Indian Country Remembers
Former President Gerald R. Ford

Amidst political turmoil, Gerald R. Ford became the first person to sit in the seat of Vice President and President without hitting the campaign trial. President Ford first obtained the seat of Vice President upon the resignation of Vice President Spiro T. Agnew in October of 1973. William Branigin and Debbi Wilgoren, Washington Post, Nation Remembers Former President Ford (visited Jan. 2, 2006) available at http://www.washingtonpost.com/wp-dyn/content/article/2007/01/02/AR2007010200281.html. Prior to filling the Vice Presidential position, he was the Republican leader in the House of Representatives where he represented the state of Michigan. Id. The Senate voted to confirm Ford in November of 1973, and the House followed in December of the same year. Id. Eight months later, Ford assumed the presidency following the scandalous resignation of President Richard M. Nixon. Former NBC White House correspondent Tom Brokaw stated of Ford, “[h]e didn’t seek the office. . .[a]nd yet. . .he was not frightened of the task before
During his two and a half year tenure as President, Ford signed three (3) major pieces of legislation into law, one executive order, and one proclamation affecting Indian County. On October 29, 1994, President Ford signed S. 3007, the Indian Claims Commission Appropriations Legislation. John Woolley and Gerhard Peters, THE AMERICAN PRESIDENCY PROJECT, Statement on Signing Indian Claims Commission Appropriations Legislation (visited Jan. 2, 2007) available at http://www.presidency.ucsb.edu/ws/index.php?pid=4518. The goal of this piece of legislation was to counter a negative provision found in the 1946 Act. Id. This negative provision required that Government-supplied food and provisions, valued at $57 million, be used to offset the Sioux’s claims against the Government over lands in the Black Hills region of South Dakota. Id. Thus, S. 3007 would ensure that this provision would be defective, and thus not “totally wipe out the $17.5 million original evaluation and leave the Sioux Indians with nothing.” Id.

On January 4, 1975, President Ford signed into law S. 1017, the Indian Self-Determination and Education Assistance Act. John Woolley and Gerhard Peters, available at http://www.presidency.ucsb.edu/ws/index.php?pid=4739. The purpose of the first portion of this legislation was to provide Indian communities with the ability to operate programs under contracts with the Federal Government. Id. The Act authorized the Bureau of Indian Affairs to make grants to tribal organizations in order to provide training to its potential workers so as to carry out the programs. Id. The second portion, the Indian Education Assistance Act, provided tribes with a stronger role in approving and disapproving the use of funds for children in the public school systems. Id. This was a major piece of legislation that jump-started the self-determination era.

President Ford next signed Executive Order 11829, creating the Hopi-Navajo Land Settlement Interagency Committee, on January 6, 1975. John Woolley and Gerhard Peters, available at http://www.presidency.ucsb.edu/ws/index.php?pid=60459. The President created this interagency committee to help reach a resolution over the conflicting rights and interests of the Hopi and Navajo tribes. Id. In essence, the committee was to develop relevant information for and respond to requests of the Mediator appointed by the Director of the Federal Mediation and Conciliation Service. Id.

On October 1, 1976, President Ford signed his most controversial Indian legislation into law. That bill being S. 522, the Indian Health Care Improvement Act. John Woolley and Gerhard Peters, available at http://www.presidency.ucsb.edu/ws/index.php?pid=6399. President Ford was aware that even though spending had increased from $128 million in FY 1970 to $425 million in FY 1977, American Indians were still far behind the rest of America when it came to achieving and maintaining good health. Id. Although President Ford realized that S. 522 was not without its faults, the President stressed that Title VII’s reporting provision would allow the administration to bring to the attention of Congress any changes needed to improve the Act. Id. Many in Ford’s Cabinet, as well as Republican politicians, urged the President to veto the bill because of its costliness. Mark Trahant, Settle Post-Intelligencer, As a Nation, We’re Better Off When Politicians Work Together (visited at Jan. 2, 2007) available at http://seattlepi.nwsource.com/opinion/297604_trahant31.html. Specifically, the legislation would cost $1.6 billion over five years. Id. “In retrospect, the clash over the Indian Health Care Improvement Act reads like the situation familiar to every president - 51 headstrong and intelligent people see it one way, 49 see it another way, and the president has to disappoint one of those large groups. Ford decided this one for Indians, and Indian health care has been on an improving curve

Last, with President Ford’s signing of proclamation 4468, came the Observance of Native American Awareness Week. John Woolley and Gerhard Peters, THE AMERICAN PRESIDENCY PROJECT, Remarks in Lawton, Oklahoma, Upon Signing a Proclamation for the Observance of Native American Awareness Week (visited Jan. 2, 2007) available at http://www.presidency.ucsb.edu/ws/index.php?pid=6428. Upon the signing of the proclamation, October 10-16, 1976 was deemed Native American Awareness Week. Id. President Ford remarked, “[m]y administration is equally determined that history is going to continue to be changed, that the Indian shall no longer be lowest in poverty and slickest in opportunity, and we are making those changes now.” Id. Thus, with his picking up where President Nixon had left off, President Ford continued to allow Indian issues to have a place on the “national political landscape that had seldom if ever been so positive.” Jerry Reynolds, INDIAN COUNTRY TODAY, The Presidents: Gerald R. Ford (visited Jan. 3, 2007) available at http://www.indiancountry.com/content.cfm?id=1081281612.

UPDATES FROM OUTSIDE COURTS

United States Supreme Court
Cases decided (1)
- BP America v. Burton et al., No. 05-669 (decided Dec. 11, 2006) (holding that administrative payment orders issued by the Interior Department's Minerals Management Service assessing royalty underpayments on oil and gas leases are not covered by the general six-year statute of limitations for government contract actions set out in 28 U.S.C. § 2415(a)).

Certiorari granted (1)

Certiorari denied (11)
- Oneida Indian Nation of New York v. Peterman, No. 06-470 (denied Dec. 4, 2006).
- Narragansett Indian Tribe v. Rhode Island, No. 06-414 (denied Nov. 27, 2006).
- Naftaly v. Keweenaw Bay Indian Community, No. 06-429 (denied Nov. 27, 2006).
- Delaware Nation v. Pennsylvania, No. 06-364 (denied Nov. 27, 2006).
- Walton v. Tesuque Pueblo, No. 06-361 (denied Nov. 13, 2006).
• Dark-Eyes v. Connecticut Commissioner of Revenue Services, No. 05-1464 (denied Oct. 2, 2006).
• South Dakota v. Dept. of Interior, No. 05-1428 (denied Oct. 2, 2006).

Petition for Certiorari filed (5)
• New Mexico v. Del E. Romero, No. 06-765 (filed Nov. 28, 2006).
• Burrell v. Armijo, No. 06-721 (filed Nov. 21, 2006).
• Phelps Dodge Corp. v. San Carlos Apache Tribe, No. 06-333 (filed Sept. 5, 2006).
• San Carlos Apache Tribe v. Arizona, No. 06-173 (filed Aug. 1, 2006).
• Murphy v. Oklahoma, No. 05-10787 (filed May 3, 2006).

Ninth Circuit Court of Appeals
Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate, 2006 WL 3489836 (9th Cir. 2006).
A Non-Native Hawai’ian applicant brought this suit against private high schools under § 1981, challenging the schools' policy of giving preference to students of Native Hawai’ian ancestry. The Ninth Circuit Court of Appeals affirmed in part and reversed in part. A rehearing en banc was then granted. The Ninth Circuit Court of Appeals held that the schools' policy of giving preference to students of Native Hawai’ian ancestry did not violate § 1981. Affirmed.

The United States brought this action against states on behalf of Indian tribes to define treaty fishing rights. The confederation of tribes intervened as a defendant, 43 F.3d 1284. The Ninth Circuit Court of Appeals held that an Indian reservation is not foreclosed by res judicata from asserting the claim of a constituent tribe to fishing rights as the requisite identity of claims between an earlier intervention attempt and the present injunction hearing did not exist and, consequently, res judicata did not apply. Reversed and remanded.

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 CASES
DECEMBER 04, 2006
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted
recognition and enforcement of the foreign judgment.

The Court had to determine whether to grant petitioner’s motion to modify the current withholding for arrears. The respondent failed to respond within the specified time frame. The Court granted petitioner’s uncontested motion.

The minor child turned eighteen (18) years of age. In accordance with state law, the respondent’s obligation ends when the children turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

The Court had to determine whether to cease withholding due to the minor child residing with the respondent. The Court accordingly ordered the cessation of current child support withholding.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

DECEMBER 05, 2006
The Court had to determine whether to cease withholding due to the minor child becoming emancipated and the child support arrearage being paid in full. The Court accordingly ordered the cessation of current child support and arrearage withholding.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

DECEMBER 06, 2006
The petitioner filed a motion to amend arrears withholding with a certified accounting statement. The Court ordered the Treasury Department to continue to withhold an amount, in accordance with a previous order, from the respondent’s future per capita distributions until satisfaction of this debt obligation.

DECEMBER 07, 2006
The minor child turned eighteen (18) years of age. In accordance with state law, the respondent’s obligation ends when the children turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent.
school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

**DECEMBER 08, 2006**


The Court had to determine whether to cease withholding due to the parties entering a stipulation agreement whereby they agreed to split placement and the termination of child support. The Court ceased the withholding with regards to the current child support in that case.

**DECEMBER 11, 2006**


The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent expressed his acquiescence to the request for relief due to his initiation of the cause of action. Thus, the Court granted recognition and enforcement of the foreign judgment.


The Court had to determine whether to cease withholding due to the minor child’s emancipation and completion of school. The Court ordered the cessation of child support withholding.


The Court had to determine whether to cease withholding due to the parties entering a stipulation agreement based upon the fact that the parties are now residing with one another. The Court ordered the cessation of child support withholding in that case, but that withholding continue unchanged in the second case.

**DECEMBER 12, 2006**


The Court had to determine whether to grant petitioner’s motion to modify child support arrears. The respondent failed to respond within the specified time frame. The Court granted petitioner’s uncontested motion.


The Court previously requested the parties to file proof of high school enrollment as the child turned eighteen (18) years of age. The petitioner failed to file such proof, thus the child support was accordingly ceased in one case, and modified in the remaining case to reflect such change in circumstances.


The Court had to determine whether to grant petitioner’s motion to modify the child support arrears. The respondent failed to respond within the specified time frame. The Court accordingly modified the arrearage amount.

**DECEMBER 13, 2006**


The Court had to determine whether to cease withholding due to the parties entering a stipulation agreement whereby they agreed to split placement and the termination of child support. The Court ceased the withholding with regards to the current child support for both per capita and wages, but continued to enforce withholding for arrears.
DECEMBER 14, 2006
The Court had to determine whether to grant petitioner’s motion to modify current child support. The respondent failed to respond within the specified time frame. The Court granted petitioner’s uncontested motion.

DECEMBER 15, 2006
The Court had to determine whether to cease withholding due to the minor child’s emancipation and dropping out of school. The Court ordered the cessation of child support withholding.

DECEMBER 18, 2006
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to file a timely answer. The Court granted recognition and enforcement of the foreign judgment, and performed an equitable adjustment.

DECEMBER 27, 2006
The Court issued this order to correct a clerical mistake made in the previous order.

CIVIL GARNISHMENT CASES
NOVEMBER 30, 2006
Linda Webber v. Leland Peter Whitegull, CG 06-70 Order (Petition Granted) (HCN Tr. Ct., Nov. 30, 2006). (Matha, T).
The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The Court afforded the respondent the opportunity to object to the recognition and enforcement of the foreign judgment. The respondent filed a timely response, noting a lack of objection to wage withholding. The Court, therefore, grants the request for relief of the petitioner.

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

DECEMBER 05, 2006
The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

DECEMBER 11, 2006
The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.
judgment. The Court afforded the respondent the opportunity to object to the recognition and enforcement of the foreign judgment. The respondent filed a timely response, noting a partial satisfaction of the debt. The Court, therefore, grants the remaining request of the petitioner.

**DECEMBER 13, 2006**  
The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

**DECEMBER 29, 2006**  
The Court recognized that the debt in the current case has been paid in full, and informed the parties of its intent to close the file if no objection is received within ten (10) days.

*Tomah Memorial Hospital v. Brian S. LaMere, CG 06-74 Order (Default Judgment)* (HCN Tr. Ct., Dec. 29, 2006). (Matha, T).
The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

**GENERAL COUNCIL ACTIONS**
*George Lewis v. HCN Election Board et al., CV 06-109 Scheduling Order* (HCN Tr. Ct., Dec. 12, 2006). (Rockman, A).
The Court issued this *Scheduling Order* to establish dates and deadlines for the instant case.

**CONTRACTS**
*HCN Dep’t of Business et al. v. Sharon E. Labenz n/k/a Bunderson, CV 06-89 Order (Default Judgment)* (HCN Tr. Ct., Nov. 30, 2006). (Matha, T).
The Court had to determine whether to grant the relief requested by the plaintiffs. The defendant failed to answer the *Complaint* despite proper service of process. Thus, the Court rendered a default judgment against the defendant, awarding the plaintiffs permissible relief sought in the *Complaint*, i.e., a small claims money judgment.

*HCN Dep’t of Business et al. v. Steven W. Carnell, CV 06-102 Order (Default Judgment)* (HCN Tr. Ct., Nov. 30, 2006). (Matha, T).
The Court had to determine whether to grant the relief requested by the plaintiffs. The defendant failed to answer the *Complaint* despite proper service of process. Thus, the Court rendered a default judgment against the defendant, awarding
the plaintiff’s permissible relief sought in the Complaint, i.e., a small claims money judgment.

HCN Dep’t of Business et al. v. Melissa S. Farmer CV 06-83 Order (Default Judgment) (HCN Tr. Ct., Nov. 30, 2006). (Matha, T).
The Court had to determine whether to grant the relief requested by the plaintiffs. The defendant failed to answer the Complaint despite proper service of process. Thus, the Court rendered a default judgment against the defendant, awarding the plaintiff’s permissible relief sought in the Complaint, i.e., a small claims money judgment.

DECEMBER 12, 2006
The Court had to determine whether to grant the relief requested by the plaintiffs. The defendant failed to answer the Complaint despite proper service of process. Thus, the Court rendered a default judgment against the defendant, awarding the plaintiff’s permissible relief sought in the Complaint, i.e., a small claims money judgment.

DECEMBER 19, 2006
The Court had to determine whether to grant the relief requested by the plaintiffs. The defendant failed to answer the Complaint despite proper service of process. Thus, the Court rendered a default judgment against the defendant, awarding the plaintiff’s permissible relief sought in the Complaint, i.e., a small claims money judgment.

DECEMBER 05, 2006
Mary Bernhardt v. HoCak Construction, LLC and HCN Dep’t of Housing, CV 05-22 Decision and Order (HCN Tr. Ct., Dec. 5, 2006). (Vele, K).
The Court had to determine whether the plaintiff’s action was barred by the Statute of Limitations and Commencement of Claims, 2 HCC § 14c1. The Court determined that the statute of limitations began tolling when the final payments were tendered, and more importantly when the plaintiff first discovered the deficiencies in the defendant-builder’s work as evidenced by her refusing to move into the residence. Because this occurred in September 2000, the plaintiff’s claims are barred because the action for breach of contract should have commenced within three years of this occurrence.

DECEMBER 12, 2006
The Court recognized that the debt in the current case has been paid in full, and informed the parties of its intent to close the file if no objection is received within ten (10) days.

DECEMBER 29, 2006
The Court had to determine whether to grant the relief requested by the plaintiff, i.e., restitution of premises and an award of damages. The defendant failed to answer the Complaint despite proper service of process. The Court rendered a default judgment against the defendant, awarding the plaintiff’s permissible relief sought in the Complaint.

After affording the defendant notice and an opportunity to be heard, the Court determined that the plaintiff has a superior right to possession of the property in question. The Court entered a final
judgment on behalf of the plaintiff to have the property restored to its possession and to remove the defendant, her possessions, and those occupying the property with her from the premises. The Court sought the assistance of a tribal law enforcement officer or the sheriff of Sauk County in order to restore the property.

ENROLLMENT
DECEMBER 04, 2006
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 Officer et al., CV 03-25 Decision and Order (HCN Tr. Ct., Dec. 4, 2006). (Vele, K).

Plaintiff filed this action on behalf of his minor children in order to seek enrollment of the children. Plaintiff sought the assistance of both the Clan Mothers and the Traditional Court. The Clan Mothers made clear that they supported the enrollment of the children. They indicated that the Ho-Chunk Nation follows the lineage of the father. The Clan Mothers then encouraged the plaintiff to seek the assistance of the Traditional Court. The plaintiff sought the assistance of the Traditional Court. The Traditional Court provided the plaintiff with a written description of what the traditions and customs of the HCN are with regards to lineage. Despite the articulation of tradition and custom by the Clan Mothers and Traditional Court, several changes in the enrollment process ultimately led to the denial of the children’s enrollment with the HCN. The Trial Court ruled that the writing provided by the Traditional Court was a decision rendered by such Court, rather than an articulation of tradition and custom. As a decision, it was found not to be appealable to the Trial Court.

EMPLOYMENT
DECEMBER 08, 2006
Pamela K. Snowball v. HCN et al., CV 02-119 Order (Final Judgment) (HCN Tr. Ct., Dec. 8, 2006). (Matha, T).

The Court had to determine whether to reverse the decision to terminate the plaintiff’s employment. The Court declined to take such action since it found that the plaintiff violated federal, state and tribal requirements for the reporting of suspected child abuse. Specifically, the Court determined that the plaintiff inappropriately disclosed the alleged incident of abuse to an unauthorized individual. Thus, the Court denied the plaintiff’s request for relief. The Court upheld the termination decision of the defendants.

DECEMBER 18, 2006

The Court had to determine whether to uphold the decision of the Grievance Review Board (hereinafter GRB). The GRB failed to adhere to the directives of the HCN Supreme Court. The Court accordingly remanded the matter to the GRB, directing it to comply with the appellate decision.

DECEMBER 21, 2006
Sherry Wilson v. HCN Dep’t of Personnel, CV 05-43 Order (Order upon Remand) (HCN Tr. Ct., Dec. 21, 2006). (Matha, T).

The Supreme Court previously reversed and remanded a decision that the Court rendered in an employment action. The Supreme Court instructed the Court to conduct further proceedings, which the Court deemed unnecessary due to the fact that the matter previously proceeded to trial. Within this decision, the Supreme Court announced and imposed a liberal pleading requirement for pro se litigants. However, the Court has always acknowledged the disadvantages of a pro se litigant, and has thus attempted to provide an appropriate level of assistance without overstepping the ethical line of judge versus advocate. The Supreme Court cast the issue as one concerning amendment to
pleadings. However, the Court questions whether
the issue should instead be one of joinder. If
joinder was the issue, the case would not have been
dismissed because the supervisor would have not
proven to be an indispensable party. Instead, the
Court would have joined the supervisor pursuant to
Ho-Chunk Nation Rules of Civil Procedure, Rule
24.

The defendant, within its Answer, had instructed the
plaintiff that she failed to name her supervisor as a
defendant, and thus her claim of negligence by this
supervisor should fail. Even with this notice, it did
not appear that the plaintiff wished to name the
supervisor as a defendant. First, the Court and
parties understood that the matter could still
progress through the GRB. Second, the plaintiff did
not pursue the allegation of negligence against the
supervisor at trial in any way. And last, the plaintiff
did not portray her supervisor as acting outside the
scope of his authority at trial, but instead that she
could expect his willing cooperation. For these
reasons, the Court reasserts its dismissal given
Supreme Court precedent on the issue of joinder.

**ADMINISTRATIVE APPEALS**

**DECEMBER 11, 2006**

*Willard Lonetree v. Larry Garvin*, CV 06-74 Order
(Notice of Oral Argument) (HCN Tr. Ct., Dec. 11,
2006). (Matha, T).

The petitioner requested that the Court entertain
oral arguments within his *Initial Brief*. The Court,
within its discretion, granted the request.

**DECEMBER 18, 2006**

*Thomas Quimby v. HCN et al.*, CV 05-91 Order
(Notice of Oral Argument) (HCN Tr. Ct., Dec. 18,

The petitioner requested that the Court entertain
oral arguments within his *Reply Brief*. The Court,
within its discretion, granted the request.

**CHILDREN’S TRUST FUND (CTF)**

**DECEMBER 01, 2006**

*In the Interest of Minor Child: C.S., DOB 07/10/95,
by Tara Snowball v. HCN Office of Tribal
Enrollment*, CV 05-81 Order (Motion Granted)

The Court previously granted a release of the
Children’s Trust Fund (hereinafter CTF) for
purposes of orthodontic care of the minor child.
The petitioner provided a partial accounting of the
debred funds, but the Court did not close the case
file. The petitioner filed a motion for release of
CTF monies related to the ongoing orthodontic care
of the minor. A family relocation permitted only a
partial usage of the aforementioned funds. Thus,
the petitioner sought to finish the orthodontic
treatment through another dental provider. The
respondent consented to the proposed usage of
funds. The Court granted the motion.

**DECEMBER 05, 2006**

*In the Interest of Minor Children: D.L., DOB
05/27/91; M.L., DOB 10/21/93; and M.L., DOB
05/28/99, by Doracita Lonetree v. HCN Office of
Tribal Enrollment, CV 06-26 Order (Accepting
Accounting) (HCN Tr. Ct., Dec. 5, 2006). (Rockman,
A).

The Court had to determine whether a parent can
access monies from her minor child’s CTF to pay
for costs associated with orthodontic procedures.
The Court granted the request.

The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The Court granted the request.

In the Interest of Adult CTF Beneficiary: Bruce Sanford, DOB 01/17/84 v. HCN Office of Tribal Enrollment, CV 06-55 Order (Denial of Petition) (HCN Tr. Ct., Dec. 11, 2006). (Rockman, A).

The Court had to determine whether an adult can access monies from his CTF to pay for costs associated with the purchase of an automobile. The Court denied the request.

In the Interest of Minor Child: J.R.D., DOB 02/01/95, by Michelle L. Fortney v. HCN Office of Tribal Enrollment, CV 06-65 Order (Requesting Accounting) (HCN Tr. Ct., Dec. 12, 2006). (Matha, T).

The Court previously released funds from the CTF accounts of the minor child for costs associated with orthodontic procedures. The petitioner failed to submit an accounting confirming proper use of the funds within the specified timeframe. The Court ordered that the petitioner submit the required accounting.

In the Interest of Adult CTF Beneficiary: April Webster, DOB 08/30/87 v. HCN Office of Tribal Enrollment, CV 05-107 Order (Subsequent Release of Monies) (HCN Tr. Ct., Dec. 15, 2006). (Matha, T).

The Court had to determine whether to grant a subsequent release of monies from the adult beneficiary’s CTF. Pursuant to a previous Order, the petitioner filed proof of enrollment in school. The Court accordingly granted the subsequent release of funds for costs associated with rent.


The Court previously released funds from the CTF accounts of the child for costs associated with orthodontic procedures. The petitioner submitted a correspondence from the orthodontist, confirming proper use of the funds. The Court accepted this accounting.

In the Interest of Adult CTF Beneficiary: Donovan T. Littlejohn, DOB 04/25/89 v. HCN Office of Tribal Enrollment, CV 06-114 Order (Granting


The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The Court granted the request.


The Court had to determine whether to grant a subsequent release of monies from the CTF accounts of the child for costs associated with eye wear. The petitioner submitted an invoice from Eau Claire Optical, confirming proper use of the funds. The Court accepted this accounting.
The Court granted the attorney’s request to appear by telephone during the Fact-Finding Hearing.

The Court had to determine whether an adult can access monies from his CTF to pay for costs associated with emergency housing assistance and replacement of personal belongings due to a residential fire. In a consolidated action, the Court must also determine whether the parent can access monies on behalf of his minor child from the child’s CTF for the same expenses. The Court granted the request in part. Specifically, the Court granted a release of monies associated with emergency rental assistance, appliances, furniture, modestly priced clothing, and renters insurance. However, the Court denied the requests for televisions and expensively priced clothing due to the fact that these requests did not represent necessities.

DECEMBER 29, 2006
In the Interest of Adult CTF Beneficiary: April Webster, DOB 08/30/87 v. HCN Office of Tribal Enrollment, CV 05-107 Order (Subsequent Release of Monies) (HCN Tr. Ct., Dec. 29, 2006). (Matha, T).
The Court had to determine whether to grant a subsequent release of monies from the adult beneficiary’s CTF. Pursuant to a previous Order, the petitioner filed proof of enrollment in school. The Court accordingly granted the subsequent release of funds for costs associated with basic utilities.

The Court had to determine whether a legal guardian can access monies on behalf of an adult incompetent member from the ITF to accommodate residential care. The Court granted the request.

The Court previously released funds from the ITF accounts of the incompetent tribal member for costs associated with rent, utilities, and a personal allowance. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

DECEMBER 18, 2006
The Court previously released funds from the ITF accounts of the child for costs associated with ongoing guardian services. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

DECEMBER 19, 2006
The petitioner requested that the judge recuse herself due to a distant familial relationship. In accordance with HCN Judicial Ethics, § 4-2 (B), a judge or justice may recuse him/herself on his or her own discretion to avoid the appearance of impropriety.” Therefore, the judge granted the recusal request.
FAMILY CASES

DIVORCE
DECEMBER 28, 2006
The joint petitioners filed the Petition for Divorce (Without Minor Children), thereby consenting to the personal jurisdiction of the Court. Additionally, the parties jointly filed a Divorce Agreement to be attached to the Final Judgment. The parties are enrolled members of the Ho-Chunk Nation and have resided in the State of Wisconsin for at least six (6) consecutive months prior to filing of the petition. The petitioner stated that the marriage is irretrievably broken with no possibility of reconciliation, whereas the respondent believed the opposite.

DOMESTIC VIOLENCE
NO RECENT DECISIONS

JUVENILE CASES
NOVEMBER 29, 2006
The petitioner filed a Petition for Temporary Guardianship of the minor child with the Court. The Court subsequently scheduled a Guardianship Hearing. In accordance with CHILDREN’S ACT, the Court requests that CFS prepare and submit a list of the minor children’s traditional relatives to the Court.

DECEMBER 01, 2006
The CHILDREN’S ACT, §3.4 confirms the confidential nature of guardianship and protection proceedings. Thus, the Court provides this redacted order to aid the guardian and/or physical custodian in obtaining services for the minor child(ren) entrusted to his/her care.

The Court had to determine whether to establish a child support obligation for the mother of the minor child. The CHILDREN’S ACT provides the Court with this authority, so long as it effects proper service of process. Thus, the Court erects a child support obligation.

The CHILDREN’S ACT, §3.4 confirms the confidential nature of guardianship and protection proceedings. Thus, the Court provides this redacted
order for purposes of child support withholding and related administration by the Ho-Chunk Nation Department of Treasury (hereinafter Treasury Department).

**DECEMBER 05, 2006**

*In the Interest of Minor Child: S.J.W., DOB 02/10/93, JV 04-12 Order (Erratum) (HCN Tr. Ct., Dec. 5, 2006). (Matha, T).*

The Court issues this *Erratum Order* to correct a clerical mistake in its last *Order.*


The Court appointed a GAL in this matter.

**DECEMBER 06, 2006**

*In the Interest of Minor Children: S.M., DOB 11/18/92; K.M., DOB 10/18/93; S.M., DOB 12/13/95; A.M., DOB 09/16/01; A.M., DOB 06/16/04; A.M., DOB 03/14/06, JV 06-33-38 Order (Denial of Motion to Reschedule Trial Date) (HCN Tr. Ct., Dec. 6, 2006). (Rockman, A).*

The Court received a *Motion for Expedited Consideration and Motion to Reschedule Trial Date* from the petitioner. Opposing counsel would not agree to postpone the *Trial.* Thus, the Court reviewed the *Motion to Reschedule Trial Date* on an expedited basis. The basis for the *Motion* was the fact that the *Guardian Ad Litem Report* had not been submitted. However, past practice has indicated that Guardian Ad Litems often submit written reports on the day of either hearings or trials, and likewise make oral reports to the Court. Thus, the Court denied the *Motion.*

**DECEMBER 08, 2006**

*In the Interest of Minor Child: N.L.W., DOB 09/22/96, JV 06-42 Order (Granting Emergency Temporary Legal & Physical Custody) (HCN Tr. Ct., Dec. 8, 2006). (Rockman, A).*

The Court had to determine whether to grant emergency temporary legal and/or physical custody of the above-named minor children. The Court entered this *Order* as necessary to ensure the safety of the children. At the scheduled *Initial Hearing,* the parent(s), guardian(s), and/or physical custodian(s) shall be afforded proper due process for purposes of answering the *Child/Family Protection Petition* filed by CFS.

