enforce a foreign child support order. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.
JUNE 4, 2003
The Court had to determine whether to enforce a foreign child support order against the respondent. The respondent failed to respond within the specified time frame. The Court granted the requests of the petitioner in part.

Civil Garnishment
MAY 5, 2003
The petitioner requested that the Court enforce a Judgment against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

MAY 14, 2003
The petitioner requested that the Court recognize and enforce a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

MAY 15, 2003
The petitioner requested that the Court recognize and enforce a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

MAY 19, 2003
The petitioner requested that the Court recognize and enforce a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

MAY 29, 2003
The petitioner requested that the Court recognize and enforce a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

The petitioner requested that the Court recognize and enforce a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

The petitioner requested that the Court recognize and enforce a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

The petitioner requested that the Court recognize and enforce a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

MAY 30, 2003
The petitioner requested that the Court recognize and enforce a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request.

JUNE 3, 2003
The petitioner requested that the Court recognize and enforce a foreign judgment. The respondent
failed to respond within the specified time frame. The Court granted the petitioner’s request.

**Children’s Trust Fund (CTF)**

**APRIL 28, 2003**

*In the Matter of the Children: L.G.B., DOB 03/30/89, C.A.B., DOB 08/26/90, by Tari Lynn Pettibone v. HCN Office of Tribal Enrollment, CV 01-136 Order (Granting Additional Funds) (HCN Tr. Ct., Apr. 28, 2003). (Bossman, W).*

The Court released funds for orthodontics on December 21, 2001. On April 23, 2002, the petitioner filed an appropriate accounting. The petitioner requested further funds for ongoing orthodontic care. The Court granted the request.

**MAY 8, 2003**

*In the Interest of Minor Child: N.E.W., DOB 04/06/88, by Marlene A. Hopinkah v. HCN Office of Tribal Enrollment, CV 02-100 Order of Dismissal (HCN Tr. Ct., May 8, 2003). (Bossman, W).*

The petitioner initiated the action by filing a *Petition for Release of Per Capita Distribution* on October 9, 2002. Subsequently, the Court rendered an *Order (Requiring Submission of Documents)* on November 21, 2002. The plaintiff failed to comply with the Court’s Order, thereby allowing the Court to dismiss the case.

**MAY 9, 2003**

*In the Interest of Decedent: Louella Jean Blackdeer, DOB 07/01/84, by Lani Blackdeer v. HCN Office of Tribal Enrollment, CV 02-09 Order (Releasing CTF Funds to the Estate) (HCN Tr. Ct., May 9, 2003). (Matha, T).*

On May 9, 2003, the Personal Representative of the estate informed the Court that funds had accumulated in the account of the deceased. The representative requested the release of these funds to the estate. The Court complied with the request.

**MAY 13, 2002**

*In the Interest of Minor Child: B.L.W., DOB 03/14/90, by Lanette Walker v. HCN Office of Tribal Enrollment, CV 02-109 Order (Accepting Accounting) (HCN Tr. Ct., May 13, 2003). (Bossman, W).*

The Court released funds from the minor’s CTF account for orthodontics on November 21, 2002. See *Order (Granting Petition), CV 92-109 (HCN Tr. Ct., Nov. 21, 2002).* The petitioner provided the Court with receipts confirming the use of funds on May 9, 2003. The Court accepts this accounting and closes the case.

**MAY 19, 2003**

*In the Interest of Minor Child: N.J.L., DOB 09/24/85, by Sarah Littlegeorge v. HCN Office of Tribal Enrollment, CV 03-31 Order (Petition Granted) (HCN Tr. Ct., May 19, 2003). (Matha, T).*

The petitioner requested funds for the home schooling of the minor child. The Court used its four-part test to determine whether to release the funds for such purposes. The Court granted the request.

**MAY 29, 2003**


The Court released funds for the minor children for clothing. See *Order (Granting Petition in Part)* (HCN Tr. Ct., Apr. 4, 2003). On May 28, 2003, the petitioner filed an accounting confirming the use of funds. The Court accepts this accounting and closes the case.

**MAY 30, 2003**


The petitioner requested funds from the minors’ CTF accounts for orthodontics. The respondent had no objection to the request. The Court granted the request.

**Incompetent’s Trust Fund Cases**

**MAY 2, 2003**

*In the Interest of Lucinda V. Littlesoldier, DOB 02/16/49, by Isabelle Mallory v. HCN Office of Tribal Enrollment, CV 00-106 Order (Finding of Contempt) (HCN Tr. Ct., May 2, 2003). (Bossman, W).*

On September 19, 2002, the Court released funds from the account of the aforementioned person.
The Court made two formal written reminders indicating that the petitioner must provide a documented accounting of all expenditures. Due to the petitioner’s failure to comply with the Court’s formal written requests, the Court convened a Show Cause Hearing on May 2, 2003. The petitioner could not adequately account for the expenditures nor her failure to comply with previous requests. The Court found her in contempt and issued a fine payable through per capita.

**MAY 8, 2003**

*In the Interest of Norma Whitebear, DOB 02/17/24, by Cecelia Rave v. HCN Office of Tribal Enrollment, CV 01-125 Order (Granting Release of ITF Funds) (HCN Tr. Ct., May 8, 2003).* (Bossman, W).

The petitioner requested a release of ITF funds for utility bills. The respondent had no objection to such a request. The Court granted the request.

**MAY 9, 2003**

*In the Interest of Mary Lou Blackdeer, DOB 11/18/30, by Shari Marg v. HCN Office of Tribal Enrollment, CV 01-85 Order (Accepting Accounting) (HCN Tr. Ct., May 9, 2003).* (Matha, T).

The Court released funds the petitioner for Christmas. On May 7, 2003, the petitioner submitted a payment history. In addition, the ITF petitioner has now been declared competent. The Court now closes the case.

**CIVIL CASES (ALL CATEGORIES)**

**MAY 7, 2003**

*Ho-Chunk Nation Department of Housing, Property Management Division v. Cyndi Mann, CV 03-26 Order (Dismissal without Prejudice) (HCN Tr. Ct., May 7, 2003).* (Bossman, W).

The petitioner requested that the Court dismiss the case. The defendant had no response. The Court granted the request.

*Ho-Chunk Nation Department of Housing, Property Management Division v. Kerry M. Funmaker, Sr., CV 03-14 Order (Dismissal Without Prejudice) (HCN Tr. Ct., May 7, 2003).* (Bossman, W).

On February 17, 2003, the plaintiff filed a Motion to Dismiss. The Court grants the request.

**MAY 8, 2003**

*Ho-Chunk Nation Department of Housing, Property Management Division v. Ellen Lewis, CV 01-82 Order (Satisfaction of Judgment and Intent to Close) (HCN Tr. Ct., May 8, 2003).* (Bossman, W).

On December 21, 2001, the Court issued a judgment in favor of the plaintiff. See Order (HCN Tr. Ct., Dec. 21, 2001). The plaintiff filed a Satisfaction of Judgment on April 3, 2003. The Court recognizes the debt is paid in full and closes the case.


On January 17, 2003, the Court entered a decision in favor of the plaintiff. See Judgment (HCN Tr. Ct., Jan. 17, 2003). On March 7, 2003, the plaintiff filed a Satisfaction of Judgment with the Court. The Court acknowledges the payment of the debt and closes the case.

*Dallas R. Whitewing v. HCN Ethics Review Board and Clarence Pettibone, Interim President and an Official of the Ho-Chunk Nation in His Individual Capacity, CV 01-32 Order of Dismissal (HCN Tr. Ct., May 8, 2003).* (Bossman, W).

On February 18, 2003, the defendants requested a dismissal of the instant case. The defendants cited a lack of activity from the plaintiff for a period of greater than six (6) months as their grounds for the request. The Court granted the request.

**MAY 9, 2003**

*Ho-Chunk Housing Authority v. Harriet M. Hopinkah, CV 02-108 Order (Default Judgment) (HCN Tr. Ct., May 9, 2003).* (Bossman, W).

The Court had to determine whether to grant the request of the plaintiff seeking monetary damages against the defendant. The defendant did not respond within the specified time frame. The Court granted the request.

**MAY 15, 2003**

*Natallia Tyschanka v. Ho-Chunk Nation, CV 02-51 Order (Granting Defendant’s Motion for Summary*
The plaintiff initiated this action claiming improper termination regarding the expiration of her resident alien employment authorization. In order to maintain employment within the United States, an alien must present valid employment authorization. The plaintiff failed to comply with the requirements of reauthorization. Without valid authorization, the Nation cannot legally continue employment of an alien.

**May 16, 2003**

**Harry Cholka v. Ho-Chunk Casino,** CV 02-116 
*Order (Denying Motion to Dismiss)* (HCN Tr. Ct., May 16, 2003). (Bossman, W).

The plaintiff asserts that he was improperly denied a position at the Ho-Chunk Casino. The defendant requested that the Court dismiss the action on the grounds of timeliness. The Court denied the request.

**Charles L. Stands v. Stephanie Lewis,** CV 03-03 

The Court convened a *Scheduling Conference* on May 16, 2003. The plaintiff did not attend. The plaintiff now has twenty (20) days to contact the Court and request a rescheduling.

**Karen Whiteeagle v. Chris Straight,** Director of Planning, Nancy Watenphul, Senior Planner, William Lowe, Executive Director of Administration, Greg Garvin, Executive Administration Officer and Troy Swallow, President of the Ho-Chunk Nation, CV 03-19 
*Order (Dismissal with Prejudice)* (HCN Tr. Ct., May 16, 2003). (Matha, T).

On May 2, 2003, the plaintiff requested that the Court dismiss the instant case with prejudice. The Court granted this request. The plaintiff may not refile this action.


The parties agreed to change the deadlines and dates established in the instant case. The Court agreed with the proposal and amended the *Scheduling Order.*

**May 19, 2003**

**Ho-Chunk Nation v. Bank of America, N.A.**, CV 02-93 
*Order (Denying Motion to Dismiss)* (HCN Tr. Ct., May 19, 2003). (Bossman, W).

The defendant filed a *Motion to Dismiss* the instant case. The parties referred to several sections contained within a contract agreement concerning choice of law provisions and jurisdiction. The defendant insisted that the jurisdiction section limited jurisdiction and venue to several specific courts exclusively. The plaintiff insisted that such jurisdictional questions were not limited to certain courts exclusively when considered in conjunction with several other provisions of the contract. After reading the contract in its entirety, and looking at all provisions within the agreement, both discarded and included, the Court was persuaded by the plaintiff. The Court denied the request.

**May 29, 2003**

**Ho-Chunk Housing Authority v. Jackie Henneha,** CV 02-106 
*Order to Dismiss without Prejudice* (HCN Tr. Ct., May 29, 2003). (Matha, T).

The parties agreed to a payment plan for back rent. With this in mind, the Court dismissed the action without prejudice. The plaintiff may file this action again if circumstances change.

**May 30, 2003**

**Cornelius Decorah on behalf of Minors:  J.D., DOB 09/17/85, S.D., DOB 03/20/87, F.D., DOB 06/14/88, B.D., DOB 11/22/89 v. Adam Hall,** Ho-Chunk Nation Office of Tribal Enrollment, Enrollment Genealogist, Tribal Enrollment Committee, Ho-Chunk Legislature, and Ho-Chunk Nation, CV 03-25 

The Court issued this *Scheduling Order* to establish dates and deadlines for the instant case up to and including trial.
June 4, 2003
The plaintiff brought an action claiming improper termination and the imposition of fines. The defendant fined and terminated the plaintiff for violations of subordinate employees. The defendant asserted a common law claim of respondeat superior. The Court analyzed the relevant laws of the Nation to determine if the Nation has adopted such a concept. The Court determined that the Nation has not yet formally adopted the common law concept of respondeat superior. The decision of the Gaming Commission was reversed and remanded for dismissal.

Juvenile
May 1, 2003
In the Interest of Minor Child: J.J.F., DOB 11/07/00, JV 02-27 Order (Formal Hearing) (HCN Tr. Ct., May 1, 2003). (Bossman, W).
The Court issued this decision to illuminate the details of the case disposition.

May 13, 2003
The Court convened a Dispositional Hearing in the instant case.

Supreme Court
May 30, 2003
The Court uses a four-prong test to determine whether to release funds from a minor’s trust account for specific expenditures. The Supreme Court focused on the request for private school tuition, stating that factual assumptions made by the Trial Court were unsupported by the record. Specifically, the Supreme Court insisted that this matter required, and did not receive, a fact-finding hearing. The Supreme Court reversed and remanded for a fact-finding hearing. Associate Justice Mark Butterfield dissented in this matter, citing the petitioner’s failure to carry his burden of proof and the majority’s failure to use the standard of review.

Recent Filings

Trial Court

Civil Garnishment
May 13, 2003
Creditor Recovery Service v. Lynn M. McGrath, CG 03-38. (Bossman, W).

Child Support
May 13, 2003
Sehoya E. Fleischman v. Brian S. LaMere, CS 03-27. (Bossman, W).

Civil Cases
May 13, 2003
James Menore v. Ho-Chunk Nation and Ho-Chunk Casino Compliance, CV 03-37. (Bossman, W).

In the Matter of William Blackdeer, DOB 01/18/84 v. HCN Office of Tribal Enrollment, CV 03-38. (Bossman, W).


May 15, 2003
Loretta J. Patterson v. Four Winds Commission et al., CV 03-40. (Bossman, W).

May 21, 2003
Kevin Croak v. Joy Rave, CV 03-41. (Matha, T).

May 30, 2003
Greg Littlejohn v. HCN Election Board et al., CV 03-42. (Bossman, W).

Juvenile Cases
May 27, 2003
In the Matter of M.I.S., DOB 04/18/00, JV 03-18. (Bossman, W).

June 6, 2003

HO-CHUNK NATION COURT BULLETIN
Vol. 9, No. 6
In the Matter of J.G.W., DOB 06/09/99, JV 03-17. (Matha, T).

SUPREME COURT

MAY 23, 2003
Harry J. Cholka v. Ho-Chunk Casino, SU 03-04.

MAY 27, 2003
Joseph E. Decorah v. Ho-Chunk Nation and Ho-Chunk Casino, SU 03-05.

Pow Wow Time!

From May 24 – 26, 2003, the Ho-Chunk Nation held its annual Pow Wow. The grounds were rimmed with countless booths offering concessions, food and gifts to all those that gathered. Like all great festivals, the booths were swarmed with requests for anything from squaw burgers and fry bread, to cotton candy and snow cones. Snow cones and ice-cold water were a must given the heat of the day. Despite the sun and the heat, the dancers showed little sign of fatigue. The dance contests were filled with contestants arrayed in beautiful colors, attempting their best and most intricate maneuvers to gain the approval of judges. The drums and singers sang their most heartfelt and eloquent songs, goading dancers to new heights.

Among the favorite events of the days, independent sources indicate that Smokeytown’s song for veterans brought out a large crowd of dancers. Young and old, the veterans came to dance in honor of all those that fought to keep the peace and freedom of their country. During the song, many supporters laid money and gifts on the blanket for Smokeytown. The most poignant moment came when the drum and singers dedicated the funds and their next song to the family of John Blackdeer, a veteran that passed in a tragic accident over that weekend.

Naturally, many gathered favored the grand entry for each day. Independent sources suggest that many more attended on Sunday. On Monday, the Nation paid tribute to the French concerning its historical ties to the culture. Many viewers loved the children’s dances. One little fancy dancer showed great skill and prowess. His regalia was orange and black with silver accents. Food and fun were the order of the days, and none went home empty handed or on an empty stomach. Here are just a few pictures to highlight the days.

The ladies prepare for the judging of their competition.

Ladies shawl dancers show off their moves for the judges.
Office of Public Advocacy

- Assistance with finding free legal counsel for qualified applicants
- Assistance with legal concerns or questions
- Located conveniently within the HCN Court Building
- For further questions regarding the O.P.A., please call Dennis Funmaker at (715) 284-8514

HO-CHUNK NATION COURT SYSTEM
JUDICIARY AND STAFF
Supreme Court — Mary Jo B. Hunter, Chief Justice
Mark D. Butterfield, Associate Justice
Jo Deen B. Lowe, Associate Justice
Traditional Court — Wallace Blackdeer
Donald Blackhawk
Dennis Funmaker
Orville Greendeer
Douglas Greengrass
Owen Mike
Gavin Pettibone
Douglas Red Eagle
Preston Thompson, Jr.
Eugene Thundercloud
Morgan White Eagle
Clayton Winneshiek
Trial Court — William H. Bossman, Chief Judge
Todd R. Matha, Associate Judge
Clerk of Court, Supreme Court — Bryan Dietzler
Clerk of Court, Trial Court — Marcella Cloud
Assistant Clerk of Court, Trial Court — Selina Joshua
Bailiff/Process Server — Willa RedCloud
Administrative Assistant — Jeanne Colwell
Staff Attorney — Rebecca Tavares

Office of Public Advocacy — Dennis Funmaker, Administrator

* The Ho-Chunk Nation Judiciary and its officers are active participants in the following organizations:

WISCONSIN TRIBAL JUDGES ASSOCIATION
(Eleven federally recognized tribes within the State of Wisconsin)

NATIVE AMERICAN INDIAN COURT JUDGES ASSOCIATION
(Region 5—Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, South Dakota, North Dakota, and Wisconsin)

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  *With the exception of petitions to register child support orders – this fee remains at $20.00 as previously ordered by the Supreme Court.
  Note: Filing Fee now includes Summons fee.
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  Tapes of Hearings .............................. $10.00/per tape
  CD of Hearing ................................. $12.50/per tape
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HCN Ordinances
Ordinance Name, Chapter number, Section/Part/Clause, page.
PERSONNEL POLICIES AND PROCEDURE MANUAL, Ch. 12,
Part B, p. 82.
CLAIMS AGAINST PER CAPITA, Sec. (or §) 6.01(b).

HCN Supreme Court Case Law
Case Name, Case No. (HCN S. Ct., month, day, year).

HCN Trial Court Case Law
Case Name, Case No. (HCN Tr. Ct., month, day, year).

Rules of Civil Procedure
HCN R. Civ. P. 19(B).
Recent tribal sovereignty decision of the United States Supreme Court.

On May 19, 2003, the Supreme Court of the United States issued a decision in the case of Inyo County, California et al. v Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony et al. See No. 02-281 (May 19, 2003). This most recent decision by the Supreme Court continues the discourse on tribal sovereignty. Observers gave the decision a lukewarm reaction with some analysts urging caution and others forecasting doom. See Brian L. Pierson, Court Punts in Inyo County Case While Sending Ominous Signal, von Briesen & Roper, S.C., June 2003; see also Joseph William Singer, Singer: The Supreme Court’s attack on tribal sovereignty, INDIAN COUNTRY TODAY, June 17, 2003.

The case involved the issue of sovereignty in the context of the following scenario. The Inyo County District Attorney’s Office was investigating welfare fraud and became suspicious of three Paiute Palace Casino employees. Inyo County, No. 02-281 at 1. The district attorney’s office requested the employment records of these individuals, only to have the tribe insist that its privacy policy did not permit the release of such information without the authorization of its employees. Id. The District Attorney obtained a search warrant for these employees and asked for records on others. Id.

In order to enjoin further action by the district attorney, the tribe filed suit in federal court. Id. The tribe sought a reassertion of sovereign immunity and the establishment of the principle that
federal law precluded state law and prohibited the seizure of tribal records. \textit{Id.} The tribe also sought economic damages. The District Court ruled against the tribe on the grounds that sovereignty did not insulate the tribe from all state search and seizure actions. \textit{Id.} at 2. The Ninth Circuit overturned the decision citing an interference with the right of self-government. \textit{Id.} The Ninth Circuit insisted that tribes seeking to secure protection under the Fourth Amendment against unlawful searches and seizures could not be considered legal persons as well as sovereigns. However, under an alternative theory of law, they upheld a claim under § 1983 due to the tribe’s assertion of Fourth Amendment protection. This decision was reversed and remanded by the United States Supreme Court. \textit{Id.}

Justice Ginsburg wrote the majority opinion in the case. Essentially, Justice Ginsburg indicated that the tribe could not be considered a “person” who may sue under § 1983 due to the tribe’s assertion of Fourth Amendment protection. This decision was reversed and remanded by the United States Supreme Court. \textit{Id.}

Federal law allows citizens and persons within the jurisdiction to seek legal remedies regarding persons who deprive them of federally protected rights while acting under color of law. The Court noted that in \textit{Will v. Michigan Dept. of State Police}, states were not considered persons under the provision. \textit{Id.} at 8 (citing \textit{Will}, 491 U.S. 58, 67 (1989)). In determining whether a sovereign could be considered a legal person for § 1983 claims, the Court insisted that a plain meaning interpretation is insufficient and proper analysis requires a study of the “legislative environment” surrounding the context of the word and its use. \textit{Id.} at 10 (citing \textit{Georgia v. Evans}, 316 U.S. 159, 161 (1942)). In the instant case, the Court argued that § 1983 was designed to protect private rights from government infringement and not to protect sovereign interests and withholding evidence. Finally, Justice Ginsburg stated that neither side presented alternative avenues, or federal law, under which the tribe could proceed with a § 1983 claim. \textit{Id.} at 11. For this reason, the Court vacated and remanded for further hearings on alternative avenues concerning federal law. \textit{Id.} at 11. Justice Stevens concurred with the Court’s opinion, writing his own separate piece to indicate that he felt tribes could be considered legal persons for the use of § 1983. \textit{Id.} at 13 (Stevens, J., concurring).

Some analysts regard this decision of the Supreme Court as merely another exhibition of the Court’s desire to increase state power while decreasing tribal authority over non-members. Singer at 1. News Correspondent Mr. Joseph Singer asserts that federal power is limited to those express, implied and necessary powers that have been established previously. Any other powers are reserved to the states. \textit{Id.} Singer asserts that the Court has
increased the gap here and intends to continue such tactics. *Id.* His argument is that the Court sees the relationship between the tribes and states in the same way. *Id.* at 2. Tribes have limited powers that have been succinctly established in the law, and all other areas of law or gaps in tribal provisions are reserved to the states. *Id.* Essentially, Singer suggests that this framework bears the earmarks of potential destruction of the protective relationship enjoyed by the federal government and tribes. *Id.*

According to Attorney Brian L. Pierson, the Court’s ruling can be seen either as the quick resolution of an undesired case or as a threat to overall sovereignty. Pierson at 1. The central concern stems from the Court’s failure to consider the tribe’s other claim of declaratory judgment pursuant to federal common law. *Id.* The Court’s decision to remand on this matter is cause for concern given that the Court’s failure to articulate an alternative federal law appears weak. In theory, if the tribe cannot make its claim under § 1983, and the Court could find no alternative theory of federal law under which to make such a case, the tribe may find itself without a federal judicial remedy. *Id.* Mr. Pierson theorizes that perhaps the Court merely rendered its decision under an avoidance theory. *Id.* However, if the Court indeed rendered such a decision with full deliberation, the affects on the Indian Law community could be harsh. *Id.*

It still remains unclear as to when the Circuit Court will entertain further hearings on remand. Furthermore, it remains unclear as to what the outcome of such hearings shall be, given that neither side in the instant case had previously presented the Supreme Court with extensive alternatives in federal common law. Personally, I remain hopeful for the outcome of the case on remand, given the Circuit Court’s previous analysis. One thing is certain, attorneys working in P.L. 280 states will closely watch the outcome of the instant case and consider its ramifications for tribal sovereignty and casino privacy.

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**Recent Decisions**

Decisions are separated between Trial Court and Supreme Court decisions and categorized by subject matter and date (from oldest to most recent). The following are summaries prepared by the Staff Attorney for the reader’s benefit. They should in no way be used as substitution for citations to the actual court opinion.

Within the Trial Court, cases are categorized and docketed as one of the following: Child Support (CS or if filed prior to 1998, CV), Civil Garnishment (CG), Civil (CV), Criminal (CR), Custody (CU), Domestic Violence (DV), or Juvenile (JV). Within this index, case citations will appear in one of these categories and, in the event it may be helpful to the reader as a research tool, the cases may also be summarized in a separate topic area. In some instances a decision may touch upon other topics that may not warrant a summary in this index, but the editor will use the indicator “other topic(s) covered,” as a research aid for the reader.

**Recent Decisions** and **Recent Filings** both begin with the date where the previous Court Bulletin left off.

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**Trial Court**

**Child Support**

**JUNE 17, 2003**

*Deanne M. Quade (Schwartz) v. Ronald W. Quade, CS 03-23 Order (Default Judgment for Child Support Deduction from Wages) (HCN Tr. Ct., June 17, 2003).* (Matha, T).

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified
time frame. The Court granted the petitioner’s request for recognition and enforcement.

**State of Wisconsin v. Charles Dennis Hindsley, CS 03-20 Order (Default Judgment for Child Support Deduction from Wages) (HCN Tr. Ct., June 17, 2003).** (Matha, T).

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

**State of Wisconsin v. Charles Dennis Hindsley, Beltrami County by Assignment of: Theresa L. Hindsley, Tanya L. Hindsley and Darren D. Dafoe v. Charles Dennis Hindsley, CS 03-20, 02-49 Default Judgment (Enforcing Child Support) (HCN Tr. Ct., June 17, 2003).** (Matha, T).

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

**JUNE 18, 2003**


The Court had to determine whether to enforce a foreign judgment. The respondent filed a timely response, but failed to persuade the Court of any legal reasoning that could permit the Court to disregard or modify the judgment. The Court granted the petitioner’s request.

**Kelly Lee Skenandore v. Kevin A. Decorah, 02-54 Order (Ceasing Withholding) (HCN Tr. Ct., June 18, 2003).** (Bossman, W).

The Court had information regarding the minor child’s graduation from school. As the child had turned eighteen (18) and graduated from school, he became emancipated for purposes of child support. The Court discontinued withholding for child support.

**State of Wisconsin/Sauk Co. and Gale J. Darnell v. Lawrence Edward LaMere, CS 01-40 Order (Ceasing Withholding) (HCN Tr. Ct., June 18, 2003).** (Matha, T).

The Court had information regarding the minor child’s graduation from school. As the child had turned eighteen (18) and graduated from school, he became emancipated for purposes of child support. The Court discontinued withholding for child support.