**DECEMBER 12, 2006**

*In the Interest of Minor Child: N.L.W., DOB 09/22/96, JV 06-42 Order (Granting Telephonic Appearance) (HCN Tr. Ct., Dec. 12, 2006). (Rockman, A).*

The Court granted the individual’s request to appear by telephone.

**DECEMBER 13, 2006**

*In the Interest of Minor Children: Y.M.R., DOB 08/19/04; Y.J.R., DOB 06/24/05; A.A., DOB 03/23/98; V.A., DOB 02/28/00, JV 06-09-12 Order (Child Protection Review Hearing) (HCN Tr. Ct., Dec. 13, 2006). (Rockman, A).*

The conducted a *Child Protection Review Hearing.* The Court had to assess the extent of compliance with the dispositional order. The Court performed this review in accordance with the [*CHILDREN’S ACT,* §3.40, and determined to maintain the status quo.]

**DECEMBER 14, 2006**

*In the Interest of Minor Child: P.D.R., DOB 08/24/90, JV 03-24 Order (Child Protection Review Hearing) (HCN Tr. Ct., Dec. 14, 2006). (Matha, T).*

The conducted a *Child Protection Review Hearing.* The Court had to assess the extent of compliance with the dispositional order. The Court performed this review in accordance with the [*CHILDREN’S ACT,* §3.40c, and determined to maintain the status quo.

**DECEMBER 18, 2006**

*In the Interest of Minor Child: J.M.D., DOB 03/29/06, JV 06-14 Order (Appointment of...
The Court appointed a GAL in this matter.

December 19, 2006
The Court convened a Plea Hearing for the purpose of determining whether the parent of the minor children wished to contest the allegations contained in the Child/Family Protection Petition. At that time, the father requested a continuance, after being advised as to his rights as a parent as set forth in the CHILDREN’S ACT, §3.22d. The Court accordingly reschedules the Plea Hearing, so as to provide time to obtain legal representation.

SUPREME COURT
December 21, 2006
Joyce L. Warner v. HCN et al., SU 06-05 Scheduling Order (HCN Sup. Ct., December 21, 2006).
The Supreme Court issued this Scheduling Order to establish dates and deadlines for the instant case.

December 26, 2006
Robert Gerhartz v. HCN Gaming Comm’n, SU 06-06 Scheduling Order (HCN Sup. Ct., December 26, 2006).
The Supreme Court issued this Scheduling Order to establish dates and deadlines for the instant case.

December 29, 2006
George Lewis v. HCN Election Board et al., SU 06-07 Scheduling Order (HCN Sup. Ct., December 29, 2006).
The Supreme Court issued this Scheduling Order to establish dates and deadlines for the instant case.

Recent Filings

RECENT FILINGS

TRIAL COURT

CHILD SUPPORT
December 12, 2006
Terri L. Thompson v. Dion J. Thompson, CS 06-59.
Katherin A. Stojak v. Dion J. Thompson, CS 06-60.

December 13, 2006

December 19, 2006

December 20, 2006
Leslie Rave v. Maynard Rave, Jr., CS 06-63.
Nicole V. Leonard v. Taylor J. Houghton, Sr., CS 06-64.

CIVIL GARNISHMENT
December 04, 2006
Creditor Recovery Service v. Chiara Cleveland, CG 06-79.

December 12, 2006

Cash Today, #201 v. Charles Hopinkah, CG 06-82. (Matha, T).

Cash Today, #201 v. Matthew Thundercloud, CG 06-83. (Matha, T).

DECEMBER 20, 2006
Alliance Collection Agencies Inc. v. Bryan J. Ringer, CG 06-84. (Matha, T).

Alliance Collection Agencies Inc. v. Amber A. Malone, CG 06-85. (Matha, T).

CIVIL CASES
DECEMBER 18, 2006

DECEMBER 19, 2006
In the Interest of Minor Child: B.G.L., Jr., DOB 03/19/93, CV 06-116. (Rockman, A).

In the Interest of Minor Child: M.G.W., DOB 07/09/95, by Melody Whiteagle-Fintak, CV 06-117. (Rockman, A).

DECEMBER 27, 2006
In the Interest of Minor Child: R.M.D., DOB 01/28/95, by Ann Decorah, CV 06-118. (Matha, T).

In the Interest of Minor Child: A.E.B., DOB 04/27/05, by Francesca Bird, CV 06-119. (Matha, T).

FAMILY
DECEMBER 14, 2006

DOMESTIC VIOLENCE
NO RECENT FILINGS

JUVENILE
DECEMBER 07, 2006
In the Interest of Minor Child: N.L.W., DOB 09/22/96, JV 06-42. (Rockman, A).

SUPREME COURT
DECEMBER 15, 2006
George Lewis v. HCN Election Board et al., SU 06-07.
**Ho-Chunk Nation Judiciary Fee Schedule**

**Filing Fees**
- Complaint: $50.00
- Petition for Release of Per Capita Distribution (Children’s Trust Fund): $50.00
- Motion to Appear Pro Hac Vice: $35.00
- Appellate Filing Fee: $50.00
- Petition to Register and Enforce Foreign Judgment/Order: $20.00
- Marriage License Fee: $50.00

**Court Fees**
- Copying: $0.10/page
- Faxing: $0.25/page (sending & receiving)
- CD of Hearings: $12.50/CD
- Deposition Videotape: $10.00/tape
- Certified Copies: $0.50/page
- Equipment Rental: $5.00/hour
- Admission to Practice: $50.00

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

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

- **Ho-Chunk Nation Code**
  Ordinance/Act Name Title Number HCC Section.
  ELDER PROTECTION ACT, 4 HCC § 1.
  EMPLOYMENT RELATIONS ACT, 6 HCC § 5.
  (for detailed citation information consult LEGISLATIVE ORGANIZATION ACT, 2 HCC § 11.36)

- **HCN Supreme Court Case Law**
  Case Name, Case Number (HCN S. Ct., month, day, year).

- **HCN Trial Court Case Law**
  Case Name, Case Number (HCN Tr. Ct., month, day, year)

- **Ho-Chunk Nation Rules of Civil Procedure**
  HCN R. Civ. P. 19(B)
SPECIAL RECOGNITION FOR
SUPREME COURT CHIEF JUSTICE
MARY JO BROOKS HUNTER

Recently, the Ho-Chunk Nation Judiciary’s own Supreme Court Chief Justice, Mary Jo Brooks Hunter, was honored by the Minnesota Judicial Branch for her pro bono work with the Hamline University School of Law Child Advocacy Clinic (online at http://www.hamline.edu/law/curriculum/clinics/child_advocacy.html, last visited February 14, 2007).

When not seated on the Nation’s Supreme Court, Justice Brooks Hunter acts as an Associate Clinical Professor at Hamline University College of Law in St. Paul, Minnesota. Justice Brooks Hunter’s work recently earned her recognition for her support of Minnesota’s Guardian ad Litem (GAL) program; Hamline’s child advocacy clinic has provided support and legal services to seventy-seven (77) GAL cases in the past years.
Updates from Outside Courts

United States Court of Appeals for the Federal Circuit
A group of Sioux descendants were found to not be entitled to additional trust fund monies, despite the Department of Interior’s breach of duties for unreasonably delaying payments to the members. A unanimous court ruled the members were entitled to the original trust amount, but not an additional $1.9 million in damages.

United States Court of Appeals for the Ninth Circuit
Arakaki v. Lingle, 2007 U.S. App. LEXIS 2936 (9th Cir. 2007).
In a suit brought against named members of the Hawaiian government for alleged preferential treatment of persons of Native Hawaiian ancestry, the United States Supreme Court reversed and remanded the decision of the Ninth Circuit, finding a lack of standing to bring the instant action. On remand, the 9th Circuit ruled the citizens lacked standing to sue the Federal Government, and all claims against the federal government were dismissed.

United States Court of Appeals for the Eighth Circuit
The 8th Circuit ruled that the United States Department of the Interior was permitted to take land into trust for the Santee Sioux Nation, despite the claims of the State of South Dakota that section 5 of the IRA is an unconstitutional delegation of power, that the land fails to meet the required criteria, and that the land does not fall within the requirements of “Indian Country.”

United States Court of Appeals for the Sixth Circuit
In a case brought against the Governor of the State of Michigan by six Indian nations regarding IGRA contracts entered into by the Governor’s predecessor, the Sixth Circuit found that reversible error was committed by the failure of the lower court to accept extrinsic evidence regarding the meaning of the word “wager” as applied within the gaming compacts at issue.

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 CASES**

**JANUARY 03, 2007**


The minor child turned eighteen (18) years of age. In accordance with state law, the respondent’s obligation ends when the children turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.


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**JANUARY 09, 2007**


The minor child turned eighteen (18) years of age. In accordance with state law, the respondent’s obligation ends when the children turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.


The Court received an Order Amending Support issued by Jackson County Circuit Court. As a result the Court directed the HCN Department of Treasury to cease withholding per capita payments for child support.

*State of Wisconsin/Jackson County v. Casey A. Fitzpatrick, CS 00-50 Order (Ceasing Arrearage Withholding from Per Capita)* (HCN Tr. Ct., Jan. 9, 2007). (Rockman, A).

The Court ordered the cessation of child support arrearage withholding based upon the underlying state court order.


The Court received an Order Suspending Support issued by Monroe County Circuit Court. As a result the Court directed the HCN Department of Treasury to cease withholding per capita payments for child support.

*State of Wisconsin, ex rel. Marita C. Basina v. Anthony M. Basina, CS 06-29 Order (Ceasing HO-CHUNK NATION COURT BULLETIN VOL. 13, NO. 2 FEbruary 2007 page 3 of 17
The Court had to determine whether to cease withholding due to the minor child’s emancipation and dropping out of school. The Court ordered the cessation of child support withholding.

The Court had to determine whether to cease withholding due to the parties entering a stipulation agreement based upon the fact that the parties are now residing with one another. The Court ordered the cessation of child support withholding in that case, but withholding continued unchanged in the second case.

JANUARY 10, 2007
The minor child turned eighteen (18) years of age. In accordance with state law, the respondent’s obligation ends when the children turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

JANUARY 12, 2007
The Court previously requested the parties to file proof of high school enrollment as the child turned eighteen (18) years of age. The petitioner filed such proof, thus the child support shall continue until the August 2007 per capita distribution.

The Court had to determine whether to grant the petitioner’s motion to modify. The county closed its case due to arrears being paid in full. The Court accordingly grants the modification.

JANUARY 15, 2007
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent expressed her acquiescence to the request for relief in writing, thus the Court granted recognition and enforcement of the foreign judgment.

The Court granted the petitioner’s request to appear by telephone.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent expressed her acquiescence to the request for relief in writing, thus the Court granted recognition and enforcement of the foreign judgment.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

The Court previously requested the parties to file proof of high school enrollment as the child turned eighteen (18) years of age. The petitioner filed such proof, thus the child support shall continue through the 2006/2007 school year.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s wages. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s wages. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

**JANUARY 16, 2007**

The Court had to determine whether to grant the petitioner’s motion to modify. The petitioners requested a modification in current child support withholding. The respondent failed to respond timely. The Court granted the motion.

The Court ordered the cessation of withholding from the respondent’s per capita for current child support because the child has reached the age of majority.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted
recognition and enforcement of the foreign judgment.

The Court ordered the cessation of withholding from the respondent’s per capita for current child support because the child has reached the age of majority.

The Court had to determine whether to modify the current child support due to the child reaching the age of majority. The parties failed to present evidence of high school enrollment within the specified time frame. The Court thus modified the withholding to represent the percentages followed by the State of Wisconsin. Furthermore, the Court ordered that the excess monies be impounded providing the State the opportunity to file proof that the child support should continue at the previous rate until the youngest child reaches the age of majority.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent filed a timely response acquiescing to the enforcement of another child support order. The Court granted recognition and enforcement of the foreign judgment.

The Court had to determine whether to grant respondent’s request that withholding of current child support continue in order to satisfy arrears that have accumulated. The Court granted the respondent’s request.

JANUARY 23, 2007
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent filed a timely response, nevertheless the Court granted recognition and enforcement of the foreign judgment.

JANUARY 29, 2007
The minor child turned eighteen (18) years of age. In accordance with state law, the respondent’s obligation ends when the children turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

JANUARY 30, 2007
The minor child turned eighteen (18) years of age. In accordance with state law, the respondent’s obligation ends when the children turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

The minor child turned eighteen (18) years of age. In accordance with state law, the respondent’s obligation ends when the children turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.
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The minor child turned eighteen (18) years of age. In accordance with state law, the respondent’s obligation ends when the children turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

The Court had to determine whether to grant the petitioner’s motion to modify. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

CIVIL GARNISHMENT CASES

JANUARY 3, 2007
The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

JANUARY 10, 2007
The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.
judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

**JANUARY 18, 2007**

*Alliance Collection Agencies, Inc. v. Crystal E. Wilson, CG 06-71 Order (Default Judgment)* (HCN Tr. Ct., Jan. 18, 2007). (Matha, T).
The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

**JANUARY 29, 2007**

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

**CIVIL CASES**

**JANUARY 25, 2007**

The Court issued this order to provide notice of oral arguments in this case.

**ADMINISTRATIVE APPEALS**

**JANUARY 29, 2007**

The Court declined to reverse the agency decision due to the petitioner’s failure to truthfully respond to an unambiguous request for information on the gaming license application.

**CHILDREN’S TRUST FUND (CTF)**

**JANUARY 02, 2007**

The Court previously released funds from the CTF accounts of the minor child for costs associated with orthodontic procedures. The petitioner failed to submit an accounting confirming proper use of the funds within the specified timeframe. The Court ordered that the petitioner submit the required accounting.

The Court previously released funds from the CTF accounts of the adult beneficiary for costs associated with continuing education and eye care. The petitioner submitted account statements, confirming proper use of the funds. The Court accepted this accounting.

The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The Court granted the request.

The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The Court granted the request.

The Court had to determine whether a parent can access monies from her minor child’s CTF to pay
for costs associated with orthodontic procedures. The Court granted the request.

**JANUARY 15, 2007**


The Court previously released funds from the CTF accounts of the minor child for costs associated with private school, tuition and expenses. The petitioner failed to submit an accounting confirming proper use of the funds within the specified timeframe. The Court ordered that the petitioner submit the required accounting.

**JANUARY 18, 2007**


The Court previously released funds from the CTF accounts of the adult beneficiary for costs associated with orthodontic procedures. The petitioner submitted account statements, confirming proper use of the funds. The Court accepted this accounting.


The Court had to determine whether the parent could access CTF monies on behalf of a minor child for costs associated with purchasing a personal computer. Since the Court deems such expenditure unnecessary, the Court denied the request.

**JANUARY 19, 2007**


The Court previously released funds from the CTF accounts of the minor child for costs associated with private school tuition. The petitioner submitted account statements, confirming proper use of the funds. The Court accepted this accounting.


The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with private school tuition and expenses. The Court granted the request.


The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with dental procedures. The Court granted the request.

**JANUARY 22, 2007**


The Court previously released funds from the CTF accounts of the child for costs associated with orthodontic procedures. The petitioner submitted a correspondence from the orthodontist, confirming proper use of the funds. The Court accepted this accounting.


The Court had to determine whether the parent could access CTF monies on behalf of a minor child for costs associated with securing legal counsel. As a result of the absolute right to counsel in a criminal proceeding conferred by the Constitution of the United States, the Court denied the request.

**JANUARY 29, 2007**


The Court previously released funds from the CTF account of minor child for costs associated with the
installation of a lap pool. The petitioner submitted account statements, confirming proper use of the funds. The Court accepted this accounting.

The Court informed the parties of the intent to close the case if no objection was filed within ten (10) days.

January 31, 2007
The petitioner failed to attend the fact-finding hearing, and did not notify the Court of an inability to attend the proceeding. Therefore, the Court dismissed the action without prejudice.

January 24, 2007

The Court issues this Erratum Order to correct a clerical mistake in its last Order.

Employment
January 19, 2007
The Court granted the individual’s request to appear by telephone.

January 30, 2007
The plaintiff informed the Court of her intention to withdraw the case during the discovery period. Therefore, the Court dismisses the action without prejudice.

General Council Actions
George Lewis v. HCN Election Board et al., CV 06-109 Order (Motion Denied) (HCN Tr. Ct., Jan. 15, 2007). (Rockman, A).
The Court denies the defendant’s motion for reconsideration on the grounds of mootness. Since
the Court had previously granted the plaintiff’s request for an injunction to preserve the status quo, and since the scheduled special election was not held, the motion was denied for lack of a case or controversy.

**HOUSING**

**JANUARY 4, 2007**

*Ho-Chunk Nation Property Management v. Evans A. Littlegeorge, CV 05-95 Order (Satisfaction of Judgment) (HCN Tr. Ct., Jan. 4, 2007). (Matha, T).*

The Court recognized that the debt had been paid in full and informed the parties of its intent to close the file.

**JANUARY 23, 2007**


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

**INCOMPETENT TRUST FUND (ITF)**

**JANUARY 2, 2007**

*In the Interest of B.F.R., DOB 09/18/19 v. HCN Office of Tribal Enrollment, CV 02-95 Order (Accepting Accounting) (HCN Tr. Ct., Jan. 2, 2007). (Matha, T).*

The Court previously released funds from the ITF accounts of the incompetent tribal member for costs associated with ongoing nursing home care. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

**JANUARY 12, 2007**

*In the Interest of Adult Incompetent G.D.G., DOB 01/03/43 v. HCN Office of Tribal Enrollment, CV 05-16 Order (Accepting Accounting) (HCN Tr. Ct., Jan. 12, 2007). (Matha, T).*

The Court previously released funds from the ITF accounts of the incompetent tribal member for costs associated with outstanding debts. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

**JANUARY 24, 2007**

*In the Interest of Adult Incompetent H.C., DOB 01/31/31 v. HCN Office of Tribal Enrollment, CV 05-72 Order (Accepting Accounting) (HCN Tr. Ct., Jan. 24, 2007). (Rockman, A).*

The Court previously released funds from the ITF accounts of the incompetent tribal member for costs associated with ongoing nursing home care. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

**FAMILY CASES**

**DIVORCE**

NO RECENT DECISIONS

**DOMESTIC VIOLENCE**

NO RECENT DECISIONS

**JUVENILE CASES**

**JANUARY 2, 2007**

*In the Interest of Minor Child: D.A.F., DOB 09/16/88, JV 03-16 Order (Termination of Jurisdiction) (HCN Tr. Ct., Jan. 2, 2007). (Matha, T).*

The Court terminated jurisdiction over and supervision of the instant case.

**JANUARY 3, 2007**

*In the Interest of Minor Child: N.L.W., DOB 09/22/96, JV 06-42 Order (Granting Telephonic Appearance) (HCN Tr. Ct., Jan. 3, 2007). (Rockman, A).*

The Court granted the individual’s request to appear by telephone.

**JANUARY 4, 2007**
The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court performed this review in accordance with the CHILDREN’S ACT, §3.40, and determined to maintain the status quo.

The Court convened a Plea Hearing for the purpose of determining whether the parent of the minor children wished to contest the allegations contained in the Child/Family Protection Petition. At that time, the father requested a continuance, after being advised as to his rights as a parent as set forth in the HO-CHUNK NATION FAMILY AND CHILDREN’S ACT (hereinafter CHILDREN’S ACT), §3.22d. The Court accordingly reschedules the Plea Hearing, so as to provide time to obtain legal representation.

JANUARY 9, 2007
In the Interest of Minor Child: J.R.P., DOB 02/27/92, JV 03-01-02 Order (Granting Telephonic Appearance) (HCN Tr. Ct., Jan. 9, 2007). (Matha, T).
The Court granted the individual’s request to appear by telephone.

JANUARY 11, 2007
The Court had to determine whether to grant permanent guardianship in the instant action. The Court denied the petition because it did not conform to the requirements of the CHILDREN’S ACT, and does not coincide with the child’s best interests.

JANUARY 12, 2007
The Court had to determine whether to appoint a successor temporary guardian of the minor child, pursuant to the CHILDREN’S ACT. The Court deemed that such an appointment was within in the minor child’s best interests.

The CHILDREN’S ACT, §3.4 confirms the confidential nature of guardianship and protection proceedings. Thus, the Court provides this redacted order for purposes of child support withholding and related administration by the Ho-Chunk Nation Department of Treasury.

The Court had to determine whether to establish a child support obligation for the parents of the minor child. The CHILDREN’S ACT provides the Court with this authority, so long as it effects proper service of process. Thus, the Court erects such a financial obligation.

JANUARY 15, 2007
The court removed the obligation of the child’s mother to continue providing ongoing child support.

In the Interest of Minor Child: S.M.J., DOB 01/08/92, JV 98-14 Order (Submission of Traditional
The petitioner filed a Petition for Temporary Guardianship of the minor child with the Court. The Court subsequently scheduled a Guardianship Hearing. In accordance with CHILDREN’S ACT, the Court requests that CFS prepare and submit a list of the minor children’s traditional relatives to the Court.

The Court had to determine whether to dismiss the instant action. The petitioner failed to attend the Guardianship Hearing, and was therefore unable to offer any additional evidence or testimony. The Court dismissed the instant action.

JANUARY 22, 2007
The Court denied the petitioner’s motion for a status hearing.

JANUARY 23, 2007
In the Interest of Minor Children: P.M.S., DOB 01/14/91; P.A.S., DOB 01/14/91, JV 98-06, 98-07, Order (Child Placement Hearing) (HCN Tr. Ct., Jan. 23, 2007). (Rockman, A).
The Court had to assess the placement of the above-named minor children.


The Court granted the extension of a deadline to submit the visitation schedule and dispositional progress report.

JANUARY 25, 2007
The conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court performed this review in accordance with the CHILDREN’S ACT, §3.40, and determined to maintain the status quo.

The Court had to determine whether to grant permanent guardianship in the instant action. The Court denied the petition because it did not conform to the requirements of the CHILDREN’S ACT, and does not coincide with the child’s best interests.

The conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court performed this review in accordance with the CHILDREN’S ACT, §3.40, and determined to maintain the status quo.

JANUARY 29, 2007
In the Interest of Minor Child: S.C., DOB 03/04/91, JV 07-03 Order (Submission of Traditional Relatives List) (HCN Tr. Ct., Jan. 29, 2007). (Rockman, A).
The petitioner filed a Petition for Temporary Guardianship of the minor child with the Court. The Court subsequently scheduled a Guardianship Hearing. In accordance with CHILDREN’S ACT, the Court requests that CFS prepare and submit a list of the minor children’s traditional relatives to the Court.
JANUARY 30, 2007
In the Interest of Minor Children: J.C., DOB 04/10/04, A.C., DOB 01/31/06, JV 07-04, 07-05 Order (Granting Emergency Temporary Legal Custody) (HCN Tr. Ct., Jan. 30, 2007). (Matha, T).
The Court had to determine whether to appoint an emergency legal guardian for the minor children. The Court deemed such an appointment to be within the minor children’s best interests.

The Court had to determine whether to accept a consent decree entered into by the parties. The Court accepted the consent decree submitted, and removed the trial date from the calendar.

JANUARY 31, 2007
In the Interest of Minor Children: S.M., DOB 11/18/92, K.M., DOB 10/18/93, S.M., DOB 12/13/95, A.M., DOB 09/16/01, A.M., DOB 06/16/04, A.M., DOB 03/14/06, JV 06-33, 06-34, 06-35, 06-36, 06-37, 06-38 Order (Acceptance of Consent Decree) (HCN Tr. Ct., Jan. 31, 2007). (Rockman, A).
The Court had to determine whether to accept a consent decree entered into by the parties. The Court accepted the consent decree submitted, and removed the trial date from the calendar.

The Court had to determine whether to accept a consent decree entered into by the parties. The Court accepted the consent decree submitted, and removed the trial date from the calendar.

SUPREME COURT
NO RECENT DECISIONS

RECENT FILINGS
TRIAL COURT

CHILD SUPPORT
JANUARY 5, 2007

JANUARY 8, 2007

JANUARY 9, 2007

JANUARY 10, 2007
Thomas Harrison v. Michelle Cortez, CS 07-04. (Matha, T).

JANUARY 19, 2007

Brenda Younghunder v. Katie Younghunder, CS 07-06. (Rockman, A).

JANUARY 22, 2007
State of Wisconsin & Scott McKay v. April D. Lincoln, CS 07-07. (Matha, T).
State of Wisconsin & Maureen Big John v. Larry A. Fanning, CS 07-08. (Matha, T).

Blue Earth Co. & Michaela Arendariz v. Joshua R. Arendariz, CS 07-09. (Matha, T).


**Civil Garnishment**

**JANUARY 09, 2007**

CitiFinancial v. Anthony Van Riper, CG 07-01. (Matha, T).

Cash Today #201 v. Dennis Lewis, CG 07-02. (Matha, T).

**JANUARY 12, 2007**

Cash Today #201 v. Lewis Frogg, CG 07-03. (Matha, T).

Cash Today, #201 v. Caroline Decorah, CG 07-04. (Matha, T).

Cash Today, #201 v. Ellen Dumas, CG 07-05. (Matha, T).

**JANUARY 16, 2007**


Quick Cash Loans v. Melinda Brown, CG 07-07. (Matha, T).

Cash Today, #201 v. Michelle Mountain, CG 07-08. (Matha, T).

Citibank (South Dakota) v. Victoria A. Lowe, CG 07-12. (Matha, T).

**Civil Cases**

**JANUARY 2, 2007**

In the Interest of: M.J.C., DOB 12/12/82, CV 07-01. (Rockman, A).

**JANUARY 3, 2007**


**JANUARY 8, 2007**

In the Interest of Minor Child: T.R.G., DOB 1/30/91, CV 07-03. (Matha, T).

**JANUARY 10, 2007**

In the Interest of Minor Child: M.L.P., DOB 5/21/95, CV 07-04. (Matha, T).

**JANUARY 12, 2007**

Ho-Chunk Nation, Property Management Division v. Francina Williams, CV 07-05. (Matha, T).

**JANUARY 22, 2007**

In the Interest of Minor Child: M.L.P., DOB 5/21/95, CV 07-06. (Matha, T).

**JANUARY 24, 2007**

In the Interest of T.K., DOB 6/6/90 v. HCN Office of Tribal Enrollment, CV 07-07. (Matha, T).

**JANUARY 26, 2007**

In the Interest of T.L.M., DOB 4/10/94 v. HCN Office of Tribal Enrollment, CV 07-08. (Matha, T).

In the Interest of N.L.R, DOB 1/18/99 v. HCN Office of Tribal Enrollment, CV 07-09. (Matha, T).

**Family**

**JANUARY 8, 2007**

Ardella V. Quackenbush v. Leo G. Quackenbush, FM 07-01. (Matha, T).

**Domestic Violence**

No Recent Filings

**Juvenile**

**JANUARY 02, 2007**

In the Interest of Minor Child: M.R.A., DOB 03/30/99, JV 07-01. (Rockman, A).


**JANUARY 26, 2007**
In the Interest of Minor Child: J.C., DOB 04/10/04, JV 07-04. (Matha, T).

In the Interest of Minor Child: A.C., DOB 01/31/06, JV 07-05. (Matha, T).

JANUARY 29, 2007
In the Interest of Minor Child: S.C., DOB 03/04/91, JV 07-03. (Rockman, A).