**JUNE 23, 2003**


The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

**State of Wisconsin v. Charles Dennis Hindsley, Beltrami County by Assignment of: Theresa L. Hindsley, Tanya L. Hindsley and Darren D. Dafoe v. Charles Dennis Hindsley, CS 03-20, 02-49 Erratum Order (HCN Tr. Ct., June 23, 2003).** (Matha, T).

The Court issued this Erratum Order to correct a clerical error.

**JUNE 24, 2003**


The petitioner requested updated arrears and greater payments of child support. The respondent failed to respond within the specified time frame. The Court could not raise the child support obligation due to the respondent’s status as a serial payor. However, the Court did recognize the new arrearage.

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

JUNE 25, 2003
The Court requires proof of high school enrollment for any minor turning eighteen (18) whose parents are parties to a child support obligation in the Court. Failure to provide such proof could result in a cessation of support for that child.

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The petitioner requested a reinstatement of per capita withholding for child support and arrears. The respondent failed to respond in the specified time frame. The Court granted the request.

The Court had to determine whether to enforce a foreign judgment against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the request.

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Civil Garnishment
JUNE 19, 2003
The petitioner requested that the Court garnish the wages of the respondent and enforce a foreign judgment. The respondent argued that the judgment was already satisfied. Neither party appeared for a Fact-Finding Hearing. The petitioner must present
a recent foreign judgment affirming the debt obligation. Without evidence rebutting the respondent’s claim, the Court denied the request.

The petitioner requested that the Court garnish the wages of the respondent and enforce a foreign judgment. The respondent argued that the judgment was already satisfied. The petitioner did not appear for a Fact-Finding Hearing. The petitioner must present a recent foreign judgment affirming the debt obligation. Without evidence rebutting the respondent’s claim, the Court denied the request.

Children’s Trust Fund (CTF)
JUNE 16, 2003
In the Interest of Minor Child: T.F., DOB 03/18/93, by Toni Funmaker v. HCN Office of Tribal Enrollment, CV 03-04 Order (Requesting Accounting) (HCN Tr. Ct., June 16, 2003). (Matha, T).
On February 20, 2003, the Court released funds from the CTF account of the minor child for orthodontics. The Order directed the petitioner to provide the Court with an accounting of the expenditures by a certain time frame. The required accounting is late, so the Court reminds the petitioner of her duty.

On July 25, 2002, the Court released funds from the CTF account of the minor child for orthodontics. On April 9, 2003, the Court reminded the petitioner of her duty of accounting for the expenditures. On June 2, 2003, the petitioner submitted the required accounting. The Court accepted the accounting and closes the case.

In the Interest of Minor Child: V.B., DOB 03/04/92, by April Daniels v. HCN Office of Tribal Enrollment, CV 02-113 Order (Accepting Accounting) (HCN Tr. Ct., June 16, 2003). (Matha, T).
On December 11, 2002, the Court released funds from the CTF account of the minor child for orthodontics. On April 9, 2003, the Court reminded the petitioner of her duty of accounting for the expenditures. On May 14, 2003, the petitioner submitted the required accounting. The Court accepted the accounting and closes the case.

JUNE 19, 2003
The petitioner requested funds from the CTF account of the minor child for orthodontics. The HCN Office of Tribal Enrollment did not object to this request. The Court granted the request.

The petitioner requested funds from the CTF account of the minor child for orthodontics. The HCN Office of Tribal Enrollment did not object to this request. The Court granted the request.

The petitioner requested funds from the CTF account of the minor child for orthodontics. The HCN Office of Tribal Enrollment did not object to this request. The Court granted the request.
In re the Children of Joni Munnell:  D.J.M, DOB 12/26/87, A.S.W., DOB 01/24/89, J.S.W., DOB 01/24/89, D.W.W., DOB 07/06/92, S.G.W., DOB 06/26/93, CV 96-64 Order (Acceptance of Accounting) (HCN Tr. Ct., June 23, 2003). (Matha, T).

The guardian of the estate filed an accounting report in accordance with directions from the Court. The Court received no information that might indicate errors with the accounting. The Court accept the accounting.


On December 11, 2002, the Court released funds from the CTF account of the minor child for orthodontics. The Order required the petitioner to provide an accounting within a specified time frame. On April 23, 2003, the Court reminded the petitioner of her duty. On June 23, 2003, the Court again reminded the petitioner of her duty to account for expenditures and warned of possible action regarding the CONTEMPT ORDINANCE.

Incompetent’s Trust Fund Cases
NOTHING TO REPORT AT THIS TIME.

CIVIL CASES (ALL CATEGORIES)
JUNE 11, 2003

The Court issued this Scheduling Order to establish dates and deadlines for the instant case up to and including trial.


The respondent requested more time to file an Answer. The respondent asserted that she had not received a copy of the Complaint. The Court granted her request.

JUNE 17, 2003
Greg Littlejohn v. HCN Election Board Chairperson, Mary Ellen Dumas and HCN Election Board Members: Eugene Topping, Jr.; Darlene Funmaker; Georgianne Funmaker; Brandee Alderman; Bonnie Stroessner; Wilma Thompson; Tari Pettibone; Mary Taylor; Elliot Funmaker, Sr.; and Tara Blackdeer, CV 03-42 Order (Granting Election Challenge) (HCN Tr. Ct., June 17, 2003). (Bossman, W).

The plaintiff filed a Complaint regarding the District 5, Seat 2 election that occurred on May 20, 2003. The incumbent won fifty-one percent (51%) of the vote, and the HCN Election Board certified her as the winner. Essentially, the plaintiff contended that the election was a primary for the general election, thus requiring a runoff with the top two candidates. The defense contended that the election was a special election requiring only fifty percent (50%) plus one vote for a final win. The Court granted the plaintiff’s request for a runoff between the candidates. The Court ruled in this manner under the theory that the election’s origin was the end of a legislative term, thereby indicating that it was a general election and not a special one.

JUNE 18, 2003
F. William Johnson v. Ho-Chunk Nation, CV 01-15 Order (Granting Defendant’s Motion to Dismiss) (HCN Tr. Ct., June 18, 2003). (Matha, T).

The plaintiff disputed his termination according to the terms of an Executive Employment Agreement. The plaintiff asserted that the Executive Agreement caused his case to fall under a separate Statute of Limitations, thereby allowing him more time to file his Complaint. First, the Court had to decide whether the Executive Agreement superceded the Ho-Chunk Nation Statute of Limitations. If not, the Court had to determine which provision under the Statute of Limitations should govern the action. The Court asserted that all laws of the Nation in
Thus, without express language suggesting superiority, the Executive Agreement could not supersede the Ho-Chunk Nation Statute of Limitations. As to which provision should be used, the plaintiff sought to use a provision held exclusively for indemnity and contribution. These concepts reference areas of Tort law that do not appear in the instant case. While the plaintiff asserted various other provisions and arguments for the Statute of Limitations, the Court was not persuaded and deemed ninety (90) days to be the appropriate measure. For this reason, the plaintiff’s action was untimely, and the Court granted dismissal.

**June 19, 2003**


The parties involved dispute the previous election. The Court ordered the parties to appear for a Hearing.


The parties involved dispute the previous election. The Court ordered the parties to appear for a Hearing.

**June 20, 2003**

*Ho-Chunk North, Wittenberg, Wisconsin, Division of Ho-Chunk Nation Department of Business and Ho-Chunk Nation v. Wayne’s Transport, Inc.; Wayne’s Trucking, Inc.; Wayne L. Hirt and Lisa Hirt et al., CV 02-14 Order (Denial of Motion for Expedited Consideration) (HCN Tr. Ct., June 26, 2003)*. (Matha, T).

The Court denied the Motion for Expedited Consideration citing a failure to comply with the two elements of the rule.


The Court dismissed the Complaint challenging the election. The Complaint was not timely filed.

**June 25, 2003**


The defendant filed an Interlocutory Appeal on May 23, 2003. The trial court scheduled a trial for June 4, 2003. The defendant asserted that the plaintiff had filed an untimely grievance, and the trial court dismissed the Complaint challenging the election. The plaintiff did not appear at the scheduled Hearing.

**Juvenile**

**June 18, 2003**

*In the Interest of the Minor Child: M.I.S., JV 00-34 Motion to Withdraw as Guardian ad Litem (HCN Tr. Ct., June 18, 2003)*. (Bossman, W).

The GAL requested to withdraw from the case. The Court granted the request.

**June 20, 2003**

*In the Interest of Minor Child: S.E.C., DOB 02/25/96, JV 03-11 Order (Dispositional Requirements) (HCN Tr. Ct., June 20, 2003)*. (Matha, T).

The Court crafted a set of dispositional requirements for the parents of the minor child.

**June 23, 2003**

*In the Interest of Minor Children: J.R.P., DOB 02/27/92, L.M.P., DOB 05/12/90, L.K.K., DOB 12/12/87, JV 03-01-03 Order (Formal Trial) (HCN Tr. Ct., June 23, 2003)*. (Matha, T).

The Court conducted a Formal Hearing on the aforementioned matter.

**Supreme Court**

**June 25, 2003**


The defendant filed an Interlocutory Appeal on May 23, 2003. The trial court scheduled a trial for June 4, 2003. The defendant asserted that the plaintiff had filed an untimely grievance, and the trial court
erred in not finding so. Because the defendant did not ask for a Stay, the trial proceeded and made the Interlocutory Appeal moot.

**JUNE 27, 2003**

The instant case began as an employee grievance regarding a demotion for sexual harassment. The lower court ruled in favor of the defendants. The plaintiff appealed to the Supreme Court, but the appeal was denied on the grounds of failure to state a legal issue within the appeal.

**Recent Filings**

**Civil Cases**

**JUNE 24, 2003**
*State Collection v. Angline L. Decorah, CG 03-47*.
(Bosman, W).

*State Collection v. Matthew Cooley, CG 03-48*.
(Bossman, W).

**Child Support**

**JUNE 11, 2003**
*Christel J. Swan v. Timothy B. Ward, CS 03-28*.
(Bossman, W).

*Kentwan Lee Dixon v. Johna Fisher, CS 03-29*.
(Bossman, W).

**JUNE 19, 2003**
*State of Wisconsin v. Thunderhawk Decorah, CS 03-30*.
(Matha, T).

*State of Wisconsin v. Faye L. Greengrass, CS 03-31*.
(Matha, T).

**JUNE 20, 2003**
*State of Nevada v. Alfred L. Griffin, CS 03-32*.
(Matha, T).

**JUNE 24, 2003**
*Lynn Coomes v. Phillip Coomes, CS 03-33*.
(Bossman, W).

**Civil Garnishment**

**JUNE 11, 2003**
*Ford Motor Credit Corp v. Christie L. Ratzel, CG 03-39*.
(Bossman, W).

*Drs. Delebo, Overman, Hegna & Reich v. Charles Marsden, CG 03-40*.
(Bossman, W).

**JUNE 12, 2003**
*Creditor Recovery Service v. Terry Sherman, CG 03-41*.
(Bossman, W).

**JUNE 19, 2003**
*Gerald M. Voelker v. Eugene Topping, Jr., CG 03-42*.
(Bossman, W).

**JUNE 20, 2003**
*Capital One v. Chandra M. Decorah, CG 03-43*.
(Matha, T).

*Kohn Law Firm v. Christine Brown, CG 03-44*.
(Matha, T).

*Stafford Rosenbaum v. Joy Rave, CG 03-45*.
(Matha, T).

*Westview Ct. v. George Dahlgreen, CG 03-46*.
(Matha, T).

**Trial Court**

*In the Interest of Minor Child: D.E.M., DOB 11/21/90, by Ayako Thundercloud v. HCN Office of Tribal Enrollment, CV 03-43*.
(Bossman, W).

*In the Interest of Minor Child: K.J.F.B., DOB 06/06/89, by Shawn Blackdeer v. HCN Office of Tribal Enrollment, CV 03-44*.
(Bossman, W).

*In the Interest of Minor Child: R.C.D., DOB 12/30/86, by Sabrina Decorah v. HCN Office of Tribal Enrollment, CV 03-45*.
(Bossman, W).

**JUNE 13, 2003**
*Wade Blackdeer v. HCN Election Board, CV 03-46*.
(Bossman, W).

*Thomas Yellow Thunder v. HCN Election Board, CV 03-47*.
(Bossman, W).
Juvenile Cases
NOTHING TO REPORT AT THIS TIME.

SUPREME COURT
JUNE 18, 2003
Ho-Chunk Nation v. Bank of America, N.A., SU 03-06.

JUNE 19, 2003
Greg Littlejohn v. HCN Election Board et al., SU 03-07.

A FOND FAREWELL

A year has gone by, and another Staff Attorney prepares to leave the Ho-Chunk Nation Trial Court. Rebecca Tavares, Staff Attorney from July 2002 – June 2003, will end her term with the Court on Friday, June 27, 2003. She will be replaced by Rose Weckenmann who begins her term on June 30, 2003.

On a personal note, I have been packing my things and looking back on my time here at the Court. I have promised to return for the Grand Opening of the new Court Building, however, I know that walking those halls will feel wholly different to me. My memories will remain with the Court that I knew.

While it is never easy to say goodbye, there are a few things that I will miss and memories that I will carry with me. I shall always remember Willa’s laughter and my morning talks with Rosie and Bryan. I will no longer sing with Jeanne or sit at her desk talking about anything that came to our minds. I cannot forget watching Marcella and Selina tease Judge Matha as he retreats into his office. Nor, will I forget pouring over cases with Judge Matha and Judge Bossman, dissecting phrases and offering volumes of analysis. While the days were numbered, they were filled with laughter. I have learned so much from each and every person, that I feel that words are not enough to express my thanks. So while this is goodbye, no one here will be far from my mind, and I will always be in touch. Megwitch.
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Constitution, Article Number, Section, and Subsection.

*HCN Const., Art. II, Sec. (or §) 1(a).*

*HCN Const., Art. XI, Sec. (or §) 7.*

**HCN Ordinances**

Ordinance Name, Chapter number, Section/Part/Clause, page.

*PERSONNEL POLICIES AND PROCEDURE MANUAL, Ch. 12, Part B, p. 82.

**HCN Supreme Court Case Law**

Case Name, Case No. (HCN S. Ct., month, day, year).


*Smith v. Casino, SU 94-11 Order (HCN S. Ct., Dec. 1, 1993).*

**HCN Trial Court Case Law**

Case Name, Case No. (HCN Tr. Ct., month, day, year).

*Jane Doe v. Bob Smith, CV 99-01 (HCN Tr. Ct., Nov. 1, 1999).*

**Rules of Civil Procedure**

*HCN R. Civ. P. 19(B).*
Swearing-In Ceremony:

HCN Supreme Court Justice, President, and Legislators sworn in

ASSOCIATE SUPREME COURT JUSTICE MARK BUTTERFIELD TAKES THE “OATH OF OFFICE”

PHOTO TAKEN BY MARCUS LEWIS, INTERN REPORTER, HOCAK WORAK
Swearing-In Ceremony (Con’t.)

On July 2, 2003, Election Board Chairperson Mary Ellen Dumas administered the oath of office to the newly elected Ho-Chunk Nation President George Lewis. Also, taking the oath of office were Associate Supreme Court Chief Justice Mark Butterfield and Legislators Myrna Thompson (Area IV), Wade Blackdeer (Area II), and Dallas WhiteWing (Area III). Melissa Smith represented Clarence Pettibone who was sworn in over the telephone earlier in the day.

On July 2, 2003, Election Board Chairperson Mary Ellen Dumas administered the oath of office to the newly elected Ho-Chunk Nation President George Lewis. Also, taking the oath of office were Associate Supreme Court Chief Justice Mark Butterfield and Legislators Myrna Thompson (Area IV), Wade Blackdeer (Area II), and Dallas WhiteWing (Area III). Melissa Smith represented Clarence Pettibone who was sworn in over the telephone earlier in the day.

In his comments made during the ceremony, Justice Butterfield remarked that the court system is an important part of the strength of the Ho-Chunk nation because it provides for an assurance of fairness. He urged the Judiciary to move forward with unity and a sense of purpose. During his remarks, Justice Butterfield joked with the audience that he was the model of campaign finance reform as he had only spent money on a filing fee.

Newly elected President George Lewis remarked that he is honored to serve as President of the Ho-Chunk Nation. Under Article VI, Section 5 of the Ho-Chunk Nation Constitution, the President serves a four-year term of office. Legislators likewise serve four-year terms under the Constitution.

A number of local dignitaries were also present at the swearing-in ceremony including: U.S. Representative Ron Kind, La Crosse; Mayor Chuck Ludeking, Tomah, and Fire Chief Kevin Decorah, Tomah.

The Ho-Chunk Nation Constitution provides in Article VII, Section 10, that Supreme Court Justices shall be elected. With his oath, Associate Justice Butterfield begins his first full four-year term with the Ho-Chunk Nation Supreme Court. He had previously served an abbreviated term after a special election held to fill a vacancy.
Meet the Trial Court’s Summer Intern: A.J. Cloud

Each summer, the Ho-Chunk Nation Trial Court chooses a summer intern to assist the Court’s staff. This summer’s recruitment, A.J. Cloud, a college student from Black River Falls, has been a welcome addition.

A.J. is the daughter of Shelley Thundercloud. Her grandparents are Lawrence and the late Edith Thundercloud. A.J. has three sisters: Nikki, Lydia, and India, and four brothers: Wesley, Winston, Tama, and Sheldon. While growing up, A.J. had many responsibilities at home, and she believes that those responsibilities have made her a more disciplined person.

In her free time, A.J. enjoys playing golf and league volleyball. A.J.’s Uncle Tracy taught her to play golf five years ago, and she has been addicted to the game ever since. She has played volleyball since middle school.

During her high school years, A.J. was involved in many extracurricular activities. She was an active participant in her high school’s Model Congress and served as editor of her school’s newspaper The Paw Print. In 2001, A.J. received the Wisconsin Indian Education Association’s Student of the Year Award. Also, that same year, the faculty of Black River Falls High School named her Student of the Year of her class.

A.J. is a second-year student at the University of Wisconsin-La Crosse. At La Crosse, she majors in political science. After graduation, she plans to attend law school in New York, North Carolina, or Michigan.

During her time at the Court, A.J. has been in charge of a major project concerning the Court’s civil cases. In addition, she has worked on reorganization of the Court’s library.

A.J. has enjoyed spending her summer at the Trial Court. She believes it has been a great opportunity to learn about Ho-Chunk Nation law and the judicial process.

A.J.’s last day at the Trial Court is August 8, 2003. Then, she will be busy moving back to school. A.J. would like to thank the Ho-Chunk Nation Trial Court staff for the kindness and hospitality shown to her throughout the summer.
WISCONSIN SUPREME COURT HOLDS TRIBAL COURT JUDGMENT ENTITLED TO FULL FAITH AND CREDIT
By Rose Weckenmann

The Supreme Court of Wisconsin issued a long-awaited ruling on July 17, 2003 in Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians, concerning whether state courts must give full faith and credit to tribal court decisions when the state court has issued an adverse ruling. 2003 WI 118. In a 5-2 decision, the Court held that a Wisconsin circuit court should give full faith and credit to a tribal court’s judgment despite concurrent proceedings in the circuit court.

This litigation first began in 1997 when Jerry Teague initiated an employment action in the Ashland County Circuit Court against the Bad River Band of Lake Superior Tribe of Chippewa Indians. While this state action was pending, the Band initiated an action in tribal court seeking a declaratory judgment that the employment contracts in question were invalid. Although Teague accepted service of the tribal court proceeding and participated in the discovery process, he failed to appear at the tribal court hearing. The tribal court ruled in a default judgment for the Band that the employment contracts were invalid.

After the tribal court judgment was rendered, Teague obtained a favorable judgment from the circuit court. He then initiated a garnishment action against the tribe. When the tribe sought relief from the garnishment action under Wisconsin’s full faith and credit statute, the request was denied. The court held that under the “prior action pending” rule, which prohibits a second state court from hearing a case already pending in another Wisconsin state court, full faith and credit could not be given to the tribal court judgment.

The Wisconsin Court of Appeals reversed the circuit court’s opinion. The Wisconsin Supreme Court then held that while the “prior action pending” rule did not apply because the tribe was a separate sovereign, the Court would not apply full faith and credit because the statute was silent on these specific circumstances. Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians, 2000 WI 79, 236 Wis. 2d 384, 612 N.W.2d 709. The case was remanded to the circuit court judge with instructions that he was to hold a conference with the tribal court judge to determine which court should maintain jurisdiction of the litigation under the principles of comity. Id. The meeting between the two judges failed to result in an agreement. The court of appeals certified the case to the Wisconsin Supreme Court to resolve the full faith and credit issue that had previously been left unresolved. On November 7, 2002, the Wisconsin Supreme Court heard oral arguments on this issue.

In an opinion written by Justice Crooks, the state Supreme Court held that under Wis. Stat. § 806.245, the circuit court was required to give full faith and credit to the Bad River tribal court judgment declaring the employment agreements void. Teague, 2003 WI 118, ¶ 2. The Court cited the Restatement (Second) of Conflicts § 86, which states that when separate sovereigns both have jurisdiction over the same matter, the other court should give full faith and credit to a judgment issued first. Id. at ¶ 24. The Court also noted that under the plain language of the Wisconsin statute, tribal court judgments must be provided with the same full faith and credit as are the judgments of any other governmental entity, provided all statutory conditions are met. Id at ¶ 25. The Court then went on to conclude that the tribal court judgment in question had met all statutory requirements. Id ¶ 50.

Chief Justice Shirley S. Abrahamson wrote a concurring opinion in which she supported the result by applying the principle of comity as opposed to full faith and credit. Id at ¶ 52. The concurrence disagreed that full faith and credit must
be applied under Wis. Stat. § 806.245 because the statute is silent on the situation where judgments are in conflict. *Id* at ¶ 58. However, the opinion noted that in balancing factors under the principle of comity, the tribal court judgment was entitled to enforcement. *Id* at ¶ 71.

The two dissenting judges wrote separate opinions. The dissent by Justice Wilcox held that under proper application of the principle of comity, the circuit court’s opinion should be upheld. *Id* at ¶ 87. Justice David Prosser’s dissent looked to the legislative history behind Wis. Stat. § 806.245 to bolster an argument that full faith and credit should not be applied in this case and that judgments from Wisconsin tribal courts should be treated the same as judgments of Wisconsin circuit courts. *Id* at ¶ 95. This would have made the “prior action pending” rule applicable here. *Id* at ¶ 131.

The Wisconsin Supreme Court’s opinion represents a recognition that tribal court judgments are not only valid in Wisconsin courts, but further, they must be treated with the same deference afforded to the courts of any other sovereign.

**Federal Court Decisions**

**Second Circuit Court of Appeals**


The Oneida Nation had brought a suit against the city of Sherrill, New York and Madison County, New York. The Nation alleged that certain subject properties were within its reservation and thus, not subject to property and sales taxes. The Second Circuit Appeals Court held that the land in question is part of the Oneidas’ aboriginal land claim that was recognized by the 1794 Treaty of Canandaigua. Therefore, sales of the land without federal consent could not be held valid. In addition, the principle of federal preemption mandates that congressional approval is required for taxation of any such Indian reservation.

**Ninth Circuit Court of Appeals**


Non-Indian plaintiffs were denied employment with the North Slope Borough because of an ordinance enacted by the Borough Assembly that granted an employment preference to Native Americans. The plaintiffs asserted that such an ordinance violated the Equal Protection Clauses of the Alaska Constitution and the United States Constitution. The Ninth Circuit Court of Appeals did not reach the federal constitutional claim because it held the ordinance unconstitutional under the Alaska Constitution. The Ninth Circuit determined that the state law was not pre-empted by § 703(i) of the Civil Rights Act of 1964.

**Federal Circuit Court of Appeals**


The Cherokee Nation of Oklahoma brought a claim under the Contract Disputes Act, alleging that the Secretary of HHS had not paid the full indirect costs that the Nation was entitled to under its Indian Self-Determination Act contracts. The Federal Circuit Court held that the Secretary was obligated to pay the Cherokee Nation full support costs under the contracts and that the Secretary’s failure to do so was a breach of contract.
Recent Decisions

Decisions are separated between Trial Court and Supreme Court decisions and categorized by subject matter and date (from oldest to most recent). The following are summaries prepared by the Staff Attorney for the reader’s benefit. They should in no way be used as substitution for citations to the actual court opinion.

Within the Trial Court, cases are categorized and docketed as one of the following: Child Support (CS or if filed prior to 1998, CV), Civil Garnishment (CG), Civil (CV), Criminal (CR), Custody (CU), Domestic Violence (DV), or Juvenile (JV). Within this index, case citations will appear in one of these categories and, in the event it may be helpful to the reader as a research tool, the cases may also be summarized in a separate topic area. In some instances a decision may touch upon other topics that may not warrant a summary in this index, but the editor will use the indicator “other topic(s) covered,” as a research aid for the reader.

Recent Decisions and Recent Filings both begin with the date where the previous Court Bulletin left off.

Trial Court

Child Support

JULY 7, 2003
Roxanne Johnson v. Loren James Rave, CV 97-25
Order (Retention of the Status Quo) (HCN Tr. Ct.,
One of two minor children reached the age of
majority. The Court discontinued withholding for
child support for such individual. However, the
quarterly withholding shall not decrease since the
foreign court intended the withholding amount to
remain constant until both children reach the age of
majority.

State of Wisconsin, Jackson County in re: Roberta
J. Yellowcloud v. Donald L. Yellowcloud, Jr., CS
98-01 Order (Modifying and Enforcing Child

JULY 9, 2003
State of Wisconsin/Jackson County v. Ida Decorah
Ermenc, CS 02-62 Order (Updating Arrearage
Withholding) (HCN Tr. Ct., July 9, 2003). (Matha,
T).
The Court had requested documentation verifying
an earlier arrearage request. The petitioner failed to
respond to the Court’s order. The Court amended
the current order’s arrearage amount.

JULY 9, 2003
Michelle M. McDermott v. Chester A. Mallory, CS
01-16 Order (Ceasing Withholding) (HCN Tr. Ct.,
July 9, 2003). (Matha, T).
The Court had to determine whether to modify an
existing child support order. The respondent failed
to offer a response within the specified time frame.
The Court granted the petitioner’s request for
modification.

JULY 10, 2003
Juneau County/Keith Miller v. Chasity A. Miller,
CS 99-26 Order (Renewing Child Support
Withholding) (HCN Tr. Ct., July 10, 2003). (Matha,
T).
The Court had suspended withholding for child
support. The petitioner filed certified copies of a
stipulation and order for support. The Court
granted the uncontested stipulation and order.

State of Wisconsin/Sawyer County v. Roberta L.
Crowe, CV 97-76 Order (Modifying and Enforcing
Child Support). (HCN Tr. Ct., July 10, 2003). (Matha,
T).
The Court had to determine whether to modify an
existing child support order. The petitioner
requested a decrease in current child support due to
the emancipation of one of the minor children. The
petitioner also requested a decrease in arrearage
withholding. The respondent failed to offer a
response within the specified time frame. The
Court granted the petitioner’s request for
modification.

The Court had to determine whether to modify an
existing child support order. The respondent failed
to offer a response within the specified time frame.
The Court granted the petitioner’s request for
modification.
July 11, 2003
Christel J. Swan v. Timothy B. Ward, CS 03-28
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

Kentwan Lee Dixon v. Johna Lee Fisher, CS 03-29
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

State of Wisconsin v. Damon Funmaker, CS 03-13
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

July 14, 2003
State of Nevada v. Alfred L. Griffin, CS 03-32
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

July 15, 2003
Nicole Ward v. Daryl Decora, CV 97-06 Order
The Court had to determine whether to modify an existing child support order. The respondent failed to offer a response within the specified time frame. The Court granted the petitioner’s request for modification.

State of Wisconsin v. Maynard A. Rave, Jr., CV 98-63
The Court had to determine whether to modify an existing child support order. The respondent failed to offer a response within the specified time frame. The Court granted the petitioner’s request for modification.

State of Wisconsin, Ex. Rel., and Robert J. Jack, CS 03-10
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

State of Wisconsin/Jackson Co. v. William B. Collins, CS 03-21
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

July 16, 2003
Heather Hartwig v. Steve Lincoln, CS 99-21
The Court had informed the parties that all child support arrears had been paid and if no objection were received, the case would be closed. Petitioner filed an objection to the closure of the case with a KIDS account statement. However, the statement shows that said amount is for interest on child support. Therefore, the Court denied the objection and ordered the case closed.

In the interest of: B.J.C., Erica J. Hawpetoss and
State of Wisconsin v. Brandan J. Cloud, Sr., CS 01-21
The Court had to determine whether to grant full faith and credit to a foreign judgment. The petitioner requested and received cessation of
current child support. The Court granted the petitioner’s request for recognition and enforcement.

The Court had to determine whether to modify an existing child support order. The respondent failed to offer a response within the specified time frame. The Court granted the petitioner’s request for modification.

The petitioner requested updated arrears. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request to amend the arrearage amount.

The petitioner requested updated arrears. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request to amend the arrearage amount.

The petitioner requested updated arrears. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request to amend the arrearage amount.

JULY 17, 2003
The Court had reminded the parties of their need to file proof of high school enrollment with the Court or face a cessation of child support withholding for the minor child. The petitioner filed proof of the child’s college enrollment and a certified copy of a State of Oregon divorce decree. The Court requires a recent judgment noting that the Wasco County Circuit Court exercises continuing, exclusive jurisdiction. In addition, the Court ordered the Treasury Department to impound a percentage of respondent’s per capita distribution.

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

JULY 18, 2003
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

JULY 21, 2003
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

JULY 22, 2003
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

On December 5, 2002, the Court entered an order in the instant case. The Court became aware of the respondent’s death and closed the case.

JULY 24, 2003

The petitioners filed a motion to modify, requesting that the Court cease child support withholding. The petitioners informed the Court that the respondent’s parental rights had been terminated. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for modification.


The Court had to determine whether to modify an existing child support order. The respondent failed to offer a response within the specified time frame. The Court granted the petitioner’s request for modification.

JULY 25, 2003

The Court had to determine whether to grant full faith and credit to a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.


The Court had to determine whether to suspend the current child support withholding from the respondent’s per capita distributions. The respondent alleged that there was an amended child support order. The Court granted the request.

JULY 29, 2003

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

Civil Garnishment

JULY 7, 2003

The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.


The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

JULY 8, 2003

The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

JULY 10, 2003
The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

**JULY 11, 2003**


The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.


The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.


The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.


The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

**JULY 23, 2003**


The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

**JULY 29, 2003**


The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

**JULY 30, 2003**


The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

**Children’s Trust Fund (CTF)**

**JULY 2, 2003**


The petitioner requested funds from the CTF accounts of the minor children for costs associated with household furnishings, a driveway, and a sun porch. The Court held that the release of monies would not result in a direct and tangible health, education or welfare benefit for the children.

**JULY 3, 2003**


On June 19, 2003, the Court released funds from the CTF account of the minor child for orthodontics. On July 2, 2003, the petitioner submitted the
required accounting. The Court accepted the accounting and closes the case.

**JULY 9, 2003**

*In the Interest of Minor Child: T.F., DOB 03/18/93, by Toni Funmaker v. HCN Office of Tribal Enrollment, CV 03-04 Order (Accepting Accounting) (HCN Tr. Ct., July 9, 2003). (Matha, T).*

On February 20, 2003, the Court released funds from the CTF account of the minor child for orthodontics. On June 16, 2003, the Court reminded the petitioner of her duty of accounting for the expenditures. On July 8, 2003, the petitioner submitted the required accounting. The Court accepted the accounting and closes the case.

*In the Interest of William Blackdeer, DOB 01/18/84, v. HCN Office of Tribal Enrollment, CV 03-38 Order (Dismissal without Prejudice) (HCN Tr. Ct., July 9, 2003). (Bossman, W).*

The petitioner requested funds from his CTF account. However, the petitioner failed to appear at the fact-finding hearing. The Court dismissed the case.

**JULY 10, 2003**

*In the Interest of Minor Children: L.G.B., DOB 03/30/89, C.A.B., DOB 08/26/90, by Tari Lynn Pettibone v. HCN Office of Tribal Enrollment, CV 01-136 Order (Requesting Accounting) (HCN Tr. Ct., July 10, 2003). (Matha, T).*

On April 28, 2003, the Court released funds from the CTF account of the minor child for orthodontics. The *Order* required the petitioner to provide an accounting within a specified time frame. The Court reminded the petitioner of her duty to account for expenditures.

*In the Interest of the Minor Child: M.E.K., DOB 01/15/90, by Ethel C. Funmaker v. HCN Office of Tribal Enrollment, CV 03-51 Order (Petition Granted) (HCN Tr. Ct., July 22, 2003). (Bossman, W).*

The petitioner requested funds from the CTF accounts of the minor children for costs associated with orthodontic procedures. The Court granted the request.

**JULY 22, 2003**


The petitioner requested funds from the children’s CTF accounts. The respondent raised issues that indicate a lack of documentation. The Court required that the petitioner provide the appropriate documentation.

*In the Interest of Minor Children: Z.G.D., DOB 04/20/86, by Sheila M. Pagel v. HCN Office of Tribal Enrollment, CV 02-101 Order (Demanding Accounting) (HCN Tr. Ct., July 10, 2003). (Matha, T).*

On January 7, 2003, the Court released funds from the CTF account of the minor child for orthodontics. The *Order* required the petitioner to provide an accounting within a specified time frame. On April 16, 2003, the Court reminded the petitioner of her duty. On July 10, 2003, the Court again reminded the petitioner of her duty to account for expenditures and warned of possible action regarding the CONTEMPT ORDINANCE.

*In the Interest of Adam Greendeer, DOB 06/23/85, by Cynthia Loofboro v. HCN Office of Tribal Enrollment CV 03-49 Order (Requiring Submission of Documents) (HCN Tr. Ct., July 22, 2003). (Bossman, W).*

The petitioner requested funds from the child’s CTF account. The respondent raised issues that indicate a lack of documentation. The Court required that the petitioner provide the appropriate documentation.

*In the Interest of Minor Child: M.E.K., DOB 01/15/90, by Ethel C. Funmaker v. HCN Office of Tribal Enrollment, CV 03-51 Order (Petition Granted) (HCN Tr. Ct., July 22, 2003). (Bossman, W).*

The petitioner requested funds from the CTF accounts of the minor children for costs associated with orthodontic procedures. The Court granted the request.

**Incompetent’s Trust Fund Cases**

**CIVIL CASES**

**JULY 3, 2003**

*HCN Department of Housing, Property Management Division v. Douglas and Alison RedEagle, CV 03-13 Order (Satisfaction of*

On April 16, 2003, the Court issued a judgment in favor of the plaintiff. On July 1, 2003, the plaintiff acknowledged full payment and satisfaction of the judgment. The Court recognized that this debt has been paid in full and informed the parties of its intent to close.

Ho-Chunk Nation Department of Housing, Property Management Division v. Summer Martin and Dustin Jackson, CV 03-23 Order (Granting Extension) (HCN Tr. Ct., July 3, 2003). (Matha, T).
The defendants requested more time to properly file an Answer. The defendants indicated that their attorney had not represented them properly. The Court granted the extension in light of the difficulties experienced with outside legal counsel.

JULY 7, 2003
The Court scheduled a hearing to grant the defendant an opportunity to argue its Motion to Dismiss and to provide respondent an opportunity to respond.

Faye Begay v. Jean Day, Executive Director of HCN Education Dept., Greg Garvin, HCN Executive Administrations Officer, and Ho-Chunk Nation, CV 03-09 (Stipulated Motion to Amend Scheduling Order) (HCN Tr. Ct., July 7, 2003). (Bossman, W).
The Court amended the Scheduling Order in accordance with the agreement by the parties.

JULY 8, 2003
The Court issued a scheduling order, setting out the various deadlines and setting the pretrial conference and trial dates.

JULY 9, 2003

Janette Smoke v. Steve Garvin, in the capacity of Table Games Manager, Majestic Pines Casino and Ho-Chunk Nation, CV 01-97 Order (Granting Extension) (HCN Tr. Ct., July 15, 2003). (Matha, T).
The defendants filed a Motion to Extend Time for Seeking PBOD Approval of the Ranking System or to Discontinue the Ranking System and Any Resulting Scheduling. The plaintiff failed to respond within the specified time frame. The Court granted the motion because it considered the request reasonable under the prior decision of the Court.

JULY 15, 2003
The Court modified a settlement agreement in accordance with an agreement by the parties. The underlying settlement agreement continues in full force and effect with the modification.

On June 13, 2003, the plaintiff filed an election challenge. The Court scheduled a hearing for June 25, 2003. However, the plaintiff failed to appear. On June 26, 2003, the Court dismissed the action. On June 30, 2003, the defendant filed a motion requesting costs, attorneys’ fees and sanctions. The plaintiff based its request on three theories: the plaintiff’s failure to appear at the hearing, the plaintiff’s failure to respond to requests for discovery, and the plaintiff’s filing of an election challenge that was “frivolous and/or wholly without
merit” under the Ho-Chunk Nation Election Ordinance. The Court held that sanctioning the plaintiff for non-appearance would be harsh and excessive under the circumstances of this case. In addition, the Court held because the discovery response was not due until the day of the hearing, the defendant was not prejudiced by the failure of the plaintiff to submit to a discovery response. Finally, the Court held that the defendant had failed to provide evidence that the election challenge in question was “frivolous” or “without merit.” Therefore, the Court denied the defendant’s motion.

Ho-Chunk Housing Authority v. Martha Martinez, CV 02-04 Order (Dismissal) (HCN Tr. Ct., July 18, 2003). (Matha, T).

On January 11, 2002, the plaintiff filed a Complaint requesting a judgment for past due rent and reasonable costs. The defendant failed to respond within the specified time frame. The plaintiff then filed a motion for a default judgment. The Court denied the motion of the plaintiff and dismissed the case. The Court held that the plaintiff was barred from bringing this action under the principle of res judicata. In addition, the Court precluded the plaintiff from bringing the action under the Ho-Chunk Nation Rules of Civil Procedure. [See also Res Judicata within this index.]

Tammy J. Ross v. Ho-Chunk Nation, CV 03-20 Order (Granting Motion to Dismiss) (HCN Tr. Ct., July 18, 2003). (Bossman, W).

The plaintiff brought an action against the Ho-Chunk Nation for monetary damages to her motor vehicle because of actions of the defendant’s employees. The defendant filed a motion to dismiss on the ground of lack of jurisdiction because of the defendant’s sovereign immunity from suit. The Court granted the motion to dismiss. [See also Sovereign Immunity within this index.]

JULY 23, 2003

The plaintiff alleged that the defendants wrongfully discharged her from employment. The defendants filed a motion requesting summary judgment. The Court concluded that there was a genuine issue of material fact and denied the motion.

JUNE 27, 2003

The plaintiff alleged that the defendant had wrongfully discharged her from employment for reasons associated with improper usage of a tribal credit card. The Court employed the arbitrary and capricious standard of review in accordance with standing HCN Supreme Court precedent. The Court held that the disciplinary action against plaintiff represented a clear error of judgment.

Juvenile

JUNE 27, 2003
In the Interest of the Minor Child: V.A.B., JV 02-12 Motion to Withdraw as Guardian ad Litem (HCN Tr. Ct., June 27, 2003). (Matha, T).

The GAL requested to withdraw from the case. The Court granted the request.

In the Interest of the Minor Child: D.A.F. and K.V.F., JV 03-16, -17 Motion to Withdraw as Guardian ad Litem (HCN Tr. Ct., June 27, 2003). (Matha, T).

The GAL requested to withdraw from the case. The Court granted the request.

In the Interest of the Minor Child: L.J.R., JV 01-05 Motion to Withdraw as Guardian ad Litem (HCN Tr. Ct., June 27, 2003). (Matha, T).

The GAL requested to withdraw from the case. The Court granted the request.


The GAL requested to withdraw from the case. The Court granted the request.
In the Interest of the Minor Children: A.C.S., DOB 04/04/89, P.M.S., DOB 01/14/91, and P.A.S., DOB 01/14/91 JV 98-05, -06, -07 Order (Appointing Temporary Legal Guardian) (HCN Tr. Ct., July 1, 2003). (Bossman, W).
The Court appointed the petitioner as temporary legal guardian for the minor children. The Court based its determination on the recommendations of CFS and the GAL and the preference of placement in a Ho-Chunk traditional family household.

In the Interest of Minor Child: J.G.W., DOB 06/09/99, JV 03-19 Order (Granting Motion to Intervene) (HCN Tr. Ct., July 10, 2003). (Matha, T).
The petitioner requested to be allowed to intervene. The court found the petitioner has a direct and legitimate interest in the case and granted the motion.

In the Interest of Minor Child: S.L.S., DOB 01/03/86, JV 00-19 Order (Discontinuing Child Support) (HCN Tr. Ct., July 15, 2003). (Matha, T).
On January 15, 2001, the Court entered a nominal child support order in this case. However, the permanent guardians do not wish to receive the standing nominal amount of support. The Court discontinued the current child support withholding.

On April 1, 2003, the petitioner filed a Petition for Permanent Guardianship for the minor child. On July 18, 2003, the petitioner requested postponement in order to seek legal counsel. The Court granted the postponement request and appointed the petitioner as the interim legal guardian.

The Court appointed a GAL to act on behalf of the children’s interests.

The Court appointed a GAL to act on behalf of the children’s interests.

The GAL requested to withdraw from the case. The Court granted the request.

The Court conducted a Dispositional Hearing to assess the extent and scope of the dispositional recommendations proposed by Child and Family Services. The Court enumerated the necessary recommendations in this order.

Res judicata

The Court held that the plaintiff was barred from bringing this action under the principle of res judicata. Under the principle of res judicata, when a final judgment on the merits of a case has been issued, the same cause of action may not be re-litigated absent a showing of fraud or some other invalidating factor. The Court cited numerous instances where it has utilized the principle res judicata in its refusal to re-hear the same cause of action. Res judicata should be applied in cases in which (1) the plaintiff is asserting a cause of action that has previously been asserted in a cause of action in which a final judgment has been issued
and (2) the parties in the case are identical to or in privity with the parties in the earlier proceeding.

The Court held the cause of action asserted in the instant case was the cause of action that had previously been asserted in *HCN Hous. Auth. v. Martha Martinez*, CV 01-43 (HCN Tr. Ct., May 16, 2001). Both complaints requested past due rent and reasonable costs, and the amount of such costs had previously been determined. In addition, the parties involved in the instant case were the same parties that had been involved in litigation in the earlier action.

[See Civil Cases within this index for case summary.]

**Sovereign Immunity**

**JULY 18, 2003**

*Tammy J. Ross v. Ho-Chunk Nation*, CV 03-20

Order (Granting Motion to Dismiss) (HCN Tr. Ct., July 18, 2003). (Bossmann, W).

Article XII, § 1 of the Ho-Chunk Nation Constitution provides that the Ho-Chunk Nation is immune from suit except to the extent that that sovereign immunity is expressly waived by the Legislature. In addition, Article VII, § 5 of the Ho-Chunk Nation Constitution provides that while the Trial Court shall have original jurisdiction over cases and controversies arising under the Constitution, laws, customs, and traditions of the Ho-Chunk Nation, this grant of jurisdiction is not to be construed as a waiver of sovereign immunity.

The Court held that as it has not been granted jurisdiction to hear cases against the Ho-Chunk Nation in cases in which the Nation has not waived its sovereign immunity from suit, the Court was without jurisdiction to hear the present case.

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**Supreme Court**

**JUNE 27, 2003**


The appellant filed a Notice of Appeal and Motion for Expedited Consideration on June 19, 2003. In addition, the appellant requested a stay to preserve the status quo. The Court accepted the matter for appeal and ordered that the case should be given expedited consideration because the case involved an election challenge. The Court refused to lift the Trial Court’s injunction that enjoined the Election Board from swearing in Kathyleen Whiterabbit.

**JUNE 30, 2003**

*Greg Littlejohn v. Ho-Chunk Nation Election Board, Chairperson Mary Ellen Dumas and the Ho-Chunk Nation Election Board Members: Eugene Topping, Jr., Darlene Funmaker, Georgianne Funmaker, Brandee Alderman, Bonnie Strossner, Wilma Thompson, Tari Pettibone, Mary Taylor, Elliot Funmaker, Sr., and Tara Blackdeer*, SU 03-07 Order Setting Time and Date for Oral Argument (HCN S. Ct., June 30, 2003).

The Court scheduled Oral Argument for July 2, 2003 at 3:00 p.m.

**JULY 10, 2003**

*Ho-Chunk Nation v. Bank of America*, SU 03-06

Order Denying Appeal (HCN S. Ct., July 10, 2003).

On June 18, 2003, the appellant filed a Notice of Appeal, appealing the Trial Court’s May 19, 2003 Order (Denying Motion to Dismiss). The Court denied the appeal because there is not a final order of the trial Court to be appealed under HCN R. App. 7. Under this rule, the Court will only accept appeals after the Trial Court has fully considered and disposed of all of the issues based on the facts of a case. In addition, this could not be considered a timely and proper pleading of an appeal by permission under HCN R. App. 7.5. The
appeal of the Trial Court’s order should have been filed as an appeal from an interlocutory order under HCN R. App. 7.5. This would have required that the appeal be filed within ten days of the Trial Court’s order. This request for appeal was filed well after the deadline outlined in the rule.

**JULY 11, 2003**

*Greg Littlejohn v. Ho-Chunk Nation Election Board, Chairperson Mary Ellen Dumas and the Ho-Chunk Nation Election Board Members: Eugene Topping, Jr., Darlene Funmaker, Georgianne Funmaker, Brandee Alderman, Bonnie Strossner, Wilma Thompson, Tari Petibone, Mary Taylor, Elliot Funmaker, Sr., and Tara Blackdeer, SU 03-07 Decision (HCN S. Ct., July 11, 2003).*

The Court reversed the Trial Court’s decision in this election challenge. The case involved a challenge by the plaintiff of the Election Board’s certification of a candidate as the election winner after the primary. In its ruling, the Court wrote that under the revised HCN ELECTION ORDINANCE there is no longer a distinction between general and special elections for purposes of when a runoff election must be held. The Court held that its decision in *Debra Greengrass v. HCN Election Board, SU 99-03 (HCN S. Ct. June 30, 1999)* was not controlling in this case because the HCN ELECTION ORDINANCE has been revised since that opinion. According to the Court, the Election Board was correct in its declaration of Kathyleen Whiterabbit as the winner.

Associate Justice Mark Butterfield wrote a dissenting opinion. Justice Butterfield wrote that the Court’s opinion failed to provide a proper reconciliation between the opinions in *Greengrass and Matha v. HCN Election Board, CV 02-34 (HCN Tr. Ct. April 12, 2002)*. In addition, the Associate Justice held that *Greengrass* would be properly applied to the case at hand because that case provided an interpretation of the HCN CONSTITUTION rather than the election ordinance. In addition, he held that the present version of the election ordinance would still violate the HCN CONSTITUTION, which requires that offices of the Legislature, Executive, and Judiciary be filled at General Elections.

**Recent Filings**

**Trial Court**

**Child Support**

**JUNE 27, 2003**

*State of WI/Jessica Cloud v. Joshua D. Cloud Sr., CS 03-34. (Bossman, W).*

*Debra B. Jepson v. Paul D. Arentz, CS 03-47. (Matha, T).*

**JUNE 30, 2003**

*State of WI v. Leaf O. Funmaker, CS 03-35. (Matha, T).*

*State of WI v. Garrett C. Decorah, CS 03-36. (Matha, T).*

*State of WI v. Damon E. Funmaker, CS 03-37. (Bossman, W).*

*State of WI v. Donald L. Yellowcloud, CS 03-38. (Matha, T).*

**JULY 1, 2003**

*State of WI/Brown Co. v. Kerry Funmaker, CS 03-40. (Matha, T).*

**JULY 4, 2003**

*State of WI/Vilas Co., Pat White v. Jane M. White, CS 03-41. (Bossman, W).*

*State of Iowa v. Brian C. Dietzler, CS 03-48. (Bossman, W).*

*Antoinette Lock v. Larry R. Frostman, CS 03-49. (Bossman, W).*

**JULY 7, 2003**

*Cynthia Mobley v. Mitchell RedCloud, CS 03-42. (Bossman, W).*

**JULY 9, 2003**

*State of WI v. Janice Harrison, CS 03-43. (Bossman, W).*
Chelsae L. Joe v. Paul Joseph Smith, CS 03-44. (Matha, T).

Patricia Elliot v. Michael P. Zenner, CS 03-45. (Bossman, W).

JULY 10, 2003
State of WI/Sauk Co. v. Tara Blackcoon, CS 03-46. (Bossman, W).

JULY 15, 2003

JULY 23, 2003

JULY 29, 2003
Felicia Topping v. Leon Topping, CS 03-52. (Matha, T.)

Civil Garnishment

JUNE 30, 2003
Discover Bank v. Kathleen J. La Mere, CG 03-50 (Matha, T).

JULY 8, 2003
Check Advance v. Betty Gerke (Krause), CG 03-53. (Bossman, W).


Gundersen Lutheran Hospital v. Melissa Windsor, CG 03-55. (Bossman, W).

JULY 14, 2003
Gunderson Lutheran Hosp. v. Andrew and Vivian Thundercloud, CG 03-49. (Matha, T).


JULY 15, 2003

State Collection Serv. v. Monica Cloud, CG 03-56. (Matha, T).

JULY 17, 2003
Tomah Memorial Hospital v. Michael and Roxanne Peth, CG 03-57. (Matha, T).

Madison Gas and Electric Co. v. Elizabeth Haller, CG 03-58. (Matha, T).

Gundersen Lutheran Clinic v. James and Melissa Rochester, CG 03-59.

JULY 23, 2003
Oral Surgery Center v. Susan A. Alderman, CG 03-60. (Bossman, W).

JULY 25, 2003

JULY 29, 2003
Black River Memorial v. Peggy Perkins, CG 03-62. (Matha, T).

Civil Cases

JUNE 30, 2003

JULY 7, 2003

JULY 11, 2003
In the Interest of Minor Child: M.E.K., DOB 01/15/90, by Ethel C. Funmaker v. HCN Office of Tribal Enrollment, CV 03-49. (Bossman, W).

JULY 18, 2003
In the Interest of Minor Child: K.D., DOB 10/01/83 v. HCN Office of Tribal Enrollment, CV 03-52. (Bossman, W).
Trial Court’s Annual Law Day & 5k Fun Run/Walk

On Friday, August 29, 2003, the Ho-Chunk Nation Trial Court will hold its annual Law Day. The Ho-Chunk Law Day is an open house and discussion that is free and open to the general public. It provides lawyers, lay advocates, and the general public with an opportunity to learn more about the Ho-Chunk Nation Judiciary and recent legal developments. In addition, Law Day is an opportunity to obtain FREE CLE credits that may be applied to both HCN Bar requirements and Wisconsin Bar requirements. This training is important for all HCN Bar members and a proposal has been made to make Law Day mandatory.

The 8th Annual 5K Fun Run/Walk will then be held on Saturday, August 30, 2003. This year Pendleton blankets will be awarded to the 1st place male and female runners. For a $10 registration fee, each runner will receive a T-shirt. The run will begin at the HCN Courthouse. Registration for the run will begin at 8:00 A.M., and the run will begin at 9:00 A.M.

For more information on Law Day or the Fun Run, you may contact Rose Weckenmann at (800) 434-4070.

Guardian Ad Litem Training Opportunity

Wisconsin Judicare will be providing guardian ad litem training for interested individuals on September 18th and 19th at the Pine Hills golf course located on the Stockbridge-Munsee Reservation. The training is being sponsored by the Forest County Potawatomi and the Stockbridge-Munsee Community. The Ho-Chunk Nation Trial Court will pay expenses for any interested Ho-Chunk Nation member or employee who wishes to attend this valuable training. For more information on this opportunity you may contact Rose Weckenmann at (800) 434-4070.
The Ho-Chunk Nation Judiciary

Presents Its Annual

Law Day

And

5K Fun Run/Walk

Attorneys, Lay Advocates and the general public are invited to attend.