SUPREME COURT
JANUARY 19, 2007
Mary Bernhardt v. HoCqk Construction, LLC., Ho-Chunk Nation Dep’t of Housing, SU 07-01.
HO-CHUNK NATION COURT SYSTEM
JUDICIARY AND STAFF
Supreme Court – Mary Jo B. Hunter, Chief Justice
   Mark D. Butterfield, Associate Justice
   Dennis Funmaker, Associate Justice
Traditional Court – Earl Blackdeer
   Donald Blackhawk
   Dennis Funmaker
   Jim Greendeer
   Douglas Greengrass
   Desmond Mike
   Douglas Red Eagle
   Preston Thompson, Jr.
   Eugene Thundercloud
   Morgan White Eagle
   Clayton Winneshiek
Trial Court – Todd R. Matha, Chief Judge
   Amanda L. Rockman, Associate Judge
   Clerk of Court, Trial Court – Marcella Cloud
   Assistant Clerk of Court, Trial Court – Selina Joshua
   Assistant Clerk of Court, Trial Court – Jessi Cleveland
   Administrative Assistant – Margaret Wilkerson
   Bailiff – Dennis Rockman
   Staff Attorney – Jennifer L. Tilden
   Staff Attorney – Nicole M. Homer
   Supreme Court Clerk – Mary Endthoff

* 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 Judiciary Fee Schedule

Filing Fees
- Complaint.............................................$50.00
- Petition for Release of Per Capita Distribution (Children’s Trust Fund) ..................$50.00
- Motion to Appear Pro Hac Vice.............$35.00
- Appellate Filing Fee..............................$50.00
- Petition to Register and Enforce Foreign Judgment/Order ..............................$20.00
- Marriage License Fee..........................$50.00

Court Fees
- Copying ............................................$0.10/page
- Faxing .............................................$0.25/page (sending & receiving)
- CD of Hearings ..................................$12.50/CD
- Deposition Videotape ..........................$10.00/tape
- Certified Copies .................................$0.50/page
- Equipment Rental ...............................$5.00/hour
- Admission to Practice .........................$50.00

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

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

Ho-Chunk Nation Code
Ordinance/Act Name Title Number HCC Section.
ELDER PROTECTION ACT, 4 HCC § 1.
EMPLOYMENT RELATIONS ACT, 6 HCC § 5.
(for detailed citation information consult LEGISLATIVE ORGANIZATION ACT, 2 HCC § 11.36)

HCN Supreme Court Case Law
Case Name, Case Number (HCN S. Ct., month, day, year).

HCN Trial Court Case Law
Case Name, Case Number (HCN Tr. Ct., month, day, year)

Ho-Chunk Nation Rules of Civil Procedure
HCN R. Civ. P. 19(B)
On Saturday, March 3, 2007, Cherokee Nation voters overwhelmingly passed a proposed amendment to the Cherokee Nation Constitution that would serve to greatly limit the membership of the so-called “Freedmen”: Cherokee members who trace their lineage to African Americans and former slaves.

The legacy of former slaves and African Americans within the Cherokee Nation is a long one. Freedmen had originally been granted citizenship in the Cherokee Nation by action of the 1866 Treaty with the United States. Following the Civil War, the Federal government placed strict requirements onto the Cherokee Nation before granting the tribe readmission, due in part to the August 21, 1861 alliance of Principal Chief John Ross (1828-1866) and other Cherokee with the toppled Confederate government. At the end of the War, Ross wrote to President Lincoln, asking for readmission to the Union for the Cherokee Nation.

Ross’ negotiations with the Federal Government culminated in the 1866 Treaty between the Cherokee and the United States, signed in
Washington, D.C. on July 19, 1866. Ironically, Ross was too ill to attend the ratification of the Treaty, dying in Washington less than a month later on August 1, 1866.

As a condition of realignment with the North, Article IX of the 1866 treaty compelled the abolition of slavery among the Cherokee, and an “equal footing” tribal membership for all slaves of the tribe and other blacks living and working within Cherokee lands at the time of ratification (July 27, 1866). Slaves and other freed blacks living within Cherokee country were given two years to reach a decision on membership; those choosing to remain were granted the right to vote and were granted the same rights and privileges of all other members of the tribe. Suits to enforce the provisions of the 1866 Treaty arose as early as 1870.

In 1970, the Supreme Court of the United States ruled that the provisions of the 1866 Cherokee treaty were still valid. See Cherokee Nation v. Oklahoma, 397 U.S. 620 (1970). However, in 1978, the landmark United States Supreme Court Martinez decision upheld the ability of sovereign Indian nations to determine their own membership. Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).

Regardless, in March of 2006, the Judicial Appeals Tribunal (J.A.T.) of the Cherokee Nation ruled that Freedmen were entitled to citizenship within the Nation, since their ancestors are listed on the Dawes Roll, official membership rolls for the Cherokee Nation closed by act of Congress in 1907. The J.A.T. noted that the 1975 Constitution of the Cherokee Nation contains no required blood quantum for membership within the Nation. However, within the text of the same decision, the J.A.T. noted “the Constitution could be amended to require that all tribal members possess Cherokee blood.” Allen v. Cherokee Nation Tribal Council, JAT-04-09 (Mar. 6, 2006) at 2-3.

The March 3, 2006 vote seeks to overturn this decision by referendum. If the referendum passes, the Constitution of the Cherokee Nation would be amended to require all tribal members to prove Cherokee, Shawnee or Delaware blood to remain enrolled members of the tribe, regardless of membership within the Dawes Roll. The Freedmen, granted citizenship by action of the 1866 Treaty, would no longer be entitled to citizenship under this amendment. Attempts to enjoin the election through the federal courts proved unsuccessful, despite the sympathies of Judge Henry Kennedy. Vann v. Kempthorne, Civil Action No. 2003-01711 (D.D.C., Dec. 19, 2006).

Nearly 9,000 tribal members—approximately 2,000 more than turned out to ratify the Constitution in the first place—turned out for last weekend’s Special Election on the issue, with 6,693 (77%) voting for the amendment and 2,040 (23%) against. Final certification of the results will not be made until after the closure of the protest period on March 12, 2007. Passage of the amendment will impact the approximately 2,800 Freedmen on the Cherokee membership rolls. Cherokee Spokesman Mike Miller noted that even if the amendment passes, services to the affected members will be subject to slow phasing-out while the tribe and its members adjust to the new constitutional requirements.

Challenges to the Amendment are already beginning at the tribal and federal level at our press date. The proposed amendment triggers serious questions regarding the inherent sovereignty of tribes, and the application of the 13th and 15th Amendments to the United States Constitution to Indian Nations. Since the Cherokee Nation has the second largest enrollment of any indigenous Nation (after the Navajo Nation), the repercussions of this case could be felt far and wide throughout Indian Country.

Spokesmen for the Tribe, including Principal Chief Chad Smith, stated that the vote illustrated a decisive statement by the tribe
regarding self-determination, “affirmed in 23 treaties with Great Britain and the United States and paid dearly with 4,000 lives on the Trail of Tears.” Opponents contend that the latest vote is one more example of the institutionalized patterns of discrimination against the Freedmen, or alternatively, a move to preserve a greater portion of the per capita distributions for a smaller group.

In addition to the pending judicial challenges to the proposed amendment, the Bureau of Indian Affairs may also choose to take action on this matter. The BIA may elect to cut federal funding to the Cherokee Nation until the Tribe reinstates the disputed members. Similar measures were taken in 2000 against the Seminole Nation.

A equivalent action taken by the Seminole Nation of Oklahoma in 2000 was overruled, and Freedmen Seminoles were reinstated into tribal membership registers. *Seminole Nation of Oklahoma v. Norton*, 223 F. Supp. 2d 122 (D.D.C. 2002). In the Seminole decision, the Court ruled the Seminole were barred from denying membership to black members, or from encroaching on the voting rights of Seminole Freedmen.

**United States Court of Appeals for the Eighth Circuit**


The 8th Circuit ruled that the Interior Board of Indian Appeals did not abuse its discretion under the APA by refusing to reopen a probate/Indian Land Certificate case when such request was untimely and brought by parties who were not party to the original, underlying cause of action.

**United States Court of Appeals for the Sixth Circuit**


The 6th Circuit upheld a ruling for the state of Michigan regarding tobacco tax and search and seizures since the tax falls on non-Indian consumers of the tobacco, the pre-pay requirement is a minimal burden on the Tribe, the applicable treaty does not preempt the tax, the search and seizure of the tobacco did not violate sovereign immunity and the warrants were sufficient to survive Fourth Amendment scrutiny.

**United States District Court for the District of Columbia**


The District Court for the District of Columbia granted a Stay Pending Appeal against the BIA, keeping the Agency from acquiring land for the Match-E-Be-Nash-She-Wish Band of Pottawatomi. The Pottawatomi are attempting to acquire the 146-acre site (the “Bradley Property”) outside of Grand Rapids, Michigan for construction of a casino. A nonprofit organization called MIchGo, the Michigan Gambling Opposition, opposes the construction of the casino, maintaining the construction of the casino would lead to irreparable environmental harm in the Wayland area.
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 CASES

FEBRUARY 1, 2007


 The Court ordered the cessation of withholding from the respondent’s per capita for current child support because the child has reached the age of majority.


 The minor child turned eighteen (18) years of age. In accordance with state law, the respondent’s obligation ends when the children turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.


 The minor child turned eighteen (18) years of age. In accordance with state law, the respondent’s obligation ends when the children turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.


 The Court had to determine whether to enforce a standing foreign child support order against the respondent’s wages. The respondent expressed his acquiescence by filing this action, thus the Court granted recognition and enforcement of the foreign judgment.


 The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

FEBRUARY 7, 2007
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

FEBRUARY 12, 2007
The Court had to determine whether to grant the petitioner’s motion to modify. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

The parties entered a new custody arrangement and stipulated to an end of child support. As a result the Court directed the HCN Department of Treasury to cease withholding per capita payments for child support.

FEBRUARY 14, 2007
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

FEBRUARY 15, 2007
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

The petitioner filed a motion to enforce a foreign child support order, but failed to provide a certified copy of arrears due. The court requested such a filing within 30 days, or the petitioner’s claim faces dismissal.

FEBRUARY 16, 2007
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s wages. The respondent expressed his acquiescence to the request for relief through his filing of the action, thus the Court granted recognition and enforcement of the foreign judgment.

CIVIL GARNISHMENT CASES

FEBRUARY 5, 2007
The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond,
thus the Court granted a default judgment in favor of the petitioner.

_Cash Today #201 v. Dennis Lewis, CG 07-02 Order (Default Judgment) (HCN Tr. Ct., Feb. 5, 2007). (Matha, T)._

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

_Cash Today #201 v. Caroline Decorah, CG 07-04 Order (Default Judgment) (HCN Tr. Ct., Feb. 5, 2007). (Matha, T)._

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.


The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

_Cash Today #201 v. Matthew Thundercloud, CG 06-83 Order (Default Judgment) (HCN Tr. Ct., Feb. 19, 2007). (Matha, T)._

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.


The petitioner sought recognition and enforcement of a money judgment. However, prior to the pleading deadline, the petitioner filed to dismiss due to the payment of the debt in full. The Court granted the dismissal.

_FEBRUARY 19, 2007

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

_FEBRUARY 20, 2007
Alliance Collection Agencies, Inc. v. Lawrence L. Walker, CG 07-09 Order (Default Judgment) (HCN Tr. Ct., Feb. 20, 2007). (Matha, T)._

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

_FEBRUARY 22, 2007
Sauk Prairie Memorial Hospital v. Kelly S. Wruck, CG 07-10 Order (Default Judgment) (HCN Tr. Ct., Feb. 22, 2007). (Matha, T)._

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.
judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

CIVIL CASES

FEBRUARY 1, 2007
In re the Children of Joni Munnell, CV 96-64 Order (Appointment of Successor Trustee) (HCN Tr. Ct., Feb. 1, 2007). (Matha, T).
The Court appointed a successor trustee to oversee the accounts of the children of the late Joni Munnell.

FEBRUARY 27, 2007
Marlene Cloud et al. v. Ho-Chunk Nation et al., CV 06-31 Amended Scheduling Order (HCN Tr. Ct., Feb. 27, 2007). (Matha, T).
The Court issued this Amended Scheduling Order to establish dates and deadlines for the instant case.

GENERAL COUNCIL ACTIONS

FEBRUARY 13, 2007
The court had to determine whether to grant attorney’s fees to the defendant in this matter. The Court granted the defendant’s request for fees in this matter, since the parties had previously stipulated to such fees.

FEBRUARY 16, 2007
The Court had to determine whether to grant summary judgment in the matter of the legality of the General Council’s vote on resolutions calling for a special election to replace named elected tribal officials. The Court found that the Chair and Secretary had acted within their delegated authority.

The Court deemed that the General Council acquiesced in voting by an absolute majority, i.e., requiring more affirmative votes than negative votes and abstentions combined. Accordingly, the Court granted summary judgment in favor of the defendants, which entitled President George Lewis to retain his seat following an attempt to recall him from office.

CONTRACTS

No recent cases.

HOUSING

FEBRUARY 21, 2007
The Court granted a monetary judgment against the defendant, and directed the Ho-Chunk Nation Department of Treasury to withhold per capita income to satisfy a debt obligation to the Nation. The plaintiff filed a Satisfaction of Judgment, pursuant to Ho-Chunk Nation Rules of Civil Procedure, Rule 59. The Court recognized that the debt has been paid in full, and informed the parties of its intention to close the file.

ENROLLMENT

No recent cases.

EMPLOYMENT

FEBRUARY 1, 2007
Kathy Stacy v. Ho-Chunk Nation Legislature, CV 02-40 Order (Granting Motion to Dismiss) (HCN Tr. Ct., Feb. 1, 2007). (Matha, T).
The Court had to determine whether to grant the petitioner’s dispositive motion. While the actions of the agency violated the hearing provision of the Gaming Ordinance, this procedural shortcoming did not compel the Court to award the petitioner’s requested relief. The petitioner did not adequately present a constitutional violation, and the Gaming Ordinance differentiated between the conduct of Commissioners and employees for purposes of
determining gaming license violations. The Court denied the petitioner’s request for relief.

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**ADMINISTRATIVE APPEALS**

No recent cases.

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**CHILDREN’S TRUST FUND (CTF)**

**FEBRUARY 2, 2007**


The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with securing legal counsel. The minor child was not entitled to a public defender, and, therefore, the Court granted the request.


The Court had to determine whether an adult CTF beneficiary can access monies from her CTF to pay for costs associated with purchasing an automobile. The Court granted the request.


The Court had to determine whether an adult CTF beneficiary can access monies from her CTF to pay for costs associated with continuing education and an automobile loan. The Court granted the request for educational funding, but denied the request to satisfy the automobile loan.


The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for orthodontic procedures. The Court granted the request.
The Court previously released funds from the CTF accounts of the minor child for costs associated with orthodontic procedures. The petitioner failed to submit an accounting confirming proper use of the funds within the specified timeframe. The Court ordered that the petitioner submit the required accounting.

The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The Court granted the request.

FEBRUARY 20, 2007
The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The Court granted the request.

FEBRUARY 26, 2007
The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The petitioner submitted account statements, confirming proper use of the funds. The Court accepted this accounting.

FEBRUARY 27, 2007
The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The Court granted the request.

FEBRUARY 28, 2007
The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with dental procedures. The Court granted the request.

In the Interest of Minor Children: M.W., DOB 12/16/93, Z.W., DOB 12/27/95, Z.W., DOB 01/02/98 v. HCN Office of Tribal Enrollment, CV 06-71 Order (Requesting Additional Accounting) (HCN Tr. Ct., Feb. 28, 2007). (Rockman, A).
The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The petitioner failed to submit an accounting confirming proper use of the funds within the specified timeframe. The Court ordered that the petitioner submit the required accounting.

INCOMPETENT TRUST FUND (ITF)
FEBRUARY 26, 2007
The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with living expenses and home remodeling. The petitioner submitted account statements, confirming proper use of the funds. The Court accepted this accounting.
DIVORCE

FEBRUARY 13, 2007
The Court granted the petitioner’s request to appear by telephone.

FEBRUARY 19, 2007
The Court granted the petitioner’s request to dismiss the petition for divorce.

FEBRUARY 22, 2007
The Court granted the parties’ divorce.

JUVENILE CASES

FEBRUARY 1, 2007
The Court appointed a GAL in this matter.

FEBRUARY 7, 2007
The Court had to determine whether to grant emergency temporary physical custody of the above-named minor children. The Court entered this Order as necessary to ensure the safety of the children. At the scheduled Initial Hearing, the parent(s), guardian(s), and/or physical custodian(s) shall be afforded proper due process for purposes of answering the Child/Family Protection Petition filed by Ho-Chunk Nation Child and Family Services (CFS).

FEBRUARY 14, 2007
The Court terminated jurisdiction and supervision of the instant case unless the parties produce documentation sustaining continued jurisdiction.

FEBRUARY 20, 2007
In the Interest of Minor Children: J.C., DOB 04/10/04, A.C., DOB 01/31/06, JV 07-04, 07-05, Order (Entrance of Plea) (HCN Tr. Ct., Feb. 20, 2007). (Matha, T).
The Court convened a Plea Hearing for the purpose of determining whether the parents of the minor children wished to contest the allegation contained in the Child/Family Protection Petition filed by CFS. The parent entered a plea of not guilty.

FEBRUARY 21, 2007
In the Interest of Minor Children: D.L.H., DOB 02/16/92, D.M.H., DOB 03/25/89, JV 03-20, 03-21, 03-22, 03-23 Order (Termination of Jurisdiction) (HCN Tr. Ct., Feb. 21, 2007). (Matha, T).
The Court terminated jurisdiction and supervision of the instant case.

In the Interest of Minor Children: L.C., DOB 03/14/98, M.C., DOB 10/11/99, C.K., DOB 02/08/04, C.K., DOB 06/20/05, JV 06-29, 06-30, 06-31, 06-32 Order (Denial of Post-Judgment Motion) (HCN Tr. Ct., Feb. 21, 2007). (Matha, T).
The Court declined to prosecute an action wherein CFS and the parties had reached a consent decree.

FEBRUARY 22, 2007
The Court convened a Plea Hearing for the purpose of determining whether the parent of the minor
child wished to contest the allegation contained in the Child/Family Protection Petition filed by CFS. The parent entered a plea of not guilty.

In the Interest of Minor Children: J.R.P., DOB 02/27/92, L.M.P., DOB 05/12/90, JV 03-01, JV 03-02, Order (Formal Trial) (HCN Tr. Ct., Feb. 22, 2007). (Matha, T).
The Court convened a formal Trial for the purpose of determining whether the Ho-Chunk Nation Child and Family Services could prove allegations made within their Petition. The Court found that while CFS failed to prove the elements of the Petition, legal and physical custody of the minor children should not be returned to the subject of the Petition due to the temporary guardian’s stated desire to relinquish guardianship.

FEBRUARY 27, 2007
The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court performed this review in accordance with the CHILDREN’S ACT, §3.40, and determined to maintain the status quo.

FEBRUARY 28, 2007
The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court performed this review in accordance with the CHILDREN’S ACT, §3.40.

The Court had to determine whether to appoint a successor temporary guardian of the minor child, pursuant to the CHILDREN’S ACT. The Court deemed that such an appointment was within in the minor child’s best interests.

SUPREME COURT
The Supreme Court had to determine whether the Trial Court committed error by creating a new cause of action after the trial, failing to make a determination of the nature of the employment, and in applying federal precedent. The Supreme Court found that while the Trial Court abused its discretion in reviewing materials following the original trial and misapplied federal precedent in regards to the weight of outside precedent, however the Supreme Court was unable to reach a conclusion regarding reversible error on the categorization of the employee. The Supreme Court ruled that Mr. Brown should have realized that under the policies of the Nation, his conduct was unacceptable. As a result of the Trial Court’s error, the decision of the Trial Court was reversed.

MARCH 5, 2007
Ho-Chunk Nation Legislature, Tracy Thundercloud in his official capacity as chair of the Ho-Chunk Nation Finance Committee v. Ho-Chunk Nation President, George Lewis, SU 07-02 Scheduling Order (HCN S. Ct., Mar. 5, 2007) (Funmaker, D).
The Supreme Court issued this Scheduling Order to establish dates and deadlines for the instant case.

TRIAL COURT

HO-CHUNK NATION COURT BULLETIN
VOL. 13, NO. 3

Outagamie County and Dallas Pekarek v. Julie Rockman, CS 07-12 (Matha, T).

FEBRUARY 13, 2007
Crystal Ryba v. Gabriel Downey, CS 07-13 (Rockman, A).

June Whitethunder v. Todd Cloud, CS 07-14 (Rockman, A).

FEBRUARY 20, 2007
Mary C. Wilson and Domestic Relation Section v. Wayne E. Wilson, CS 07-15 (Matha, T).

Leon R. Caldwell v. Tanya L. Hindsley, CS 07-17 (Matha, T).


FEBRUARY 21, 2007

CIVIL GARNISHMENT
FEBRUARY 16, 2007
Citibank (South Dakota) v. Victoria A. Lowe, CG 07-12 (Matha, T).

FEBRUARY 20, 2007
Creditor Recovery v. Chad L. Lowell, CG 07-13 (Matha, T).

FEBRUARY 23, 2007
Alliance Collection Agency v. Dixie Hall, CG 07-14 (Matha, T).


Alliance Collection Agency v. Lambert C. Cleveland, CG 07-16 (Matha, T).

Alliance Collection Agency v. Steven Stygar, CG 07-17 (Matha, T).

Alliance Collection Agency v. Donna Pabst, CG 07-18 (Matha, T).

FEBRUARY 28, 2007
Dean Medical Center v. John Mulhern, CG 07-19 (Matha, T).

FEBRUARY 6, 2007

FEBRUARY 12, 2007
In the Interest of: J.J.S., DOB 04/01/94 v. HCN Office of Tribal Enrollment, CV 07-11 (Rockman, A).

FEBRUARY 26, 2007
In the Interest of: M.T.K., DOB 07/04/95 v. HCN Office of Tribal Enrollment, CV 07-12 (Rockman, A).

In the Interest of: T.G., DOB 07/18/94 v. HCN Office of Tribal Enrollment, CV 07-13 (Rockman, A).

FAMILY
FEBRUARY 8, 2007
Mary A. Rosas v. Jorge Rosas, FM 07-02. (Matha, T).

DOMESTIC VIOLENCE
FEBRUARY 26, 2007
Julie A. Rockman v. Dallas Pekarek, DV 07-01. (Matha, T).

JUVENILE
FEBRUARY 7, 2007
In the Interest of Minor Child: S.D.T., DOB 01/18/94, JV 07-06. (Matha, T).

SUPREME COURT
NO RECENT FILINGS
**HO-CHUNK NATION COURT SYSTEM**

**JUDICIARY AND STAFF**

Supreme Court – Mary Jo B. Hunter, Chief Justice
Mark D. Butterfield, Associate Justice
Dennis Funmaker, Associate Justice

Traditional Court – Earl Blackdeer
Donald Blackhawk
Dennis Funmaker
Jim Greendeer
Douglas Greengrass
Desmond Mike
Douglas Red Eagle
Preston Thompson, Jr.
Eugene Thundercloud
Morgan White Eagle
Clayton Winneshiek

Trial Court – Todd R. Matha, Chief Judge
Amanda L. Rockman, Associate Judge

Clerk of Court, Trial Court – Marcella Cloud
Assistant Clerk of Court, Trial Court – Selina Joshua
Assistant Clerk of Court, Trial Court – Jessi Cleveland
Administrative Assistant – Margaret Wilkerson
Bailiff – Denis Rockman
Staff Attorney – Jennifer L. Tilden
Staff Attorney – Nicole M. Homer
Supreme Court Clerk – Mary Endthoff

* 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)

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**HCN Judiciary Fee Schedule**

**Filing Fees**

- Complaint.............................................$50.00
- Petition for Release of Per Capita Distribution (Children’s Trust Fund) …………………….$50.00
- Motion to Appear Pro Hac Vice………………….$35.00
- Appellate Filing Fee…………………………..$50.00
- Petition to Register and Enforce Foreign Judgment/Order …………………………………$20.00
- Marriage License Fee…………………………..$50.00

**Court Fees**

- Copying …………………………………………. $0.10/page
- Faxing ………………………………………….. $0.25/page (sending & receiving)
- CD of Hearings ………………………………… $12.50/CD
- Deposition Videotape ………………………… $10.00/tape
- Certified Copies ……………………………….. $0.50/page
- Equipment Rental ……………………………… $5.00/hour
- Admission to Practice ………………………… $50.00

**Legal Citation Forms**

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

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

**Ho-Chunk Nation Code**
Ordinance/Act Name Title Number HCC Section.
ELDER PROTECTION ACT, 4 HCC § 1.
EMPLOYMENT RELATIONS ACT, 6 HCC § 5.
(for detailed citation information consult LEGISLATIVE ORGANIZATION ACT, 2 HCC § 11.36)

**HCN Supreme Court Case Law**
Case Name, Case Number (HCN S. Ct., month, day, year).

**HCN Trial Court Case Law**
Case Name, Case Number (HCN Tr. Ct., month, day, year)

**Ho-Chunk Nation Rules of Civil Procedure**
HCN R. Civ. P. 19(B)
Bush Administration Offers $7 Billion “Settlement” in Cobell Litigation

On Thursday, March 1, 2007, Secretary of the Interior Dirk Kempthorne and Attorney General Alberto Gonzales issued a letter to Senator Byron Dorgan, offering a settlement of up to seven billion dollars over ten years to settle the Cobell trust mismanagement case.

The Cobell litigation began in 1996 when Elouise Cobell and four others filed suit against the United States Department of the Interior and the Treasury Department. Elouise Cobell is a member of the Blackfeet Tribe of Montana. Cobell and the others were represented by the Native American Rights Fund, and the suit was originally brought against Bruce Babbitt (Secretary of the Interior until January 1, 2001, under President William Clinton). The named defendant was later updated to Gale Norton, then to Dirk Kempthorne in May of 2006.

The named plaintiffs claimed the gross mismanagement
of Indian trust lands and monies by the Bureau of Indian Affairs and others had led to huge losses for approximately 500,000 Native Americans whose land is held in trust by the Federal Government.

Understanding the root of the Cobell litigation requires a grasp of the history of the interaction between the federal government and Native tribes. Following the Civil War, the federal government determined that the best way to handle relations with the indigenous Nations would be to attempt to assimilate Tribes into the wider population, thereby destroying their individual identity. Noting the strong ties tribes held to their land, a determination was made to destroy the tribal land base to “encourage assimilation.”

To this end, in 1887 the Dawes Act was passed. The Dawes Act cut a portion of tribal lands into plots between 40-160 acres in size, declaring the balance of Indigenous land “surplus” and opening it to non-Indian settlement. Section 5 of the Act provided for the US to “hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made.” The federal government assumed that in the 25-year trust period, the land would prove suitable for farming, and then the lands would be handed over in fee simple (the best form of ownership in property law) after the trust period ended.

Unfortunately, the segway of lands from the custody of the federal government to the hands of the individual trustees did not progress entirely as planned. Many of the lands handed over at 25 years were lost due to tax levies, since the taxation system was not explained to trustees prior to the transfer of the lands. Abundant anti-Indigenous racism remained, and the government began to question whether the trustees were “competent” to receive the deeds for so much land. By the early 1900s, federal statutes had been amended to make the federal government’s oversight of these lands more permanent. Allotment was formally repealed in 1934, with the passage of the IRA (Indian Reorganization Act).

As time passed, and the original trustees aged and passed on, the probate of these allotments became an increasingly important issue. Since few tribal members left a formal will, the lands passed through intestate succession to their heirs, fractionalizing the holdings even further. Now, 120 years after the original passage of the Dawes Act, ownership of some of the original parcels is down to 0.0000001 percent. At present there are an estimated four million ownership interests in the ten million acres of land. See http://en.wikipedia.org/wiki/Cobell_v._Kempthorne, last visited March 14, 2007.

The Cobell litigation was originally assigned to Judge Royce C. Lamberth of the DC Circuit. One of Judge Lamberth’s first actions was to bifurcate the Cobell litigation into two cases: to account for the missing funds; then to provide for a reform of the system in the future. Such a reconciliation (good only through the end of 2000) would take approximately ten years, at an estimated cost of $2.4 billion. The trial date for the second portion of the litigation has yet to be set, more than a decade after inception of the litigation.

In February 1999, then-Secretary of the Interior Bruce Babbitt was held in contempt of Court by presiding Judge Lamberth for failure to produce documents, destruction of relevant documents, and giving false testimony. Six months later, Lamberth assessed a $600,000 penalty against the government for failure to produce requested discovery documents. On three separate occasions, the Treasury department has admitted to destroying Indian trust documents.