Everyone Welcome!

For more information contact Rose Weckenmann at (715) 284-2722.

Law Day – Friday, August 29th, 2003
9 am – 12:30pm
Free and open to the public. Open House & Discussion on current issues before the Ho-Chunk Nation Court System.

PLACE: Ho-Chunk Nation Courthouse
Located on Highway 54 approximately 2 miles west of Majestic Pines Casino and 3 miles east of Black River Falls, WI.

CLE Credits available for attorneys. Refreshments will be served.

5 K Fun Run/Walk –
Saturday, Aug. 30th, 2003

PLACE: Meet at the Ho-Chunk Nation Courthouse

($10 registration fee pays for your entry and gets you a t-shirt.)

REGISTRATION: 8 a.m. to 8:45 a.m.
WELCOME: 8:45 a.m. to 9 a.m.
RUN STARTS: 9 a.m.
AWARDS PRESENTATION: 10 a.m.
(Winners also announced at the Labor Day Pow-wow.)

Juice/water/coffee/fruit will be served before and after the race.
Water will be available at the halfway point of the race.
HO-CHUNK NATION COURT SYSTEM

JUDICiARY AND STAFF

Supreme Court – Mary Jo B. Hunter, Chief Justice
    Mark D. Butterfield, Associate Justice
    Jo Deen B. Lowe, Associate Justice

Traditional Court – Wallace Blackdeer
    Donald Blackhawk
    Dennis Funmaker
    Orville Greendeer
    Douglas Greengrass
    Owen Mike
    Gavin Pettibone
    Douglas Red Eagle
    Preston Thompson, Jr.
    Eugene Thundercloud
    Morgan White Eagle
    Clayton Winneshiek

Trial Court – William H. Bossman, Chief Judge
    Todd R. Matha, Associate Judge

Clerk of Court, Supreme Court – Bryan Dietzler

Clerk of Court, Trial Court – Marcella Cloud

Assistant Clerk of Court, Trial Court – Selina Joshua

Bailiff/Process Server – Willa RedCloud

Law Clerk – Rose Weckenmann

Office of Public Advocacy – Dennis Funmaker, Administrator

* The Ho-Chunk Nation Judiciary and its officers are active participants in the following organizations:

WISCONSIN TRIBAL JUDGES ASSOCIATION
( Eleven federally recognized tribes within the State of Wisconsin)

NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION
(Region 5—Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, South Dakota, North Dakota, and Wisconsin)

HCN Court System Fee Schedule

- Filing Fees .......................... $50.00*

*With the exception of petitions to register child support orders – this fee remains at $20.00 as previously ordered by the Supreme Court.

Note: Filing Fee now includes Summons fee.

- Filing Fees for Petitions to Register and Enforce Foreign Judgment/Order ........................................... $20.00
Court Hosts 8<sup>th</sup> Annual Law Day

On Friday, August 29, 2003, the Ho-Chunk Nation Judiciary presented its 8<sup>th</sup> Annual Law Day program. The annual presentation provides an opportunity for Ho-Chunk Nation bar members and the general public to participate in discussion on current issues before the Court. This year’s program covered a wide range of topics and provided the audience with an opportunity to ask numerous questions of concern to practitioners within the HCN court system.
Associate Trial Court Judge Todd R. Matha kicked-off the event with a presentation on appellate standards of review within the Ho-Chunk Nation Judiciary. Judge Matha’s presentation traced the evolution of the law within this jurisdiction while also referencing standards of review used within federal law. Chief Trial Court Judge William Bossman then spoke on judicial statutory construction.

Associate Supreme Court Justice Mark Butterfield reviewed the cases heard before the Supreme Court during the past year. In addition, Justice Butterfield provided practitioners appearing before the HCN Supreme Court with practical tips concerning oral arguments. The Associate Justice urged members of the bar to answer questions asked by the justices directly and to avoid simply reading arguments found in the brief.

The Supreme Court panel concluded with a presentation by Associate Justice Jo Deen B. Lowe. Justice Lowe offered an overview of the Supreme Court in which she described the establishment of the Court and the qualifications of Supreme Court justices. In addition, Justice Lowe discussed the appellate proceedings generally and the administration of the Judiciary.

Ho-Chunk Nation Department of Justice Attorney Michael Murhpy offered a presentation on the recent Wisconsin Supreme Court decision in *Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians*, 665 N.W.2d 899 (2003). Attorney Murhpy discussed the comity standard adopted by the Wisconsin Supreme Court and the future for courts attempting to apply this standard. Members of the audience had a number of questions on how protocols should be worked out between state and tribal courts.

The Ho-Chunk Nation Supreme Court made the final presentations of the program. The three current members of the Supreme Court sat on a panel designed to help advocates appearing before the Supreme Court. Chief Justice Mary Jo B. Hunter discussed the professional standards for members of the HCN bar. Her presentation elicited discussion on what continuing education should be imposed on members of the bar.

Law Day 2003 also included a presentation to HCN Bar Member Mark Goodman for his representation of Ho-Chunk tribal members through Judicare. (See related story, page 3). At the end of the program, Chief Trial Court Judge William Bossman treated those in attendance to a tour of the new courthouse which is currently under construction and set for opening in December 2003.
ATTORNEY MARK GOODMAN RECOGNIZED

During Law Day festivities held on August 29, 2003, the Judiciary recognized an attorney who has made a significant contribution through his participation in Wisconsin Judicare. Sparta Attorney Mark Goodman was recognized for the large number of cases involving Ho-Chunk members he has accepted while participating in the Judicare program. Director of the Indian Law Section of Wisconsin Judicare, James Botsford, was on hand to present the award.

ATTORNEY MARK GOODMAN AND DIRECTOR OF THE INDIAN LAW SECTION OF WISCONSIN JUDICARE JAMES BOTSFORD

Attorney Mark Goodman has taken more of these cases than any other participating attorney. Since he began participating in the program in 1994, he has closed thirty-two cases. This figure is double that of any other attorney. Attorney Goodman has not only represented Ho-Chunk clients in a high number of cases, but additionally, the cases show a diversity in the subject matter that he has been willing to tackle. Attorney Goodman has represented clients in nineteen family law cases, two consumer finance cases, three employment cases, three neglect cases, two Indian law cases, two housing cases, and one licensing case.

James Botsford presented a certificate of appreciation and a Pendleton blanket to Attorney Goodman. In his remarks, Attorney Goodman noted that he was humbled by the award. In addition, he explained that his service to Ho-Chunk clients has been rewarding and that often his nicest clients have been those whom he served through Judicare.

Mark Goodman is a member of the HCN and Wisconsin bars. He obtained his undergraduate and law degrees from the University of Wisconsin in Madison. Attorney Goodman is a third generation Sparta attorney. He also serves as a municipal judge in Sparta.

The Ho-Chunk Nation has contracted with Wisconsin Judicare to provide legal representation to tribal members who fall below established income guidelines. The attorneys who represent clients under this contract receive reimbursement for their services, but at a low hourly rate. James Botsford describes the work as “compensated pro bono.”

Any Ho-Chunk tribal member with questions regarding Judicare or seeking to obtain representation through Judicare should contact Dennis Funmaker, Administrator of the Office of Public Advocacy at (715) 284-8514.
ANNUAL FUN RUN A SUCCESS

The HCN Judiciary’s 8th Annual Fun Run was held on August 30, 2003. Nearly fifty runners participated in this year’s run.

CHIEF TRIAL COURT JUDGE WILLIAM BOSSMAN ANNOUNCES WINNERS.

The overall male winner was Patrick Storm with a time of 20:10. The overall female winner was Susan Leadholm with a time of 23:18. Both runners were awarded Pendletons. This year’s first place team was Myra Blackdeer, Keisha Vasquez, and Alexis Cloud with a total running time of 1 hour, 48 minutes, and 22 seconds. The Court congratulates all runner and walkers on their achievements. For complete race results, see page 13.

SUPREME COURT CLERK BRYAN DIETZLER AWARDS 1ST PLACE RUNNER PATRICK STORM WITH HIS PENDLETON.

THIS YEAR’S FIRST PLACE TEAM WAS MYRA BLACKDEER, KEISHA VASQUEZ, AND ALEXIS CLOUD.
**Federal Court Decisions**

**Eighth Circuit Court of Appeals**

*In re Sac & Fox Tribe of Mississippi in Iowa/Meskwaki Casino Litigation*, Nos. 03-2329, 03-2355, 03-2357, 03-2390, 03-2392 and 03-2393, 2003 WL 22015767 (8th Cir. Aug. 27, 2003).

At issue in the case was a temporary closure order by the Chairman of the National Indian Gaming Commission. The Meskwaki casino has been shut down since May 23 as a result of the order. The tribe’s appointed council sought enjoinment of the Chairman’s order. The 8th Circuit panel held that the temporary closure action is not a “final agency action” subject to judicial review and dismissed the claim for lack of subject matter jurisdiction. The three-judge panel also affirmed the district court’s granting of an injunction enforcing a temporary closure order from the Chairman of the NIGC.

**Ninth Circuit Court of Appeals**

*United States v. Alpine Land and Reservoir Co.*, Nos. 01-15665, 01-15814, 01-15816, 01-16224, 01-16241, 2003 LEXIS 17039 (9th Cir. Aug. 20, 2003).

At issue in the case is Pyramid Lake, the central feature of the almost 500,000 acres in Nevada set aside as a reservation for the Pyramid Lake Paiute Tribe of Indians. This litigation has spanned years and stems from the Reclamation Act of June 17, 1902, in which Congress created the Newlands Reclamation Project. This Project was created to convert arid land into irrigated farmland and diverted water from the principal source for Pyramid Lake. The Project reduced the area of Pyramid Lake and threatened the survival of indigenous fish. In the 1980s, some landowners submitted transfer applications for the rights held in the reclamation project. The Tribe protested the application proceedings, and the United States intervened on the Tribe’s behalf. The Nevada State Engineer granted transfer applications of those landowners holding water rights in the diversion project. The three-judge panel remanded the applications. The opinion set forth findings the State Engineer must include. The panel also held that the State Engineer must apply a clear and convincing standard in evaluating evidence as to whether there has been abandonment and forfeiture of the project rights.

**Tenth Circuit Court of Appeals**


At issue was whether Kansas could assess fuel taxes on a corporation wholly owned by the Winnebago Tribe of Nebraska. The State of Kansas was attempting to impose its fuel tax on the sale and delivery of fuel within the State as the Winnebago corporation was doing business with three Kansas tribes. When the State was unable to collect the fuel tax, it began seizing tribal property and had initiated criminal proceedings. The tribes involved filed suit seeking injunctive and declaratory relief. A federal judge had previously ordered the injunctive and declaratory relief, and the Tenth Circuit three-judge panel affirmed.
Recent Decisions

Decisions are separated between Trial Court and Supreme Court decisions and categorized by subject matter and date (from oldest to most recent). The following are summaries prepared by the Staff Attorney for the reader’s benefit. They should in no way be used as substitution for citations to the actual court opinion.

Within the Trial Court, cases are categorized and docketed as one of the following: Child Support (CS or if filed prior to 1998, CV), Civil Garnishment (CG), Civil (CV), Criminal (CR), Custody (CU), Domestic Violence (DV), or Juvenile (JV). Within this index, case citations will appear in one of these categories and, in the event it may be helpful to the reader as a research tool, the cases may also be summarized in a separate topic area. In some instances a decision may touch upon other topics that may not warrant a summary in this index, but the editor will use the indicator “other topic(s) covered,” as a research aid for the reader.

Recent Decisions and Recent Filings both begin with the date where the previous Court Bulletin left off.

Trial Court

Child Support

AUGUST 5, 2003
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

AUGUST 7, 2003
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

**AUGUST 12, 2003**
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

**AUGUST 13, 2003**
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

**AUGUST 14, 2003**
The Court had to determine whether to enforce a foreign judgment. The respondent filed a timely response stipulating agreement with the enforcement of the foreign order. The Court granted the petitioner’s request.

**AUGUST 19, 2003**
The Court had to determine whether to enforce a foreign judgment against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the request.

**Civil Garnishment**
**AUGUST 6, 2003**
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

**AUGUST 7, 2003**
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

**AUGUST 8, 2003**
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

**AUGUST 8, 2003**
The petitioner requested that the Court amend the unpaid judgment amount. The Court granted the request.

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

August 12, 2003
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

August 14, 2003
The Court had to determine whether to grant full faith and credit to a foreign judgment. The Court had previously conditionally denied the petition since the respondent claimed an exemption to the earnings garnishment. The Court informed the petitioner of the need to file a certified foreign judgment. The petitioner properly filed such document. The Court granted the petitioner’s request for recognition and enforcement.

August 15, 2003
The Court had to determine whether to grant full faith and credit to a foreign judgment. The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

August 19, 2003
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

August 21, 2003
The petitioner requested that the Court amend the unpaid judgment amount to reflect payments made by the respondent. The Court granted the request.

Children’s Trust Fund (CTF)
August 7, 2003
The Court had previously granted a request for release of funds for purposes of orthodontic care. The petitioner requested release of additional funds for a medical procedure related to the ongoing orthodontic care. The Court granted the request.

On December 11, 2002, the Court released funds from the CTF account of the minor child for orthodontics. On two occasions, the Court reminded the petitioner of her duty of accounting for the expenditures. On June 30, 2003, the petitioner submitted the required accounting. The Court accepted the accounting and closed the case.
August 12, 2003

On April 28, 2003, the Court released funds from the CTF account of the minor children for orthodontics. The Order required the petitioner to provide an accounting within a specified time frame. On July 10, 2003, the Court reminded the petitioner of her duty. On August 12, 2003, the Court again reminded the petitioner of her duty to account for expenditures and warned of possible action regarding the CONTEMPT ORDINANCE.


On January 7, 2003, the Court released funds from the CTF account of the minor children for orthodontics. The Order required the petitioner to provide an accounting within a specified time frame. On April 16, 2003, the Court reminded the petitioner of her duty. On July 10, 2003, the Court again reminded the petitioner of her duty to account for expenditures and warned of possible action regarding the CONTEMPT ORDINANCE. The Court shall now convene a Show Cause Hearing to allow the petitioner the opportunity to explain why the Court should not hold her in contempt of court.

August 13, 2003

The petitioner requested that the Court dismiss the instant case. The Court granted the request.


On May 30, 2003, the Court released funds from the CTF accounts of the minor children for orthodontics. The Order required the petitioner to provide an accounting within a specified time frame. On August 13, 2003, the Court reminded the petitioner of her duty.

August 15, 2003

The petitioner filed an accounting report in accordance with directions from the Court. The Court received no information that might indicate errors with the accounting. The Court accepts the accounting.


On January 7, 2003, the Court released funds from the CTF account of the minor children for orthodontics. The Order required the petitioner to provide an accounting within a specified time frame. On April 16, 2003, the Court reminded the petitioner of her duty. On July 10, 2003, the Court again reminded the petitioner of her duty to account for expenditures and warned of possible action regarding the CONTEMPT ORDINANCE. The Court shall now convene a Show Cause Hearing to allow the petitioner the opportunity to explain why the Court should not hold her in contempt of court.

Incompetent’s Trust Fund Cases
August 22, 2003

The Court had to determine whether to grant a release of funds from the ITF account of Elaine Sine for the purchase of a home. The Court granted the request.

Civil Cases (All Categories)
August 5, 2003
Ho-Chunk Nation Department of Housing, Property Management Division v. Summer Martin and Dustin Jackson, CV 03-23 Order (Permission to Reschedule) (HCN Tr. Ct., August 5, 2003). (Matha, T).
The defendants failed to appear at the Scheduling Conference, and did not inform the Court of an inability to attend the proceeding. The Court granted the defendants three weeks to reschedule the Scheduling Conference. If the defendants fail to contact the Court within three weeks to make appropriate arrangements, the Court shall enter a default judgment.

**AUGUST 13, 2003**
The Court issued this Scheduling Order to establish dates and deadlines for the instant case up to and including trial.

**AUGUST 14, 2003**
The Court issued this Scheduling Order to establish dates and deadlines for the instant case up to and including trial.

The defendant requested reconsideration and a stay of a portion of the Court’s Order (Final Judgment). The defendant disputes the Court’s authority to require a former official of the Ho-Chunk Nation to provide a written apology to the plaintiff. The Court granted a partial stay of the final judgment.

**AUGUST 15, 2003**

On December 17, 2002, the Court issued an Eviction Order (Restitution and Relief) for the plaintiff. The Court directed the Treasury Department to deduct the amount of the judgment from per capita distributions until satisfaction of the debt. On August 11, 2003, the plaintiff filed a Satisfaction of Judgment. The Court recognized that this debt has been paid in full and closed the case.

**AUGUST 18, 2003**
The Court issued an Order (Default Judgment) for the plaintiff. The Court directed the Treasury Department to deduct the amount of the judgment from per capita distributions until satisfaction of the debt. On August 11, 2003, the plaintiff filed a Satisfaction of Judgment. The Court recognized that this debt has been paid in full and closed the case.

**AUGUST 19, 2003**
*Vaughn Pettibone v. Ho-Chunk Nation Election Board, and Michele Decorah (Ho-Chunk Nation Election Board Chairperson) in her representative capacity, and Ho-Chunk Nation Office of the President, and Troy Swallow (Ho-Chunk Nation President) in his representative capacity, and Ho-Chunk Nation*, CV 03-17 Order Granting Motion to Dismiss in Part and Denying in Part (HCN Tr. Ct., August 19, 2003). (Bossman, W).
The plaintiff claims that she was improperly removed from her position as Ho-Chunk Nation Election Board Chairperson. The defendants moved to dismiss on the grounds of sovereign immunity and the statute of limitations. The Court granted the motion as to the claim for monetary compensation for lost wages and benefits. The Court denied all other portions of the motion.

**Juvenile**
**AUGUST 7, 2003**
The Court conducted a Review Hearing on the aforementioned matter.

**AUGUST 14, 2003**


The mother had substantially complied with the requirements of the Dispositional Order. The Court terminated its jurisdiction and supervision in the instant case.


The Court scheduled a dispositional hearing in the aforementioned matter.

**AUGUST 15, 2003**


The Court recognized the voluntary stipulation entered into by legal counsel on behalf of their respective clients. The Court entered orders regarding the physical placement, legal custody, and additional conditions as reflected in the agreement of the parties.

**AUGUST 21, 2003**


The Court had to determine whether to grant emergency temporary legal custody of the minor children. The Court granted emergency temporary legal custody to the Ho-Chunk Nation Child and Family Services.


The Court appointed a GAL to serve in the aforementioned case.


The Court conducted a Review Hearing on the aforementioned matter. The Court held that certain dispositional recommendations remain necessary for the protection of the child.

**Supreme Court**

**AUGUST 14, 2003**


The Court extended the decision deadline on appellant’s Notice of Motion and Motion for Reconsideration to Reinstate Appeal or in the Alternative, to Amend Order Denying Appeal.

**Recent Filings**

**Trial Court**

**Civil Garnishment**

**AUGUST 25, 2003**

*American General Finance v. Cleo Littlegeorge, CG 03-64. (Matha, T).*

*Matthew & Angelita Hofmeister v. Mary Ann Dick, CG 03-65. (Matha, T).*

**Child Support**

**AUGUST 5, 2003**

*State of WI/Jackson Co. v. Shannon Duke Rave, CS 03-53. (Bossman, W).*

**AUGUST 19, 2003**

*Myrna Littlewolf v. Carl McKee, CS 03-54. (Bossman, W).*

**AUGUST 27, 2003**

*State of WI/Sauk Co. & Bethal St. Cyr. V. Geoffrey Lonetree, CS 03-55. (Matha, T).*
Civil Cases

AUGUST 1, 2003
Rachel Mendoza v. HCN Office of Tribal Enrollment, CV 03-58. (Matha, T).

AUGUST 11, 2003

AUGUST 12, 2003
HCN Dept. of Housing Prop. Mgmt. v. Deanna Hopinkah, CV 03-60. (Matha, T).

AUGUST 14, 2003
Lauren L. Snake v. Douglas Greengrass, CV 03-61. (Matha, T).

AUGUST 15, 2003
Ronald K. Kirkwood v. HCN Housing Dept. and HCN Legislature, CV 03-62. (Matha, T).

Stanley Decorah v. Linda Decorah, CV 03-63. (Matha, T).

AUGUST 20, 2003
HCN Housing, PMD v. Loretta and Dean Hopinka, CV 03-64. (Bossman, W).

AUGUST 25, 2003


AUGUST 26, 2003
In the Interest of J.M.M., DOB 03/03/88, by Becky Manuell, CV 03-68. (Matha, T).

HCN Business Dept. v. Cora Lee Murphy, CV 03-69. (Matha, T).

Juvenile Cases

AUGUST 18, 2003
In the Interest of Minor Child: C.C.P., DOB 02/03/93, JV 03-25. (Bossman, W).


AUGUST 20, 2003
In the Interest of Minor Child: C.A.T., DOB 07/06/95, JV 03-27. (Bossman, W).


AUGUST 28, 2003
In the Interest of Minor Child: H.L.H., DOB 02/18/03, JV 03-29. (Matha, T).

SUPREME COURT
NOTHING TO REPORT AT THIS TIME.

Guardian Ad Litem Training Opportunity

Wisconsin Judicare will be providing guardian ad litem training for interested individuals on September 25th and 26th at the Pine Hills Golf Course Club House located on the Stockbridge-Munsee Reservation. The training is being sponsored by the Forest County Potawatomi and the Stockbridge-Munsee Community. There is no cost for this training. However, individuals will be responsible for covering their own hotel and travel expenses. For more information on this opportunity or to register, you may contact Rose Weckenmann at (800) 434-4070.
## Race Results
Ho-Chunk Nation 8th Annual 5K Fun Run/Walk

### Best Overall - Individuals

<table>
<thead>
<tr>
<th>Male</th>
<th>Time</th>
<th>Female</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patrick Storm</td>
<td>20:10</td>
<td>Susan Leadholm</td>
<td>23:18</td>
</tr>
</tbody>
</table>

### Best Overall - Team

**First Place** with a Total Time of 1 hour 48 minutes 22 seconds
- Alexis Cloud 30:17
- Myra Blackdeer 34:37
- Keisha Vasquez 43:28

### 10 and Under

<table>
<thead>
<tr>
<th>Male</th>
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<th>Female</th>
<th>Time</th>
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<tbody>
<tr>
<td>1st</td>
<td>Christopher DeMarrias</td>
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</tr>
<tr>
<td>2nd</td>
<td>Gary Garvin</td>
<td>39:44</td>
<td>2nd</td>
</tr>
<tr>
<td>3rd</td>
<td>Waukon Blackdeer</td>
<td>39:36</td>
<td>3rd</td>
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### 11 to 19

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<tr>
<td>1st</td>
<td>Patrick Storm</td>
<td>20:10</td>
<td>1st</td>
</tr>
<tr>
<td>2nd</td>
<td>Dana Lonetree</td>
<td>20:13</td>
<td>2nd</td>
</tr>
<tr>
<td>3rd</td>
<td>Leonard Hopinka</td>
<td>25:25</td>
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### 20 to 29

<table>
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<tr>
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<th>Female</th>
<th>Time</th>
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<tbody>
<tr>
<td>1st</td>
<td>Brady Palmer</td>
<td>20:11</td>
<td>1st</td>
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<tr>
<td>2nd</td>
<td></td>
<td>2nd</td>
<td>Katie Matha</td>
</tr>
<tr>
<td>3rd</td>
<td></td>
<td>3rd</td>
<td>Semia Lonetree</td>
</tr>
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### 30 to 39

<table>
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<tbody>
<tr>
<td>1st</td>
<td>Todd Matha</td>
<td>32:13</td>
<td>1st</td>
</tr>
<tr>
<td>2nd</td>
<td></td>
<td>2nd</td>
<td>Laura O’Flanagan</td>
</tr>
<tr>
<td>3rd</td>
<td></td>
<td>3rd</td>
<td>Sherry Fitzpatrick</td>
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## 40 to 49

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<tr>
<td>1st</td>
<td>A.C. Sheridan</td>
<td>26:42</td>
<td>1st</td>
<td>Angie Dowling</td>
</tr>
<tr>
<td>2nd</td>
<td>Mark Butterfield</td>
<td>27:00</td>
<td>2nd</td>
<td></td>
</tr>
<tr>
<td>3rd</td>
<td>Tom Walker</td>
<td>39:24</td>
<td>3rd</td>
<td></td>
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</table>

## 50 and over

<table>
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<th>Female</th>
<th>Time</th>
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<tbody>
<tr>
<td>1st</td>
<td>Gene Numsen</td>
<td>23:40</td>
<td>1st</td>
<td>Hattie Walker</td>
</tr>
<tr>
<td>2nd</td>
<td></td>
<td></td>
<td>2nd</td>
<td>Theresa Lonetree</td>
</tr>
<tr>
<td>3rd</td>
<td></td>
<td></td>
<td>3rd</td>
<td>Mary Jo Hunter</td>
</tr>
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</table>

### All Runners and Walkers – Sorted Alphabetically

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<thead>
<tr>
<th>Name</th>
<th>Age Category</th>
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<tbody>
<tr>
<td>Blackdeer, Ember</td>
<td>11 to 20</td>
<td>37:03</td>
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<tr>
<td>Blackdeer, Myra</td>
<td>11 to 20</td>
<td>34:37</td>
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<tr>
<td>Blackdeer, Waukon</td>
<td>10 and under</td>
<td>39:36</td>
</tr>
<tr>
<td>Butterfield, Mark</td>
<td>40 to 49</td>
<td>27:00</td>
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<tr>
<td>Cleveland, Kayla</td>
<td>11 to 20</td>
<td>28:17</td>
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<tr>
<td>Cloud, Alexis</td>
<td>11 to 20</td>
<td>30:17</td>
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<td>Cooper, Mason</td>
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<td>Corbine, Sheila</td>
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<td>48:32</td>
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<td>DeMarrias, Christopher</td>
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<tr>
<td>Dowling, Angie</td>
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<td>Dowling, Danny</td>
<td>40 to 49</td>
<td>33:29</td>
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<td>Dowling, Danny</td>
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<td>Edwards, Natasha</td>
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<td>Fitzpatrick, Sherry</td>
<td>30 to 39</td>
<td>33:34</td>
</tr>
<tr>
<td>Garvin, Gary</td>
<td>10 and under</td>
<td>39:44</td>
</tr>
<tr>
<td>Garvin, Margaret</td>
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<td>25:13</td>
</tr>
<tr>
<td>Hopinka, Leonard</td>
<td>11 to 20</td>
<td>25:25</td>
</tr>
<tr>
<td>Hunter, Gary</td>
<td>40 to 49</td>
<td>1:02:22</td>
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<td>Hunter, Mary Jo</td>
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<td>King, Tiffany</td>
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<td>King, Trisha</td>
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<td>Leadholm, Susan</td>
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<td>Link, Duana</td>
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<td>Lonetree, Dana Jr.</td>
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<td>Lonetree, Dana Sr.</td>
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<td>Lonetree, Semia</td>
<td>21 to 29</td>
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<td>Lontree, Theresa</td>
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<td>Matha, Katie</td>
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<td>O’Flanagan, Laura</td>
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<td>Owen, Brandon</td>
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<td>Palmer, Brady</td>
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<td>Rave, Gabby</td>
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<td>Sheridan, A.C.</td>
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<td>Slowey, Erin</td>
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<td>Smoke, Phyllis</td>
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<td>Snegonee, Angie</td>
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<td>Storm, Patrick</td>
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<td>Vasquez, Valicia</td>
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<td>Weber, Susan</td>
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<tr>
<td>Wesho, Shelby</td>
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<tr>
<td>Walker, Hattie</td>
<td>50 and above</td>
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<td>Walker, Leah Ann</td>
<td>30 to 39</td>
<td>53:36</td>
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<tr>
<td>Walker, Tom</td>
<td>40 to 49</td>
<td>39:24</td>
</tr>
</tbody>
</table>
HCN Court System Fee Schedule

- Filing Fees .......................... $50.00*
  *With the exception of petitions to register child support orders – this fee remains at $20.00 as previously ordered by the Supreme Court.
  Note: Filing Fee now includes Summons fee.

- Filing Fees for Petitions to Register and Enforce Foreign Judgment/Order. ............... $20.00

Copying ............................... $0.10/per page
Faxing ................................ $0.25/per page (sending and receiving)
Tapes of Hearings ...................... $10.00/per tape
CD of Hearing ........................ $12.50/per tape
Deposition Videotape ................. $10.00/per tape
Certified Copies ....................... $0.50/per page
Equipment Rental .................... $5.00/per hour
Appellate filing fees .................. $35.00
Admission to Practice ................. $50.00
Pro Hac Vice Appearance ............ $35.00

Legal Citation Form

The following are example citation forms by legal reference and citation description.

Ho-Chunk Nation Constitution
Constitution, Article Number, Section, and Subsection.
HCN Const., Art. II, Sec. (or §) 1(a).
HCN Const., Art. XI, Sec. (or §) 7.

HCN Ordinances
Ordinance Name, Chapter number, Section/Part/Clause, page.
PERSONNEL POLICIES AND PROCEDURE MANUAL, Ch. 12, Part B, p. 82.
CLAIMS AGAINST PER CAPITA, Sec. (or §) 6.01(b).

HCN Supreme Court Case Law
Case Name, Case No. (HCN S. Ct., month, day, year).

HCN Trial Court Case Law
Case Name, Case No. (HCN Tr. Ct., month, day, year).

Rules of Civil Procedure
HCN R. Civ. P. 19(B).

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Case Name, Case No. (HCN Tr. Ct., month, day, year).

Rules of Civil Procedure
HCN R. Civ. P. 19(B).
Work is continuing rapidly on the Ho-Chunk Nation’s new courthouse. This December, the Ho-Chunk Nation Judiciary will relocate to its new judicial center, Wa Ehi Hoci. This 14,700 square foot structure will house the Ho-Chunk Nation Traditional Court, Supreme Court, and Trial Court.

Within the new justice center, there will be a traditional courtroom and two hearing rooms. In addition, the center will provide offices for the Ho-Chunk Nation Departments of Justice and Social Services. Watch for details of a grand opening ceremony in future issues of the Court Bulletin.
John Dall Sworn In As Area V Legislator

On September 17, 2003, John Dall was sworn in as a member of the Ho-Chunk Nation Legislature. Representative Dall was elected to fill the Area V, Seat 1 vacancy created by Ho-Chunk Nation President George Lewis. Representative Dall has been serving as the Branch Coordinator for the Chicago Office.

The ceremony in honor of Representative Dall was held at the Ho-Chunk Nation Executive Building in Black River Falls and was followed by a luncheon. In remarks following the administration of the oath, Representative Dall stated that he is looking forward to serving the people and exceeding the expectations of the position.

Court Announcements

Tribal Courts Please Note: The Ho-Chunk Nation Court Bulletin is currently sent to all tribal courts within Region 5 of the National American Indian Court Judges Association. However, the Ho-Chunk Nation Court has now been placed in Region 10. Therefore, beginning with the November 2003 edition, the Court will discontinue sending the bulletin to tribes within Region 5. Any Region 5 court that would like to continue to receive the Ho-Chunk Nation Court Bulletin should contact the Court’s staff attorney Rose Weckenmann at (715)284-2722.

Certificate of Service Available On-Line: The Ho-Chunk Nation Rules of Civil Procedure provide in Rule 19 that all motions and responses to such motions filed in the Court should be served on the other parties to an action. As a convenience to parties to actions, a Certificate of Service is now available at the Court’s webpage: http://www.hochunknation.com/government/courts.htm. The form may be accessed by choosing the option “Forms Online.” A number of other forms remain available at the site.
Federal Court Update

Ninth Circuit Court of Appeals

City of Saint Paul v. Evans, No. 02-35958, 2003 WL 22208787 (9th Cir. Sept. 15, 2003).

The City of St. Paul, Alaska, brought a suit seeking to void the settlement agreement that it had previously reached with Tanadgusix Corporation, a Native corporation. The agreement had settled the issue of land rights on the island of St. Paul. The district court held that St. Paul’s claims were barred by the six-year statute of limitations that Alaska law imposes on lawsuits by municipalities. However, the district court did allow identical claims to be asserted as defenses to the Corporation’s counterclaims. The Ninth Circuit panel held that St. Paul was time-barred from either asserting the claims or using the same allegations as defenses to the Corporation’s counterclaims.

Tenth Circuit Court of Appeals


The plaintiffs, the Dosar Barkus and Bruner Bands of the Seminole Nation of Oklahoma, brought a suit against the United States seeking declaratory and injunctive relief. The plaintiffs contend that because of their African ancestry, federal officials have allowed the Seminole Tribe to exclude them from participation in its programs and that the Bureau of Indian Affairs improperly refused to issue Certificates of Degree of Indian Blood (CDIB) to members of the bands.

The Seminole Nation includes members of both Native American and African ancestry. Those members of African ancestry are the descendants of escaped slaves who began living among Native American groups in the territory that would become Florida. After an 1823 treaty ceded the Seminole lands in Florida, the Seminole Nation, including those of African ancestry, was removed to Oklahoma. The Seminole Nation entered into a 1866 treaty with the United States in which the membership and rights of the Nation’s members of African descent were affirmed.

When the Dawes Rolls were created in 1906, there were two distinct rolls created for the Seminole Nation: the Seminole Blood Roll for those of Native American ancestry and the Freedman Roll for those of African ancestry. Today, a member of the Seminole Nation may obtain a CDIB by proving a relationship to someone listed on the Seminole Blood Roll.

The plaintiffs have been denied access to Seminole Nation judgment-fund programs. These programs were created by the General Council of the Seminole Nation for those enrolled members who were descended from the Seminole Nation as it existed in 1823. This would exclude those members of African descent because they were not recognized as members until the Treaty of 1866.

The district court held that the tribe was an indispensable party with respect to the judgment-fund program claims and dismissed the plaintiffs’ CDIB-card claims for failure to exhaust administrative remedies under the BIA’s regulations. The three-judge panel of the Tenth Circuit Court of Appeals affirmed.

State Court Update

District III Court of Appeals


The issue in this case was whether the employee exclusion in a general liability policy barred coverage for a tribal employee who fell on the tribe’s premises before starting work. The court held that the employee exclusion is limited to those injuries originating from the employee’s job and incurred while the employee is engaged in work. In addition, the court held that the Gaming Compact of 1991, which required the tribe to obtain liability insurance for class III gaming activities, has no bearing on whether the employee’s injuries are covered by the general liability insurance policy.
Recent Decisions

Decisions are separated between Trial Court and Supreme Court decisions and categorized by subject matter and date (from oldest to most recent). The following are summaries prepared by the Staff Attorney for the reader’s benefit. They should in no way be used as substitution for citations to the actual court opinion.

Within the Trial Court, cases are categorized and docketed as one of the following: Child Support (CS or if filed prior to 1998, CV), Civil Garnishment (CG), Civil (CV), Criminal (CR), Custody (CU), Domestic Violence (DV), or Juvenile (JV). Within this index, case citations will appear in one of these categories and, in the event it may be helpful to the reader as a research tool, the cases may also be summarized in a separate topic area. In some instances a decision may touch upon other topics that may not warrant a summary in this index, but the editor will use the indicator “other topic(s) covered,” as a research aid for the reader.

Recent Decisions and Recent Filings both begin with the date where the previous Court Bulletin left off.

Trial Court

Child Support

SEPTEMBER 2, 2003
The petitioner filed a motion to amend arrears withholding with a certified accounting statement. The Court updated the arrearage withholding to the amount reflected in the certified accounting statement.

SEPTEMBER 3, 2003
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

SEPTEMBER 5, 2003
The Court became aware of the untimely passing of the respondent. The Court closed these cases.

SEPTEMBER 8, 2003
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

The petitioner requested a modification of child support withholding. The petitioner stated that an arrearage amount had been paid in full. The Court ordered withholding for arrears to cease.

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.
time frame. The Court granted the petitioner’s request for recognition and enforcement.

**SEPTEMBER 9, 2003**
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

**SEPTEMBER 11, 2003**
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

**SEPTEMBER 17, 2003**
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

**SEPTEMBER 19, 2003**
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

**SEPTEMBER 22, 2003**
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

**SEPTEMBER 24, 2003**
A review of the file indicates that a minor child recently turned eighteen years of age. The Court now requires the parties to furnish proof of high school enrollment. If no such proof is filed on or before October 13, 2003, the Court shall cease withholding for current child support.

**SEPTEMBER 25, 2003**
A review of the file indicates that a minor child recently turned eighteen years of age. The Court now requires the parties to furnish proof of high school enrollment. If no such proof is filed on or before October 13, 2003, the Court shall cease withholding for current child support.

A review of the file indicates that a minor child is about to turn eighteen years of age. The Court now requires the parties to furnish proof of high school enrollment. If no such proof is filed on or before October 13, 2003, the Court shall cease withholding for current child support.

State of WI/Nancy Smith v. David A. White Eagle, CS 98-27 Notice (Child Turning 18 – Requiring
A review of the file indicates that a minor child recently turned eighteen years of age. The Court now requires the parties to furnish proof of high school enrollment. If no such proof is filed on or before October 13, 2003, the Court shall cease withholding for current child support.

**Civil Garnishment**

**SEPTEMBER 3, 2003**


The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

**SEPTEMBER 22, 2003**


The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.


The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

**SEPTEMBER 25, 2003**


The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

**Children’s Trust Fund (CTF)**

**SEPTEMBER 2, 2003**


On May 30, 2003, the Court released funds from the CTF accounts of the minor children for orthodontics. On August 13, 2003, the Court reminded the petitioner of her duty of accounting for the expenditures. On August 29, 2003, the petitioner submitted the required accounting. The Court accepted the accounting and closed the case.

**SEPTEMBER 4, 2003**

*Kasia Decorah, DOB 10/01/83 v. HCN Office of Tribal Enrollment, CV 03-52 Order (Requiring Submission of Documents) (HCN Tr. Ct., Sept. 4, 2003).* (Bossman, W).

The petitioner requested a release of CTF account funds for repair of a vehicle. The respondent raised several issues that indicate a lack of documentation concerning standards the Court has traditionally used in determining the appropriateness of a proposed release of CTF funds. The Court requires that the petitioner submit further documentation in support of the request.

**SEPTEMBER 18, 2003**


The Court had to determine whether to grant a release of funds from the CTF account of the minor child for the purchase of a handicapped accessible van. The Court granted the request.

**SEPTEMBER 19, 2003**


A request was made for an extension of time to submit documents in the action. The Court granted the request.

On April 28, 2003, the Court released funds from the CTF accounts of the minor children for orthodontics. On two occasions, the Court reminded the petitioner of her duty of accounting for the expenditures. On August 18, 2003, the petitioner submitted the required accounting. The Court accepted the accounting and closed the case.


The Court had to determine whether to grant a release of funds from the CTF account of the minor child to pay for costs associated with orthodontic procedures. The Court granted the request.


The petitioner requested a release of CTF account funds for orthodontics. The respondent raised several issues that indicate a lack of documentation concerning standards the Court has traditionally used in determining the appropriateness of a proposed release of CTF funds. The Court requires that the petitioner submit further documentation in support of the request.

Incompetent’s Trust Fund Cases


The Court received a Request for Funds from the protective payee. No objection to the request was filed. The Court granted the request.

CIVIL CASES (ALL CATEGORIES)


The petitioner requested a release of CTF account funds of minor children. The respondent raised several issues that indicate a lack of documentation concerning standards the Court has traditionally used in determining the appropriateness of a proposed release of CTF funds. The Court requires that the petitioner submit further documentation in support of the request.

In the Interest of Minor Child:  S.D.B., DOB 07/30/92, by Carol Barnes v. HCN Office of Tribal Enrollment, CV 00-90 Order (Granting CTF Funds for Orthodontics) (HCN Tr. Ct., Sept. 26, 2003). (Bossman, W).

The Court had to determine whether to grant a release of funds from the CTF account of the minor child to pay for costs associated with orthodontic procedures. The Court granted the request.


The Court granted the defendant the ability to argue its Motion for Summary Judgment at the scheduled pre-trial conference.


The Court granted the defendant the ability to argue its Motion for Summary Judgment at the scheduled pre-trial conference.

Francis L. Williams v. Alex B. Chown, Marketing Dir. of Majestic Pines Casino and HCN, CV 02-78 Order (Denying Motion to Reopen Case and Modify Order) (HCN Tr. Ct., Sept. 5, 2003). (Bossman, W).

The defendants requested that the Court reopen the case and modify its order by granting the defendant a judgment on its counterclaim. The Court held that the defendant had failed to properly raise the
counterclaim within its answer. Therefore, the Court denied the motion.

SEPTEMBER 8, 2003
The defendants requested that the Court dismiss the action because the administrative review process under the TRIBAL EMPLOYMENT RIGHTS ORDINANCE was not completed, and therefore, the action was brought prematurely. The Court dismissed the action without prejudice.

The plaintiff filed a complaint requesting a judgment for past due rent and utilities. The defendants failed to respond to the complaint. Therefore, the Court issued a default judgment in favor of the plaintiffs.

SEPTEMBER 10, 2003
The Court issued this Scheduling Order to establish dates and deadlines for the instant case up to and including trial.

The Court had to determine whether the defendant improperly terminated the employment of the plaintiff. The plaintiff failed to produce any evidence at trial either through testimony or production of documents. The Court granted a judgment in favor of the defendant.

SEPTEMBER 11, 2003
The Court issued this Scheduling Order to establish dates and deadlines for the instant case up to and including trial.

The Court issued this Scheduling Order to establish dates and deadlines for the instant case up to and including trial.

SEPTEMBER 16, 2003
The plaintiff failed to appear for the scheduled pre-trial conference. The plaintiff did not notify the Court of an inability to attend the proceeding. The Court dismissed the instant case with prejudice.

The defendants’ counsel motioned the Court to permit him to appear by telephone for a scheduling conference. The Court granted the request.

The plaintiff motioned the Court to permit him to appear by telephone for a scheduling conference. The Court granted the request.

SEPTEMBER 24, 2003

The plaintiff claims that she was improperly demoted from the position of manager and that she was subsequently improperly terminated from the position of retail associate. The defendants moved to dismiss the portion of the action relating to the plaintiff’s demotion because of estoppel. The Court denied the motion.


The Court issued this Scheduling Order to establish dates and deadlines for the instant case up to and including trial.


The Court issued this Scheduling Order to establish dates and deadlines for the instant case up to and including trial.

SEPTEMBER 29, 2003

The Court granted the defendant the ability to argue its Motion for Summary Judgment at the scheduled pre-trial conference.


The plaintiff requested postponement of the pre-trial conference. The Court granted the request.

Juvenile
SEPTEMBER 3, 2003

The Court convened an initial emergency hearing to discuss the legal and procedural status of the instant action. The Court advised the parties of their need to attend a plea hearing and advised the parties of their rights. The Court determined that legal and physical custody of the minor child should remain the same.


The Court convened a plea hearing in the action. The Court advised the father of the minor children of his rights and entered a plea of not guilty on his behalf. The Court scheduled a formal hearing on the issues.

SEPTEMBER 10, 2003

The Court appointed permanent guardians of minor children. The Court based this determination on the consent of the minor children to the guardianship, the recommendations of CFS and the GAL, the duration in the residence, and the preference of placement in a Ho-Chunk traditional family.


The Court conducted a hearing to assess the dispositional recommendations proposed by CFS. The Court ordered certain dispositional requirements necessary for the protection of the children and possible reunification of the family.
SEPTEMBER 16, 2003

In the Interest of Minor Child:  D.C., DOB 05/12/03, JV 03-34 Order (Acceptance of Transfer) (HCN Tr. Ct., Sept. 16, 2003). (Bossman, W).

The Court had to determine whether to accept transfer of a children’s case from Jackson County Circuit Court. The Court determined that it shall not decline the transfer of this action.

SEPTEMBER 17, 2003


The Court re-scheduled the guardianship hearing at the request of parties to the action.

SEPTEMBER 23, 2003


The Court was unable to effect personal service on the mother in the action. In order to allow for such service, the Court continued the matter for one week.

SEPTEMBER 24, 2003

In the Interest of Minor Child:  H.S.H., DOB 02/18/03, JV 03-29 Order (Entrance of Plea) (HCN Tr. Ct., Sept. 24, 2003). (Matha, T).

The Court convened a plea hearing to determine whether the parents of the minor child wished to contest the allegations contained within the petition filed by CFS. Each parent entered a plea of not guilty. The Court scheduled a trial in the matter.


The Court convened a plea hearing to determine whether the parent of the minor child wished to contest allegations contained in the petition filed by CFS. The parent requested a continuance after the Court advised her of her rights. The Court rescheduled the plea hearing to provide the parent an opportunity to obtain legal representation.


The Court convened a plea hearing to determine whether the parent of the minor children wished to contest allegations contained in the petition filed by CFS. The parent requested a continuance after the Court advised her of her rights. The Court rescheduled the plea hearing.

SEPTEMBER 9, 2003

Hope B. Smith v. HCN, SU 03-08 Scheduling Order (HCN Tr. Ct., Sept. 9, 2003).

The Court issued this Scheduling Order to establish dates and deadlines for the instant case.

SEPTEMBER 11, 2003


The Appellant requested that the Court reconsider its denial of the Appellant’s interlocutory request for appeal or amend the Order Denying Appeal. The Court denied the motion.

SEPTEMBER 22, 2003

Hope B. Smith v. HCN, SU 03-08 Amended Scheduling Order (HCN Tr. Ct., Sept. 22, 2003).

The Court issued this Amended Scheduling Order to establish dates and deadlines for the instant case.
Recent Filings

Trial Court

Civil Garnishment
SEPTEMBER 2, 2003

Black River Memorial Hospital v. Ricky and Kate Folkers, CG 03-67. (Bossman, W).

SEPTEMBER 30, 2003
Wood Co. Telephone v. Wendy Harnemm, CG 03-68. (Bossman, W).


Dr. Connie Jacobson v. Christina Melcher, CG 03-72. (Bossman, W).

State Collection v. June Rogers, CG 03-73. (Bossman, W).

Child Support
SEPTEMBER 12, 2003

SEPTEMBER 25, 2003

Maria Ruth Goodbear v. William Lowell Goodbear, CS 03-59. (Matha, T).

State of WI/Eau Claire Co. v. Cory Funmaker, CS 03-60. (Matha, T).

Civil Cases
SEPTEMBER 2, 2003
Barbara Dent v. HCN, CV 03-70. (Bossman, W).

SEPTEMBER 4, 2003
Joseph Hammer v. HCN Office of Tribal Enrollment, CV 03-71. (Bossman, W).

SEPTEMBER 8, 2003

SEPTEMBER 26, 2003
M.J.D., DOB 01/02/86 by Elaine Blackhawk v. HCN Office of Tribal Enrollment, CV 03-73.

Juvenile Cases
SEPTEMBER 11, 2003
In the Interest of Minor Child: B.T., Jr., DOB 07/21/99, JV 03-31. (Matha, T).

In the Interest of Minor Child: B.P.T., DOB 08/29/95, JV 03-32. (Matha, T).

In the Interest of Minor Child: B.A.T., DOB 11/18/96, JV 03-33. (Matha, T).

SEPTEMBER 12, 2003
In the interest of Minor Child: J.D.S., DOB 09/08/03, JV 03-30. (Matha, T).

SEPTEMBER 16, 2003
In the Interest of Minor Child: D.C., DOB 05/12/03, JV 03-34. (Bossman, W).

SEPTEMBER 22, 2003
In the Interest of Minor Child: K.L.H., DOB 10/21/88, JV 03-35. (Matha, T).

SEPTEMBER 24, 2003
In the Interest of Minor Child: L.R.H., DOB 11/18/87, JV 03-36. (Matha, T).

SUPREME COURT
SEPTEMBER 2, 2003
Hope B. Smith v. HCN, SU 03-08.
**Ho-Chunk Nation Court System**

**Judiciary and Staff**

Supreme Court—Mary Jo B. Hunter, Chief Justice  
Mark D. Butterfield, Associate Justice  
Jo Deen B. Lowe, Associate Justice  

Traditional Court—Wallace Blackdeer  
Donald Blackhawk  
Dennis Funmaker  
Orville Greendeer  
Douglas Greengrass  
Owen Mike  
Gavin Pettibone  
Douglas Red Eagle  
Preston Thompson, Jr.  
Eugene Thundercloud  
Morgan White Eagle  
Clayton Winneshiek  

Trial Court—William H. Bossman, Chief Judge  
Todd R. Matha, Associate Judge  
Clerk of Court, Supreme Court—Bryan Dietzler  
Clerk of Court, Trial Court—Marcella Cloud  
Assistant Clerk of Court, Trial Court—Selina Joshua  
Bailiff/Process Server—Willa RedCloud  
Staff Attorney—Rose Weckenmann  

Office of Public Advocacy—Dennis Funmaker, Administrator  

*The Ho-Chunk Nation Judiciary and its officers are active participants in the following organizations:*

**Wisconsin Tribal Judges Association**  
(Eleven federally recognized tribes within the State of Wisconsin)  

**National American Indian Court Judges Association**  
(Region 5—Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, South Dakota, North Dakota, and Wisconsin)  

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**HCN Court System Fee Schedule**

- **Filing Fees** .................. $50.00*  
  *With the exception of petitions to register child support orders—this fee remains at $20.00 as previously ordered by the Supreme Court.*  
  Note: Filing Fee now includes **Summons** fee.

- **Filing Fees for Petitions to Register and Enforce Foreign Judgment/Order** ........ $20.00

**Copying** .................. $0.10/per page  
**Faxing** ................. $0.25/per page (sending and receiving)  
**Tapes of Hearings** ........ $10.00/per tape  
**CD of Hearing** ........ $12.50/per tape  
**Deposition Videotape** .... $10.00/per tape  
**Certified Copies** .......... $0.50/per page  
**Equipment Rental** .......... $5.00/per hour  
**Appellate filing fees** ...... $35.00  
**Admission to Practice** ... $50.00  
**Pro Hac Vice Appearance** .. $35.00

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**Legal Citation Form**

The following are example citation forms by legal reference and citation description.

**Ho-Chunk Nation Constitution**  
Constitution, Article Number, Section, and Subsection.  
**HCN Const., Art. II, Sec. (or §) 1(a).**  
**HCN Const., Art. XI, Sec. (or §) 7.**

**HCN Ordinances**  
 Ordinance Name, Chapter number, Section/Part/Clause, page.  
**PERSONNEL POLICIES AND PROCEDURE MANUAL**, Ch. 12, Part B, p. 82.  
**CLAIMS AGAINST PER CAPITA**, Sec. (or §) 6.01(b).

**HCN Supreme Court Case Law**

Case Name, Case No. (HCN S. Ct., month, day, year).  

**HCN Trial Court Case Law**

Case Name, Case No. (HCN Tr. Ct., month, day, year).  

**Rules of Civil Procedure**

**HCN R. Civ. P. 19(B).**
Supreme Court to Review *U.S. v. Lara*

On September 30, 2003, the United States Supreme Court accepted the appeal of an Eight Circuit Court of Appeals decision that will have far-reaching implications for the jurisdiction that tribes exercise over nonmembers. *U.S. v. Lara*, 324 F.3d 635 (8th Cir. 2003) (en banc). The case involves the dual tribal and federal prosecutions of a non-member Indian. However, the Court’s decision will not just impact tribal prosecutions. The ramifications of the decision will be felt by all tribes as the Court may resolve the issue as to whether tribal governments have inherent sovereignty over all Native Americans, not just members of the particular tribe.

At play in *Lara*, is the concept of dual sovereignty. Dual prosecutions of separate sovereigns do not violate the Double Jeopardy Clause of the Fifth Amendment. Therefore, the primary question in *Lara* is not whether tribes have criminal jurisdiction over nonmembers, but whether this jurisdiction currently exercised is an inherent or delegated power. If the power is considered delegated, then dual tribal/federal prosecutions would violate the Constitution’s prohibition on Double Jeopardy.