Over the course of the litigation, Lamberth became a strong critic of the Department of the Interior, and he was eventually removed from the case on July 11, 2006. The US Court of Appeals for the DC Circuit found that Lamberth had lost his impartiality in regards to the Cobell litigation. The
Appeals Court noted, “We conclude, reluctantly, that this is one of those rare cases in which reassignment is necessary.” Lamberth was replaced by Judge James Robertson, United States District Court, District of Columbia.

This month, in a letter sent from Kempthorne and Alberto Gonzales to Senator Byron Dorgan, the government proposed up to a $7 billion dollar settlement over ten years on Cobell. The monies in the proposed settlement would not go to individual plaintiffs, but to Indian Country as a whole. It admits no liability, requires no accounting for the affected monies, and changes nothing about the current trust administration system. With the settlement, the government still maintains no money is missing from the trust!

Asked for comment, lead plaintiff Elouise Cobell said “[t]he Kempthorne-Gonzales letter is a license to steal from Indian people. And, while the Interior Department has a long and notorious history of cheating, swindling and robbing from Indian people, I in all my years have never heard of such a brazen attempt to rob us of our livelihood.”


On March 26, 2007, the Supreme Court of the United States refused two appeals in the Cobell litigation. One of the appeals regarded the removal of Judge Lamberth from the case, the other regarded information technology security of Indian trust systems. Chief Justice John Roberts did not participate in either petition. The Court had no comment regarding their refusal to grant certiorari in these appeals.

The Cobell litigation is ongoing.

**UPDATES FROM OUTSIDE COURTS**

**United States Court of Appeals for the Federal Circuit**


The Court of Appeals for the Federal Circuit reversed and remanded the decision of the US Court of Federal Claims. The Appeals Court found that since the Cherokee Nation of Oklahoma was not a necessary party to the action regarding the Settlement Act and land in the Arkansas River Basin, the lower court erred in dismissing the claim under United States Court of Federal Claims Rule 19.

**United States Court of Appeals for the Ninth Circuit**

*Navajo Nation v. United States Forest Service*, No. 06-15371, (Mar. 12, 2007)

The 9th Circuit ruled to protect the sacred San Francisco Peaks from treated sewage runoff in an action by the Navajo Nation, Sierra Club, Havasupai, White Mountain Apache, and others. A three-judge panel found a proposed sewage-treatment project in the area would substantially burden the Navajo’s free exercise of religion in the region.

**United States Court of Appeals for the Eighth Circuit**


The 8th Circuit ruled that the actions of the employer fell short of the discrimination required to sustain a claim. There was no evidence in the record that the supervisor’s anger materially affected the employee’s circumstance such that a reasonable person in the complainant’s position would be dissuaded from filing a complaint. The judgment of the US District Court for the District of South Dakota was 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 CASES

MARCH 5, 2007


The minor child turned eighteen (18) years of age. In accordance with state law, the respondent’s obligation ends when the children turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.


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The minor child turned eighteen (18) years of age. In accordance with state law, the respondent’s obligation ends when the children turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.


The Court previously requested the parties to file proof of high school enrollment as the child turned eighteen (18) years of age. The petitioner filed such proof, thus the child support shall continue until the August 2007 per capita distribution.


The Court had to determine whether to enforce a standing foreign child support order against the respondent’s wages. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

**Joey Whitewing v. Gladys Sitting Eagle, CS 07-19**

*Order (Enforcing Child Support Against Wages)*


The Court had to determine whether to enforce a standing foreign child support order against the respondent’s wages. The respondent consented to the motion by filing the action, thus the Court granted recognition and enforcement of the foreign judgment.

**State of Wisconsin and Lena R. Cleveland v. Tyrone E. Cloud, CS 06-43**

*Order (Modifying and Enforcing Child Support Arrears Withholding)*


The Court had to determine whether to grant the petitioner’s motion to modify. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

**State of Wisconsin and Maureen J. Bighorn v. Larry A. Fanning, CS 07-08**

*Order (Erratum)*


The Court issued this order to correct a clerical mistake made in the previous order.

**MARCH 6, 2007**

**State of Wisconsin v. Robert Cleveland, CS 00-33**

*Order (Modifying and Enforcing Child Support Arrears Withholding)*


The Court had to determine whether to grant the petitioner’s motion to modify. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

**Kay S. Thompson v. Kerry L. Thompson, CS 07-11**

*Order (Enforcing Child Support)*


The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent consented to the motion, thus the Court granted recognition and enforcement of the foreign judgment.

**MARCH 7, 2007**

**State of Wisconsin v. Moses L. Cleveland, CS 04-15**

*Order (Cessation of Current Child Support)*


The minor children are currently residing with the respondent full-time. As a result, the Court directed the HCN Department of Treasury to cease withholding per capita payments for child support.

**MARCH 8, 2007**

**Crystal G. Ryba v. Gabriel A. Downey, CS 07-13**

*Order (Enforcing Child Support)*


The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent consented to the motion, thus the Court granted recognition and enforcement of the foreign judgment.

**MARCH 12, 2007**

**William Carl Scarce v. Maria Nicole Blackhawk, CS 06-09**

*Order (Modifying and Enforcing Child Support - Per Capita & Wages)*


The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments and wages. The respondent consented to the motion, thus the Court granted recognition and enforcement of the foreign judgment.

**MARCH 13, 2007**

**Leon R. Caldwell v. Tanya L. Hindsley, CS 07-17**

*Default Judgment (Enforcing Child Support)*


The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent...
failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

The Court issued this order to update the amount of arrears owed in this case.

The Court issued this order to update the amount of arrears owed in this case.

MARCH 14, 2007

The Court issued this order to update the amount of arrears owing in this case.

MARCH 15, 2007
The Court issued this order to update the amount of arrears owing in this case.

MARCH 19, 2007
The Court had to determine whether to grant the petitioner’s motion to modify. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

MARCH 21, 2007
The Court issued this order to update the amount of arrears owing in this case.

MARCH 27, 2007
The Court issued this order to update the amount of arrears owing in this case.

The Court issued this order to update the amount of arrears owing in this case.

MARCH 14, 2007
Judith Ann Harbin Lujan v. Clinton Thunderchief, CS 05-72, Order (Extension of Child Support) (HCN Tr. Ct., Mar. 27, 2007). (Matha, T). The Court issued this order extend child support until the minor child’s nineteenth birthday, in accordance with Colorado law.

CIVIL GARNISHMENT CASES

MARCH 13, 2007
The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

MARCH 15, 2007
The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

MARCH 26, 2007
The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

CIVIL CASES

MARCH 29, 2007
The Court granted the petitioner’s request for a Show Cause Hearing pursuant to the CONTEMPT ORDINANCE, 2 HCC § 5.5a(1)(a).

GENERAL COUNCIL ACTIONS

MARCH 1, 2007
Ona Garvin v. Ho-Chunk Nation Election Bd., Mary Ellen Dumas, as Election Bd. Chair, and Wilma Thompson, as Election Bd. Vice Chair and Dallas White Wing v. Ho-Chunk Nation Gen. Council, through Alvin Cloud, in his capacity as Chairperson of the Gen. Council; and HCN Election Bd., through Mary Ellen Dumas, as Chair of the Election Bd., CV 05-90, CV 05-93 Decision (HCN Tr. Ct., Mar. 1, 2007). (Vele, K).
The Court had to determine whether to grant summary judgment in the matter of who may vote in a Special Election called by the General Council to recall named elected officials. The Court found that while the Nation’s Constitution guaranteed the General Council the right to call such an election, it did not guarantee a tribal-wide right to vote in the election. A tribal-wide vote was found to unfairly
dilute the interests of members within Districts 3 and 4. The Court additionally found that according to the plain language of the underlying resolution, the Special Elections were recall, not removal, actions. Accordingly, the Court granted partial summary judgment in favor of the plaintiffs.

**ELECTION MATTERS**

**MARCH 6, 2007**
The Court granted the petitioner’s request to appear by telephone.

**MARCH 19, 2007**
The Court denied the candidate’s request for certification in the coming General Election, due to the member’s failure to properly inform the Nation of his change in residence.

**MARCH 19, 2007**
Shelia Corbine, Attorney General; Ho-Chunk Nation; and Constituents of District II v. Wade Blackdeer, Vice President/District II Legislator, and in his individual capacity, CV 07-18 Order (Preliminary Injunction Hearing) (HCN Tr. Ct., Mar. 19, 2007). (Rockman, A).
The Court issued this order to schedule a Preliminary Injunction Hearing in this matter.

**ADMINISTRATIVE APPEALS**

**MARCH 9, 2007**
Janet Funmaker v. Libby Fairchild, in her capacity as Executive Director of HCN Dep’t of Pers., HCN Dep’t of Pers., and Ho-Chunk Nation, CV 06-61 Order (Remand) (HCN Tr. Ct., Mar. 9, 2007). (Rockman, A).
The Court remanded this case to the Grievance Review Board for a specific finding of monetary relief. The Court determined that the limits established by the Employment Relations Act’s sovereign immunity waiver do not apply to the Board’s grants of relief.

Willard Lonetree v. Larry Garvin, in his official capacity as Executive Director of Ho-Chunk Nation Heritage Preservation, CV 06-74 Order (Reversing and Remanding) (HCN Tr. Ct., Mar. 9, 2007). (Matha, T).
The Court reversed and remanded this case to the Grievance Review Board due to the supervisor’s failure to afford the petitioner pre-deprivation minimal due process. The Court reiterated that the supervisor conducting the pre-deprivation hearing must possess discretionary authority to determine the level of appropriate discipline.

**CHILDREN’S TRUST FUND (CTF)**

**MARCH 1, 2007**
The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with dental procedures. The Court granted the request.

**MARCH 6, 2007**
The Court had to determine whether an adult CTF beneficiary can access monies from her CTF to pay for costs associated with automobile repairs. The Court granted the request, so long as the petitioner provided proof of school enrollment and proof of financial assistance.
MARCH 12, 2007
The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The Court granted the request.

The Court had to determine whether a parent can access additional monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The Court granted the request.

MARCH 15, 2007
The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The Court granted the request.

The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The Court granted the request.

MARCH 26, 2007
The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The Court granted the request.

In the Interest of Adult CTF Beneficiary: April Webster, DOB 08/30/87 v. HCN Office of Tribal Enrollment, CV 06-107 Order (Suspending Release) (HCN Tr. Ct., Mar. 26, 2007). (Matha, T).
The Court suspended future releases from the CTF of the adult beneficiary, due to the member’s failure to file required paperwork.

The Court previously released funds from the CTF accounts of the minor child for costs associated with orthodontic procedures. The petitioner failed to submit an accounting confirming proper use of the funds within the specified timeframe. The Court demanded that the petitioner submit the required accounting.

The Court previously released funds from the CTF accounts of the minor child for costs associated with private school tuition and expenses. The petitioner failed to submit an accounting confirming proper use of the funds within the specified timeframe. The Court demanded that the petitioner submit the required accounting.

The Court previously released funds from the CTF accounts of the minor child for costs associated with the purchase of hearing instruments. The petitioner failed to submit an accounting confirming proper use of the funds within the specified timeframe. The Court requested that the petitioner submit the required accounting.

The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with private school tuition and expenses. The Court granted the request.

The Court previously released funds from the CTF accounts of the minor child for costs associated with orthodontic procedures. The petitioner failed to submit an accounting confirming proper use of the funds within the specified timeframe. The Court requested that the petitioner submit the required accounting.

The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The Court granted the request.

The Court previously released funds from the CTF accounts of the adult beneficiary for costs associated with his criminal defense and underlying events. The petitioner failed to submit an accounting confirming proper use of the funds within the specified timeframe. The Court demanded that the petitioner submit the required accounting.

The Court directed Fifth Third Bank to release funds for automobile repairs, following the petitioner’s submission of the required documentation.

March 30, 2007
The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The Court granted the request.

INCOMPETENT TRUST FUND (ITF)
March 15, 2007
In the Interest of B.G.S., DOB 02/07/80 v. HCN Office of Tribal Enrollment, CV 06-34 Order (Motion Granted) (HCN Tr. Ct., Mar. 15, 2007). (Matha, T).
The Court had to determine whether a guardian can access monies from an incompetent member’s ITF to accommodate assisted vacation expenses. The Court granted the request.

March 28, 2007
In the Interest of A.F., DOB 05/10/79 v. HCN Office of Tribal Enrollment, CV 97-79 Order (Motion Granted) (HCN Tr. Ct., Mar. 28, 2007). (Rockman, A).
The Court had to determine whether a guardian can access monies from an incompetent member’s ITF to remodel the ward’s bedroom and bathroom. The Court granted the request.

The Court previously released funds from the ITF accounts of the incompetent member for costs associated with residential care. The petitioner failed to submit an accounting confirming proper use of the funds within the specified timeframe. The Court requested that the petitioner submit the required accounting.

In the Interest of H.C., DOB 01/31/31 v. HCN Office of Tribal Enrollment, CV 05-72 Order
The Court previously released funds from the ITF accounts of the incompetent member for costs associated with ongoing nursing home care. The petitioner submitted account statements, confirming proper use of the funds. The Court accepted this accounting.

**MARCH 30, 2007**  
The Court previously released funds from the ITF accounts of the adult beneficiary for costs associated with residential care. The petitioner submitted account statements, confirming proper use of the funds. The Court accepted this accounting.

**FAMILY CASES**

**DIVORCE**

**MARCH 5, 2007**  
The Court granted the parties’ divorce.

**DOMESTIC VIOLENCE**

**MARCH 9, 2007**  
The Court extended the final order for protection originally issued by the State of Wisconsin due to the non-responsiveness of the respondent.

**JUVENILE CASES**

**MARCH 2, 2007**  
The Court had to determine whether to grant temporary guardianship in the instant action. The Court denied the petition because it did not conform to the requirements of the CHILDREN’S ACT, and does not coincide with the children’s best interests.

**MARCH 6, 2007**  
*In the Interest of Minor Child: S.C., DOB 03/04/91, JV 07-03 Order (Granting Motion)* (HCN Tr. Ct., Mar. 6, 2007). (Rockman, A).  
The Court granted expedited consideration and a motion to postpone in this matter.

**MARCH 7, 2007**  
The Court appointed a GAL in this matter.

**MARCH 12, 2007**  
The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court performed this review in accordance with the
CHILDREN’S ACT, §3.40, and determined to maintain the status quo.

MARCH 13, 2007

The Court accepted CFS’s choice not to prosecute the case against the respondents.

The Court issued this order to request the submission of an opinion report by the GAL assigned to this case.

MARCH 28, 2007

The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court performed this review in accordance with the CHILDREN’S ACT, §3.40, and determined to maintain the status quo.

In the Interest of Minor Children: J.C., DOB 04/10/04, A.C., DOB 01/31/06, JV 07-04, 07-05, Order (Formal Trial) (HCN Tr. Ct., Mar. 28, 2007). (Rockman, A).
The Court convened a formal Trial for the purpose of determining whether the Ho-Chunk Nation Child and Family Services could prove allegations made within their Petition. The Court found CFS could prove the elements of the Petition, leading the Court to schedule a Dispositional Hearing.

In the Interest of Minor Child: T.J.B., DOB 05/30/06, JV 06-15 Order (Submission of Guardianship Report and Home Study) (HCN Tr. Ct., Mar. 28, 2007). (Matha, T).
The petitioner filed a Petition for Permanent Guardianship of the minor child with the Court. The Court subsequently scheduled a Guardianship Hearing. In accordance with CHILDREN’S ACT, the Court requests that CFS prepare and submit a guardianship report and home study to the Court.

SUPREME COURT

MARCH 5, 2007

Ho-Chunk Nation Legislature, Tracy Thundercloud in his official capacity as chair of the Ho-Chunk Nation Finance Committee v. Ho-Chunk Nation President, George Lewis, SU 07-02 Scheduling Order (HCN S. Ct., Mar. 5, 2007) (Funmaker, D).
The Supreme Court issued this Scheduling Order to establish dates and deadlines for the instant case.

MARCH 12, 2007

George Lewis v. HCN Election Board et al., SU 06-07 Decision (HCN S. Ct., Mar. 12, 2007).
The Supreme Court reversed the Trial Court’s issuance of a preliminary injunction preventing the removal of HCN President George Lewis by the General Council. The Supreme Court found the Trial Court should not have issued the preliminary injunction because the determination as to whether President Lewis had committed malfeasance is a political question, and thereby unfit to be decided by the judicial branch.

TRIAL COURT

CHILD SUPPORT

MARCH 12, 2007

Heather Littlethunder v. Steven Kearnes, Sr., CS 07-20 (Rockman, A).


**MARCH 23, 2007**

Milwaukee Cty. & Allison Albert v. Peter Albert, CS 07-23 (Matha, T).

Blue Earth Cty. & Elizabeth Ann Block v. Dana J. Armendariz, CS 07-24 (Matha, T).

**CIVIL GARNISHMENT**

**MARCH 2, 2007**

Valued Service of Wisconsin, LLC., Check Advance # 20125 v. Danielle L. Tousey, CG 07-20 (Matha, T).

Valued Service of Wisconsin, LLC., Check Advance #20125  v. Tracy R. Steeb, CG 07-21 (Matha, T).

Valued Service of Wisconsin, LLC., Check Advance #20125  v. Kelly Potts, CG 07-22 (Matha, T).

**MARCH 8, 2007**

Creditor Recovery Service v. Jerry D. McCrossen, CG 07-23 (Matha, T).

**CIVIL CASES**

**MARCH 2, 2007**


**MARCH 9, 2007**

In the Interest of Minor Child Avery Deer, DOB 12/25/93 v. HCN Office of Tribal Enrollment, CV 07-14. (Matha, T).

**MARCH 13, 2007**

In the Interest of Minor Children V.K.B., DOB 09/18/98, E.M.B., DOB 03/09/01 v. HCN Office of Tribal Enrollment, CV 07-15. (Rockman, A).

**MARCH 14, 2007**


**MARCH 15, 2007**

Jason N. Hopinka v. HCN Office of Tribal Enrollment, CV 07-17. (Rockman, A).

**MARCH 16, 2007**


**MARCH 23, 2007**


**SUPREME COURT**

**MARCH 5, 2007**

Ho-Chunk Nation Legislature, Tracy Thundercloud in his official capacity as chair of the Ho-Chunk Nation Finance Committee v. Ho-Chunk Nation President George Lewis, SU 07-02.
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(for detailed citation information consult LEGISLATIVE ORGANIZATION ACT, 2 HCC § 11.36)

HCN Supreme Court Case Law
Case Name, Case Number (HCN S. Ct., month, day, year).

HCN Trial Court Case Law
Case Name, Case Number (HCN Tr. Ct., month, day, year)

Ho-Chunk Nation Rules of Civil Procedure
HCN R. CIV. P. 19(B)
On April 16, 2007, a lone gunman opened fire on the campus of Virginia Tech in Blacksburg, Virginia. The gunman, later identified as senior Seung-Hui Cho, killed 32 people and wounded 29 more in two separate incidents two hours apart. At the end of his spree, as police closed in on him, Cho died in Norris Hall of a self-inflicted gunshot wound. Later investigation into Cho revealed a young man pathologically obsessed with death and violence, who had shown his sadistic tendencies for years prior to his final breakdown.

While the Virginia Tech massacre was undoubtedly the greatest firearm massacre in recent American history, and a great tragedy, the short-sighted media was quick to label the disaster “the greatest school massacre in American history” and the “greatest firearms massacre in US history.” Students of American history will note, however, that tragically neither of these statements is the case.

On May 18, 1927, angered about the pending foreclosure of his farm due to rising property taxes, a disgruntled member of the school board loaded over 1,000 pounds of dynamite in the elementary school in Bath Township, Michigan. In a series of three explosions, Andrew
Kehoe killed himself and 44 others, by and large children between third and sixth grade. Kehoe injured an additional 58, also mostly small children. The bombing of Bath Consolidated Schools still ranks as the deadliest school massacre in US history, killing more than VA Tech and Columbine combined.

In 1864, Governor John Evans of Colorado suggested that all whites “take a few months off and dedicate the time to wiping out the Indians.” Colonel John Chivington, a former Methodist minister, took Evan’s statement to heart. Chivington led a band of white militia against the residents of Black Kettle, a Cheyenne settlement on the banks of the Sand Creek, despite the American flag of truce flying over the village.

On the icy morning of 29 November 1864, Chivington’s militia killed at least 200 Indians; in his deposition to Congress about the massacre, Chivington himself estimated as many as 500-600 Indians were killed. Most of those killed were women, children, and the elderly. When a soldier asked why he must fire on unarmed children, Chivington is reported to have stated, “From nits come lice.” This Massacre has been largely lost to history, as evidenced by recent claims that the tragic Virginia Tech shootings on April 20 were the largest number of murders in US history. See generally http://www.indianz.com/News/2007/002488.asp.

“Later, nobody could remember whether White Antelope was still wearing the peace medal given to him by President Lincoln.” Chivington’s men scalped most of the dead, and a display of body parts of those killed were later displayed at the Opera House in Denver. Many of the corpses were boiled (to remove the flesh) and returned to the Army Museum for study.

In the aftermath of the Sand Creek Massacre, a Joint Special Committee of the United States Congress was called to look into allegations of atrocities committed by Chivington and his men. Congress found the actions taken in the name of the US Government to amount to a “sedulously and carefully planed [sic] massacre.” The Committee noted:

As to Colonel Chivington, your committee can hardly find fitting terms to describe his conduct...he deliberately planned and executed a foul and dastardly massacre...Having full knowledge of their friendly character, having himself been instrumental to some extent in placing them in their position of fancied security, he took advantage of their inapprehension...the truth is that he surprised and murdered, in cold blood, the unsuspecting men, women, and children on Sand Creek...and then returned to Denver and boasted of the brave deeds he and the men under his command had performed.

Despite these findings, no one was ever convicted for participation in the Sand Creek Massacre.

In 1993, pursuant to NAGPRA, a delegation of Cheyenne traveled to the Smithsonian Institution in Washington, D.C., and received the remains of six of the victims of the Sand Creek massacre. The Smithsonian had divided remains in their collection into five categories of Cheyenne affiliation: Definite, Probable, Possible, Uncertain, and Unknown. All remains falling within the first three of these categories were returned to the tribe, pursuant to PL 101-185. These bones—mostly skulls—were laid to rest in a ceremony in Concho, Okla. A human scalp, identified as Arapahoe, taken from Sand Creek was formerly within the collection of the Denver Museum of Nature & Science in Colorado, which published a NAGPRA notice in March 2004. The remains were repatriated to the Cheyenne-Arapaho in June of 2005 for future interment at the Sand Creek site. See: http://www.cr.nps.gov/nagpra/fednotices/nagpradir/nic0752.html.

For many years, the actual site of the massacre was lost to history. In 1998, former President Bill Clinton signed Public Law 105-243, the Sand Creek Massacre Site Study Act. The area was definitively identified in May 2000 following the discovery of shrapnel from a mountain Howitzer, a large caliber
cannon documented as used in the massacre, but unused in the region at the time. The site is located outside the modern town of Eads, CO. The Sand Creek Massacre Site Establishment Act of 2000 authorized purchase of this land from willing sellers for the establishment of a park and memorial. As noted by the 105th Congress in the text of the bill, “[t]ribes deserve the right of open access to visit the site and rights of cultural and historical observance at the site.” The site will be officially dedicated on April 28, 2007.

The remains of those killed in these two massacres, particularly those housed in the collections of the Denver Museum and the Smithsonian Institution, are clearly within the zone of interests that NAGPRA was intended to protect. The museums have obeyed the terms of the statute by cataloging the remains and returning them to petitioning tribal members with definitive proof of ancestry. That makes the Sand Creek and Bear River Massacres both rare success stories under the Act: the right tribes with standing to petition applying for remains which were adequately inventoried and covered under the Act.

It is said those who forget history are doomed to repeat it. May the tragic acts of incomprehensible violence which predated the Virginia Tech massacre be remembered, in hopes they may never again be repeated. The friends and families of the VA Tech victims remain in the thoughts and prayers of the Ho-Chunk Judiciary.

The 9th Circuit ruled the Nez Perce, Umatilla, Warm Springs and Yakama Nations had the right to be consulted regarding hydroelectric dams on the Columbia and Snake Rivers under treaty rights dating to 1855. The 9th Circuit found the requirement that engineers and builders consult with the local indigenous nations prior to undertaking construction was reasonable given the history of the case.

Supreme Court of Virginia
Alliance to Save the Mattaponi et al. v. Commonwealth of Virginia, 621 S.E. 2d 78, (2005)
The city of Newport News, Virginia and the Mattaponi Tribe reached a compromise in the 10-year litigation regarding the construction of a reservoir in King William County, Virginia. The Tribe maintains they retain water rights to the region under a 1677 Treaty. The case has been ongoing for nearly a decade, with the Supreme Court of the United States denying certiorari in June 2006. The agreement provides for the payment of $650,000.00 to end litigation on the matter. Construction of the reservoir is due to begin in June, 2007.

Supreme Court of Connecticut
In an action brought by a former member of the Mohegan Tribal Gaming Commission, the Supreme Court of Connecticut found that the Tribe had not waived its sovereign immunity by instigating an original lawsuit in the matter. The Court noted while initiation of a lawsuit may constitute consent to sue or be sued, such consent only applies to the particular action, not suits stemming therefrom. Justice David M. Borden concluded by noting “[n]either reason nor fairness permits us to disregard the well established doctrine of tribal sovereign immunity. Though it began as a judicial doctrine, tribal sovereign immunity now rests squarely in Congress’ 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. 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 CASES

APRIL 3, 2007
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

APRIL5, 2007
The Court previously requested the parties to file proof of high school enrollment as the child turned eighteen (18) years of age. The petitioner filed such proof, thus the child support shall continue until the August 2007 per capita distribution.

APRIL10, 2007
The Court previously requested the parties to file proof of high school enrollment as the child turned eighteen (18) years of age. The petitioner filed such proof, thus the child support shall continue until the August 2007 per capita distribution.

The petitioner filed a motion stating child support arrears in this case had been paid in full. As a result, the Court issued this order to cease withholding for child support arrears.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

APRIL11, 2007
The Court had to determine whether to grant the petitioner’s motion to modify. Since the motion was advantageous to the respondent, the Court assumed his acquiescence, thereby granting recognition and enforcement of the foreign judgment.

APRIL 13, 2007
The petitioner filed a motion stating child support in this case had been paid in full. As a result, the Court issued this order to cease withholding for child support.

APRIL 16, 2007
The Court issued this order to update the amount of arrears owing in this case.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s wages. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

APRIL 23, 2007
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s wages. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

The Court issued this order to update the amount of arrears owing in this case.

The Court issued this order to update the amount of arrears owing in this case.

The Court issued this order to update the amount of arrears owing in this case.

CIVIL GARNISHMENT CASES
APRIL 23, 2007
The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent has returned to employment with the Nation and failed to timely respond to a notice of reactivation, thus the Court granted a judgment in favor of the petitioner.

CIVIL CASES
JANUARY 5, 2007
The Court granted the petitioner’s request for a Show Cause Hearing pursuant to the CONTEMPT ORDINANCE, 2 HCC § 5.5a(1)(a).
**GENERAL COUNCIL ACTIONS**

**MARCH 1, 2007**

*Ona Garvin v. Ho-Chunk Nation Election Bd., Mary Ellen Dumas, as Election Bd. Chair, and Wilma Thompson, as Election Bd. Vice Chair and Dallas White Wing v. Ho-Chunk Nation Gen. Council, through Alvin Cloud, in his capacity as Chairperson of the Gen. Council; and HCN Election Bd., through Mary Ellen Dumas, as Chair of the Election Bd., CV 05-90, CV 05-93 Decision (HCN Tr. Ct., Mar. 1, 2007). (Vele, K).*

The Court had to determine whether to grant summary judgment in the matter of who may vote in a Special Election called by the General Council to recall named elected officials. The Court found that while the Nation’s Constitution guaranteed the General Council the right to call such an election, it did not guarantee a tribal-wide right to vote in the election. A tribal-wide vote was found to unfairly dilute the interests of members within Districts 3 and 4. The Court additionally found that according to the plain language of the underlying resolution, the Special Elections were recall, not removal, actions. Accordingly, the Court granted partial summary judgment in favor of the plaintiffs.

**ADMINISTRATIVE APPEALS**

**APRIL 2, 2007**

*Susan F. Bosgraaff v. Ho-Chunk Nation and Ho-Chunk Nation Dep’t of Ins. and Paula Goulet v. HCN Ins. Review Comm’n, CV 06-99, 06-105 Order (Reversing and Remanding) (HCN Tr. Ct., Mar. 9, 2007). (Matha, T).*

The Court reversed and remanded this case to the Grievance Review Board due to the supervisor’s failure to afford the petitioner pre-deprivation minimal procedural due process. The Court reiterated that the supervisor conducting the pre-deprivation hearing must possess discretionary authority to determine the level of appropriate discipline.

**CHILDREN’S TRUST FUND (CTF)**

**APRIL 2, 2007**

*In the Interest of Minor Child D.R.M., DOB 05/12/1999 v. HCN Office of Tribal Enrollment, CV 06-107 Order (Accepting Accounting) (HCN Tr. Ct., Apr. 2, 2007). (Rockman, A).*

The Court previously released funds from the CTF accounts of the minor member for costs associated...
with the purchase of hearing instruments. The petitioner submitted account statements, confirming proper use of the funds. The Court accepted this accounting.


The Court previously released funds from the CTF accounts of the minor member for costs associated with private school tuition and related expenses. The petitioner submitted account statements, confirming proper use of the funds. The Court accepted this accounting.


The Court previously released funds from the CTF accounts of the minor member for costs associated with orthodontic procedures. The petitioner submitted account statements, confirming proper use of the funds. The Court accepted this accounting.


The Court previously released funds from the CTF accounts of the minor child for costs associated with emergency housing assistance and replacement of belongings lost in a residential fire. The petitioner failed to submit an accounting confirming proper use of the funds within the specified timeframe. The Court requested that the petitioner submit the required accounting.


The Court previously released funds from the CTF account of the minor member for costs associated with orthodontic procedures. The petitioner submitted account statements, confirming proper use of the funds. The Court accepted this accounting.


The Court previously released funds from the CTF account of the minor member for costs associated with orthodontic procedures. The petitioner submitted account statements, confirming proper use of the funds. The Court accepted this accounting.

APRIL 10, 2007


The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The Court granted the request.

APRIL 23, 2007

In the Interest of Adult CTF Beneficiary Jason Hopinkah v. HCN Office of Tribal Enrollment, CV 07-17 Order (Granting Telephonic Appearance) (HCN Tr. Ct., Apr. 23, 2007). (Rockman, A).
The Court granted the party’s request to appear by telephone.


The Court previously released funds from the CTF account of the minor member for costs associated with private school tuition and expenses. The petitioner submitted account statements, confirming proper use of the funds. The Court accepted this accounting.


The Court previously released funds from the CTF account of the minor member for costs associated with orthodontic procedures. The petitioner submitted account statements, confirming proper use of the funds. The Court accepted this accounting.


The Court previously released funds from the CTF account of the minor member for costs associated with orthodontic procedures. The petitioner failed to submit an accounting confirming proper use of the funds within the specified timeframe. The Court requested that the petitioner submit the required accounting.


The Court previously released funds from the CTF account of the minor member for costs associated with orthodontic procedures. The petitioner submitted account statements, confirming proper use of the funds. The Court accepted this accounting.


The Court had to determine whether a parent can access monies from her minor children’s CTFs to pay for costs associated with orthodontic procedures. The Court granted the request.

_Incompetent Trust Fund (ITF)

_MARCH 28, 2007

_In the Interest of A.F., DOB 05/10/79 v. HCN Office of Tribal Enrollment, CV 97-79 Order (Motion Granted) (HCN Tr. Ct., Mar. 28, 2007). (Rockman, A).

The Court had to determine whether a guardian can access monies from an incompetent member’s ITF to remodel the ward’s bedroom and bathroom. The Court granted the request.

The Court previously released funds from the ITF account of the incompetent member for costs associated with residential care. The petitioner failed to submit an accounting confirming proper use of the funds within the specified timeframe. The Court requested that the petitioner submit the required accounting.

**FAMILY CASES**

**DIVORCE**

**MARCH 5, 2007**


The Court granted the parties’ divorce.

**DOMESTIC VIOLENCE**

**MARCH 9, 2007**


The Court extended the final order for protection originally issued by the State of Wisconsin due to the non-responsiveness of the respondent.

**JUVENILE CASES**

**APRIL 2, 2007**


The Court had to determine whether to revoke permanent guardianship in the instant action. The Court denied the petition because it did not conform to the requirements of the CHILDREN’S ACT, and does not coincide with the child’s best interests.


The Court convened a Status Hearing at the request of the mother to discuss the case. Ho-Chunk Nation Children & Family Services (hereinafter CFS) requested a three-month transitional period of return from the temporary guardian and paternal grandmother to the mother.

**APRIL 3, 2007**


The Court appointed a GAL in this matter.

**APRIL 5, 2007**

*In the Interest of Minor Child: S.D.T., DOB 01/18/94, JV 07-06 Order (Dispositional Requirements)* (HCN Tr. Ct., Apr. 5, 2007). (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.

**MARCH 12, 2007**


The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court performed this review in accordance with the CHILDREN’S ACT, §3.40, and determined to maintain the status quo.
SUPREME COURT
APRIL 13, 2007
George Lewis v. HCN Election Board et al., SU 06-07 Order for Reconsideration (HCN S. Ct., Apr. 13, 2007). (Butterfield, M.).
The Supreme Court vacated the first paragraph of page 8 in its March 12, 2007 Decision in this matter, a portion which appeared to give an advisory opinion on the line of succession for the position of President of the Ho-Chunk Nation.

TRIAL COURT

CHILD SUPPORT
APRIL 11, 2007
Michelle Klien-Brito v. Albert Cleveland, CS 07-26 (Rockman, A).

APRIL 16, 2007

Jacqueline Miller and State of Wisconsin v. Donovan P. Scheurich, Jr., CS 07-28 (Matha, T).

APRIL 20, 2007
Ramsey Cty. & Danielle Crowfeather v. Kent Funmaker, CS 07-29 (Matha, T).

CIVIL GARNISHMENT
APRIL 3, 2007
Alliance Collection Agency v. Tammy Roberts, CG 07-25 (Matha, T).

APRIL 4, 2007
Alliance Collection Agency v. Marie Ann Wolf, CG 07-26 (Matha, T).

APRIL 5, 2007

APRIL 11, 2007
Ozaukee County Clerk of Courts v. Anthony A. Decorah, CG 07-28 (Matha, T).

APRIL 16, 2007
Creditor Recovery Service v. Chiara Cleveland, CG 07-29 (Matha, T).

Creditor Recovery Service v. Grady Stewart, CG 07-30 (Matha, T).

APRIL 20, 2007
Tri-State Adjustments v. Diane Wilde, CG 07-31 (Matha, T).
In the Interest of Minor Child M.L., DOB 03/03/94 v. HCN Office of Tribal Enrollment, CV 07-25. (Matha, T).

DIVORCE
APRIL 5, 2007
Jerome Cloud v. Simone Cloud, FM 07-03 (Rockman, A).

JUVENILE CASES
APRIL 3, 2007
In the Interest of Minor Child A.H., DOB 07/03/06, JV 07-07. (Rockman, A).

SUPREME COURT
APRIL 6, 2007
HCN Treasury Department et al. v. Corvettes on the Isthmus, et al., SU 07-03.

Willard Lonetree v. Larry Garvin, in his official capacity as Exec. Director of HCN Heritage Preservation, SU 07-04.

Forrest Funmaker, Rita Cleveland, Wilfrid Cleveland, Angelina Waege, Loa Porter v. Alvin Cloud in his capacity as Chairperson for 2005 General Council, SU 07-06.

APRIL 10, 2007
Janet Funmaker v. Libby Fairchild, in her capacity as Exec. Director of HCN Dep’t of Personnel, Dep’t of Personnel, HCN Dep’t of Personnel, Ho-Chunk Nation, SU 07-05.

APRIL 24, 2007
Ona Garvin v. HCN Election Bd., SU 07-07.
MARK YOUR CALENDARS FOR:

**Guardian Ad Litem Training**

**July 10-12, 2007**

The *Ho-Chunk Nation Children & Family Act* requires that the Trial Court “appoint a guardian ad litem to protect the interests of the child” in every juvenile case. 4 HCC § 3.20b. The Ho-Chunk Nation Judiciary currently seeks conscientious, caring and dependable individuals to fill this important role. A guardian ad litem serves as an independent advocate and informs the Court of a child’s interests in child protection actions and guardianship matters.

Guardians ad litem receive compensation for their services and reimbursement for accumulated expenses. The Court will host an **on-site guardian ad litem training session on July 10-12, 2007**, at Wa Ehi Hoci in Black River Falls, WI.

Wisconsin Judicare, Inc. will conduct the training, which is free to tribal members and non-member tribal employees. Interested individuals, including current guardians ad litem, are encouraged to attend, and should seek further information from the Clerk of Court at (800) 434-4070 or (715) 284-2722. Pursuant to the *Ho-Chunk Nation Rules for Guardian Ad Litem*, prospective attendees must complete an application and schedule a brief interview. The course is limited to participation of approximately twenty (20) individuals.

The training session has received the support of the Executive Director of the Personnel Department, and **tribal employees may receive paid Educational Leave to attend the course.** Employees must request Educational Leave at least thirty (30) days in advance of the training as required by the *Employment Relations Act*. Approval of any such request remains within the discretion of the relevant departmental Executive Director. 6 HCC § 5.24a-b.
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HCN Trial Court Case Law
Case Name, Case Number (HCN Tr. Ct., month, day, year)

Ho-Chunk Nation Rules of Civil Procedure
HCN R. Civ. P. 19(B)
In September 1897, arctic explorer Robert Peary brought six Greenland Inuit to New York City onboard the artice steamer the Hope. Peary had acted at the behest of Franz Boas of the American Museum of Natural History. The Inuit, known popularly as the “Peary Eskimos,” were a great tourist attraction; in their first two days in the city, 30,000 people paid a quarter apiece to see them on the deck of the Hope. The Inuit lived in apartments above the museum and remained a popular attraction until they began to die of pneumonia and tubercular infections.

The ill Inuit moved to Bellevue Hospital in the city. Within just eight months of their arrival at the Port of New York, four of the six were dead of tuberculosis. One of the survivors returned to Greenland, and the last, a six-year-old named Minik, remained with a member of Boas’ team. Minik attended the burial of his father, Qisuk, in a grave in Central Park, showing onlookers a “traditional” Inuit burial. Minik failed to realize at the time his father’s remains had been boiled, cataloged and added to the Museum collection; a log was used to fill the grave. When 15-year-old Minik learned the truth about his father’s
remains from a newspaper, he fought for the return of Qisuk’s remains. Sensationalist papers of the day ran with the melodramatic story:

An upstairs room—at the museum—is his father’s last resting place. His coffin is a showcase, his shroud a piece of plate glass. No quiet of the graveyard is there; the noise of shuffling feet and the tap, tap of hammers as workmen fix up other skeletons, is ever present. And when the sunlight fades they turn on the electrical lights so that Minik’s father may not even have the pall of darkness to hide his naked bones.

Minik died during the great influenza epidemic of 1918.

The story of Minik and the other Peary Eskimos is one of the rare occasions that Native American Graves Protection and Repatriation Act (NAGPRA) repatriation has directly contradicted the wishes of both the tribe and the dead in question. In August 1993, the remains of the Peary Eskimos were returned to Qaanaaq, Greenland, for reburial. Ironically, this repatriation was against the Inuit tradition and the likely wishes of those whose remains were moved: the Inuit believe the evil of a person remains in his bones, and therefore try not to associate with the remains of the dead. Corpses are believed to be shells left behind when the spirit reincarnates. Asked his feelings on the return of the remains, Minik’s last surviving relative replied, “If that’s what [the Museum people] wanted, it’s alright. And if they [the bones] had stayed where they were, that would have been alright too.”

Minik and his companions now rest below a simple cross, bearing a plaque inscribed, “Nunamingnut Uteqihut”—They are Home.

Within American museums, no culture’s remains have been so widely displayed and so openly exploited as those of the indigenous tribes of North America. Until the past 20 years, native remains would be displayed, sold, collected, and even singled out for inspection to the exclusion of other bodies in the same dig. These desecrations finally led Congress to enact the NAGPRA in 1990 (25 U.S.C.S. §§ 3001 et. seq.), allowing law enforcement agencies to control the trade in Native ritual objects and remains and providing a system for the return of traceable remains. Senator Daniel K. Inouye (D, Hawaii) noted:

When human remains are displayed in museums or historical societies, it is never the bones of white soldiers or the first European settlers that came to this continent that are lying in glass cases. It is Indian remains. The message that this sends to the rest of the world is that Indians are culturally and physically different and inferior to nonindians. By any definition, this is racism.

This exclusive display of non-Caucasian remains is a distinctly American idiosyncrasy. All the European bog people discovered have been white. Cathedrals throughout Europe contain the relics of Catholic Saints exhibited for the veneration of pilgrims—Saint Bernadette remains incorruptible in her crystal coffin in Nevers, France; St. Valentine’s bones repose in an ossuary in Dublin, Ireland.

In its 45th Session in 1994, the United Nations Economic and Social Council Commission on Human Rights drafted a bill similar to NAGPRA calling for the international return of indigenous remains and a renewed respect for native cultures, languages, and religions. Article 13 specifically states that, “[s]tates shall take effective measures, in conjunction with the indigenous peoples concerned, to ensure that indigenous sacred places, including burial sites, be preserved, respected, and protected.”

In 1996, teenagers at the Tri-City Water Follies hydroplane race outside Kennewick, Wash., came upon human remains in an eroding Columbia River bank. Initially, there was no reason to believe that NAGPRA applied to the skeleton. The remains were initially believed to be those of early Caucasian settlers, since the craniofacial structure did not appear to be consistent with that of any known tribal remains. Leading American forensic anthropologist Dr. James Chatters noted, “[t]here were unusual characteristics in the skull, narrow, sloping features. And the prominent nose, distinct

from the more rounded, Mongolian-type features found on early Native remains.”

The decidedly Caucasoid features of Kennewick Man became a major bone of contention among anthropologists studying the remains. Chatters’ facial reconstruction from the skull yielded a profile startlingly similar to that of the British X-Men star Patrick Stewart. The New Yorker and New York Post each ran articles questioning the ethnicity of Kennewick Man based on the “Stewart Reconstruction,” implying an early Caucasoid presence in North America. However, Doug Owsley of the Smithsonian Institution noted that the remains resembled those of the Spirit Cave mummy discovered in Nevada, dated at approximately 10,650 years old.

The bones were found on federal property owned by the Army Corps of Engineers, who elected to return the bones to the Umatilla Tribe without following the standard repatriation procedures outlined in NAGPRA. Additionally, the Umatilla refused all requests by anthropologists to study the remains. The Confederated Tribes of the Colville Nation called into question the Army Corps failure to follow protocol in the case.

Radio-carbon dating of the metacarpal bone performed at the University of California, Riverside, sets the age of the skeleton at somewhere between 8,340 and 9,800 years old with a 95% confidence level, some of the oldest human remains ever uncovered in North America. Other ancient remains have been unearthed at Hourglass Cave, Colorado (8,000 years old) and Spirit Cave, Nevada (9,415 years). CAT scans revealed an arrow-like stone projectile with a rounded base and serrated edges still imbedded within the man’s pelvis. Known as the Kennewick Man for the site where he was unearthed, the skeleton is nearly complete despite its age—nearly 450 generations.

Eight scientists filed suit in United States District Court in Portland requesting the right to examine the remains. A memorandum arrived to the office of Doug Owsley questioning the ability of Smithsonian employees to file suit against the government under 18 U.S.C. § 205. After the case was filed, the Army Corps of Engineers, working in concert with tribes like the Umatilla, used helicopters to bury the site with landfill and planted Russian Olive Trees over the area. These maneuvers effectively cut off all further study of the area before Congress could act to protect the site. The corps spent nearly $170,000.00 of taxpayer money to carry out the site cover-up.

During the process of moving the remains, both of the femurs originally catalogued at the discovery site vanished. After the skull, femurs are the most important bones for dating and scientific purposes. A high-ranking official at the La Battelle facility apparently let members of the Umatilla tribe into the vault to perform ceremonies over the bones. These same tribal members allegedly removed the femurs and reburied them at an undisclosed location.

The Kennewick Man dispute initially rose through the District of Oregon, appealed to the 9th Circuit in September of 2003. Circuit Judge Ronald M. Gould wrote the opinion of the Court affirming Oregon’s decision to bar the tribes from reburying Kennewick Man and handing the remains over to the scientists pursuant to the Archeological Resources Protection Act of 1979 (ARPA). After establishing the court had jurisdiction over the issue, the court ruled “that NAGPRA requires human remains to bear some relationship to a presently existing tribe, people, or culture to be considered ‘Native American.’” However, why should he? The climate, topography, flora and fauna of North America have all altered since Kennewick Man lived. Kennewick Man saw the end of the last great Ice Age 10,000 years ago; giant short-faced bear and mastodons still roamed North America.

There is no evidence in the trial record that Kennewick Man shares any relation to modern tribes in the Washington region. Moreover, the skeleton’s features more closely resemble those of Caucasians, Pacific Islanders and Polynesians. Oral
histories presented by some of the tribes were dismissed by the court as being surmised later from geological and anthropological evidence. Focusing on the word “indigenous” in the statute, the scientists noted that Congress never intended in drafting the statute to encompass skeletons more than 9,000 years old; such a date was far past the intended cutoff date.

Under 43 CFR 10.10(g), “culturally unidentifiable human remains” must be reported, and a review committee established to suggest a plan of action for each set of remains. These reports are submitted to the Secretary of the Interior, who may recommend specific actions for culturally unidentifiable remains. Since the court ruled the remains were not Native American, and not covered under NAGPRA, the 9th Circuit awarded them to the anthropologists under ARPA, and remanded the case to the district court.

Following a retrial encompassing amicus curiae briefs from five tribes, Jelderks noted in his opinion that no definitive link to any living tribe could be proven, allowing for study of Kennewick Man to proceed. “Following the 9th Circuit’s conclusion that NAGPRA does not apply, there is no basis for concluding that the tribal claimants have a legally cognizable interest which entitles them to participate as parties in any further proceedings in this court.” Until repatriation efforts succeed, the remains continue to be the property of the Army Corps of Engineers. They are housed at the Burke Museum, University of Washington.

**Notes from the Bench:**

**TIMELINESS OF COURT APPEARANCES**

The Court had informally sanctioned a practice of permitting parties to appear in the courtroom up to approximately fifteen (15) minutes after scheduled hearing times. However, the Court will no longer allow such latitude absent a proper advance request from a party for a delay of a proceeding. Parties are expected to appear promptly at the time of a court action, and unwelcome consequences may result from an untimely appearance. See HCN R Civ P.

**HOW TO IRRITATE A JUDGE**

*Tim Hallahan*

Maintaining judicial objectivity and equanimity in the face of caseload pressures and courtroom irritants isn't easy.

Amongst the most annoying...

- "*With all due respect...*" As soon as a judge hears this, she knows that her judgement, intelligence, or both, are about to be attacked.
- **Bickering.** Judges hate lawyers who attack each other. Speak to the judge, not to your opponent. Don't interrupt. Don't stoop to the level of your obnoxious adversary.
- **Tardiness.** Leave for court earlier than seems necessary. If you're going to be late, call as soon as you know.
- **Blaming the secretary and/or paralegal.** If you err, take responsibility for it.
- **Eye rolling.** It's tempting to show disapproval with all manner of facial expressions and body language. It may feel good, but it makes you look like a twelve-year-old.
- **Threats.** Don't even mention the Court of Appeal or "reversible error."
- **Ex parte communication.** Avoid the temptation of speaking with the judge about the merits of your case without the other side present. Judges are uncomfortable with these communications and risk being disciplined.
- **Lack of focus.** Burdened with crushing caseloads, judges hate having someone waste their time. Avoid repetition and trivial detail; don't offer cumulative evidence.
- **Quibbling.** Sometimes it's worth the risk of incurring the judge's wrath by arguing with his rulings. Most of the time it isn't.
Being rude to the staff. Don't think that cozying up to the judge will negate your arrogance with her courtroom staff. The clerk, court reporter, and bailiff are the eyes and ears of the judge.

Lack of preparation. You make the judge's job much easier to do when you are prepared. Have your files organized. Know the legal and evidentiary issues. Prepare your witnesses. Be efficient. See the judge smile.

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UPDATES FROM OUTSIDE COURTS

United States District Court for the District of Columbia

Marilyn Vann et al. v. Dirk Kempthorne, Secretary of the United States Dep’t of the Interior et al., 1:03cv01711 (May 8, 2007)
The recently ousted “Freedmen” members of the Cherokee Nation filed a Motion for a Preliminary Injunction, seeking the withdrawal of federal funding to the Cherokee Nation and an invalidation of the election leading to their removal from the Cherokee rosters.

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 CASES

MAY 1, 2007
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

MAY 3, 2007
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted
recognition and enforcement of the foreign judgment.

MAY 7, 2007

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s wages. The respondent filed the motion, thus the Court granted recognition and enforcement of the foreign judgment.

MAY 8, 2007

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s wages. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.


The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

MAY 9, 2007

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

MAY 10, 2007

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s wages. The respondent failed to respond within the prescribed timeframe, thus the


The Court issued this order to correct a clerical error in a previous order.

MAY 14, 2007

The Court issued this order to update the amount of arrears owing in case CS02-35.


The Court issued this order to update the amount of arrears owing in case CS03-78.


The petitioner filed a motion ceasing current child support in this case. As a result, the Court issued this order to cease withholding for child support.

MAY 15, 2007

The Court issued this order to update the amount of arrears owing in this case.


The Court had to determine whether to enforce a standing foreign child support order against the respondent’s wages. The respondent failed to respond within the prescribed timeframe, thus the
Court granted recognition and enforcement of the foreign judgment.

The Court issued this notice to consolidate two open cases in the above matter.

**MAY 16, 2007**
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

The petitioner filed a motion ceasing current child support arrearage withholding in this case. As a result, the Court issued this order to cease withholding for child support arrears.

**MAY 17, 2007**
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita payments. The respondent failed to file a timely answer. The Court granted recognition and enforcement of the foreign judgment, and performed an equitable adjustment.

**MAY 18, 2007**
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s wages. The respondent failed to timely respond, thus the Court granted recognition and enforcement of the foreign judgment.

**MAY 24, 2007**
The petitioner filed a motion ceasing current child support withholding in this case. As a result, the Court issued this order to cease withholding for child support.

**MAY 30, 2007**
The petitioner filed a motion ceasing current child support in this case. As a result, the Court issued this order to cease withholding for child support.

**MAY 31, 2007**
The petitioner filed a motion ceasing current child support in this case. As a result, the Court issued this order to cease withholding for child support.

CIVIL GARNISHMENT CASES

**MAY 1, 2007**
The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

MAY 15, 2007
The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

MAY 17, 2007
The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The Court granted a default judgment in favor of the petitioner out of respect to its state counterpart.

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

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The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

Valued Services of Wisconsin, LLC d/b/a Check Advance #20125 v. Kelly Potts, CG 07-22 Order
The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

**CIVIL CASES**

**MAY 1, 2007**

Marlene C. Cloud et al. v. Ho-Chunk Nation et al., CV 06-31 Order (Motion Hearing) (HCN Tr. Ct., May 1, 2007). (Matha, T).
The Court convened a hearing to entertain arguments on the defendant’s Motion to Dismiss.

**ELECTION MATTERS**

**APRIL 17, 2007**

The Court found that the removal of President George Lewis at the November 11, 2006 General Council fit within the prior procedural safeguards, such as timeliness of the notice and a reasonable opportunity to be heard as interpreted by the HCN Supreme Court.

**MAY 4, 2007**

The Court issued this Order to inform the remaining presidential candidates of the filed challenge.

The Court issued this Order to inform the remaining presidential candidates of the filed challenge.

The Court issued this Order to inform the remaining presidential candidates of the filed challenge.

**MAY 10, 2007**

The Court granted the party’s request to appear by telephone.

**MAY 11, 2007**

The Court granted the party’s request to appear by telephone.

The Court issued this order to permit the plaintiff to reschedule the Pre-Trial Hearing in this matter, cancelled for good cause.

The Court issued this order denying the plaintiff’s request for a preliminary injunction, enjoining the Special Runoff Primary Election scheduled for May 11, 2007; and the Special Recall Election scheduled
for May 15, 2007. Since the plaintiff failed to exhaust his administrative remedies and had previously litigated the same issue in a prior case, the present claim was barred by res judicata, and the injunction was denied.

**May 14, 2007**

The Court issued this Order to memorialize actions taken at the May 11, 2007 Pre-Trial Hearing.

**May 21, 2007**

The Court issued this Order to grant the Motion to Intervene of presidential candidate Wilfrid Cleveland.

*Joyce L. Warner v. Ho-Chunk Nation Election Bd. et al., CV 07-30 Order (Granting Motion to Dismiss)* (HCN Tr. Ct., May 21, 2007). (Matha, T).
The Court issued this order to grant the defendant’s Motion to Dismiss, since legislative candidate Gerald Cleveland obtained the requisite amount of electoral signatures on his Official Nomination Petition despite the presence of some seemingly fraudulent signatures.

**May 22, 2007**

The Court issued this order holding that due to the Election Board’s failure to timely notify the plaintiff that he had been removed from the election ballot, a Special Runoff Election must be held to meet statutory notification requirements.

**May 24, 2007**

The Court denied the request of the plaintiff regarding the proposed removal of presidential candidate Wilfrid Cleveland from the ballot since the plaintiff failed to prove by clear and convincing evidence that the candidate had been convicted of a felony.

**Administrative Appeals**

**May 30, 2007**

The Court issued this Order to establish dates and times in this action.

**Children’s Trust Fund (CTF)**

**May 1, 2007**

The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The Court granted the request.

*In the Interest of Adult CTF Beneficiary: Neva J. Littlegeorge, DOB 09/24/85 v. HCN Office of Tribal Enrollment, CV 06-80 Order (Requesting Accounting)* (HCN Tr. Ct., May 1, 2007). (Matha, T).
The Court previously released funds from the CTF accounts of the adult beneficiary for costs associated with the purchase of an automobile. The petitioner failed to submit an accounting confirming proper use of the funds within the specified timeframe. The Court requested that the petitioner submit the required accounting.

**May 2, 2007**

The Court dismissed the case, due to the petitioner’s indication he no longer intended to pursue the petition.
The Court previously released funds from the ITF accounts of the minor member for costs associated with orthodontic procedures. The petitioner submitted account statements, confirming proper use of the funds. The Court accepted this accounting.

MAY 3, 2007
The Court dismissed the case, due to the petitioner’s failure to appear for the Fact-Finding Hearing.

MAY 15, 2007
The Court previously released funds from the CTF accounts of the adult beneficiary for costs associated with continuing education. The petitioner failed to submit an accounting confirming proper use of the funds within the specified timeframe. The Court requested that the petitioner submit the required accounting.

MAY 17, 2007
The Court previously released funds from the CTF accounts of the minor child for costs associated with orthodontic procedures. The petitioner failed to submit an accounting confirming proper use of the funds within the specified timeframe. The Court requested that the petitioner submit the required accounting.

MAY 29, 2007
The Court had to determine whether a parent can access monies from her minor child’s CTF to pay for costs associated with orthodontic procedures. The Court granted the request.

MAY 30, 2007
The Court previously released funds from the ITF accounts of the minor member for costs associated with dental procedures. The parent requested additional funds to satisfy the remaining balance on the account. The Court granted this request.

MAY 31, 2007
The Court previously released funds from the ITF accounts of the minor member for costs associated with orthodontic procedures. The Court granted this request.

ENROLLMENT
MAY 1, 2007
Cornelius Decora et al. v. Adam Hall, Ho-Chunk Nation Tribal Enrollment Officer et al., CV 03-25 Order (Show Cause) (HCN Tr. Ct., May 1, 2007). (Vele, K).
The Court granted the plaintiff’s request for a Show Cause Hearing pursuant to the CONTEMPT ORDINANCE, 2 HCC § 5.5a(1)(a).