Billy Jo Lara, a member of the Turtle Mountain Band of Chippewa Indians, was first convicted of assaulting a police officer by the Spirit Lake Nation tribal court. Three months later, the federal government indicted Lara for assault of a federal officer. This charges stemmed from the same incident.
The defendant moved to dismiss the indictment on double jeopardy grounds. The district court denied the motion, and Lara entered a conditional guilty plea, reserving his right to appeal the denial of his motion. A panel of the Eighth Circuit Court of Appeals upheld the district court’s decision, explaining that the Spirit Lake Nation’s power to prosecute derives from its inherent power to prosecute and not from Congressional delegation. Therefore, the conviction on the federal charge did not violate the Double Jeopardy Clause of the Fifth Amendment. The Eighth Circuit Court of Appeals, sitting en banc, reversed the order denying the motion to dismiss on double jeopardy grounds. The Eight Circuit held that “the distinction between a tribe’s inherent and delegated powers is of a constitutional magnitude and therefore is a matter ultimately entrusted to the Supreme Court.” Lara, at 639. The Eight Circuit explained that Congress, in giving the tribes inherent power to exercise criminal jurisdiction over non-member Indians through an amendment to the Indian Civil Rights Act, was attempting to override a Supreme Court decision by re-writing history.

In 1990, the United States Supreme Court ruled that tribes do not have the power to criminally prosecute non-member Indians. Duro v. Reina, 495 U.S. 676 (1990). In 1990, Congress enacted the “Duro fix” as an amendment to the Indian Civil Rights Act. 25 U.S.C. § 1301(2). The amendment recognized that tribes have the “inherent power” to exercise criminal jurisdiction over all Indians. In Lara, the Eighth Circuit did not go so far as to declare the “Duro fix” void. However, the court held that the while Congress could grant criminal jurisdiction over non-member Indians to the tribe, it could not go so far as to re-write history and declare these delegated powers to be inherent. The court was careful to note, however, that “[n]othing in our decision today in any way circumscribes the jurisdiction so conferred.” Lara at 640.

The Eight Circuit’s decision in Lara was ripe for appeal as other circuits have previously ruled differently. The Ninth Circuit Court of Appeals held last year that a tribe exercises its inherent power when prosecuting non-member Indians. U.S. v. Enas, 255 F. 3d 662 (2001) (en banc), cert. denied, 534 U.S. 1115 (2002). Therefore, the court held that the Double Jeopardy Clause was not violated by dual tribal/federal prosecutions.

The Supreme Court will likely have to answer the question of whether tribes retain inherent or delegated jurisdiction over non-members. The Supreme Court has issued a number of opinions which seemingly limit the exercise of inherent sovereign power to the tribe’s own members. See Atkinson Trading Co. v. Shirley, 532 U.S. 645 (2001); Nevada v. Hicks, 533 U.S. 353 (2001). Through a review of Lara, the Supreme Court may be forced to explicitly define the inherent power that tribes retain with respect to all non-members in both the criminal and civil contexts.

Perhaps the more important issue that the Court will address is whether Congress has the power to declare that a power is either delegated or inherent. The question arises as to whether Congress was attempting to re-write history through overriding Duro. In the alternative, the Supreme Court may find as did the Ninth Circuit, that Congress has the authority to identify the “parameters of tribal sovereignty.” Enas, 255 F. 3d at 670 (2001).

Tribes have recently supported the idea of Congressional initiatives to correct the current trend of the Supreme Court to limit sovereignty over nonmembers. If the Court finds the “Duro fix” to be an unconstitutional exercise of Congress’ power, this would prevent any similar corrective measures to address case law in which the Supreme Court has limited tribal sovereignty over nonmembers. See Nevada v. Hicks, 533 U.S. 353 (2001) (holding that tribal inherent sovereign powers do not extend to activities of nonmembers); Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978) (holding tribes have no inherent power to prosecute non-Indians). Such a consequence would detrimentally impact tribes in both Public Law 280 and non-Public Law 280 states, including the Ho-Chunk Nation.
Federal Court Update

Eighth Circuit Court of Appeals

*Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520 (10th Cir. 2003).

The petitioners challenged a decision by the Surface Transportation Board that approved a proposal by the Dakota, Minnesota & Eastern Railroad Corporation to construct a new rail line to reach the coal mines of Wyoming’s Powder River Basin. The petitioners alleged that this approval violated the Fort Laramie Treaty of 1868, as well as provisions of the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). The 8th Circuit vacated the Board’s decision and remanded for further proceedings.

The remand was based on deficiencies related to NEPA and NHPA. The 8th Circuit panel rejected the argument put forth by the petitioner, the Oglala Sioux Tribe, that the Board had violated the terms of the Fort Laramie Treaty of April 29, 1868. The Fort Laramie Treaty prohibited the cession of any reservation land without approval by three-fourths of the Tribe’s male population.

The three-judge panel concluded that the land in question does not cross the boundaries of the present day reservation, as the land was restored to the public domain through the Act of March 2, 1877 and the Act of February 28, 1877. The Tribe also argued that the 1889 Act was invalid. The panel also rejected this contention.

Ninth Circuit Court of Appeals


The juvenile defendant, a member of the Cheyenne River Sioux, appealed the sentence imposed by the District Court. The District Court’s jurisdiction in the matter arose under the Federal Juvenile Delinquency Act (FJDA). The juvenile was charged with aggravated sexual abuse of a child and pleaded guilty pursuant to a plea agreement. The District Court then sentenced the juvenile to the custody of the Attorney General until his twenty-first birthday, the maximum sentence allowed under the FJDA. The Ninth Circuit Court of Appeals held that the sentence imposed by the District Court was arbitrary and failed to serve the rehabilitative purposes of the FJDA.

Federal Circuit Court of Appeals


This litigation stemmed from 1987 amendments to a coal lease between the predecessor of Peabody Coal Company and the Navajo Nation. The Secretary of Interior approved the lease amendments. The Tribe brought suit in the Court of Federal Claims under the Indian Tucker Act, alleging a breach of trust under the Indian Mineral Leasing Act (IMLA).

The Court of Federal Claims had previously granted summary judgment in favor of the government. See *Navajo Nation v. United States*, 46 Fed. Cl. 217 (2000). On appeal, the Federal Circuit Court of Appeals held that the IMLA of 1938 imposes a fiduciary duty upon the United States and that a breach of such duty could result in an award of monetary damages. See *Navajo Nation*, 263 F.3d 1325 (Fed. Cir. 2001). The Supreme Court reversed and remanded the case. See *United States v. Navajo Nation*, 537 U.S. 488 (2003).

In the instant action, the Appeals Court remanded the case to the Court of Federal Claims for further proceedings. The Court held that the decision of the Supreme Court in this case was limited to the question of whether the IMLA imposes a judicially enforceable fiduciary duty upon the United States. Therefore, the case was remanded for the Court of Federal Claims to determine (1) whether the Tribe waived a claim with respect to other statutes and regulations and (2) if not, whether such statutes and regulations impose judicially enforceable duties.
Recent Decisions

Recent Decisions and Recent Filings both begin with the date where the previous Court Bulletin left off.

Trial Court

Child Support

OCTOBER 2, 2003

A review of the file indicated that a minor child recently turned eighteen years of age. The Court ordered the parties to furnish proof of high school enrollment. If no such proof is filed on or before October 13, 2003, the Court shall cease withholding for current child support.

OCTOBER 3, 2003

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to answer within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.


The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to answer within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

OCTOBER 14, 2003

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to answer within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.


The petitioner filed a motion to amend arrears withholding. The respondent failed to answer within the specified time frame. The Court granted the petitioner’s request.


The petitioner requested a modification of child support withholding. The motion stated that current child support withholding should be suspended. The Court ordered withholding for current child support to cease.


The petitioner requested a modification of child support withholding. The respondent failed to
answer within the specified time frame. The Court granted the petitioner’s request.


The Court had previously notified the parties that a minor child had turned eighteen years of age. The Court ordered the parties to file proof of high school enrollment, or the Court would cease withholding for current child support. The petitioner filed the required proof.


The petitioner requested a modification of child support withholding. The respondent failed to answer within the specified time frame. The Court granted the petitioner’s request for arrearage withholding.


The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.


The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.


The Court had previously notified the parties that a minor child had turned eighteen years of age. The Court ordered the parties to file proof of high school enrollment, or the Court would cease withholding for current child support. The petitioner filed the required proof.


The Court had previously notified the parties that a minor child had turned eighteen years of age. The Court ordered the parties to file proof of high school enrollment, or the Court would cease withholding for current child support. The petitioner failed to file the required proof. The Court ordered withholding for current child support to cease.


The Court had previously notified the parties that a minor child had turned eighteen years of age. The Court ordered the parties to file proof of high school enrollment, or the Court would cease withholding for current child support. The petitioner failed to file the required proof.


The petitioner filed a motion to amend arrears withholding. The respondent failed to answer within the specified time frame. The Court granted the petitioner’s request.


The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

The Court had previously notified the parties that a minor child had turned eighteen years of age. The Court ordered the parties to file proof of high school enrollment, or the Court would cease withholding for current child support. The petitioner filed the required proof.

**OCTOBER 15, 2003**
The petitioner filed a motion to modify, requesting that per capita distributions be redirected to her home. The Court has no authority to unilaterally modify the foreign court decision it previously enforced in the case. Therefore, the Court denied the petitioner’s motion.

The petitioner requested a modification of child support withholding. The respondent failed to answer within the specified time frame. The Court granted the petitioner’s request for arrearage withholding.

The petitioner requested a modification of child support withholding. The motion stated that child support withholding for arrears should be suspended. The Court ordered withholding for child support arrears to cease.

The petitioner requested a modification of child support withholding. The motion stated that child support withholding for arrears should be suspended. The Court ordered withholding for child support arrears to cease.

The Court had previously notified the parties that a minor child had turned eighteen years of age. The Court ordered the parties to file proof of high school enrollment, or the Court would cease withholding for current child support for the minor child. The petitioner failed to file the required proof. The Court ordered a corresponding modification in current child support withholding.

**OCTOBER 16, 2003**
The Court had previously notified the parties that a minor child had turned eighteen years of age. The Court ordered the parties to file proof of high school enrollment, or the Court would cease withholding for current child support for the minor child. The petitioner failed to file the required proof. The Court ordered a corresponding modification in current child support withholding.

**OCTOBER 17, 2003**
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent filed an answer stipulating agreement with the enforcement of the foreign order. The Court granted the petitioner’s request for recognition and enforcement.
Maria Ruth Goodbear v. William Lowell Goodbear, CS 03-59 Default Judgment (Enforcing Child Support) (HCN Tr. Ct., Oct. 17, 2003). (Matha, T). The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to answer within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.


Stephanie R. Walker v. Elliot Lee Walker, CS 03-69 Order (Enforcing Child Support) (HCN Tr. Ct., Oct. 17, 2003). (Matha, T). The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent filed an answer stipulating agreement with the enforcement of the foreign order. The Court granted the petitioner’s request for recognition and enforcement.

October 21, 2003
State of Wisconsin v. Cynthia Hopinka, CV 97-36 Order (Proof of High School Enrollment Filed) (HCN Tr. Ct., Oct. 21, 2003). (Bossman, W). The Court had previously notified the parties that a minor child had turned eighteen years of age. The Court ordered the parties to file proof of high school enrollment, or the Court would cease withholding for current child support. The petitioner filed the required proof.

Melissa K. Johnson v. David A. WhiteEagle, CS 03-22; State of WI/Suzette Greengrass, CS 98-26; State of WI/Nancy Smith v. David A. WhiteEagle, CS 98-27 Order (Modifying Current Child Support) (HCN Tr. Ct., Oct. 21, 2003). (Matha, T). The Court had previously notified the parties that a minor child had turned eighteen years of age. The Court ordered the parties to file proof of high school enrollment, or the Court would cease withholding for current child support. When no proof was filed, the Court issued an order ceasing withholding for current child support. The petitioner has now filed the required proof. Therefore, the Court resumes current child support withholding for the child.

October 22, 2003
Yvonne Barrett v. Roger K. Pettibone, CS 03-61 Order (Default Judgment) (HCN Tr. Ct., Oct. 22, 2003). (Bossman, W). The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

October 28, 2003
State of WI/Eau Claire Co. v. Cory H. Funmaker, CS 03-60; State of WI/Trempealeau Co. v. Cory H. Funmaker, CS 03-63 Order (Default Judgment-Enforcing Child Support) (HCN Tr. Ct., Oct. 28, 2003). (Bossman, W). The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

Civil Garnishment
October 14, 2003
Community Credit Union v. Betty Gerke, CG 03-66 Order (Default Judgment) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W). The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

October 21, 2003
Creditor Recovery Services, L.L.C., Agent for Wood Co. Telephone Company v. Wendy Hanneman, CG 03-68 Order (Default Judgment) (HCN Tr. Ct., Oct. 21, 2003). (Bossman, W). The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

Children’s Trust Fund (CTF)
OCTOBER 14, 2003
The Court previously issued an order requiring that the petitioner submit further documentation before the Court could schedule a fact-finding hearing to consider the merits of petitioner’s request. The petitioner failed to submit the requested documentation. Therefore, the Court dismissed the instant case without prejudice.

The Court previously released money from the CTF account of the minor child for costs concerning orthodontic procedures. The required accounting is now late. The Court requested that the petitioner submit the required accounting.

The petitioner requested a release of CTF account funds. The respondent raised several issues that indicate a lack of documentation concerning standards the Court has traditionally used in determining the appropriateness of a proposed release of CTF funds. The Court required that the petitioner submit further documentation in support of the request.

The Court previously released money from the CTF account of the minor child for costs related to home schooling. The required accounting is now late.
The Court requested that the petitioner submit the required accounting.

The Court previously issued an order requiring that the petitioner submit further documentation before the Court could schedule a fact-finding hearing to consider the merits of petitioner’s request. The petitioner failed to submit the requested documentation. Therefore, the Court dismissed the instant case without prejudice.

OCTOBER 17, 2003
The Court previously issued an order requiring that the petitioner submit further documentation with respect to the petitioner’s request for release of CTF funds. The petitioner has failed to submit the requested documentation. Therefore, the Court announced its intent to dismiss this action in thirty days unless good cause is shown in writing.

OCTOBER 20, 2003
The Court had to determine whether to grant a release of funds from the CTF account of the minor child for costs associated with winter clothing, household furnishings, and county fines. The Court denied the request.

OCTOBER 23, 2003
The Court previously released money from the CTF account of the minor child for costs concerning orthodontic procedures. The required accounting is now late. The Court requested that the petitioner submit the required accounting.

OCTOBER 27, 2003
The Court previously issued an order requiring that the petitioner submit further documentation before a fact-finding hearing to consider the merits of petitioner’s request could be convened. The petitioner failed to submit the requested documentation. Therefore, the Court dismissed the instant case without prejudice.

OCTOBER 28, 2003
The Court previously released money from the minor child’s CTF account for orthodontics. The petitioner subsequently filed the required accounting, which confirmed the use of the funds. The Court accepted this accounting and gives notice that it shall close the instant case if the Court receives no objection from the parties.

The Court previously released money from the minor child’s CTF account for a medical procedure related to the ongoing orthodontic care of the minor. The petitioner subsequently filed the required accounting, which confirmed the use of the funds. The Court accepted this accounting and gives notice that it shall close the instant case if the Court receives no objection from the parties.
**Incompetent’s Trust Fund Cases**

**OCTOBER 2, 2003**

The Court received a request for funds from the guardian. No objection to the request was filed. The Court granted the request.

**Civil Cases**

**OCTOBER 2, 2003**

The defendant filed a Motion for Summary Judgment. The Court held that the defendants are not entitled to judgment as a matter of law and denied the defendants’ motion.  
[See also Drug Policy within this index.]

**OCTOBER 3, 2003**

Regina K. Baldwin v. HCN, CV 01-16; Andrea Estebo v. HCN Home Ownership Program, Steve Davis, as Real Estate Manager, and Alvin Cloud, as Hous. Dir., CV 01-19; Carolyn J. Humphrey v. HCN, Alvin Cloud, as Hous. Dir., and Bob Pulley, as Prop. Manager, CV 01-21 Order (Final Judgment) (HCN Tr. Ct., Oct. 3, 2003). (Matha, T).  
The plaintiffs challenged the layoffs they received from their respective departments within the Housing Department. The Court had to determine whether the defendants had properly applied the Ho-Chunk Preference and Layoff Policies. The Court upheld the constitutionality of the Ho-Chunk Preference Policy. The Court held that the Ho-Chunk Preference and Layoff Policies had been properly applied and denied the relief sought by the plaintiffs.  
[See also Ho-Chunk Preference and Layoff Policies within this index.]

**OCTOBER 3, 2003**

Gerald Cleveland v. President, Gen. Council and Timothy WhiteEagle, CV 03-75. (Matha, T).  
The Court had to determine whether to grant an injunction on the basis of a request for an emergency order. The plaintiff failed to allege the imminent presence of irreparable harm. The Court declined to enter an injunction.

**OCTOBER 14, 2003**

The Court had to determine whether to grant a voluntary dismissal after the filing of a responsive pleading. The defendants filed a settlement agreement and voluntary dismissal, which bore the signatures of the plaintiff and the HCN President. The Court dismissed the action with prejudice and incorporates the settlement agreement into its order.

The Court convened a trial in the matter. The plaintiff failed to appear at the trial and did not notify the Court of an inability to attend. The Court dismissed the case without prejudice.

The plaintiff requested a reimbursement of monies, which the defendant neglected to utilize for its intended purpose. The defendant failed to answer the complaint. The Court rendered a default judgment against the defendant.

The plaintiff requested a reimbursement of unauthorized charges the defendants incurred while staying in alternative housing provided by the plaintiff. The defendant failed to answer the complaint. The Court rendered a default judgment against the defendant.

The plaintiff requested reimbursement for unpaid monthly payments and late fees incurred while defendant was under lease with plaintiff. The defendant failed to answer the complaint. The
Court rendered a default judgment against the defendant.

OCTOBER 15, 2003

Prior to the expiration of the response period, the plaintiff sought to voluntarily dismiss its cause of action. The Court granted the dismissal without prejudice.

OCTOBER 16, 2003

The Court had previously held the defendants in contempt for failure to abide by an earlier Court decision. The Court imposed a remedial monetary sanction, which the plaintiffs could discontinue by showing that they had begun to satisfy the money judgment entered against them. Although the defendants have made no attempt to comply with the default judgment, the Court held the ongoing remedial sanction may represent an inappropriate civil penalty if it has failed to induce the defendants to act and accordingly temporarily suspended withholding for the contempt fines.

OCTOBER 23, 2003

The Court issued this Scheduling Order to establish dates and deadlines for the instant case up to and including trial.


The Court issued this Amended Scheduling Order to establish dates and deadlines for the instant case up to and including trial.

OCTOBER 27, 2003
Clarence Pettibone v. HCN Gen. Council, Alvin Cloud, Acting Chair of the Gen. Council; Roberta Funmaker (aka Roberta Greendeer), Sec’y of the General Council; Gloria Visintin; Wade Blackdeer, Dallas Whitewing, Myrna Thompson, Christine Romano, Gerald Cleveland, Sharon Whiterabbit, Katelyn Lonetree Whiterabbit, John Dall, Tracy Thundercloud, and Elliot Garvin, Legislators in the HCN Legislature; and Maryann Dumas, Chair of the Election Bd., CV 03-77 Order (Preliminary Injunction Hearing) (HCN Tr. Ct., Oct. 17, 2003). (Bossman, W).

The plaintiff filed a motion requesting a preliminary injunction. The Court scheduled a hearing on the motion.

OCTOBER 28, 2003

The Court had to determine whether the defendant’s failure to hire the plaintiff violated the Ho-Chunk Preference Policy. The Court held that the Ho-Chunk Preference Policy required the hiring of the plaintiff. The Court granted the plaintiff his requested relief.

[See also Ho-Chunk Preference within this index.]


The defendants filed a motion to dismiss in the instant case. The Court scheduled a hearing to hear arguments on the motion.

OCTOBER 30, 2003

The plaintiff filed a petition that failed to establish a basis for the Court’s exercise of subject matter jurisdiction. The plaintiff requested an extension of time to amend his complaint. The Court granted the request.

Cornelius DeCora, on behalf of Minors: J.D., DOB 09/17/85; S.D., DOB 03/20/87; F.D., DOB 06/14/88; and B.D., DOB 11/22/89 v. Adam Hall, HCN Tribal Enrollment Off., George Greendeer, Enrollment Genealogist, Tribal Enrollment Comm.,
The Court previously postponed the pre-trial conference and trial. The Court now orders that further deadlines shall be set at the pre-trial conference, if necessary.

**Custody**

**OCTOBER 17, 2003**


The minor child attained the age of majority. Therefore, the Court terminated its jurisdiction over and supervision of the instant case.

**Domestic Violence**

**OCTOBER 21, 2003**

*Luann M. Littlegeorge on behalf of R.B.L., DOB 05/29/01, and P.J.L.-D., DOB 01/13/03 v. Bryan Dietzler, DV 03-02 Ex Parte Order for Protection* (HCN Tr. Ct., Oct. 21, 2003). (Matha, T).

The petitioner requested an order for protection on behalf of minor children against the respondent. The Court found there to be reasonable grounds to believe that the respondent had committed acts of domestic violence. The Court granted the order for protection.

**OCTOBER 31, 2003**

*Luann M. Littlegeorge on behalf of R.B.L., DOB 05/29/01, and P.J.L.-D., DOB 01/13/03 v. Bryan Dietzler, DV 03-02; Bryan C. Dietzler v. Stephanie L. Littlegeorge, DV 03-03; Bryan C. Dietzler on behalf of P.J.L.-D., DV 03-04 Order (Dismissal Without Prejudice)* (HCN Tr. Ct., Oct. 31, 2003). (Goodman, M).

The Court consolidated the aforementioned cases as they arose from one particular set of circumstances. At the request of all parties, the Court dismissed the actions without prejudice.

**Juvenile**

**OCTOBER 2, 2003**

*In the Interest of Minor Child: D.C., DOB 05/12/03, JV 03-34 Order (Plea Hearing)* (HCN Tr. Ct., Oct. 2, 2003). (Bossman, W).

The Court held a plea hearing. The Court entered a plea of not guilty on behalf of the parents and scheduled a trial.


The petitioner filed a petition for temporary guardianship of the minor child. The Court scheduled a guardianship hearing. The Court directed the HCN CFS to submit a guardianship report and home study to the Court.

*In the Interest of Minor Child: C.L., DOB 01/28/93, JV 97-08 Order (Submission of Traditional Relatives List)* (HCN Tr. Ct., Oct. 2, 2003). (Bossman, W).

The Court requested that HCN CFS prepare and submit a list of the minor child’s traditional relatives. The Court limited the request to the maternal and paternal grandparents and their descendants.

**OCTOBER 6, 2003**


The Court conducted an initial emergency hearing to discuss the legal and procedural status of the case. The Court notified the parties of their need to attend a plea hearing and advised the parties of their rights.

**OCTOBER 10, 2003**

*In the Interest of Minor Child: H.S.H., DOB 02/18/03, JV 03-29 Order (Granting Telephonic Appearance)* (HCN Tr. Ct., Oct. 10, 2003). (Matha, T).

The attorney for CFS requested permission for three witnesses to appear at the trial by telephone.

**OCTOBER 14, 2003**

A plea hearing was convened. However, personal service has not been made upon the mother, and she was not present at the hearing. Therefore, the Court rescheduled the plea hearing.

_In the Interest of Minor Child:_ J.D.S., DOB 09/08/03, JV 03-30 Order (Entrance of Plea) (HCN Tr. Ct., Oct. 14, 2003).

The Court convened a plea hearing to determine whether the parent of the minor child wished to contest the allegations contained within the petition filed by CFS. The parent entered a plea of not guilty. The Court scheduled a trial in the matter.


A plea hearing was convened. However, personal service has not been made upon the mother. Therefore, the Court rescheduled the plea hearing.

**OCTOBER 16, 2003**


The Court redirected child support to CFS, which recently regained legal custody of the minor children. In addition, the Court reduced child support in the instant case to reflect that one child has reached nineteen years of age and is no longer entitled to child support.

**OCTOBER 17, 2003**


The Court convened a plea hearing to determine whether the parents of the minor child wished to contest the allegations contained within the petition filed by CFS. The parent present at the hearing entered a plea of not guilty. The Court entered a plea of not guilty on behalf of the parent who was not present at the hearing. The Court scheduled a trial in the matter.

**OCTOBER 20, 2003**


The Court convened a plea hearing to determine whether the parents of the minor child wished to contest the allegations contained within the petition filed by CFS. The father of the minor children requested a continuance after being informed of his rights. The Court rescheduled the plea hearing to allow the father an opportunity to obtain legal representation.

**OCTOBER 21, 2003**

_In the Interest of Minor Child:_ M.S.B., DOB 09/14/99, JV 03-12 Order (Granting Telephonic Appearance) (HCN Tr. Ct., Oct. 21, 2003). (Bossman, W).

A maternal aunt to the minor child requested permission to appear at the scheduled review hearing by telephone. The Court granted the request.

**OCTOBER 22, 2003**

_In the Interest of Minor Child:_ T.V.F., DOB 02/18/02, JV 03-14 Order (Termination of Jurisdiction) (HCN Tr. Ct., Oct. 22, 2003). (Matha, T). CFS recommended that the Court terminate its continuing jurisdiction over the matter. CFS acknowledged substantial completion of the dispositional requirements. The Court terminated its jurisdiction over and supervision of the instant case.

**OCTOBER 24, 2003**


The Court conducted a review hearing in the instant case. The Court concluded that legal and physical custody of the child should remain the same for an indeterminate period of time unless the parties document earlier completion of the dispositional requirements.
OCTOBER 27, 2003
In the Interest of Minor Child: J.J.F., DOB 11/07/00, JV 02-27 Order (Granting Stipulation and Motion to Postpone) (HCN Tr. Ct., Oct. 27, 2003). (Bossman, W).
The parties stipulated to rescheduling the review hearing in the instant case. The Court granted the request.