**INCOMPETENT TRUST FUND (ITF)**

**MAY 1, 2007**

*In the Interest of L.L.L., DOB 09/18/48 v. HCN Office of Tribal Enrollment, CV 06-108 Order (Motion Granted) (HCN Tr. Ct., May 1, 2007). (Rockman, A).*

The Court had to determine whether a guardian can access monies from an incompetent member’s ITF to accommodate residential care expenses. The Court granted the request.

**MAY 2, 2007**

*In the Interest of L.L.L., DOB 09/18/48 v. HCN Office of Tribal Enrollment, CV 06-108 Order (Motion Granted) (HCN Tr. Ct., May 2, 2007). (Rockman, A).*

The Court had to determine whether a guardian can access monies from an incompetent member’s ITF to pay property taxes and outstanding debts to vendors. The Court granted the request.

*In the Interest of L.L.L., DOB 09/18/48 v. HCN Office of Tribal Enrollment, CV 06-108 Order (Requesting Accounting) (HCN Tr. Ct., Mar. 28, 2007). (Rockman, A).*

The Court previously released funds from the ITF accounts of the incompetent member for costs associated with residential care. The petitioner failed to submit an accounting confirming proper use of the funds within the specified timeframe. The Court requested that the petitioner submit the required accounting.

*In the Interest of H.C., DOB 01/31/31 v. HCN Office of Tribal Enrollment, CV 05-72 Order (Accepting Accounting) (HCN Tr. Ct., Mar. 28, 2007). (Rockman, A).*

The Court previously released funds from the ITF accounts of the incompetent member for costs associated with ongoing nursing home care. The petitioner submitted account statements, confirming proper use of the funds. The Court accepted this accounting.

**FAMILY CASES**

**DOMESTIC VIOLENCE**

**MAY 2, 2007**

*Vanessa Carriaga v. Jorden Vidana, DV 07-02 Order (Dismissal) (HCN Tr. Ct., May 2, 2007). (Rockman, A).*

The Court dismissed the instant action, since the petitioner failed to articulate reasonable grounds to believe the respondent had committed acts of domestic violence.

**MAY 16, 2007**


The Court issued this order to request additional documentation from the petitioner in this matter.

**JUVENILE CASES**

**APRIL 17, 2007**


The Court appointed a GAL in this matter.

*In the Interest of Minor Children: S.C., DOB 03/04/91; A.H., DOB 07/31/06 JV 07-03, -07 Order (Granting Emergency Temporary Legal and Physical Custody) (HCN Tr. Ct., Feb. 7, 2007). (Rockman, A).*

The Court had to determine whether to grant emergency temporary legal and physical custody of the above-named minor children. The Court entered this Order as necessary to ensure the safety of the children. At the scheduled Initial Hearing, the
parent(s), guardian(s), and/or physical custodian(s) shall be afforded proper due process for purposes of answering the Child/Family Protection Petition filed by Ho-Chunk Nation Child and Family Services (CFS).

**APRIL 23, 2007**

_In the Interest of Minor Child A.C., DOB 07/03/06, JV 07-07 Order (Appointment of Guardian ad Litem) (HCN Tr. Ct., Apr. 23, 2007). (Rockman, A)._

The Court appointed a GAL in this matter.

**APRIL 25, 2007**

_In the Interest of Minor Child: T.J.B., DOB 05/30/06, JV 06-15 Order (Child Protection Review Hearing) (HCN Tr. Ct., Apr. 25, 2007). (Matha, T)._

The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court performed this review in accordance with the CHILDREN’S ACT, §3.40, and determined to maintain the status quo.

**MAY 1, 2007**

_In the Interest of Minor Children: J.B., Jr., DOB 11/27/95; and A.B., DOB 07/25/94, JV 01-06, 01-07 Order (Motion Hearing) (HCN Tr. Ct., May 1, 2007). (Rockman, A)._

The Court conducted a Motion Hearing to determine whether to extinguish the temporary guardianship of the minor children. The Court performed this review in accordance with the CHILDREN’S ACT, §3.44, and determined to maintain the status quo.

_In the Interest of Minor Children: C.C.C., DOB 06/25/92; and A.K.C., DOB 11/23/90, 93-CU-04, 94-CU-21 Order (Revocation Hearing) (HCN Tr. Ct., May 1, 2007). (Matha, T)._

The Court conducted a Revocation Hearing to determine whether to extinguish the permanent guardianship of the minor children. The Court performed this review in accordance with the CHILDREN’S ACT, §3.34d(2).

**MAY 2, 2007**

_In the Interest of Minor Children: P.M.S., DOB 01/14/91; and P.A.S., DOB 01/14/91, JV 98-06, 98-07 Order (Child Protection Review Hearing)-Redacted (HCN Tr. Ct., May 2, 2007). (Rockman, A)._

The Court issued this order to aid the legal guardian, Child and Family Services, in obtaining services for the minor children.

**MAY 3, 2007**

_In the Interest of Minor Child: H.M.A.S., DOB 05/22/04, JV 06-20 Order (Granting Telephonic Appearance) (HCN Tr. Ct., May 3, 2007). (Matha, T)._

The Court granted the party’s request to appear by telephone.

**MAY 4, 2007**

_In the Interest of Minor Children: S.C., DOB 01/14/91; and A.H., DOB 07/03/06, JV 07-03, 07-07 Order (Entrance of Plea) (HCN Tr. Ct., May 4, 2007). (Rockman, A)._

The Court convened a Plea Hearing for the purpose of determining whether the parents of the minor children wished to contest the allegation contained in the Child/Family Protection Petition filed by CFS. The Court entered a plea of not guilty on behalf of the parent, due to her failure to attend the proceeding.

_In the Interest of Minor Child: P.M.S., DOB 01/14/91, JV 98-06 Order (Capias Order) (HCN Tr. Ct., May 4, 2007). (Rockman, A)._

The Court issued this order to permit the custody and transfer of the minor child back to Wisconsin.

**MAY 7, 2007**

_In the Interest of Minor Children: L.L.T.B., DOB 06/23/9; R.R.T.B., DOB 05/22/94; and L.S.T.B., DOB 05/23/94, JV 05-01, 05-02, 05-03 Order (Conditional Termination of Jurisdiction) (HCN Tr. Ct., May 7, 2007). (Rockman, A)._

The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court determined to conditionally terminate its jurisdiction.

**MAY 11, 2007**

_In the Interest of Minor Children: J.V., DOB 10/22/98, S.V.; DOB 09/03/99, JV 02-19, 02-20 Order (Child Protection Review Hearing) (HCN Tr. Ct., May 11, 2007). (Rockman, A)._
The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court performed this review in accordance with the CHILDREN’S ACT, §3.40, and determined to maintain the status quo.

**MAY 15, 2007**
*In the Interest of Minor Child: P.M.S., DOB 01/14/91, JV 98-06 Reissued Order (Capias Order) (HCN Tr. Ct., May 15, 2007). (Rockman, A).*
The Court issued this order to permit the custody and transfer of the minor child back to Wisconsin.

**MAY 17, 2007**
*In the Interest of Minor Child H.M.A-S., DOB 05/22/04, JV 06-20 Order to Release County Juvenile Records (HCN Tr. Ct., May 17, 2007). (Matha, T).*
The Court issued this order to provide for the release of County juvenile records in the above-entitled matter.

**MAY 18, 2007**
*In the Interest of Minor Child T.J.B., DOB 05/30/06, JV 06-15 Order (Appointment of Temporary Guardian) (HCN Tr. Ct., May 18, 2007). (Matha, T).*
The Court appointed a temporary guardian in this matter.

**MAY 22, 2007**
*In the Interest of Minor Children M.L.D., DOB 05/23/91; M.L.H., DOB 08/18/97, M.H., DOB 02/19/99; and M.H., DOB 03/09/00, JV 05-15, -16, -17, -18 Reissued Order (Submission of Guardianship Report and Home Study) (HCN Tr. Ct., May 22, 2007). (Rockman, A).*
The petitioner filed a Petition for Temporary Guardianship of the minor child with the Court. The Court subsequently scheduled a Guardianship Hearing. In accordance with the HOCAK NATION CHILDREN AND FAMILY ACT (hereinafter CHILDREN’S ACT), § 3.45c(1), the Court requests that CFS prepare and submit a guardianship report and home study to the Court.

**SUPREME COURT**
**MAY 9, 2007**
*Thomas Quimby v. Ho-Chunk Nation and Ho-Chunk Nation Insurance Review Commission, SU 07-08 Order Denying Appeal (HCN S. Ct., May 9, 2007).*
The Supreme Court upheld the Trial Court’s decision due to the appellant’s failure to raise allegations that the Trial Court was in error.

**RECENT FILINGS**

**TRIAL COURT**

**CHILD SUPPORT**
**MAY 1, 2007**
*Stephanie Good v. Jesse Whiteagle, CS 07-30 (Rockman, A).*

**MAY 8, 2007**
*Brenda L. Miller v. Lewis A. Frogg, CS 07-31 (Rockman, A).*

**MAY 14, 2007**
*State of WI- Candi M. Peterson v. John M. Lowe, CS 07-32 (Rockman, A).*

**MAY 17, 2007**
*State of Wisconsin v. Silver D. Martin, CS 07-33 (Rockman, A).*

*Danelo CSA v. Fernandez D. Lucas, CS 07-34 (Rockman, A).*

**CIVIL GARNISHMENT**
**MAY 1, 2007**
*Advance America v. Richard Walker, CG 07-35. (Matha, T).*
MAY 3, 2007
Travis DeCora v. Cynthia Cloud-Smith, CG 07-36 (Matha, T).

MAY 8, 2007
Black River Memorial v. Patrick Hartnett, CG 07-37 (Matha, T).
Black River Memorial v. Peggy Perkins, CG 07-38 (Matha, T).
Mile Bluff Clinic v. Trina Buchanan, CG 07-39 (Matha, T).

MAY 21, 2007
Greater La Crosse Radiological v. Ricky & Katie Folkers, CG 07-41 (Matha, T).

MAY 29, 2007
Bulls Eye Credit Union v. Jerry D. McCrossen, CG 07-42 (Matha, T).

CIVIL CASES
MAY 4, 2007
JoAnn Jones v. Ho-Chunk Nation, CV 07-29. (Matha, T).

MAY 7, 2007

MAY 8, 2007

In the Interest of Minor Child: M.B., DOB 08/18/98 v. HCN Office of Tribal Enrollment, CV 07-33. (Rockman, A).
Dallas White Wing v. HCN Election Bd., CV 07-34. (Rockman, A).

MAY 11, 2007

MAY 18, 2007
In the Interest of Minor Child: D.H., DOB 10/17/75 v. HCN Office of Tribal Enrollment, CV 07-38. (Matha, T).

MAY 21, 2007
Gale Storm v. HCN Office of Tribal Enrollment, CV 07-40. (Rockman, A).

MAY 24, 2007
Sharon Williams v. Four Winds Insurance Agency and the HCN, CV 07-43. (Rockman, A).

DIVORCE
MAY 17, 2007

SUPREME COURT
NO RECENT FILINGS
MARK YOUR CALENDARS FOR:

Guardian Ad Litem Training

July 10-12, 2007

The Ho-Chunk Nation Children & Family Act requires that the Trial Court “appoint a guardian ad litem to protect the interests of the child” in every juvenile case. 4 HCC § 3.20b. The Ho-Chunk Nation Judiciary currently seeks conscientious, caring and dependable individuals to fill this important role. A guardian ad litem serves as an independent advocate and informs the Court of a child's interests in child protection actions and guardianship matters.

Guardians ad litem receive compensation for their services and reimbursement for accumulated expenses. The Court will host an on-site guardian ad litem training session on July 10-12, 2007, at Wa Ehi Hoci in Black River Falls, WI.

Wisconsin Judicare, Inc. will conduct the training, which is free to tribal members and non-member tribal employees. Interested individuals, including current guardians ad litem, are encouraged to attend, and should seek further information from the Clerk of Court at (800) 434-4070 or (715) 284-2722. Pursuant to the Ho-Chunk Nation Rules for Guardian Ad Litem, prospective attendees must complete an application and schedule a brief interview. The course is limited to participation of approximately twenty (20) individuals.

The training session has received the support of the Executive Director of the Personnel Department, and tribal employees may receive paid Educational Leave to attend the course. Employees must request Educational Leave at least thirty (30) days in advance of the training as required by the Employment Relations Act. Approval of any such request remains within the discretion of the relevant departmental Executive Director. 6 HCC § 5.24a-b.
**HO-CHUNK NATION COURT SYSTEM**

**JUDICIARY AND STAFF**

Supreme Court – Mary Jo B. Hunter, Chief Justice
Mark D. Butterfield, Associate Justice
Dennis Funmaker, Associate Justice

Traditional Court – Earl Blackdeer
Donald Blackhawk
Dennis Funmaker
Cecil Garvin
Jim Greendeer
Douglas Greengrass
Desmond Mike
Douglas Red Eagle
Preston Thompson, Jr.
Eugene Thundercloud
Morgan White Eagle
Clayton Winneshiek

Trial Court – Todd R. Matha, Chief Judge
Amanda L. Rockman, Associate Judge
Clerk of Court, Trial Court – Marcella Cloud
Assistant Clerk of Court, Trial Court – Selina Joshua
Assistant Clerk of Court, Trial Court – Jessi Cleveland
Administrative Assistant – Rosalie Kakkak
Bailiff – Margaret Wilkerson
Staff Attorney – Jennifer L. Tilden
Staff Attorney – Nicole M. Homer
Supreme Court Clerk – Mary Endthoff

* 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)

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**HCN Judiciary Fee Schedule**

**Filing Fees**

- Complaint ..............................................$50.00
- Petition for Release of Per Capita Distribution (Children’s Trust Fund) ..............................................$50.00
- Motion to Appear Pro Hac Vice ..........................$35.00
- Appellate Filing Fee ......................................$50.00
- Petition to Register and Enforce Foreign Judgment/Order ........................................................................ $20.00
- Marriage License Fee ......................................$50.00

**Court Fees**

- Copying ....................................................$0.10/page
- Faxing .....................................................$0.25/page (sending & receiving)
- CD of Hearings ........................................ $12.50/CD
- Deposition Videotape .................................... $10.00/tape
- Certified Copies .......................................... $0.50/page
- Equipment Rental ........................................ $5.00/hour
- Admission to Practice .................................... $50.00

**Legal Citation Forms**

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

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

**Ho-Chunk Nation Code**
Ordinance/Act Name Title Number HCC Section.
ELDER PROTECTION ACT, 4 HCC § 1.
EMPLOYMENT RELATIONS ACT, 6 HCC § 5.
(for detailed citation information consult LEGISLATIVE ORGANIZATION ACT, 2 HCC § 11.36)

**HCN Supreme Court Case Law**
Case Name, Case Number (HCN S. Ct., month, day, year).

**HCN Trial Court Case Law**
Case Name, Case Number (HCN Tr. Ct., month, day, year)

**Ho-Chunk Nation Rules of Civil Procedure**
HCN R. Civ. P. 19(B)
Welcome Supreme Court Associate Justice

DENNIS FUNMAKER

The Ho-Chunk Nation Judiciary welcomes Mr. Dennis Funmaker to the position of Associate Justice of the Supreme Court. Mr. Funmaker was sworn in on July 6, 2005. Mr. Funmaker has worked for the Ho-Chunk Nation nearly thirty years, since 1976, in a variety of capacities. Most recently, he worked in the Ho-Chunk Nation Office of Public Advocacy as the office administrator.
Additionally, he has served as a lay advocate for the Ho-Chunk Nation Judiciary for the last five years. As a lay advocate, he has had the opportunity to become familiar with the Nation’s laws and ordinances. He initially became a lay advocate because he found tribal law fascinating. Currently, Mr. Funmaker is also a member of the Traditional Court; he has been a member representing the Bear Clan since 1998.

When asked why he ran for the prestigious position, he responded that he “hopes to make a difference, and he will serve the Ho-Chunk people with the best intentions and use a clean heart maintaining cultural ways.” He would like to see, “the law incorporate more tradition and customs in our rulings.” Mr. Funmaker currently resides in Wisconsin Rapids.

The Ho-Chunk Nation Judiciary welcomes Ms. Tina F. Gouty-Yellow to the position of Associate Judge of the Trial Court. Ms. Gouty-Yellow was appointed pro tempore by the Legislature on June 9th, 2005. She will serve in this capacity until January 2nd, 2006, at which time she will begin her three year term as the Associate Trial Court Judge.

Ms. Gouty-Yellow comes to the position with over 19 years of experience as an attorney. She has had the privilege of serving a number of Indian Nations. She has practiced in seven different tribal courts and numerous district courts. She created a public defender program for the Cheyenne River Sioux Tribe; she also served as a court consultant for the Crow Creek Sioux Tribe. She was employed by the Menominee Nation, she served for four years as an assistant prosecutor for the Menominee Nation and most recently she served as the Social Service attorney. Additionally, she ran her own law practice for six years.

Throughout her varied legal positions she has specialized in native issues and issues related to children. It is her intention to bring these experiences to the position of Associate Judge. She currently resides in Eau Claire with her family.

Welcome
Trial Court
Associate Judge
TINA F. GOUTY-YELLOW

Updates from Outside Courts

Second Circuit Court of Appeals
Warsoldier v. Woodford, 2005 U.S. App. LEXIS 15599 (9th Cir. 2005).

Warsoldier appealed from the United States District Court for the Central District of California's denial of his request for a preliminary injunction against the defendant, Woodford, in his suit challenging the prison hair grooming policy of Cal. Code Regs. tit. 15, § 3062(e), arguing the policy and a refusal to permit a religious exception
violated the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).

Warsoldier believed that hair could be cut only upon the death of a close relative. The policy prohibited male inmates from having hair longer than three inches. He had been subjected to a series of punishments to coerce compliance. Because the policy intentionally put significant pressure on the inmate to abandon his religious beliefs, it imposed a substantial burden on his religious practice. The inmate was incarcerated in a minimum security facility. RLUIPA replaced the prior "legitimate penological interest" test with a four-prong "compelling government interest" test. While security was a compelling interest, the policy was not shown as the least restrictive alternative available to reach the compelling interest. The Court found that the:

1. policy imposed a substantial burden on inmate's religious practice;
2. policy was not the least restrictive alternative to achieve CDC's interest in prison security, and thus violated RLUIPA;
3. inmate faced a possibility of irremovable injury absent the issuance of injunction; and
4. balance of hardships favored the inmate.

The denial of the request for a preliminary injunction was reversed and the case was remanded.


The Hoopa Valley Indian Tribe sought review of a summary judgment from the United States District Court for the Northern District of California granted in favor of defendants, the Bureau of Reclamation, in the Tribe's action seeking mandatory contracts under the Indian Self-Determination and Education Assistance Act (ISDEAA). The Bureau adopted a multifaceted restoration program to address ongoing declines in salmon and steelhead populations in the basin of the Trinity River, which flowed through the Tribe's reservation. The Tribe sought contracts related to the proposed restoration projects under the mandatory contracting provisions of the ISDEAA. The court agreed with the district court that the programs at issue were not "for the benefit of Indians because of their status as Indians" within the meaning of 25 U.S.C. § 450f(a)(1)(E) and that they were thus not eligible for mandatory contracts. In comparison to other programs eligible for self-determination contracts under § 450f(a)(1)(A)-(C), the Trinity River restoration program was not specifically targeted to the Tribe but rather collaterally benefited the Tribe as a part of the broader population. The court also determined that the Bureau did not violate its trust obligation to the Tribe by determining that contracts for the restoration work should be negotiated under the discretionary, rather than mandatory, provisions of the ISDEAA.


In 1992, seven Native Americans petitioned the Trademark Trial and Appeal Board ("TTAB") to cancel the registrations of six trademarks used by the Washington Redskins football team. After the TTAB granted their petition, the team's owner, Pro-Football, Inc., brought suit seeking reversal of the TTAB's decision. The district court granted summary judgment to Pro-Football on two alternate grounds, holding that the TTAB should have found the Native Americans' petition barred by laches and that in any event the TTAB's cancellation decision was unsupported by substantial evidence. The Native Americans appealed.

The appellate court concluded that 15 U.S.C. § 1064(3) did not bar the equitable defense of laches in response to § 1064(3) cancellation petitions. However, the fact that the district court started the clock for assessing laches in 1967--the time of the first mark's registration--for all appellants, even though the first Native American was at that time only one year old, ran counter to the well-established principle of equity that laches ran only from the time a party reached his majority. The district court should have measured both the first Native American's delay and the resulting prejudice to the owner based on the period between his attainment of majority and the filing of the 1992 cancellation petition. The appellate court preferred not to undertake its own analysis of the first Native American's laches. In assessing prejudice, the district court should address both trial and economic prejudice.
The appellate court remanded the record to the district court for the purpose of evaluating whether laches barred the first Native American’s claim.

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). 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

June 28, 2005
The petitioner filed a motion requesting that the Court cease child support withholding from the respondent’s per capita distributions due to respondent’s termination of his parental rights. The Court granted the motion.

July 1, 2005
State of Wisconsin v. Robert Cleveland, CS 00-33 Notice (Child Turning 18 – Requiring Proof of Enrollment) (HCN Tr. Ct., July 1, 2005). (Matha, T).
The minor child turned eighteen (18) years of age. In accordance with state law, the respondent’s obligation ends when the child turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

July 6, 2005
The Court had to amend the current child support withholding in order to guarantee compliance with the Ho-Chunk Nation Recognition of Foreign Child Support Orders Ordinance, 4 HCC § 2.8b(3).

July 6, 2005
The Court issued this order to correct a clerical mistake made in the previous order.

July 8, 2005
The Court closed the case and extended its condolences to the family of the late respondent.

**JULY 11, 2005**

The Court had to determine whether to grant the petitioner’s motion to modify. The respondent failed to respond within the prescribed timeframe. The Court granted the petitioner’s request to modify.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s wages. The respondent failed to respond within the prescribed timeframe. The Court granted the petitioner’s request to modify.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s wages. The respondent acquiesced in the request. The Court granted the petitioner’s request to modify.

**JULY 12, 2005**

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

The Court had to determine whether to enforce another foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

The Court modified current child support in order to guarantee compliance with the Ho-Chunk Nation Recognition of Foreign Child Support Orders Ordinance, 4 HCC § 2.8b(3). The Court also granted the petitioner’s uncontested motion to update the respondent’s arrearage obligation.

**JULY 13, 2005**

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

The Court issued this order to correct a clerical mistake made in the previous order.

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to amend child support arrearage withholding with a certified accounting statement. The Court granted the motion.

*Crystal D. Olson v. Clint A. Beversdorf; State of WI/Shawano Co. and Jamie Decorah v. Clint A.
The Court had to determine whether to enforce another foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

JULY 14, 2005
The Court had to determine whether to enforce another foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

The Court had to determine whether to enforce another foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

The petitioner filed a motion requesting that the Court suspend child support withholding. The Court granted the motion. The existing judgment for the arrears remained unchanged.

The petitioner filed a motion requesting that the Court terminate child support arrears withholding. The Court granted the motion. The existing judgment for current child support remained unchanged.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

The Court had to determine whether to enforce another foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

The Court had to determine whether to grant the petitioner’s motion to modify current child support. The respondent agreed with the requested change in enforcement. The Court granted the petitioner’s motion.
The Court had to decide whether to impound a percentage of the respondent’s per capita distribution until the respondent’s objection can be heard in open court. The Court shall not release impounded funds to the respondent until a hearing occurs.

**JULY 15, 2005**

The Court had to determine whether to grant the petitioner’s motion to modify current child support. The respondent agreed with the requested change in enforcement. The Court granted the petitioner’s motion.

The Court had to determine whether to grant the petitioner’s motion to modify current child support. The respondent agreed with the requested change in enforcement. The Court granted the petitioner’s motion.

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to amend child support arrearage withholding with a certified accounting statement. The Court granted the motion.

The petitioner filed a motion requesting that the Court suspend child support withholding. The Court granted the motion. The existing judgment for the arrears remained unchanged.

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to amend child support arrearage withholding with a certified accounting statement. The Court granted the motion.

**JULY 18, 2005**

The Court had to determine whether to grant the petitioner’s motion to modify current child support. The respondent agreed with the requested change in enforcement. The Court granted the petitioner’s motion.

The Court had to determine whether to enforce another foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

The Court issued this order to correct a clerical mistake made in the previous order.

The Court had to determine whether to grant the petitioner’s motion to modify current child support. The respondent failed to respond within the prescribed timeframe. The Court granted the petitioner’s request to modify.
**JULY 20, 2005**
The Court had to determine whether to grant the petitioner’s motion to modify current child support. The respondent failed to respond within the prescribed timeframe. The Court granted the petitioner’s request to modify.

**JULY 21, 2005**
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

**JULY 21, 2005**
The Court had to decide whether to impound a percentage of the respondent’s per capita distribution based upon a transfer of legal and physical custody of the minor child. The Court shall not release impounded funds to the respondent until a hearing occurs.

**JULY 21, 2005**
The petitioner filed proof of the child’s high school enrollment. The Court modified current child support accordingly.

**JULY 25, 2005**

The Court allowed the Petitioner to appear by telephone for the Fact-Finding Hearing.

**Ken Loose v. Jennifer Jones, CS 03-09 Order (Denying Modification of Child Support) (HCN Tr. Ct., July 25, 2005). (Gouty-Yellow, T).**
The Court had to determine whether to grant the respondent’s motion to modify. The Court denied the motion to modify because the Court granted full faith and credit to the child support judgment issued by Cook County Circuit Court. The respondent instead needs to file a request to amend judgment within the foreign jurisdiction.

**JULY 26, 2005**
Patsy Prescott v. Travis Prescott, CS 04-31 Order (Granting Motion to Modify) (HCN Tr. Ct., July 26, 2005). (Matha, T).
The Court had to determine whether to grant the petitioner’s motion to modify. The respondent failed to respond within the prescribed timeframe. The Court granted the petitioner’s request to modify.

**Civil Garnishment**
**JULY 8, 2005**
The Court previously issued a default judgment against the respondent. The petitioner filed a document denoting satisfaction of the recognized debt obligation. However, the petitioner also filed a motion to modify seeking court costs and fees. The respondent’s response timeframe had not yet lapsed, so the Court could not announce the closing of the case.
Alliance Collection Agencies, Inc. v. James L. Schier, CG 04-115 Order (Granting Motion to Modify) (HCN Tr. Ct., July 8, 2005). (Matha, T).
The petitioner filed a Motion to Modify the Current Order for Additional Interest. The respondent failed to file a timely response to the motion to modify. The Court granted the petitioner’s request for relief.

Alliance Collection Agencies, Inc. v. Kevin Kniprath, CG 04-37 Order (Granting Motion to Modify) (HCN Tr. Ct., July 8, 2005). (Matha, T).
The petitioner filed a Motion to Modify the Current Order for Additional Interest. The respondent failed to file a timely response to the motion to modify. The Court granted the petitioner’s request for relief.

JULY 11, 2005
The Court granted the party’s request to appear by telephone at the Status Hearing.

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

JULY 12, 2005
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

The petitioner requested a motion to modify because the respondent’s bankruptcy action was dismissed by the United States Bankruptcy Court. The Court resumed withholding.

JULY 14, 2005
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

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

**JULY 15, 2005**

The Court previously granted a default judgment against the respondent due to her failure to respond to the Petition to Register and Enforce a Foreign Judgment or Order. Under Wisconsin law, no execution on a judgment shall issue after five (5) years of the rendition of the judgment. The Court ordered the Treasury Department to suspend garnishment of the respondent’s wages.

**JULY 18, 2005**

The Court previously entered a Default Judgment against the respondent due to her failure to answer the Petition to Register & Enforce a Foreign Judgment or Order in the specified timeframe. The respondent filed a motion to modify requesting that the Court acknowledge three (3) personal payments delivered to the petitioner. The petitioner sought a reduction of the default judgment order by such an amount. The Court directed the Department of Treasury to perform this modification.

**JULY 22, 2005**

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

The Court previously issued a default judgment against the respondent. The petitioner filed a correspondence indicating that the “garnishment of wages has been fulfilled.” The Court recognizes that the debt has been satisfied.