The Court convened a plea hearing to determine whether the father of the minor children wished to contest the allegations contained within the petition filed by CFS. The father entered a plea of guilty. The Court scheduled a dispositional hearing in the matter.

A plea hearing was convened. However, personal service had not been made upon the mother. Therefore, the Court determined that with respect to the mother, this matter should be continued until a time when proper service can be effected.

OCTOBER 30, 2003
The Court convened a plea hearing to determine whether the parent of the minor child wished to contest the allegations contained within the petition filed by CFS. The Court entered a plea of not guilty on behalf of the parent. The Court scheduled a trial in the matter.

In the Interest of Minor Children: P.J.L.-D., DOB 01/13/03, JV 03-44 Order (Dismissal Without Prejudice) (HCN Tr. Ct., Oct. 31, 2003). (Goodman, M).
The petitioner filed a motion to dismiss with the Court prior to the filing of an answer in the case. Therefore, the Court granted the dismissal without prejudice.

The Court convened a plea hearing to determine whether the parent of the minor children wished to contest the allegations contained within the petition filed by CFS. The parent entered a plea of not guilty. The Court scheduled a trial in the matter.

Drugs Policy
OCTOBER 2, 2003
The Court had to determine whether the plaintiff was wrongfully terminated under the HCN Drug, Alcohol, and Controlled Substance Policy. The plaintiff was terminated after testing positive for a controlled substance. The plaintiff contended that he had accidentally ingested the drug for which his friend had a prescription.
The defendants contended that there were no facts in dispute in the case. However, the defendants contended that it was irrelevant whether the defendant intended to take the drug because the Drug Policy does not provide an exception for accidental usage. The plaintiff argued that accidental usage of illegal drugs should not be grounds for discipline or termination.
The Court held that the HCN Drug Policy mandates that the intent to use the illegal substances be shown. The Court explained that to hold otherwise would allow for unconscionable results. Therefore, the Drug Policy’s prohibition of the “use of drugs” should be interpreted to prohibit the “intentional use of drugs.” [See also Civil Cases within this index.]
Ho-Chunk Preference  
**OCTOBER 3, 2003**

Regina K. Baldwin v. HCN, CV 01-16; Andrea Estebo v. HCN Home Ownership Program, Steve Davis, as Real Estate Manager, and Alvin Cloud, as Hous. Dir., CV 01-19; Carolyn J. Humphrey v. HCN, Alvin Cloud, as Hous. Dir., and Bob Pulley, as Prop. Manager, CV 01-21 Order (Final Judgment) (HCN Tr. Ct., Oct. 3, 2003). (Matha, T).

In this case, the Court examined the constitutionality and application of the Ho-Chunk Nation Preference Policy. While the Court generally attempts to remain consistent in its decisions, the Court objected to earlier Court application of administrative deference. The Court held that administrative deference in this case would amount to a judicial sanctioning of an arbitrary business practice.

The Court explained that the Ho-Chunk Nation Preference Policy constitutes neither unlawful racial discrimination nor national origin discrimination. The Nation is further justified in its application of the Ho-Chunk Preference by its power to exclude non-Indians, which represents an inherent right derived from the Nation’s sovereign status. The power to exclude includes the power to place conditions on the presence of non-Indians on Indian land.

The Ho-Chunk Nation Preference Policy applies to recruiting, hiring, promotion, transfers, layoff, and all other conditions of employment. The Court assessed the Preference Policy through the rational basis standard of review as the preference does not serve as a bar to non-member employment nor do affected non-members represent a suspect classification. Therefore, the Court held that the Ho-Chunk Nation Preference Policy is constitutionally sound.

The Court examined the application of the Ho-Chunk Preference Policy. The Court held that because the policy explicitly states that the policy shall be applied, this does not allow for application of business deference in applying the policy. Therefore, a tribal member who meets or exceeds the stated qualifications of a job shall receive preference over non-Ho-Chunk counterparts. [See also Civil Cases within this index.]

**October 28, 2003**


The Court adopted the reasoning of the Baldwin decision in its application of the Ho-Chunk Nation Preference Policy, stating the principle that the Court should attempt to stay consistent in its decisions. The Court re-stated the ruling in Baldwin, which required that a tribal member who meets or exceeds the stated job qualifications shall receive preference over non-Ho-Chunk counterparts. In this case, the plaintiff was entitled to preference over the non-members hired for a position in which plaintiff met all qualifications. [See also Civil Cases within this index.]

**Layoff Policies  
**OCTOBER 3, 2003**

Regina K. Baldwin v. HCN, CV 01-16; Andrea Estebo v. HCN Home Ownership Program, Steve Davis, as Real Estate Manager, and Alvin Cloud, as Hous. Dir., CV 01-19; Carolyn J. Humphrey v. HCN, Alvin Cloud, as Hous. Dir., and Bob Pulley, as Prop. Manager, CV 01-21 Order (Final Judgment) (HCN Tr. Ct., Oct. 3, 2003). (Matha, T).

The Court determined what should be the appropriate interplay between the Ho-Chunk Nation Preference and Layoff Policies. The Court noted that it was erecting a presumption in favor of basing layoffs on seniority because it is easily calculable. However, the Court explained that while the employer retains discretion in determining seniority and ability, the employer retains no discretion in applying tribal preference with respect to layoffs. [See also Civil Cases within this index.]

**Supreme Court  
**OCTOBER 3, 2003**


The Court ordered that the appellee had shown sufficient basis to allow for late filing of the response brief. The Court established the date, time, and location for oral arguments.
The appellant requested a stay of the lower court’s order. The appellee did not file any responsive pleadings. The Court ordered the Trial Court order issued in this matter stayed pending the appeal.

Recent Filings

Trial Court

Civil Garnishment

OCTOBER 21, 2003
State Collection Service v. Matthew S. Cooley, CG 03-76. (Bossman, W).


Child Support

OCTOBER 1, 2003
Yvonne Barret v. Roger K. Pettibone, CS 03-61. (Bossman, W).


OCTOBER 6, 2003
State of WI/Trempeleau Co. v. Cory Funmaker, CS 03-63. (Bossman, W).

OCTOBER 7, 2003
Lawrence D. Corbesia v. Melissa J. Corbesia, CS 03-64. (Matha, T).

OCTOBER 9, 2003

OCTOBER 14, 2003


OCTOBER 15, 2003

Virginia C. Murphy v. Hunter Littlejohn, CS 03-72. (Matha, T).

OCTOBER 16, 2003

OCTOBER 20, 2003
Taryn H. Greendeer v. Wm J. Greendeer, CS 03-70. (Matha, T).

OCTOBER 22, 2003

OCTOBER 24, 2003
Debra Peters v. Curtis Pidgeon, CS 03-73. (Matha, T).

OCTOBER 31, 2003
Erica Jurgella v. Randall Appell, CS 03-74.

Civil Cases

OCTOBER 1, 2003
E.R.W., DOB 05/27/88; S.L.W., DOB 12/02/86; by Sadie Wesho v. HCN Office of Tribal Enrollment, CV 03-74. (Bossman, W).

OCTOBER 9, 2003
Gerald Cleveland v. President, Gen. Council and Timothy WhiteEagle, CV 03-75. (Matha, T).

OCTOBER 10, 2003
Clarence Pettibone v. Gloria Visintin, CV 03-76. (Bossman, W).

OCTOBER 16, 2003

Domestic Violence

OCTOBER 21, 2003
Luann M. Littlegeorge on behalf of R.B.L., DOB 05/29/01 and P.J.L.-D., DOB 01/13/03 v. Bryan Dietzler, DV 03-02. (Goodman, M).
Juvenile Cases

OCTOBER 1, 2003
In the Interest of Minor Child: B.E.Y., DOB 07/25/89, JV 03-37. (Bossman, W).

In the Interest of Minor Child: N.R.Y., DOB 07/07/91, JV 03-38. (Bossman, W).

OCTOBER 9, 2003

In the Interest of Minor Child: I.D.F., DOB 03/30/02, JV 03-40. (Matha, T).

OCTOBER 10, 2003
In the Interest of Minor Child: T.D., DOB 11/04/86, JV 03-41.

OCTOBER 22, 2003
In the Interest of Minor Child: P.J.L., DOB 01/13/03, JV 03-44. (Goodman, M).

SUPREME COURT
Nothing To Report At This Time.

Trick-Or-Treat

On October 30, 2003, the Ho-Chunk Nation Head Start students visited the Court while on a search for Halloween candy.

Traditional Court Elder and Office of Public Advocacy Administrator, Dennis Funmaker, passed out the candy to the kids.
HO-CHUNK NATION COURT SYSTEM

JUDICIARY AND STAFF

Supreme Court – Mary Jo B. Hunter, Chief Justice
Mark D. Butterfield, Associate Justice
Jo Deen B. Lowe, Associate Justice

Traditional Court – Wallace Blackdeer
Donald Blackhawk
Dennis Funmaker
Orville Greendeer
Douglas Greengrass
Owen Mike
Gavin Pettibone
Douglas Red Eagle
Preston Thompson, Jr.
Eugene Thundercloud
Morgan White Eagle
Clayton Winneshiek

Trial Court – William H. Bossman, Chief Judge
Todd R. Matha, Associate Judge

Clerk of Court, Supreme Court – Bryan Dietzler
Clerk of Court, Trial Court – Marcella Cloud
Assistant Clerk of Court, Trial Court – Selina Joshua
Bailiff/Process Server – Willa RedCloud
Staff Attorney – Rose Weckenmann

Office of Public Advocacy – Dennis Funmaker, Administrator

* The Ho-Chunk Nation Judiciary and its officers are active participants in the following organizations:

WISCONSIN TRIBAL JUDGES ASSOCIATION
(Eleven federally recognized tribes within the State of Wisconsin)

NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION
(Region 10—Illinois, Indiana, Michigan, Minnesota, and Wisconsin)

HCN Court System Fee Schedule

- Filing Fees ............................... $50.00*
  *With the exception of petitions to register child support orders – this fee remains at $20.00 as previously ordered by the Supreme Court.
  Note: Filing Fee now includes Summons fee.

- Filing Fees for Petitions to Register and Enforce Foreign Judgment/Order .................. $20.00

Copying ..................................... $0.10/per page
Faxing .................................... $0.25/per page (sending and receiving)
Tapes of Hearings ........................... $10.00/per tape
CD of Hearing .............................. $12.50/per tape
Deposition Videotape ..................... $10.00/per tape
Certified Copies ........................... $0.50/per page
Equipment Rental ........................ $5.00/per hour
Appellate filing fees ...................... $35.00
Admission to Practice .................... $50.00
Pro Hac Vice Appearance ................ $35.00

Legal Citation Form

The following are example citation forms by legal reference and citation description.

Ho-Chunk Nation Constitution
Constitution, Article Number, Section, and Subsection.
HCN CONST., Art. II, Sec. (or §) 1(a).
HCN Const., Art. XI, Sec. (or §) 7.

HCN Ordinances
Ordinance Name, Chapter number, Section/Part/Clause, page.
PERSONNEL POLICIES AND PROCEDURE MANUAL, Ch. 12,
Part B, p. 82.
CLAIMS AGAINST PER CAPITA, Sec. (or §) 6.01(b).

HCN Supreme Court Case Law
Case Name, Case No. (HCN S. Ct., month, day, year).


HCN Trial Court Case Law
Case Name, Case No. (HCN Tr. Ct., month, day, year).

Rules of Civil Procedure
HCN R. Civ. P. 19(B).

HCN R. Civ. P. 19(B).
On November 7, 2003, the Native American Law Society at Hamline University School of Law hosted an oral argument before the Ho-Chunk Nation Supreme Court. The Ho-Chunk Nation had appealed an adverse ruling by the Trial Court in *Hope B. Smith v. Ho-Chunk Nation*. Chief Justice Mary Jo B. Hunter, director of Hamline’s children’s clinic, Associate Justice Mark D. Butterfield, and Justice Pro Tempore John Wabaunsee heard the arguments in the appeal.

**Supreme Court Chief Justice Mary Jo B. Hunter also serves as an Associate Clinical Professor at Hamline University.**
In *Smith*, the defendant terminated the plaintiff’s employment for improper usage of a tribal credit card. The defendants contended that the plaintiff knew or should have known of the credit card abuse perpetrated by the plaintiff’s son while he was also employed in the same branch office. The Trial Court held that the decision to terminate the plaintiff bore no rational relation to the facts as known to her supervisory staff. Accordingly, the Trial Court held that the plaintiff’s discharge was an arbitrary and capricious action. The Trial Court ordered compensation for actual lost wages, ordered the Ho-Chunk Nation Department of Personnel to raise the plaintiff’s salary to a comparable wage, and ordered the plaintiff’s supervisor to submit a formal written apology to the plaintiff.

The Supreme Court heard the oral argument in a packed Annette K. Levine Moot Courtroom at Hamline’s campus in St. Paul. An estimated seventy people attended the argument. Associate Justice Jo Deen B. Lowe had previously recused herself from *Smith* because she has a family member involved the case. Justice Pro Tempore John Wabaunsee, Chief Judge for the Prairie Band Potawatomi Nation, sat in for Justice Lowe. Michael P. Murphy, a Ho-Chunk Nation Department of Justice Attorney, represented the appellant, the Ho-Chunk Nation. William Gardner represented the appellee.

During Attorney Murphy’s oral argument, Justice Butterfield asked the attorney to explain where he believed the Trial Court had made an error. Murphy explained that the Trial Court failed to examine whether Smith should have known that her son was using the credit card inappropriately. Murphy asserted that the defendant had terminated the plaintiff for negligence and that the Trial Court ignored this fact.

Justice Wabaunsee asked Attorney Murphy which standard of review the Supreme Court should apply to the case at bar in light of Murphy’s objection to the use of the arbitrary and capricious standard. Murphy suggested that the Supreme Court should apply abuse of discretion. Murphy explained that the Trial Court abused its discretion in its analysis and consideration of the evidence before it. Chief Justice Hunter asked Attorney Murphy if he felt that the Trial Court retains the ability to order an apology in light of HCN Leg. Res. 6-9-98A. Attorney Murphy explained that the aforementioned resolution limits the Trial Court to granting monetary remedies.

Prior to the argument, a tribal prayer was recited. After the oral arguments had concluded, the Supreme Court took questions from the audience. Audience members asked questions about the structure of the Court, sovereign immunity, and the Ho-Chunk Nation.

The Ho-Chunk Nation Judiciary Act of 1995 allows the Judiciary to hear cases outside of tribal land. The Act provides that “[p]roceedings of the Judiciary shall be conducted in a public place suitable for the purpose, but not necessarily in Ho-Chunk territory.” The Judiciary has previously held court in Tomah and Wittenberg.

2 *Id.* at 1.
3 *Id.* at 16.
4 *Id.*
5 *Id.* at 17.
6 *Id.* at 17-18.
7 *HO-CHUNK NATION JUDICIARY ACT OF 1995*, § 3.
In previous editions of this Court Bulletin, Associate Judge Todd R. Matha offered a survey of Children’s Trust Fund (CTF) cases. In this article, the Court provides an update to that survey. The Court examined all CTF cases since publication of the previous survey. Therefore, this update should be read in conjunction with the previous survey.

The update shall first address CTF cases involving requests for children under the age of sixteen (16) years of age. Next, the Court shall update cases involving requests for children over the age of sixteen (16) years of age through the age of twenty-five (25) years of age. Categories of requests divide each of these aforementioned sections. The order of the categories corresponds with the volume of requests received in each such category.

**CTF Cases Involving Requests for Children Under the Age of 16**

**Orthodontics:**

The Court first granted a request to pay orthodontic expenses on March 27, 1998. The Court has consistently held that such expenses provide a “necessary health and welfare benefit to the child(ren).” Since the initial survey of CTF cases, the Court has granted a number of requests for orthodontia.

**Automobiles:**

The Court has received two recent requests for a release of funds for the purchase of automobiles. In *Light Storming,* the petitioner requested a release of fund from the minor’s CTF account to purchase an automobile used primarily for the petitioner’s employment. The Court held that the petitioner failed to show that the automobile would benefit the minor’s health, education, or welfare. The parent did not intend to utilize the car to transport the child to and from school, the child’s study center, or his youth activities. Although the plaintiff expressed an intention to transport the minor child to the dentist, such an intention did not persuade the Court that the automobile would sufficiently further the health of the child.

The Court recently held that an automobile would further the health and welfare needs of a child. However, the minor child in the aforementioned case suffers severe handicaps and needed handicapped accessible transportation. With respect to automobiles, the Court previously held that the petitioner must show “unforeseeable and/or unusual circumstances.” In *J.H.R.*, the Court held that severe physical and mental handicaps create such circumstances. Recently, the Court also has examined requests for automobile repairs. In *Whiteagle-Fintak,* the Court denied the request for release of automobile repairs. The Court held that while the vehicle repairs would have a positive impact on the health of the minor due to the need to transport the child to non-emergency medical appointments, such facts would not warrant a release of funds since “the articulated need may dissipate over a short period of time.”
However, in Swan, the Court found sufficient circumstances “outside the control of a reasonable parent” when reviewing that request for a release for vehicle repair. In allowing for a release of funds from the CTF account of the minor child, the Court held that the case was distinguishable in that “the trying family circumstances do not result from poor parental decision-making.” In Swan, the petitioner and sole parent suffered from a debilitating medical condition, and the petitioner and minor child subsisted solely on Supplemental Security Income. The aforementioned circumstances, coupled with the petitioner’s ability to show an education necessity, since the child needed to be transported to tutoring sessions, persuaded the Court to grant a release for automobile repairs.

Clothing:

The Court generally recognizes that parents have the responsibility to meet a child’s basic needs, including the need for clothing. Therefore, in Whiteagle-Fintak, the Court conjectured that an extension of that principle meant that a release might be warranted if for the purchase of a school uniform. However, the Court denied the request for a normal clothing allocation. In one recent case, the Court did grant a release for clothing for two minor children. However, the Court found that the petitioner had demonstrated a “special financial need” in Johnson. The petitioner demonstrated this special financial need by a showing that he was unemployed, disabled, and currently receiving no support from the children’s mother.

Furniture:

The Court has denied both recent requests for household furnishings. The Court has consistently held that, in general, household furniture does not significantly benefit the child’s health, education, or welfare. Further, while a bed may benefit the welfare of a child, children “should not bear the financial responsibility of providing a bed upon which to sleep.”

Private School Tuition:

With respect to requests for private school tuition, the Court requires a showing that the child has special needs that cannot be met through the public school system. In Brown, the Court denied a request for private school tuition because the petitioner failed to show any such special needs. However, the Court has granted tuition in light of showing by the petitioner that the minor child has been diagnosed with attention deficit hyperactivity disorder and oppositional defiant disorder and that as a result, the educational needs of the child cannot be appropriately met by public schools.

Miscellaneous:

The Court has recently granted releases for educational related requests, including school meal expenses, the purchase of musical instruments and continuing music lessons, and a professional tutoring program. In addition, the Court granted a release of funds for the purchase of a vacuum cleaner and an air humidifier. In granting those requests, the Court noted that although the family would benefit from the purchases, the family would not purchase the items absent the medical condition of the minor. The Court has recently denied requests for release of CTF funds for a telephone bill, household expenses, a driveway, a sun porch, and a television.
CTF CASES INVOLVING REQUESTS FOR CHILDREN BETWEEN THE AGES OF 16 AND 25

Attorney’s Fees and Legal Fines:

In general, the Court denies requests made for release of funds for criminal defense purposes. Because there exists a constitutional right to appointment of counsel under the Sixth Amendment, petitioners cannot show the absence of either a state or federal entitlement. The Court recently granted one request for a release for legal and psychological services in relationship to a pending criminal action. However, this case is distinguishable from most requests for funds for legal representation in that the petitioner suffered from a serious medical disorder. The Court held that the disorder made the specific attorney’s services necessary, thereby eliminating the possibility of the state funding.

The Court generally bases its decision to grant or not grant requests for payment of restitution resulting from the delinquent acts of the minor on the severity of the consequences of non-payment of the fines. The Court has granted a release of funds for restitution when the petitioner showed that the minor child would go to jail absent payment. However, absent a showing of severe circumstances upon non-payment of the fines, the Court has denied requests for such fines.

Bills:

The Court has generally not granted requests for a release of funds for bills and other debt obligations. However, in Little Bear, the Court authorized the release of funds to pay past due rent and utility payments. In that case, the petitioner articulated special financial need in her request. Further, the Court held that the petitioner had sufficiently shown the request to be a necessity.

Clothing:

The Court denied both recent requests for a release to purchase clothing.

Miscellaneous:

The Court recently granted a release of CTF funds for home schooling because the minor child had departed public school because she was pregnant. Alternatively, the Court has denied requests for an automobile and a band trip to Florida.

2 Any individual may view the Court’s public compilation of judicial decisions maintained in the library located in the Tribal Court Building in Black River Falls, WI. The public may also access case files and courtroom minutes. The only blanket exception to this open records policy concerns confidential juvenile proceedings.
3 In the Interest of Casey J. Tripp v. HCN Enrollment Dep’t, CV 98-10 (HCN Tr. Ct., Mar. 27, 1998).

In the Interest of Minor Child:  J.H.R., DOB 01/09/95, CU 95-18 (HCN Tr. Ct., Sept. 18, 2003); In the Interest of Minor Child:  P.S., DOB 04/10/87, by Pearl Light Storming v. HCN Office of Tribal Enrollment, CV 02-44 (HCN Tr. Ct., Sept. 20, 2002).

Light Storming at 6.

Id. at 6.

Id.

Id.

Id.


Id. at 8.

In the Interest of Minor Children:  V.D.C., DOB 10/03/84, et al. by Debra Crowe v. HCN Office of Tribal Enrollment, CV 00-25 (HCN Tr. Ct., Apr. 6, 2001) at 14.

J.H.R. at 8.

In the Interest of Minor Child:  D.A.S., DOB 10/14/87, by Larry Swan v. HCN Office of Tribal Enrollment, CV 02-36 (HCN Tr. Ct., July 15, 2002); Whiteagle-Fintak, CV 01-154 at 11.

Whiteagle-Fintak at 11.

Id. at 12.

Swan at 9.

Id.

Id. at 6.

Whiteagle-Fintak at 11.

Id.

Id.


Id. at 6.

Id.


Whiteagle-Fintak at 11.

Id.

In the Interest of Minor Child:  C.Y.B., DOB 05/04/92, by Charles A. Brown v. HCN Office of Tribal Enrollment, CV 02-104 (HCN Tr. Ct., Apr. 3, 2003); In the Interest of Minor Child:  B.L., DOB 11/22/96, by Michelle Lewis v. HCN Office of Tribal Enrollment, CV 02-86 (HCN Tr. Ct., Nov. 26, 2002).

Brown at 5.

Lewis at 6.

Whiteagle-Fintak at 11.

Federal Court Update

U.S. Supreme Court

The Supreme Court denied the petition for a writ of certiorari from the New York Court of Appeals decision in _Saratoga County Chamber of Commerce Inc. v. Pataki_, 2003 N.Y. Lexis 1470 (N.Y., June 12, 2003). The plaintiffs challenged the governor’s authority to negotiate and sign agreements without legislative authorization.

On October 15, 1993, the governor of New York entered into a “Tribal-State Compact” with the St. Regis Mohawk Tribe. The compact allowed the Tribe to conduct gambling, including baccarat, blackjack, craps and roulette. Then, on May 27, 1999, the governor and the Tribe executed an amendment to the compact. The amendment allowed the Tribe to operate electronic class III games, including keno. This amendment expired on May 27, 2000. The Department of Interior disapproved later amendments. However, electronic gaming continues at the casino.

Plaintiffs based the challenge of the compact and subsequent amendment on the belief that the governor’s actions had violated the principle of separation of powers and the gambling prohibition under the New York Constitution. The Supreme Court of New York had granted summary judgment to the plaintiffs and held that the compact and amendment were void and unenforceable. The Appellate Division affirmed.

The New York Court of Appeals held that the plaintiffs’ challenges to the 1999 amendment were moot because the amendment had expired in May 2000, and thus, there would be no practical effect in declaring the amendment either valid or invalid. However, with respect to the compact itself, the Court of Appeals held that the gubernatorial action was “legislative” in character and that the governor lacks the power to unilaterally negotiate and execute tribal gaming compacts. Therefore, the Court of Appeals held that the compact is void and unenforceable.

Tenth Circuit Court of Appeals

Leonard Peltier is currently serving consecutive life sentences for the 1975 murders of two FBI agents. He filed a petition for habeas corpus, seeking release on parole. The district court denied this requested relief. The Tenth Circuit Court of Appeals affirmed.

This case was brought by the United States on behalf of the Southern Ute Indian Tribe. In 1948, the United States issued a patent for a tract of land “subject to the reservation of all minerals in and to the land, including oil and gas, to the United States for the use and benefit of the Southern Ute Tribe.” The district court held that the commercial quality gravel underlying the property is included in the patent’s reservation. The Tenth Circuit held that if property is underlain with gravel and such gravel cannot be mined without disturbing the property’s surface, the general rule is that a mineral reservation does not include gravel.

D.C. Circuit Court of Appeals

In 1967, Congress withdrew federal recognition from the Auburn Indian Band. In 1994, the Auburn Indian Restoration Act restored federal recognition to the Band, located near Sacramento, California. In addition, the Act authorized the Secretary of Interior to take land into trust to serve as the Band’s reservation. Because most of the former reservation was held in fee by individual Indians and non-Indians, the Band applied for a parcel of land located outside of the former reservation.

The cities of Roseville and Rocklin, located near the Band’s new reservation, and Citizens for Safer Communities challenged the Secretary of Interior’s decision to take the land into trust under section 20 of IGRA. The plaintiffs asserted that under IGRA, the Secretary was required to find that
that gaming “would not be detrimental to the surrounding community” and secure the consent of the governor. The district court held that the Secretary properly acted under the “restoration of lands” provision in IGRA even though the land is not located on the Band’s former reservation as of the time the Band lost federal recognition. The Court of Appeals affirmed.

Recent Decisions

Decisions are separated between Trial Court and Supreme Court decisions and categorized by subject matter and date (from oldest to most recent). The following are summaries prepared by the Staff Attorney for the reader’s benefit. They should in no way be used as substitution for citations to the actual court opinion.