The petitioner filed the Petition to Register and Enforce a Foreign Judgment or Order. Under Wisconsin law, no execution on a judgment shall issue after five (5) years of the rendition of the judgment. The Court requires proof that the petitioner’s have revived the foreign judgment through applicable Wisconsin procedures.
Civil Cases

**JULY 11, 2005**


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

**JULY 13, 2005**


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

**JULY 14, 2005**


The Court granted a pro hac vice appearance to counsel for the defendants.

**JULY 22, 2005**


The Court issued an order for the purposes of enforcing the voluntary stipulation entered into between the parties. The defendants filed a Satisfaction of Judgment. This document indicates that the defendants have completely satisfied their obligations in accordance with the stipulation.

**JULY 25, 2005**


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


Based upon the Stipulation and Motion to Reschedule, the trial date is amended.

**CHILDREN’S TRUST FUND (CTF)**

**JULY 12, 2005**


The petitioner fulfilled the reimbursement obligation to the Children’s Trust Fund (CTF) as required by the previous order of the Court.

*In the Interest of Minor Child: N.L.P., DOB 02/18/91, by Janice Savage v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-33 Order (Motion Granted) (HCN Tr. Ct., July 12, 2005). (Matha, T).*

The Court approved a Children’s Trust Fund (CTF) release for the purposes of orthodontic care of the minor child. The respondent failed to file a timely response to the motion, thereby denoting its acquiescence to the request for relief.

*In the Interest of Minor Child: B.J.G., DOB 12/03/91, by Steve E. Garvin v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-54 Order (Petition Granted) (HCN Tr. Ct., July 12, 2005). (Matha, T).*

The Court approved a Children’s Trust Fund (CTF) release for the costs associated with orthodontic procedures of the minor child.


The Court approved a Children’s Trust Fund (CTF) release for the costs associated with orthodontic procedures of the minor child.
The petitioner fulfilled the reimbursement obligation to the Children’s Trust Fund (CTF) as required by the previous order of the Court.

The Court approved a Children’s Trust Fund (CTF) release for the costs associated with orthodontic procedures of the minor child.

The Court previously released funds from the CTF account of a minor child for costs associated with orthodontic procedures. The petitioner failed to submit an accounting confirming the specified use of the funds within the specified timeframe. The Court ordered a Show Cause Hearing to allow the petitioner the opportunity to explain why the Court should not hold her in contempt of court.

The Court requested that the petitioner submit the required accounting.


The Court had to determine whether to enjoin the swearing-in of two (2) legislators-elect scheduled for Wednesday, July 6, 2005. On Friday, July 1, 2005, the plaintiffs filed the instant motion in conjunction with an appeal of the June 29, 2005 final judgment. The Court granted the preliminary injunction to afford appellate review of the trial level decision.

The Court had to clarify its previous Order. The Court, in its haste to enter a timely decision, errantly described the granted injunction as preliminary in nature. To clarify, the Court granted the equitable injunction pursuant to its authority under the CONSTITUTION OF THE HO-CHUNK NATION, ART. VII, §6(a).

The Court requested that the petitioner submit the required accounting.

The Court, in its haste to enter a timely decision, errantly described the granted injunction as preliminary in nature. To clarify, the Court granted the equitable injunction pursuant to its authority under the CONSTITUTION OF THE HO-CHUNK NATION, ART. VII, §6(a).

JULY 22, 2005

JULY 25, 2005

JULY 26, 2005
**JULY 6, 2005**  
**Stephanie Hughes v. HCN Gaming Commission et al., CV 05-44 Scheduling Order (HCN Tr. Ct., July 11, 2005). (Matha, T).**  
The Court issued this *Scheduling Order* to establish dates and deadlines for the instant case.

**JULY 14, 2005**  
**Kristin K. White Eagle v. Ho-Chunk Casino, Ho-Chunk Nation, CV 04-97 Order (Final Judgment) (HCN Tr. Ct., July 14, 2005). (Matha, T).**  
The Court needed to determine whether to uphold the plaintiff’s termination for reasons associated with unexcused absences. The plaintiff attempted to seek approval of an Unpaid Leave of Absence in accordance with the *Ho-Chunk Nation Personnel Policies and Procedures Manual*. The defendants denied the plaintiff’s leave request, which conflicted with the plaintiff’s traditional obligations. Consequently, the defendants terminated the plaintiff’s employment. The Court, in an effort to acknowledge and accommodate tribal law and Ho-Chunk traditions and customs, finds the termination unreasonable. The Court overturns the termination and awards the plaintiff appropriate relief.

**JULY 25, 2005**  
**In the Interest of Adult Incompetent: Oliver S. Rockman by Jean Ann Day, CV 97-117 Amended Order (Motion Granted) (HCN Tr. Ct., July 25, 2005). (Gouty-Yellow, T).**  
The Court had to determine whether a protective payee could access ITF monies on behalf of the adult incompetent member for costs associated with allowance and living expenses. The Court granted the requests.

**In the Interest of Decedent Member: Francine Bighorn, DOD 06/12/95 by Joleen Emerson v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-57 Order (Releasing Per Capita Distribution / Trust Account to Estate) (HCN Tr. Ct., July 25, 2005). (Gouty-Yellow, T).**  
The Court needed to determine whether to release the monies from a decedent tribal member’s trust fund to the estate. The Court directed the release of the ITF account to the court-appointed representative of the estate.

**In Re: Bruce Patrick O’Brien by Elethe Nichols, Guardian v. HCN Office of Tribal Enrollment, CV 96-46 Order (Motion Granted & Hearing Ordered) (HCN Tr. Ct., July 25, 2005). (Gouty-Yellow, T).**  
The Court needed to determine whether to release the monies from an incompetent tribal member’s trust fund for respite care and the purchase of a vehicle. The Court directed the partial release of the ITF account to satisfy the request of the guardian and in part orders a hearing to address the remainder of the request.

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**Juvenile**  
**JULY 7, 2005**  
**In the Interest of Minor Children: I.J.W., DOB 08/02/95; L.L.R., DOB 02/17/94, JV 05-10-11 Order (Appointment of Guardian ad litem) (HCN Tr. Ct., July 12, 2005). (Matha, T).**  
The Court appointed a GAL in this matter.

**In the Interest of Minor Child: D.Y., DOB 01/26/98, JV 05-21 Order (Submission of Guardianship Report and Home Study) (HCN Tr. Ct., July 7, 2005). (Matha, T).**  
The Court ordered CFS to prepare and submit a guardianship report and home study to the Court.

**JULY 12, 2005**  
**In the Interest of Minor Children: I.J.W., DOB 08/02/95; L.L.R., 02/17/94, JV 05-10-11 Order (Appointment of Guardian ad litem) (HCN Tr. Ct., July 12, 2005). (Matha, T).**  
The Court appointed a GAL in this matter.
The Court appointed a GAL in this matter.

In the Interest of Minor Child: J.L.G., DOB 07/24/92, JV 02-14 Order (Appointment of Guardian ad litem) (HCN Tr. Ct., July 12, 2005). (Matha, T).
The Court appointed a GAL in this matter.

In the Interest of Minor Children: M.L.D., DOB 05/23/91; M.L.H., 08/18/97; M.H., 02/19/99; M.H., 02/09/00, JV 05-10-11 Order (Appointment of Guardian ad litem) (HCN Tr. Ct., July 12, 2005). (Matha, T).
The Court appointed a GAL in this matter.

The Court appointed a GAL in this matter.

JULY 18, 2005
In the Interest of Minor Child: P.D.R., DOB 08/24/90, JV 03-24 Order (Child Protection Review Hearing) (HCN Tr. Ct., July 18, 2005). (Matha, T).
The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo as necessary for the protection of the children.

JULY 19, 2005
The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo as necessary for the protection of the children.

In the Interest of Minor Children: D.J.W., DOB 03/17/94; V.H.W., DOB 07/27/95; A.P.W., DOB 10/28/91; D.C.W., DOB 12/14/96, JV 04-08-11;

The Court redirected the child support to the third party custodian.

The Court rescheduled a Child Protection Review Hearing so that the mother of the minor children could obtain counsel.

The Court rescheduled a Child Protection Review Hearing so that the mother of the minor children could obtain counsel.

The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo as necessary for the protection of the children.

JULY 21, 2005
The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo as necessary for the protection of the children.

The Court terminates its jurisdiction over and supervision of the instant case.
The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo as necessary for the protection of the children.

In the Interest of Minor Children: C.L., DOB 04/25/98; C.D., DOB 09/19/01; L.R.L., DOB 11/02/02, JV 04-30, -31, -20 Order (Appointment of Guardian ad litem) (HCN Tr. Ct., July 12, 2005). (Matha, T).
The Court appointed a GAL in this matter.

**JULY 21, 2005**

The Court dismissed the instant case without prejudice. The petitioner for temporary guardianship withdrew the petition.

**JULY 26, 2005**

Christine Funmaker-Romano et al. v. Ho-Chunk Nation Election Board and Mary Ellen Dumas, Chairperson, SU 05-08 Order (Dissolving Injunction) (HCN S. Ct., July 26, 2005).
The Court dissolved the Injunction granted by the Trial Court on July 5, 2005, which adjoined the swearing-in of the two apparent winners of the General Election of June 7, 2005, for two seats in Area IV of the Ho-Chunk Nation.

**Supreme Court**

**JULY 6, 2005**

Christine Funmaker-Romano et al. v. Ho-Chunk Nation Election Board and Mary Ellen Dumas, Chairperson, SU 05-08 Scheduling Order (HCN S. Ct., July 6, 2005).
The Court issued this Scheduling Order to establish dates and deadlines for the instant case.

**JULY 18, 2005**

Guy Frederick Beebe v. Ho-Chunk Nation, SU 05-04 Decision (HCN S. Ct., July 18, 2005).
The appellant filed an appeal of a Judgment that provided him with the legally available relief allowed by the Ho-Chunk Nation laws. The appellant sought to overturn the statute as it is written so that he would receive remedies above and beyond the scope of the law. The Court noted that Indian Tribes like the State and Federal governments are sovereigns, and while the Judiciary in general stands for the principle that all persons be compensated for the wrongs committed against them, the CONSTITUTION sets a limit on its jurisdiction that it cannot exceed. The Supreme Court found that the Trial Court did everything in its ability to make the appellant whole. The Final Judgment is affirmed. The Court did not address the second aspect of the appeal because it is currently being litigated in the Trial Court.

**Recent Filings**

**Trial Court**

**Child Support**

**JULY 1, 2005**

Earl L. LeMieux II v. Melissa Snowball, CS 05-62. (Matha, T).
**JULY 11, 2005**


**JULY 12, 2005**


*State of WI – Eau Claire County v. Regina M. Melendy*, CS 05-68. (Matha, T).

**JULY 19, 2005**


**JULY 22, 2005**
*Judith Ann Harbin Lujan v. Clinton Thunderchief*, CS 05-72. (Gouty-Yellow, T).


**JULY 28, 2005**

**Civil Garnishment**

**JULY 11, 2005**
*St. Joseph’s Memorial Hospital v. Horst W. & Doris*, CG 05-70. (Matha, T).

**JULY 12, 2005**
*Citifinancial v. Frisk H. Decorah*, CG 05-71. (Matha, T).

**JULY 19, 2005**

*Quick Cash Loans v. Gale White*, CG 05-73. (Matha, T).

**JULY 28, 2005**
*Quick Cash Loans v. Gale White*, CG 05-74. (Matha, T).


**Civil Cases**

**JULY 5, 2005**
*In the Interest of Minor Child: B.J.G. DOB 12/03/91 v. Ho-Chunk Nation Office of Tribal Enrollment*, CV 05-54. (Matha, T).

**JULY 11, 2005**
*In the Interest of Minor Child: D.H. DOB 06/07/91 v. Ho-Chunk Nation Office of Tribal Enrollment*, CV 05-55. (Matha, T).

**JULY 15, 2005**

**JULY 19, 2005**
*In the Interest of Decedent: F.M.B. DOB 04/08/40*, CV 05-57. (Matha, T).

**Juvenile**

**JULY 1, 2005**
*In the Interest of Minor Child: D.Y., DOB 01/26/98, JV 05-21*. (Matha, T).

**Supreme Court**

No recent filings.
**HCN Judiciary Fee Schedule**

**Filing Fees**
- Complaint...........................................$50.00
- Petition for Release of Per Capita Distribution (Children's Trust Fund) .........................$50.00
- Motion to Appear Pro Hac Vice................$35.00
- Appellate Filing Fee.................................$50.00
- Petition to Register and Enforce Foreign Judgment/Order ........................................$20.00
- Marriage License Fee.................................$50.00

**Court Fees**
- Copying .............................................$0.10/page
- Faxing ..............................................$0.25/page (sending & receiving)
- CD of Hearings ...................................$12.50/CD
- Deposition Videotape ..............................$10.00/tape
- Certified Copies ..................................$0.50/page
- Equipment Rental .................................$5.00/hour
- Admission to Practice ............................$50.00

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

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

**Ho-Chunk Nation Code**
Ordinance/Act Name Title Number HCC Section.  
ELDER PROTECTION ACT, 4 HCC § 1.  
EMPLOYMENT RELATIONS ACT, 6 HCC § 5.  
(for detailed citation information consult LEGISLATIVE ORGANIZATION ACT, 2 HCC § 11.36)

**HCN Supreme Court Case Law**
Case Name, Case Number (HCN S. Ct., month, day, year).  

**HCN Trial Court Case Law**
Case Name, Case Number (HCN Tr. Ct., month, day, year).  

**Ho-Chunk Nation Rules of Civil Procedure**
HCN R. Civ. P. 19(B)

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* 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)
The Ho-Chunk Nation Judiciary presented its 10th Annual Law Day program on Friday, September 2, 2005, at Wa Ehi Hoci. Law Day is an open house, which is free and open to all lawyers, lay advocates, and the general public. This is a great opportunity to learn more about the HCN Judiciary and recent legal developments, as well as tour the courthouse. A wide range of topics were presented, and audience members were eager to ask questions and explore the topics further.

This year’s discussions included the following topics: ADOPTION AND SAFE FAMILIES ACT, THE CHALLENGE AND POTENTIAL INHERENT IN TRIBAL CHILD SUPPORT, GENERAL COUNCIL
Ho-Chunk Nation Trial Court Chief Judge Todd R. Matha began with a welcome and overview of the Judiciary. Staff Attorney Amanda Rockman Cornelius followed with a discussion and overview of the last year in the Ho-Chunk Nation Trial Court. Ms. Cornelius’ presentation gave information regarding the enactment of new laws and their effects on the Judiciary. Since October 2004, the HCN Legislature enacted several new or updated sections of the HCN Code, including the HCN Children & Family Act, the Child Support Enforcement Code, the Divorce & Custody Ordinance, and the Marriage Ordinance. Although each law may present some procedural differences, their adoption has broadened the Courts’ authority.

On January 31, 2005, the Employment Relations Act went into effect and replaced the Ho-Chunk Nation Personnel Policies and Procedures Manual. The ERA amends the employee administrative review process. Under the new ERA, candidates for employment or current employees may file a complaint with the Personnel Department regarding the interview and selection process, harassment, suspension, or termination, and may elect to file a complaint directly with the Grievance Review Board.

Attorney Laura O’Flanagan offered a presentation on HOW THE ADOPTION AND SAFE FAMILIES ACT (ASFA) AFFECTS FAMILY COURT CASES IN HO-CHUNK NATION TRIAL COURT. Her presentation included the background and history of ASFA, its requirements and application to tribal law, and how it interacts with the Indian Child Welfare Act. The presentation alluded to how the law will interact with Ho-Chunk law. The discussion sparked a debate regarding how the majority of States, including Wisconsin, have failed the ASFA review. Wisconsin has created two workgroups involving the various tribes to cooperatively remedy the problem areas.

Judge Tina F. Gouty-Yellow followed with a discussion regarding the benefits and constraints of asserting jurisdiction over child support through a Child Support Enforcement Agency. She shared first hand knowledge of child support enforcement program development from her recent employment as social services attorney with the Menominee Nation.

The Ho-Chunk Nation Tribe has applied for direct funding for its own Child Support Enforcement Agency. Much of the discussion involved the complexity of a tribal child support program with real life examples. For instance, the Court currently enforces 420 child support cases. It is anticipated that 600 cases would be transferred when the grant is awarded. No one was aware of the 420 cases currently being enforced. Therefore, the preliminary case load would be in excess of 1000 cases.
HCN Associate Justice Mark Butterfield and HCN Bar Member Mark Goodman

Attorney Michael Murphy, from the Ho-Chunk Nation Department of Justice offered a timely presentation, an overview of General Council regarding procedure and past case law. The discussion elicited questions from members of the audience concerning the processes and procedures of General Council meetings, including the roles of Office of the General Council as well as the General Council Planning Committee.

Department of Justice Attorney Michael Murphy with Law Day participant.

The final presentations of the program were by Supreme Court Associate Justices Mark Butterfield and Dennis Funmaker, as well as former Associate Justices Rita Cleveland and Jo Deen B. Lowe. Former Justice Cleveland discussed the evolution of the Court since she served her term, as well as the direction in which she hopes the Court will evolve. She was presented with a Certificate of Appreciation from Justice Butterfield for her service and dedication to the Judiciary. Former Justices Debra Greengrass and Forrest Whiterabbit were also recognized for their service to the Judiciary, and were also given Certificates of Appreciation.

Former Justice Lowe discussed her perspectives as a recent Justice. She impressed on the audience the importance of establishing consistency within the Judiciary, and recognized the important, stabilizing role that Chief Justice Hunter plays within the Judiciary. She also discussed the caseload presented to the Supreme Court and the complexity of issues presented to the Court. She impressed the importance of the Trial Court issuing decisions in a timely manner.

Former Supreme Court Justice Jo Deen Lowe and William Lowe

Justice Funmaker provided a survey of the importance of traditional values and its integration into the Supreme Court. His experience in the Traditional Court as well as his experience as a lay advocate lends a new perspective from an Associate Justice. Associate Justice Mark Butterfield served as the panel moderator, and he concluded the panel by discussing his perspective as former Trial Court Chief Judge and current Associate Justice of the Supreme Court. He also discussed the importance of accessibility to the Courts and the need to maintain an operating Judicial Branch.
COURT HOSTS
ANNUAL FUN
RUN/WALK

In conjunction with Law Day, the HCN Judiciary hosted its annual 5K Fun Run/Walk on Saturday, September 3, 2004. This year marked the tenth anniversary of the event. Nearly thirty runners and walkers, from ages 10 to 71, participated.

The overall male winner was Dana Lonetree with a time of nineteen minutes, five seconds (19:05). Nikki Day was the first overall female runner with a time of twenty-three minutes, thirty-four seconds (23:34). The Ho-Chunk Nation Judiciary congratulates all runners and walkers on their achievements. For complete race results, see page 22.

Thank you to the staff who worked on the HCN Law Day and the Fun Walk/Run! Amanda Rockman Cornelius did a great job of coordinating the events. Both Trial Court staff and the Supreme Court Clerk helped her to make the events successful. Your efforts are greatly appreciated!

Chief Justice Mary Jo B. Hunter
The Ho-Chunk Nation Supreme Court would like to invite responses to the attached, amended Ho-Chunk Nation Rules of Civil Procedure by September 24, 2005. You can find the amendments in Appendix A located on page 25 of this issue. You can provide written comments to mendthoff@ho-chunk.com or mail them to Mary K. Endthoff, Supreme Court Clerk, P.O. Box 70, Black River Falls, WI 54615.

**UPDATES FROM OUTSIDE COURTS**

**United States Supreme Court**

Certiorari pending  
*In Re Kanion'ke:haka Kaianereh'ko:wa Kanon'ses:neh*, No. 05-165 (filed August 2, 2005).

**Ninth Circuit Court of Appeals**

*Doe v. Kamehameha Schools et al.*, 416 F.3d 1025 (9th Cir. 2005).

In a 2-1 decision, the 9th Circuit Court of Appeals ruled that the exclusive Kamehameha Schools cannot restrict enrollment to Native Hawaiians. The school system was founded in 1887 under a charitable testamentary trust. Under the schools' admissions policy, preference was given to students of native Hawaiian ancestry. The district court found that the admissions policy was a valid affirmative action program, but the appellate court found that the policy violated § 1981. The applicant's claims were governed by the substantive standards and burden-shifting framework applicable to race-based challenges under Title VII of the Civil Rights Act of 1964.

The school system's denial of admission to students who had no native Hawaiian ancestry as long as there were sufficient qualified applicants with at least some native Hawaiian ancestry resulted in an invalid absolute bar to admission on the basis of race. Even though the school does not receive federal funds and is not part of the public system, its admission policy violates a federal civil rights law, the majority said. Former 20 U.S.C. § 4905(a) (repealed 1994), which authorized grants to the school system to promote native Hawaiian higher education, did not indicate congressional intent to abrogate the applicability of 42 U.S.C. §1981 to the schools' admissions policy. However, because the will that established the charitable trust did not require race-based admissions, the estate and the trustees did not violate § 1981. The district court's grant of summary judgment was affirmed as to the estate and the trustees and was reversed as to the school system, and the case was remanded.

**San Carlos Apache Tribe v. United States**, 417 F.3d 1091 (9th Cir. 2005).

The Ninth Circuit curtailed the ability of tribes to bring lawsuits aimed at protecting cultural, historic and sacred sites by holding that the National Historic Preservation Act (NHPA) does not authorize lawsuits against the United States. The San Carlos Apache Tribe of Arizona argued that its suit concerning reservoir water flow was properly brought as a private right of action directly under NHPA rather than under the Administrative Procedure Act (APA). The Tribe argued that NHPA § 106 created a private right of action by implication. The appellate court determined that dismissal of the suit was appropriate. Section 106 did not give rise to a "private" right of action against the federal government, because (1) an aggrieved party could sue under the APA to force compliance with NHPA § 106 without having a "private right of action" under the statute, (2) creating a direct private action against the federal government made little sense in light of the administrative review scheme set out in the APA, and (3) NHPA's status as a "look and listen" statute...
akin to the National Environmental Policy Act weighed against implying a private right of action. Also, because the APA did not itself contain a fees provision, in an NHPA suit under § 106, a prevailing party could rely on NHPA's fee authorization to obtain attorney's fees.

The judges noted the Tribe could have brought a claim under other federal statutes that authorize lawsuits. But in doing so, the Tribe created a conflict between the 9th Circuit and at least three other circuits over the interpretation of NHPA. The 3rd Circuit, the 5th Circuit and the 8th Circuit have previously ruled that the act's provisions on attorney's fees demonstrate the intent of Congress to create a private right of action. The 9th Circuit, however, noted the lack of "explicit language" to authorize lawsuits under NHPA itself. Id. at 1099. The decision is important because tribes and Indian organizations have cited NHPA in a number of court cases. Advocates complain that the NHPA "lacks teeth." Federal agencies can ignore mandates to work with tribes and protect important sites because officials know they cannot be forced into court.

_Samish Indian Nation v. United States_, No. 04-5042 (Fed. Cir. 2005).

The tribe was not federally recognized until after a judicial determination that the denial of recognition was improper under applicable regulations. The tribe contended that it was entitled to benefits under the Indian Self-Determination and Education Assistance Act (ISDA) for the period when recognition was wrongfully refused. The government argued that the tribe's claims were not timely asserted after the government excluded the tribe from its list of recognized tribes.

The court held that, while it lacked jurisdiction to consider the tribe's claims under the ISDA, the tribe's claims under other statutes were not barred by the statute of limitations. The ISDA did not mandate compensation from the government for the tribe's lack of self-determination contract funding in the absence of any contract, and thus there was no relief which the court could grant. However, the tribe's remaining claims under other statutes were timely asserted after the prior judicial decision determined that federal recognition of the tribe was wrongfully withheld. The government's initial decision excluding the tribe from recognition was a non-justiciable political decision, and the tribe's claims did not accrue until the judicial decision was issued. The order dismissing the tribe's action was affirmed in part with regard to the lack of jurisdiction over the ISDA claims, but the order was reversed with regard to the timeliness of claims under other statutes.

_Means v. Navajo Nation_, 416 F.3d 1025 (9th Cir. 2005).

Russell Means, an Oglala-Sioux tribal member, sought to prevent appellees, Navajo Nation and its judges, from criminally prosecuting him in the Navajo tribal court for an incident that occurred on the Navajo Reservation. After exhausting his remedies in Navajo courts, the United States District Court for the District of Arizona denied Means' habeas petition to enjoin tribal courts from proceeding in his case. Means appealed. He argued that by recognizing tribal criminal jurisdiction over nonmember Indians, the 1990 Amendments to the Indian Civil Rights Act, also known as the Duro fix, violated the equal protection guarantees of the Fifth Amendment and the Indian Civil Rights Act. Thus the amendments discriminated against him as an Indian, and subjected him to adverse treatment based on his race.

The court found that the law that subjected nonmember Indians to tribal criminal jurisdiction in Indian country passed the rational-basis standard since the statute subjected Means to Navajo criminal jurisdiction, not because of his race, but because of his political status as an enrolled member of an Indian tribe, even though it was a different tribe than the Navajo Nation. Means' facial due process challenge to the 1990 Amendments to the Indian Civil Rights Act had no force since he would not have been deprived of any constitutionally protected rights despite being tried by a sovereign not bound by the United States Constitution because the Indian Civil Rights Act conferred all criminal protections that he would have received under the Constitution. Therefore Russell Means can be prosecuted by the Navajo
Nation for a crime he allegedly committed on the Navajo Reservation.

**Tenth Circuit Court of Appeals**

*Perez v. Ellington*, Docket No. 04-2181 (10th Cir. 2005).

Plaintiffs, a faction of the Nambe Pueblo Indian Tribe, entered into a contract with Mr. Newton (acting for Gasplus, his gasoline distribution corporation) regarding the management of Nambe Pueblo's gasoline distribution business, Gasplus agreement. The plaintiffs entered into the Gasplus agreement on behalf of the Nambe Pueblo Development Corporation (NPDC). The NPDC is a registered gas distributor and can take advantage of the gas tax deduction for Indian tribal distributors in the state of New Mexico. The distributor had previously been investigated by the New Mexico Tax and Revenue Department (TRD) officials for his involvement with a fraudulent tax scheme designed to illegally take advantage of such tax breaks. TRD officials investigated the matter using jeopardy tax assessments. After some preliminary investigation, tax liens were issued. However, the complete audit revealed that there was nothing illegal about the agreement. The jeopardy tax assessments were abated a month later; however, the liens were not released until more than one year later. The court held that the officials' quick decision to issue jeopardy tax assessments could, if ultimately found by the jury to be the case, chill a reasonable person from associating with an outside distributor who happened to be at odds with the officials and that the extreme delay in releasing the liens evidenced a retaliatory motive. The officials were not entitled to absolute immunity because they were acting in a merely investigatory capacity. The denial of summary judgment regarding the First Amendment right of association claim was affirmed. The denial of absolute immunity was also affirmed.

**Supreme Court of Washington**


This case involves whether the Washington Utilities and Transportation Commission (WUTC) properly allowed utilities to take costs imposed upon them by the Yakama Indian Nation (Nation) and pass them on to the bills of all customers, including non-Indian residents, living within the Yakama reservation. The residents argued that the WUTC unlawfully allowed the utilities to pass the Nation's tax on to their utility bills. The appellate court found that it had to primarily apply Washington state law, thereby requiring utilities to pay only prudent expenses. The WUTC did not act in an arbitrary and capricious manner in determining the tax was valid and thus a prudent expense. For the purposes of Indian law taxation of utilities, a tax that was not "clearly invalid" was a prudent expense. The WUTC treated a franchise fee differently from a tax. A utility could pass a tax on to the bills of taxpayers within the taxing jurisdiction. A franchise fee was considered a cost of doing business and could be distributed only as an expense to all ratepayers served, systemwide. Wash. Rev. Code § 80.280.090 was designed to ensure that all ratepayers in the same area paid the same rate and were not unfairly discriminated against in that manner. In the reservation, all residents were receiving the same utility services for the same price. Since none of the residents' claims were valid, the utilities' argument that the residents failed to join the Nation did not need to be addressed.

**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). 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**

**July 21, 2005**
The Court had to decide whether to impound a percentage of the respondent’s per capita distribution based upon a transfer of legal and physical custody of the minor child regarding the latter case. The Court shall not release impounded funds to the respondent until a hearing occurs.