Within the Trial Court, cases are categorized and docketed as one of the following: Child Support (CS or if filed prior to 1998, CV), Civil Garnishment (CG), Civil (CV), Criminal (CR), Custody (CU), Domestic Violence (DV), or Juvenile (JV). Within this index, case citations will appear in one of these categories and, in the event it may be helpful to the reader as a research tool, the cases may also be summarized in a separate topic area. Due to the great incidence of civil cases before the Court, the category for civil cases is divided into broad sub-categories. In some instances a decision may touch upon other topics that may not warrant a summary in this index, but the editor will use the indicator “other topic(s) covered,” as a research aid for the reader.

Recent Decisions and Recent Filings both begin with the date where the previous Court Bulletin left off.

Trial Court

**Child Support**

**NOVEMBER 5, 2003**


A review of the file indicated that a minor child had recently graduated from high school. As the respondent no longer has a current child support obligation and no further arrears withholding has been requested, the Court informed the parties of its intent to close this file.

**NOVEMBER 13, 2003**


The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent answered within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.


The Court had to determine whether to grant full faith and credit to another foreign judgment against a serial payor’s per capita payments. The respondent failed to answer within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.


The Court had to determine whether to grant full faith and credit to another foreign judgment against a serial payor’s per capita payments. The respondent failed to answer within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.


The Court had to determine whether to grant the petitioner’s recent motion to modify. The respondent failed to respond to the motion within the motion within the specified time frame. The Court granted the petitioner’s motion.
**NOVEMBER 18, 2003**


The petitioner filed a motion to amend arrears withholding. The respondent failed to answer within the specified time frame. The Court granted the petitioner’s request.

**NOVEMBER 26, 2003**


The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

**Civil Garnishment**

**NOVEMBER 13, 2003**


The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.


The Court had granted full faith and credit to a foreign judgment. The petitioner filed a satisfaction of judgment. The Court recognized that the debt has been paid in full and informed the parties of its intent to close the case.

**NOVEMBER 21, 2003**

*American General Finance, Inc. v. Cleo Littlegeorge, CG 03-64 Order (Suspension of the Judgment)* (HCN Tr. Ct., Nov. 21, 2003). (Matha, T).

The Court had to determine whether to grant the respondent’s motion in which she requested a termination of the judgment. The respondent presented documentation that appeared to demonstrate satisfaction of an earlier default judgment. The Court granted a suspension of the judgment.

**Civil Cases**

**Children’s Trust Fund (CTF)**

**NOVEMBER 18, 2003**


The Court released money from the CTF account of the minor child for costs related to home schooling. The Court had previously requested that the petitioner submit the required accounting. The Court again requested that the petitioner submit the required accounting.

**NOVEMBER 19, 2003**


The petitioner previously filed a petition requesting a release of the CTF accounts of minor children. The respondent raised several issues that indicate a lack of documentation concerning standards traditionally used in determining the appropriateness of a release of funds. The Court requested further documentation and scheduled a hearing.

**NOVEMBER 24, 2003**


The petitioner previously filed a petition requesting a release of the CTF account of a minor child. The respondent requested that the petitioner submit further documentation. The petitioner made no such filings. The Court dismisses the instant case without prejudice.
**November 25, 2003**


The petitioner previously filed a petition requesting a release of the CTF accounts of minor children. The respondent raised several issues that indicate a lack of documentation concerning standards traditionally used in determining the appropriateness of a release of funds. The Court requested further documentation and scheduled a hearing.

**Election**

**November 5, 2003**

*Clarence Pettibone v. HCN Gen. Council, Alvin Cloud, Acting Chair of the Gen. Council; Roberta Funmaker (aka Roberta Greendeer), Sec’y of the General Council; Gloria Visintin; Wade Blackdeer, Dallas Whitewing, Myrna Thompson, Christine Romano, Gerald Cleveland, Sharon Whiterabbit, Kathleen Lonetree Whiterabbit, John Dall, Tracy Thundercloud, and Elliot Garvin, Legislators in the HCN Legislature; and Maryann Dumas, Chair of the Election Bd., CV 03-77 Order (Granting Preliminary Injunction) (HCN Tr. Ct., Nov. 5, 2003). (Bossman, W).*

The Ho-Chunk Nation General Council enacted a resolution providing for the removal of the plaintiff from the Ho-Chunk Nation Legislature. The plaintiff sought a Preliminary Injunction to enjoin the defendants from acting in furtherance of the resolution. The Court granted the request for a Preliminary Injunction.

[See also Preliminary Injunctions within this index.]

**Employment**

**November 13, 2003**

*Loretta Patterson v. Four Winds Comm’n and Susan Van Riper, CV 03-40 Order (Granting Motion to Dismiss) (HCN Tr. Ct., Nov. 13, 2003). (Bossman, W).*

The plaintiff claimed she was wrongfully denied workers’ compensation benefits. The defendants moved to dismiss for lack of jurisdiction. The Court granted the motion to dismiss due to lack of jurisdiction and due to the failure of the plaintiff to appear at a hearing.

*Charles L. Stands v. Stephanie Lewis, CV 03-03 Order (Dismissal without Prejudice) (HCN Tr. Ct., Nov. 13, 2003). (Bossman, W).*

The Court convened a scheduling conference in this matter. The plaintiff failed to appear at the scheduling conference and did not notify the Court of an inability to attend the proceeding. The Court dismissed the instant case without prejudice.

**November 14, 2003**

*Lorna M. Hach v. HCN C-Store, Baraboo, and Deb Hindes, Manager, CV 01-98 Order (Granting Defendants’ Motion for Summary Judgment) (HCN Tr. Ct., Nov. 14, 2003). (Matha, T).*

The Court had to determine whether to grant the defendants’ motion for summary judgment. The Court held that the defendants acted within the scope of the Ho-Chunk Nation progressive discipline policy. Therefore, the Court granted the motion for summary judgment.

**November 18, 2003**

*Anita Naquayouma v. Jonette Pettibone, CV 03-55 Order (Motion Hearing) (HCN Tr. Ct., Nov. 18, 2003). (Bossman, W).*

The defendants filed a motion for summary judgment in the instant case. The Court scheduled a hearing to hear arguments on the motion.

**November 25, 2003**

*Harry J. Cholka v. Ho-Chunk Casino, CV 02-116 Order (For Show Cause Hearing) (HCN Tr. Ct., Nov. 25, 2003). (Bossman, W).*

The Court previously granted a judgment in favor of the plaintiff. The plaintiff filed letters with the Court alleging that the defendant has not complied with the Court’s order. The Court shall convene a show cause hearing to allow the defendant the opportunity to explain why the Court should not hold it in contempt of court.

*Wayne S. Hanrahan v. HCN Legislators Sharyn Whiterabbit and Kathleen Whiterabbit, CV 03-54; Wayne S. Hanrahan v. Ron Anwash, HCN Dep’t of Natural Res. Lands Supervisor, and Larry Garvin,*

The Court had previously entered a scheduling order. The plaintiff requested a delay to produce discovery. The Court amended the scheduling order.

**Gaming**

**November 19, 2003**

Troy S. Westphal v. HCN, Ho-Chunk Casino and Bally Gaming, Inc., CV 02-75 Order (Dismissal) (HCN Tr. Ct., Nov. 19, 2003). (Matha, T).

Both the plaintiff and the defendants filed motions to dismiss the instant action. The Court had to determine whether to dismiss the instant case with or without prejudice. With respect to the defendant that had not filed an answer in the action, the case was dismissed without prejudice. With respect to the remaining defendant the case was dismissed with prejudice.

[See also **Dismissals** within this index.]

**Housing**

**November 20, 2003**


The Court had previously issued a default judgment for the plaintiff. The plaintiff filed proof of satisfaction of the judgment. The Court recognized that the debt is paid in full and informs the parties of its intent to close the case.

**November 24, 2003**


The Court had previously issued a default judgment for the plaintiff. The plaintiff filed proof of satisfaction of the judgment. The Court recognized that the debt is paid in full and informs the parties of its intent to close the case.


The Court had to determine whether to grant the relief requested by the plaintiff. The defendant failed to file an answer in the case despite proper service of process. The Court issued a default judgment against the defendant.

**Incompetent’s Trust Fund**

**November 5, 2003**


The Court previously released funds from the ITF account for expenses related to the purchase of a home. The required accounting is now late. The Court requested that the petitioner submit the required accounting.

**Miscellaneous**

**November 24, 2003**


The Court had to determine whether to dismiss the instant case. The plaintiff requested a dismissal of the action. The Court dismissed the case without prejudice.

**Juvenile**

**November 3, 2003**


The Court convened a trial to determine whether the allegations presented in the child protection petition proved more likely true than not and whether the best interests of the minor children would be served by continued court intervention. CFS moved for a default judgment for the failure of the permanent legal guardian to appear at the trial. Following the presentation of its case in chief, the Court determined that CFS did satisfy its burden by a preponderance of the evidence. The Court scheduled a dispositional hearing in the matter.
In the Interest of Minor Children:  C.C.P., DOB 02/03/93; G.L.P., DOB 06/10/94, JV 03-25 -26 Order (Granting Telephonic Appearance) (HCN Tr. Ct., Nov. 3, 2003). (Bossman, W).
The attorney for CFS requested permission for a witness to appear at the trial by telephone. The Court granted the request.

The Court convened a formal hearing in this matter. At the hearing, the Court allowed the parents of the minor children to change their pleas from not guilty to no contest. The Court finds the minor children to be in need of protection or services.

NOVEMBER 4, 2003
In the Interest of Minor Children:  V.J.F., DOB 09/26/98; I.D.F., DOB 03/30/02, JV 03-39 -40 Order (Second Continuance of Plea Hearing) (HCN Tr. Ct., Nov. 4, 2003). (Matha, T).
The Court convened a plea hearing to determine whether the parents of the minor children wished to contest the allegations contained in the child protection petition. At the hearing, the mother of the minor children requested a continuance after the Court advised her of her rights. The Court granted the continuance to provide the mother an opportunity to obtain legal representation.

In the Interest of Minor Child:  T.M.G., DOB 07/19/94, JV 03-45 Order (Conditional Acceptance of Transfer) (HCN Tr. Ct., Nov. 4, 2003). (Matha, T).
The Court had to determine whether to conditionally accept the transfer of a state children’s case in which an enrolled minor child is subject to foster care placement. The Court held that it shall not decline transfer of this action.

The Court appointed a Guardian ad litem to serve in the instant case.

NOVEMBER 6, 2003
In the Interest of Minor Child:  J.L., DOB 12/14/89, JV 97-06 Order (Submission of Guardianship Report and Home Study) (HCN Tr. Ct., Nov. 6, 2003). (Bossman, W).
The petitioner filed a petition for permanent guardianship of the minor child. The Court scheduled a guardianship hearing. The Court requested that CFS prepare and submit a guardianship report and home study to the Court.

In the Interest of Minor Child:  J.L., DOB 12/14/89, JV 97-06 Order (Submission of Traditional Relatives List) (HCN Tr. Ct., Nov. 6, 2003). (Bossman, W).
The Court requested that CFS prepare and submit a list of the minor child’s traditional relatives. The Court limited the request to the maternal and paternal grandparents and their descendants.

The petitioner filed a petition for permanent guardianship of the minor child. The Court scheduled a guardianship hearing. The Court requested that CFS prepare and submit a guardianship report and home study to the Court.

The Court requested that CFS prepare and submit a list of the minor child’s traditional relatives. The Court limited the request to the maternal and paternal grandparents and their descendants.

NOVEMBER 7, 2003
The Court appointed a Guardian ad litem to serve in the instant case.
In the Interest of Minor Children:  T.J., DOB 05/02/97; M.L.C.R., DOB 11/03/95, JV 03-46 -47 Order (Conditional Acceptance of Transfer) (HCN Tr. Ct., Nov. 7, 2003). (Matha, T).
The Court had to determine whether to conditionally accept the transfer of a state children’s case in which enrolled minor children are subject to foster care placement. The Court held that it shall not decline transfer of this action.

In the Interest of Minor Child:  J.D.S., DOB 09/08/03, JV 03-30 Order (Continuance of Trial) (HCN Tr. Ct., Nov. 7, 2003). (Matha, T).
The Court convened a trial to determine whether the allegations contained in the child protection petition proved more likely true than not and whether the best interests of the child would be served by continued court intervention. At the hearing, legal counsel to the mother of the minor children requested a continuance due to the non-appearance of his client. The Court granted the continuance.

NOVEMBER 12, 2003
The Court appointed a Guardian ad litem to serve in the instant case.

NOVEMBER 13, 2003
The Court appointed a Guardian ad litem to serve in the instant case.

NOVEMBER 18, 2003
The petitioner filed a petition for permanent guardianship of the minor child. The Court scheduled a guardianship hearing. The Court requested that CFS prepare and submit a guardianship report and home study to the Court.

In the Interest of Minor Children:  D.R.W., DOB 11/09/95; D.S.W., DOB 02/19/98, JV 01-19 -20 Order (Submission of Guardianship Report and Home Study) (HCN Tr. Ct., Nov. 18, 2003). (Bossman, W).
The petitioner filed a petition for permanent guardianship of the minor child. The Court scheduled a guardianship hearing. The Court requested that CFS prepare and submit a guardianship report and home study to the Court.

In the Interest of Minor Children:  D.G.W., DOB 11/09/95; D.S.W., DOB 02/19/98, JV 01-19 -20 Order (Submission of Traditional Relatives List) (HCN Tr. Ct., Nov. 18, 2003). (Bossman, W).
The Court requested that CFS prepare and submit a list of the minor child’s traditional relatives. The Court limited the request to the maternal and paternal grandparents and their descendants.

In the Interest of Minor Children:  D.R.W., DOB 09/22/92, JV 01-18 Order (Submission of Guardianship Report and Home Study) (HCN Tr. Ct., Nov. 18, 2003). (Bossman, W).
The petitioner filed a petition for permanent guardianship of the minor child. The Court scheduled a guardianship hearing. The Court requested that CFS prepare and submit a guardianship report and home study to the Court.

The Court conducted a child protection review hearing. At the hearing, the Court had to assess the extent of compliance with the dispositional order.
The Court performed this review and determined to maintain the status quo.

In the Interest of Minor Children:  C.C.P., DOB 02/03/93; G.L.P., DOB 06/10/94, JV 03-25 -26
Order (Dispositional Requirements) (HCN Tr. Ct., Nov. 20, 2003).  (Bossman, W).
The Court conducted a dispositional hearing.  At the hearing, the Court had to assess the extent and scope of the dispositional recommendations proposed by CFS.  The Court ordered certain dispositional recommendations necessary for the protection of the children and possible reunification of the family.

In the Interest of Minor Children:  C.C.P., DOB 02/03/93; G.L.P., DOB 06/10/94, JV 03-25 -26
Order (Formal Hearing) (HCN Tr. Ct., Nov. 20, 2003).  (Matha, T).
The Court had previously entered a not guilty plea to the allegations contained in the child protection petition on behalf of the mother.  The Court convened a formal hearing in this matter.  The Court found that CFS met its burden of proving the allegations and that the minor children are in need of protection or services.

In the Interest of Minor Children:  L.R.H., DOB 11/18/87; K.L.H., DOB 10/21/88, JV 03-35 -36
Order (Dispositional Requirements) (HCN Tr. Ct., Nov. 21, 2003).  (Matha, T).
The Court conducted a dispositional hearing.  At the hearing, the Court had to assess the extent and scope of the dispositional recommendations proposed by CFS.  The Court ordered certain dispositional recommendations necessary for the protection of the children and possible reunification of the family.

The Court conducted a child protection review hearing.  At the hearing, the Court had to assess the extent of compliance with the dispositional order.

The Court convened a review hearing.  The Court ordered that the review hearing should be postponed in order to allow time for the Court to appoint a Guardian ad litem, for the parents to seek legal counsel, for the parties to be fully prepared to respond to the recommendations of CFS, and for the parties to be fully prepared to respond to the motion to revoke filed by the grandparents.

In the Interest of Minor Child:  P.D.R., DOB 08/24/90, JV 03-24 Order (Dispositional Requirements) (HCN Tr. Ct., Nov. 25, 2003).  (Matha, T).
The Court conducted a dispositional hearing.  At the hearing, the Court had to assess the extent and scope of the dispositional recommendations proposed by CFS.  The Court ordered certain dispositional recommendations necessary for the protection of the children and possible reunification of the family.

The Court had to determine whether to appoint a temporary guardian of the minor child.  The Court deemed the appointment to be within the best interest of the child.

Preliminary Injunctions

Clarence Pettibone v. HCN Gen. Council, Alvin Cloud, Acting Chair of the Gen. Council; Roberta Funmaker (aka Roberta Greendeer), Sec’y of the General Council; Gloria Visintin; Wade Blackdeer, Dallas Whitewing, Myrna Thompson, Christine Romano, Gerald Cleveland, Sharon Whiterabbit, Kathyleen Lonetree Whiterabbit, John Dall, Tracy Thundercloud, and Elliot Garvin, Legislators in the HCN Legislature; and Maryann Dumas, Chair of the Election Bd., CV 03-77 Order (Granting

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The Court previously adopted a four-part test for the purpose of evaluating requests for preliminary injunctions. Furthermore, the HCN Supreme Court has upheld the use of this incorporated federal standard. Therefore, the Court must deny a request for a preliminary injunction if the plaintiff does not allege facts capable of satisfying the four-part test.

In the instant matter, the Court applied this relevant standard. The Court first had to determine whether there was an adequate remedy at law. More specifically, the Court had to determine whether the plaintiff could reasonably be compensated through money damages. The Court held that money damages will not be available for any damages the plaintiff might suffer under the law of the HCN.

The Court next considered the second prong of the relevant standard: whether the threatened harm to the plaintiff outweighs the harm of issuing the injunction. The Court held that the possible harms to the plaintiff do in fact outweigh the harms posed by issuance of an injunction. The Court then examined the third prong of the applicable standard: whether the plaintiff has a reasonable likelihood of success. The Court held the plaintiff has a reasonable likelihood of success in proving that either his notice or opportunity to be heard was constitutionally deficient.

The fourth prong of the test is whether issuing the injunction serves the public interest. The Court held that postponement of the Special Election serves the public interest in this case. Therefore, the Court granted the preliminary injunction.

[See also Civil Cases within this index.]

Dismissals

NOVEMBER 19, 2003

Troy S. Westphal v. HCN, Ho-Chunk Casino and Bally Gaming, Inc., CV 02-75 Order (Dismissal) (HCN Tr. Ct., Nov. 19, 2003). (Matha, T).
The Court had to determine whether to grant a dismissal of the action with or without prejudice. Rule 56 of the Ho-Chunk Nation Rules of Civil Procedure provides that a plaintiff may voluntarily dismiss an action at anytime prior to the filing of an answer and that such dismissal shall be dismissed without prejudice. In this case, Bally Gaming never filed an answer. Therefore, the Court followed the clear direction of the rule and dismissed the case without prejudice.

The Court was unable to apply the same rule with respect to the action against the Nation and Ho-Chunk Casino. Those defendants had filed an answer nearly nine months before the voluntary dismissal request by the plaintiff. In addition, the defendants had previously filed a motion to dismiss with prejudice.

Rule 56 provides that after an answer is filed, a motion to dismiss will be granted at the discretion of the Court. The previous version of Rule 56 provided that involuntary dismissals were granted with prejudice. The Supreme Court omitted this line from the revised rule.

The Court held that the Supreme Court’s decision to omit the requirement that involuntary dismissals be with prejudice allowed the Trial Court the discretion to grant involuntary dismissals with or without prejudice. Therefore, the Court exercises discretion equivalent to that exercised by federal courts. However, the Court held that it would be improper for the Court’s use of discretion to resemble a federal district court’s resolution of a similarly filed motion to dismiss. The Court explained that it has no basis for applying foreign common law concepts, which never informed the earlier version of the rule.

The Court noted the time and effort it had expended throughout the proceeding, as well as the inconvenience suffered by the defendants in defending the suit. In light of these factors, the Court granted the dismissal with prejudice as against the Nation and Ho-Chunk Casino.

[See also Civil Cases within this index.]

Supreme Court

NOTHING TO REPORT AT THIS TIME.
Recent Filings

Trial Court

Civil Garnishment

**NOVEMBER 5, 2003**
*Capitol One v. Teresa L. Geissler*, CG 03-78. (Matha, T).

**NOVEMBER 10, 2003**

**NOVEMBER 17, 2003**

Child Support

**NOVEMBER 6, 2003**

**NOVEMBER 10, 2003**
*Yona Montelongo v. State of WI*, CS 03-77. (Bossman, W).

**NOVEMBER 21, 2003**
*State of IA and Angie Mullin v. Marcus D. Sena*, CS 03-78. (Matha, T).

Civil Cases

**NOVEMBER 7, 2003**


**NOVEMBER 13, 2003**
*Owen C. Mike v. Victoria Cloud*, CV 03-81. (Matha, T).

**NOVEMBER 17, 2003**
*In the Interest of Minor Child: A.W.*, DOB 09/17/85, CV 03-82. (Matha, T).

Juvenile Cases

**NOVEMBER 5, 2003**
*In the Interest of Minor Child: T.J.*, DOB 05/02/97, JV 03-46. (Matha, T).

**NOVEMBER 17, 2003**
*In the Interest of Minor Child: M.R.*, DOB 11/03/95, JV 03-47. (Matha, T).

**SUPREME COURT**

**NOVEMBER 17, 2003**

**NOVEMBER 25, 2003**
*Harry J. Cholka v. Ho-Chunk Casino*, SU 03-10.
Announcements

COURT SEeks STAFF
ATTORNEY/LAW CLERk

The Ho-Chunk Nation Judiciary instituted
the law clerk program shortly after its establishment
in 1995. The Judiciary employs the law clerk for
the term of one year beginning on or around July 1.
Eight recent law school graduates have participated
in the program since its inception. Several of those
individuals currently practice and/or teach in the
area of Indian law. The intention of the program is
to provide a starting attorney with the necessary
foundation to ably continue in this regard.

An interested applicant must submit the
following documents to receive consideration for
the law clerk position: 1) cover letter, 2) recent
résumé, 3) transcript from an accredited law school,
4) writing sample, and 5) contact information for
three professional/academic references. The
Judiciary must receive the above application
materials by mail on or before December 31.
Applicants should direct materials to the following
address:

Ho-Chunk Nation Trial Court
Attn.: Hon. William H. Bossman
P.O. Box 70
Black River Falls, WI 54615-0070

The Judiciary will inform applicants of the
need to attend an on-site interview, and
consequently applicants must be willing to travel to
Wa Ehi Hocira for such purpose. The Judiciary will
reimburse travel expenses to the extent possible.
This reimbursement may include overnight
accommodation.

The Judiciary will afford Indian and Ho-
Chunk preference to applicants for the position.

COURT TO BE CLOSED FOR
CHRISTMAS HOLIDAY

Due to the Christmas holiday, on
Wednesday, December 24, 2003, the Court will
close at noon. The Court will not re-open until
Monday, December 29, 2003. All pleadings or
filings ordinarily due on December 24th, 25th, or 26th
may be filed on the next full business day,

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**HCN Court System Fee Schedule**

- **Filing Fees** ........................................ $50.00*
  
  *With the exception of petitions to register child support orders – this fee remains at $20.00 as previously ordered by the Supreme Court.

  Note: Filing Fee now includes *Summons* fee.

- **Filing Fees for Petitions to Register and Enforce Foreign Judgment/Order** .................................. $20.00

  Copying ........................................... $0.10/per page

  Faxing ........................................ $0.25/per page (sending and receiving)

  Tapes of Hearings .............................. $10.00/per tape

  CD of Hearing ................................... $12.50/per tape

  Deposition Videotape ......................... $10.00/per tape

  Certified Copies .............................. $0.50/per page

  Equipment Rental ............................. $5.00/per hour

  Appellate filing fees ....................... $35.00

  Admission to Practice ....................... $50.00

  Pro Hac Vice Appearance .................... $35.00

**Legal Citation Form**

The following are example citation forms by legal reference and citation description.

**Ho-Chunk Nation Constitution**

Constitution, Article Number, Section, and Subsection.

HCN CONST., Art. II, Sec. (or §) 1(a).

HCN Const., Art. XI, Sec. (or §) 7.

**HCN Ordinances**

Ordinance Name, Chapter number, Section/Part/Clause, page.

PERSONNEL POLICIES AND PROCEDURE MANUAL, Ch. 12, Part B, p. 82.

CLAIMS AGAINST PER CAPITA, Sec. (or §) 6.01(b).

**HCN Supreme Court Case Law**

Case Name, Case No. (HCN S. Ct., month, day, year).


**HCN Trial Court Case Law**

Case Name, Case No. (HCN Tr. Ct., month, day, year).


**Rules of Civil Procedure**

**HCN R. Civ. P. 19(B).**

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**Ho-Chunk Nation Court System**

**Judiciary and Staff**

Supreme Court – Mary Jo B. Hunter, Chief Justice

Mark D. Butterfield, Associate Justice

Jo Deen B. Lowe, Associate Justice

Traditional Court – Wallace Blackdeer

Donald Blackhawk

Dennis Funmaker

Orville Greendeer

Douglas Greengrass

Owen Mike

Gavin Pettibone

Douglas Red Eagle

Preston Thompson, Jr.

Eugene Thundercloud

Morgan White Eagle

Clayton Winneshiek

Trial Court – William H. Bossman, Chief Judge

Todd R. Matha, Associate Judge

Clerk of Court, Supreme Court – Bryan Dietzler

Clerk of Court, Trial Court – Marcella Cloud

Assistant Clerk of Court, Trial Court – Selina Joshua

Bailiff/Process Server – Willa RedCloud

Staff Attorney – Rose M. Weckenmann

Office of Public Advocacy – Dennis Funmaker, Administrator

* The Ho-Chunk Nation Judiciary and its officers are active participants in the following organizations:

**Wisconsin Tribal Judges Association**

(Eleven federally recognized tribes within the State of Wisconsin)

**National American Indian Court Judges Association**

(Region 10—Illinois, Indiana, Michigan, Minnesota, and Wisconsin)