**August 2, 2005**
The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

**August 4, 2005**
The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

**August 12, 2005**
*State of Wis./Eau Claire County, on behalf of K.R.F., DOB 11/29/00 v. Harry I. Funmaker, CS 02-22 Order (Ceasing Withholding Current Child Support) (HCN Tr. Ct., Aug. 12, 2005). (Matha, T).*
The petitioner filed a request that the Court cease child support withholding from the respondent’s per capita distributions. The Court granted the motion.

*State of Wisconsin/Jackson County v. Lohman E. Cloud; State of Wisconsin/Jackson County v. Lohman Cloud, CS 00-19, 05-63 Order (Modifying and Enforcing Child Support) (HCN Tr. Ct., Aug. 12, 2005). (Matha, T).*
The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

The petitioner filed a request that the Court cease child support withholding from the respondent’s per capita distributions. The Court granted the motion.

*Menominee Tribal Child Support v. Mina Webster, CS 05-67 Default Judgment (Enforcing Child Support) (HCN Tr. Ct., August 12, 2005). (Matha, T).*
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

The Court issued this order to correct an administrative inadvertence made in the previous order.


The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

AUGUST 15, 2005

The Court had to determine whether to grant full faith and credit and/or comity to a foreign child support order against the respondent’s wages. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.


The Court had to determine whether to grant full faith and credit and/or comity to a foreign child support order against the respondent’s wages. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

AUGUST 16, 2005

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

AUGUST 17, 2005

The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).


The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

AUGUST 18, 2005

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified
The Court granted the petitioner’s request for recognition and enforcement.

**AUGUST 19, 2005**


The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).


The Court must determine whether to release the impounded per capita monies of the respondent. The parties submitted a Stipulation and Order from the county denoting the use of the child support funds.

**AUGUST 23, 2005**


The petitioner filed a request that the Court cease child support withholding from the respondent’s per capita distributions. The Court granted the motion.

*Terry Lafler v. Sherry Kirkland, CS 00-34 Order (Modifying Child Support Against Wages) (HCN Tr. Ct., Aug. 23, 2005).* (Gouty-Yellow, T).

The Court had to determine whether to grant full faith and credit and/or comity to a foreign child support order against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

*Terry Lafler v. Sherry Kirkland, CS 00-34 Order (Ceasing Withholding Current Child Support from Per Capita Distribution) (HCN Tr. Ct., Aug. 23, 2005).* (Gouty-Yellow, T).

The petitioner requested child support withholding from per capita to cease. The Court granted the petitioner’s request.

**AUGUST 25, 2005**


The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

**AUGUST 29, 2005**


The Court had to determine whether to grant full faith and credit and/or comity to a foreign child support order against the respondent’s wages. 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 enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

**AUGUST 30, 2005**


The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).
The petitioner requested child support withholding from per capita to cease. The Court granted the petitioner’s request.

The petitioner requested child support withholding from wages to cease. The Court granted the petitioner’s request.

The petitioner requested child support withholding from per capita to cease. The Court granted the petitioner’s request.

AUGUST 31, 2005
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

Civil Garnishment
AUGUST 5, 2005
The petitioner filed a Motion to Modify the Current Order for Additional Interest. The respondent failed to file a timely response to the motion to modify. The Court granted the petitioner’s request for relief.

The petitioner filed a Petition to Register and Enforce a Foreign Judgment or Order. Under Wisconsin law, no execution on a judgment shall issue after five (5) years of the rendition of the judgment. Therefore the Court orders the petitioner to file an Amended Petition, including a recently issued foreign money judgment.

The petitioner filed a Petition to Register and Enforce a Foreign Judgment or Order. Under Wisconsin law, no execution on a judgment shall issue after five (5) years of the rendition of the judgment. Therefore the Court orders the petitioner to file an Amended Petition, including a recently issued foreign money 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 timeframe. 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 timeframe. The Court granted the petitioner’s request for recognition and enforcement.
August 11, 2005

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent filed a timely response, and the Court convened a Fact-Finding Hearing, resulting in weekly wage deductions.

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

August 25, 2005

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

August 26, 2005

The petitioner submitted a Motion to Modify requesting fees and costs associated with filing the Petition to Register & Enforce a Foreign Judgment or Order. The Court held that the petitioner should have included such requests within the initial pleading since the costs were known with certainty at that time.

Civil Cases

Children’s Trust Fund (CTF)

August 4, 2005

The parties filed the Stipulation for Dismissal of Action, requesting that the Court dismiss the matter without prejudice. The parties voluntarily entered the arrangement upon advice of counsel. The Court informed the parties of its intent to close the file if no objection is received within ten (10) days.

August 5, 2005

The Court released funds from the CTF account of E.T.H., DOB 12/19/91, to pay for costs associated with orthodontic procedures. The petitioner submitted an account activity statement, which confirmed proper use of the funds.

The Court released funds from the CTF account of M.A.C., DOB 04/09/89, to pay for costs associated with orthodontic procedures.

The petitioner filed the Petition for Release of Per Capita Distribution. The Court never issued a formal ruling on the petitioner’s request. Subsequently, the petitioner satisfied the graduation requirement and received the corpus of the trust fund, thereby rendering the cause of action moot.

**AUGUST 11, 2005**

*In the Interest of Minor Children: B.A.S., DOB 01/17/84; B.W.S., DOB 06/06/85; and S.M.S., DOB 12/23/87, by Brenda Sanford v. Ho-Chunk Nation Office of Tribal Enrollment, CV 04-86 Order (Dismissal without Prejudice) (HCN Tr. Ct., Aug. 11, 2005). (Matha, T).*

The Court convened a Fact-Finding Hearing to consider the merit of the petitioner’s Petitioner for Release of Per Capita Distribution. The petitioner failed to appear, and did not notify the Court of an inability to attend the proceeding. Therefore, the Court dismissed the instant case without prejudice.

*AUGUST 12, 2005*  


The Court convened a Fact-Finding Hearing to consider the merit of the petitioner’s Petitioner for Release of Per Capita Distribution. The petitioner failed to appear, and did not notify the Court of an inability to attend the proceeding. Therefore, the Court dismissed the instant case without prejudice.

*In the Interest of Minor Child: M.W., DOB 07/09/95, by Melody Whiteagle-Fintak v. Ho-Chunk Nation Office of Tribal Enrollment, CV 04-83 Order (Show Cause) (HCN Tr. Ct., Aug. 12, 2005). (Matha, T).*

The Court released funds from the CTF account of M.W., DOB 07/09/95, to pay for costs associated with orthodontic procedures.

*In the Interest of Decedent Member: I.M.F., DOD 04-25-2005, by Rosemarie Funmaker, v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-71 Order (Releasing Children’s Trust Fund to Estate) (HCN Tr. Ct., Aug. 25, 2005). (Gouty-Yellow, T).*

The Court determined to release the monies from a decedent tribal member’s CTF account prior to the unfortunate passing of the tribal member. The Court directs the release of the CTF to the court-appointed representative of the estate.

*In the Interest of Minor Children: J.J.N., DOB 06/23/88; J.D.N., DOB 08/27/91; and J.D.N., DOB 08/27/91, by Mary Frances Ness v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-17 Order Request Accounting (HCN Tr. Ct., Aug. 25, 2005). (Gouty-Yellow, T).*

The Court released funds from the CTF accounts of J.J.N., DOB 06/23/88, J.D.N., DOB 08/27/91, and J.D.N., DOB 08/27/91, to pay for costs associated with payments on the family mortgage. Additional payments are to be accounted for, thus August 15,
2005 accounting is past due and shall be submitted immediately.

The Court released funds from the CTF account of B.W., DOB 08/28/89, to pay for costs associated with orthodontic procedures.

AUGUST 30, 2005
The Court determined to release the monies from a decedent tribal member’s CTF account prior to the unfortunate passing of the tribal member. The Court directs the release of the CTF to the court-appointed representative of the estate.

EMPLOYMENT
AUGUST 5, 2005
The parties stipulated and agreed to settle the above-captioned case pursuant to a voluntary agreement.

The parties stipulated and agreed to settle the above-captioned case pursuant to a voluntary agreement.

AUGUST 11, 2005
The Court issued this Scheduling Order to establish dates and deadlines for the instant case.

AUGUST 12, 2005
The parties stipulated and agreed to settle the above-captioned case pursuant to a voluntary agreement.

The parties stipulated and agreed to settle the above-captioned case pursuant to a voluntary agreement.

AUGUST 12, 2005
The Court needed to determine whether to grant a default judgment against the defendants. The defendants failed to answer the Complaint despite proper service of process. The Court, however, declines to enter a decision due to the plaintiffs’ failure to articulate a basis for the exercise of subject matter jurisdiction. The Court required the plaintiffs to file an amended pleading.

AUGUST 25, 2005
The Supreme Court of the Ho-Chunk Nation reversed and remanded a decision that this Court rendered in an employment action. The Supreme Court instructed the Court to convene further proceedings, suggesting the scheduling of a pre-trial motion phase. The Court determined the remand on the basis of a motion to dismiss. The plaintiff did not properly file a minimum of two (2) administrative grievances to his department director and Office of the President. The Court grants the
defendants’ request for dismissal on the same grounds as its earlier grant of summary judgment.

AUGUST 30, 2005

_Wendi A. Huling v. Ho-Chunk Nation et al., CV 05-47 Order (Motion Hearing) (HCN Tr. Ct., Aug. 30, 2005). (Gouty-Yellow, T)._ 

The Court must determine whether or not to grant the defendant’s _Motion for Dismissal, or in the alternative, Motion for a More Definitive Statement._ The Court scheduled a _Motion for Dismissal_ to provide the plaintiff the opportunity to offer a response for a hearing.

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**INCOMPETENT TRUST FUND (ITF)**

AUGUST 2, 2005


The Court had to determine whether a permanent guardian can access monies on behalf of an adult incompetent from the member’s Incompetent’s Trust Fund (ITF). The Court granted the release of funds to satisfy the request of the guardian.

AUGUST 5, 2005

_In the Interest of B.F.R., DOB 09/18/19, by Dorothy Lenard v. Ho-Chunk Nation Office of Tribal Enrollment, CV 02-95 Order (Accepting Accounting) (HCN Tr. Ct., Aug. 5, 2005). (Matha, T)._ 

The Court released funds from the ITF account of B.F.R, for costs associated with ongoing nursing home care. The petitioner submitted a payment history statement which confirmed proper use of the funds. The Court accepts this accounting.

_In the Interest of Adult Incompetent: N.W., DOB 02/16/24, by Cecelia A. Rave, CV 01-125 Order (Closing Case) (HCN Tr. Ct., Aug. 5, 2005). (Matha, T)._ 

The Court is aware that the petitioner passed away on April 14, 2005. The Court accordingly shall close this case, and extend its sincerest condolences to her family.

AUGUST 17, 2005

_In re: B.P.O. by Elethe Nichols v. HCN Enrollment Dept., CV 96-46 Order (Release of Funds) (HCN Tr. Ct., Aug. 17, 2005). (Gouty-Yellow, T)._ 

The Court had to determine whether a guardian could access monies on behalf of an adult incompetent from the member’s Incompetent’s Trust Fund (ITF). The Court granted the release of funds to satisfy the request of the guardian for the purchase of a used van for transportation.

AUGUST 19, 2005


The Court had to determine whether the corporate guardian can access monies on behalf of an adult incompetent from the member’s ITF. The Court granted the release of funds to satisfy the request of the guardian and sets forth a monthly fee for the ongoing administration of this ward’s circumstances.

AUGUST 29, 2005

_In the Interest of: E.S., DOB 02/01/55, by Cecelia Sine, Legal Guardian v. Ho-Chunk Nation Office of Tribal Enrollment, CV 03-27 Order (HCN Tr. Ct., Aug. 29, 2005). (Gouty-Yellow, T)._ 

The Court had to determine whether to grant a release of funds from the Incompetent’s Trust Fund. The Court grants the request for release of ITF Funds for home modification, reimbursements, and a monthly living allowance.
Juvenile

JULY 27, 2005

In the Interest of Minor Children: L.L.T.B., DOB 06/23/96; R.R.T.B., DOB 03/16/94; L.S.T.B., DOB 01/20/93, JV 05-01-03 Order (Dispositional Requirements) (HCN Tr. Ct., July 27, 2005). (Gouty-Yellow, T).
The Court conducted the Dispositional Hearing. At the Hearing, the Court had to assess the extent and scope of the dispositional recommendations proposed by the Ho-Chunk Nation Child & Family Services.

JULY 28, 2005

The Court appointed a GAL in this matter.

JULY 29, 2005

The Temporary Guardianship Petition is terminated because the prior Judge assigned to this matter did not act on the Petition, no hearings were held, no orders were issued, and the children were returned to the Court’s jurisdiction.

The Court redirected child support payments to the third-party physical custodian.

AUGUST 3, 2005

The Court issues this Erratum Order to correct a clerical mistake made in the July 27, 2005 Order.

AUGUST 4, 2005

The Court determined that an appointment of a permanent guardian is within the child’s best interests.

The Court postponed the Hearing so that the parties would all be in attendance and so counsel would be sought.

The Court recognizes and grants full faith and credit to the State of Wisconsin which established the guardianship of the child. Thus the Court terminates its jurisdiction over the case.

AUGUST 8, 2005

The Court appointed a temporary guardian in this matter. After a careful weighing of all the presented evidence, the Court deems such an appointment within the minor child’s best interests.

The Court removed the next scheduled Hearing because the mother resumed physical custody of the child.

The Court conducted a Child Protection Review Hearing. The Court reaffirmed the dispositional
requirements as necessary for the protection of the child.

The Court appointed a temporary guardian in this matter. After a careful weighing of all the presented evidence, the Court deems such an appointment within the minor child’s best interests.

The Court appointed a temporary guardian in this matter. After a careful weighing of all the presented evidence, the Court deems such an appointment within the minor child’s best interests.

The Court appointed a temporary guardian in this matter. After a careful weighing of all the presented evidence, the Court deems such an appointment within the minor child’s best interests.

The Court determined to establish a child support obligation for the mother of the minor children.

The Court determined to establish a child support obligation for the mother of the minor children. The HO-CHUNK NATION CHILDREN & FAMILY ACT confirms the confidential nature of the guardianship and protection proceedings, and the Court accordingly entered this contemporaneous order to direct to the Department of Treasury.

The Court appointed a temporary guardian in this matter. After a careful weighing of all the presented evidence, the Court deems such an appointment within the minor child’s best interests.

The Court appointed a GAL in this matter.

In the Interest of Minor Children: A.J.C., DOB 12/24/03; P.R.F., DOB 04/22/02, JV 05-20-19 Order (Dispositional Requirements) (HCN Tr. Ct., Aug. 10, 2005). (Gouty-Yellow, T).
The Court conducted the Dispositional Hearing. At the Hearing, the Court had to assess the extent and scope of the dispositional recommendations proposed by the Ho-Chunk Nation Child & Family Services.

The Court determined that an appointment of a permanent guardian is within the child’s best interests.

In the Interest of Minor Children: C.H.F., DOB 12/24/03; D.R.W., DOB 09/22/92; D.G.W., DOB 11/09/95; D.S.W., DOB 02/19/98, JV 01-17-20 Order (Appointment of Permanent Guardian) (HCN Tr. Ct., Aug. 11, 2005). (Gouty-Yellow, T).
The Court determined that an appointment of a permanent guardian is within the child’s best interests.

The Court appointed a temporary guardian in this matter. After a careful weighing of all the presented evidence, the Court deems such an appointment within the minor child’s best interests.

The Court appointed a temporary guardian in this matter. After a careful weighing of all the presented evidence, the Court deems such an appointment within the minor child’s best interests.

The Court appointed a GAL in this matter.

AUGUST 10, 2005
In the Interest of Minor Children: C.H.F., DOB 12/24/03; P.R.F., DOB 04/22/02, JV 05-20-19 Order (Dispositional Requirements) (HCN Tr. Ct., Aug. 10, 2005). (Gouty-Yellow, T).
The Court conducted the Dispositional Hearing. At the Hearing, the Court had to assess the extent and scope of the dispositional recommendations proposed by the Ho-Chunk Nation Child & Family Services.

AUGUST 11, 2005
In the Interest of Minor Children: C.H.F., DOB 12/24/03; P.R.F., DOB 04/22/02, JV 05-20-19 Order (Dispositional Requirements) (HCN Tr. Ct., Aug. 10, 2005). (Gouty-Yellow, T).
The Court conducted the Dispositional Hearing. At the Hearing, the Court had to assess the extent and scope of the dispositional recommendations proposed by the Ho-Chunk Nation Child & Family Services.

AUGUST 12, 2005
The Court appointed a temporary guardian in this matter. After a careful weighing of all the presented evidence, the Court deems such an appointment within the minor child’s best interests.

AUGUST 15, 2005
In the Interest of Minor Child: D.C., DOB 05/12/03, JV 03-34 Order (Dismissal of Petition) (HCN Tr. Ct., Aug. 15, 2005). (Matha, T).
The Court convened Trial to determine whether the allegations presented in the Child/Family Protection Petition filed by the Ho-Chunk Nation Child & Family Services were true and whether the best interests of the minor child would be served by continued court intervention. The Court holds that CFS has not satisfied the burden of proof.

The Court terminated its jurisdiction over and supervision of the instant case in accordance with the HO-CHUNK NATION CHILDREN & FAMILY ACT.

AUGUST 18, 2005
In the Interest of Minor Child: D.M.S., DOB 01/12/93, JV 04-18 Order (Appointment of Guardian ad litem) (HCN Tr. Ct., Aug. 18, 2005). (Matha, T).
The Court appointed a GAL in this matter.

AUGUST 19, 2005
The Court determined whether to conditionally accept transfer of a State of Wisconsin children’s case in which the minor children, either enrolled or eligible for enrollment with the Ho-Chunk Nation, are subject to foster care placement. After reviewing the Motion for Transfer to Tribal Court, the Court shall not decline transfer of this action.

AUGUST 24, 2005
The Court appointed a GAL in this matter.

Domestic Violence
AUGUST 10, 2005
The Ho-Chunk Nation Trial Court has been presented with a sworn Petition for Order for Protection. The Court finds reasonable grounds to believe that the respondent has committed acts of domestic violence against the petitioner and/or family. Consequently, the Court enters this Ex Parte Order for Protection as necessary to protect the petitioner.

Supreme Court
AUGUST 3, 2005
Christine Funmaker-Romano et al. v. Ho-Chunk Nation Election Board and Mary Ellen Dumas, Chairperson, SU 05-08 Decision (HCN S. Ct., Aug. 3, 2005).
The Court heard Oral Argument on this case on July 23, 2005. The Court issued an Order (Dissolving Injunction) on July 26, 2005. The Court concurred with the substance of the Trial Court’s findings that while there were irregularities in the Election, the Court would not order a new election.
The appellants complain that despite showing violations of Election law, the Trial Court’s conclusion that their election appeal failed is flawed. The Appellants also contend that the Trial Court denied their due process rights by cutting off discovery at an unduly early stage in the litigation despite the compressed Constitutional requirements that the Trial Court reach a decision within 20 days from when an Election Challenge is filed. Nonetheless, the parties and the Courts must cooperate along with the Election Board to ensure that voters are able to exercise their right to be represented by candidates of their choice.
The requirement that the Legislature set that a challenger must show that the outcome would have been different but for the election violation is constitutional and Abangan is overruled to the extent that it is inconsistent. Pursuant to the HCN Election Ordinance, a challenger must not just show that there was a violation of the Election Ordinance, which the appellants did in this case, but also that the violation made a difference in the outcome. The challenger must show both.

Recent Filings

Trial Court

Child Support

AUGUST 4, 2005
Wood County Child Support Agency v. Paul Sallaway, CS 05-76. (Gouty-Yellow, T).

AUGUST 15, 2005
State of Wisconsin, Celeste Yvonne Turner v. Michael W. Decorah, CS 05-77. (Matha, T).

AUGUST 25, 2005
Joan C. Goodness-Baum v. Robin R. Baum, CS 05-79. (Matha, T).

Steven J. Stygar v. Terrie Holmes, CS 05-80. (Matha, T).

AUGUST 31, 2005
Anna Kingswan v. Anthony Kingswan, CS 05-78. (Matha, T).

Civil Garnishment

AUGUST 10, 2005

State Collection Service v. Patrick Roberge, CG 05-76. (Matha, T).

State Collection Service v. Mikeleen A. Finucan, CG 05-77. (Matha, T).

Alliance Collection Agencies, Inc. v. Debra Swantek, CG 05-78. (Matha, T).


AUGUST 25, 2005
Augusta Housing Management Co. v. Ardith M. Snowball, CG 05-80. (Matha, T).


Alliance Collection Agencies, Inc. v. Donna Pabst, CG 05-82. (Matha, T).

AUGUST 26, 2005

AUGUST 31, 2005
Quick Cash Loans v. Joan Fox, CG 05-84. (Matha, T).


Civil Cases

AUGUST 8, 2005
In the Interest of Minor Child: M.L.D. DOB 04/05/01, by Terry Deloney v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-58. (Matha, T).

In the Interest of Minor Child: T.M.K. DOB 12/05/87 by Amy K. Littlegeorge v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-65. (Matha, T).

AUGUST 9, 2005
In the Interest of Minor Child: M.S.P. DOB 09/28/90, by Sharon Pierce v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-60. (Matha, T).


Home Ownership Program v. Carter Roofing, CV 05-63. (Matha, T).


August 11, 2005
In the Interest of Minor Child: B.M.G. DOB 09/26/93, by Jon Greendeer v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-61. (Matha, T).


Jeffrey Harrison v. HCN Insurance Commission, et al., CV 05-68. (Matha, T).

August 15, 2005

August 17, 2005
In the Interest of Decedent: I.M.F. by Rosmarie Funmaker v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-71. (Gouty-Yellow, T).

August 23, 2005
In the Interest of: H.C. DOB 01/31/31, by Barbara Melteson & Dawn Ollendick v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-72. (Gouty-Yellow, T).


In the Interest of Minor Child: T.K. DOB 06/06/90, by Sara WhiteEagle v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-74. (Gouty-Yellow, T).

August 25, 2005
In the Interest of Decedent: E.P.G. by Hazel J. Garske v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-75. (Gouty-Yellow, T).

August 31, 2005

Domestic Violence Cases

August 8, 2005

Supreme Court

No recent filings.

Upcoming National Events
September 23, 2005. 38th Annual California Indian Day Celebration to be held at the California State Capitol; Sacramento, CA.


October 13-14, 2005. Tribal Self Governance Fall Conference, Washington, D.C.


Tina Gouty-Yellow, Associate Judge Pro Tempore
Clerk of Court, Trial Court – Marcella Cloud
Assistant Clerk of Court, Trial Court – Selina Joshua
Bailiff/Process Server – Albert Carrimon
Administrative Assistant – Jessi Cleveland
Staff Attorney – Amanda R. Cornelius
Supreme Court Clerk – Mary Endthoff

* 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 Judiciary Fee Schedule
Filing Fees
- Complaint .................................................. $50.00
- Petition for Release of Per Capita Distribution (Children’s Trust Fund) ....................... $50.00
- Motion to Appear Pro Hac Vice ............... $35.00
- Appellate Filing Fee ................................. $50.00
- Petition to Register and Enforce Foreign Judgment/Order ....................................... $20.00
- Marriage License Fee ............................... $50.00

Court Fees
- Copying .................................................. $0.10/page
- Faxing .................................................... $0.25/page (sending & receiving)
- CD of Hearings ........................................ $12.50/CD
- Deposition Videotape ............................. $10.00/tape
- Certified Copies ...................................... $0.50/page
- Equipment Rental ................................. $5.00/hour
- Admission to Practice ............................ $50.00

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

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

Ho-Chunk Nation Code
Ordinance/Act Name Title Number HCC Section.
ELDER PROTECTION ACT, 4 HCC § 1.
EMPLOYMENT RELATIONS ACT, 6 HCC § 5.
(for detailed citation information consult LEGISLATIVE ORGANIZATION ACT, 2 HCC § 11.36)
**Ho-Chunk Nation Judiciary 5K**

**Fun Run/Walk Results**

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<tr>
<td>2nd</td>
<td>Mark Butterfield</td>
<td>28:52</td>
<td>Marv J. Rosmenoski</td>
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<tr>
<td>3rd</td>
<td>Danny Rozmenoski</td>
<td>40:32</td>
<td>Shirley Peterson</td>
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### All Runners and Walkers – Sorted Alphabetically

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<th>Name</th>
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<td>Boardman, Ben</td>
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APPENDIX A
Amended HCN R. Civ. P. – DRAFT

Rule 3. Complaints.

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

(A) filing a written Complaint with the clerk of court and paying the appropriate fees. The Complaint shall contain short, plain statements of the grounds upon which the Court's jurisdiction depends; the facts and circumstances giving rise to the action, and a demand for any and all relief that the party is seeking. Relief should include, but is not limited to the dollar amount that the party is requesting. The Complaint must contain the full names and addresses of all parties and any counsel, as well as a telephone number at which the Complainant may be contacted. The Complaint shall be signed by the filing party or his/her counsel, if any.

(B) a Ho-Chunk Nation official with the authority to enforce Code provisions issuing and serving a written Citation on the defendant, and filing a copy of the Citation in the Trial Court within (1) day of serving the defendant.

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

Rule 4.  Filing.

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


A. Definitions.

1. Service of process – The manner in which parties are informed of the Complaint or Citation and of the opportunity to Answer. Personal service is preferred; however, service by registered U.S. mail (return receipt requested) at the person’s home or usual place of business or employment are equally acceptable and effective. Other methods of service may be employed when, in the Court’s discretion, they are most likely to result in actual notification of the parties.

2. Summons – The official notice to the party informing him/her that he/she is identified as a party to an action or is being sued, that an Answer is due in twenty (20) calendar days (See HCN R. Civ. P. 6) and that a Default Judgment may be entered against them if they do not file an Answer in the prescribed time. It shall also include the name and location of the Court, the case number, and the names of the parties. The Summons shall be issued by the Clerk of Court and shall be served with a copy of the filed Complaint attached.

   a. In the event that a Citation is issued upon an alleged violator of one or more provisions of the Ho-Chunk Nation Code, the Citation shall serve as the Summons to command the initial appearance of the defendant at the Preliminary Hearing. The issuance and service of the Citation upon the defendant by the issuing authorized tribal official negates the Clerk’s duty to issue and serve a Summons upon the defendant.

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

(C) Methods of Service of Process.

1. Personal Service. The required papers are delivered to the party in person by the bailiff, or when authorized by the Court, a law enforcement officer from any jurisdiction, or any other person not a party to the action who is eighteen (18) years of age or older and of suitable discretion.
a. Personal Service is required for the initiation of actions in the following:

(i) Relief requested is over $5,000.00, excluding the enforcement of foreign child support orders; or

(ii) Children’s custody and/or placement are the subject matter of the proceedings.

(b) Where personal service is required by this rule and the Court or the filing party exercises due diligence in unsuccessfully pursuing personal service of process, the filing party may move for permission to pursue service of process by any means provided for in sections (c) through (f). The Court will grant the motion where good cause is shown. The Court may also enter such an order *sua sponte* for good cause shown.

(c) Service upon a Business, Corporation or Entity. Service may be made upon an agent of a business, corporation or governmental agency.

(d) Service upon an Individual. The required papers are delivered in person to the party’s home or usual and current place of business or employment to someone of suitable age and discretion over fourteen (14) years of age.

(e) Service by Mail. Service of process may be accomplished by sending the required papers to a party by registered mail with return receipt requested, except in the instances of Rule 5(C)(1)(a)(i) and 5(C)(1)(a)(ii) as stated above.

(f) Service by Publication. Upon order of the Court for good cause shown, service of process may be accomplished by publishing the contents of the summons. Where service by publication is being made on a member or members of the Ho-Chunk Nation, the contents of the summons may be published in the Hocak Worak or a newspaper of general circulation in an area where the party is most likely to be made aware of the summons. In the case of non-members of the Ho-Chunk Nation, the contents of the summons may not be published in the Hocak Worak, but may be published in a newspaper of general circulation in an area where the party is most likely to be made aware of the summons. If publication is sought in the Hocak Worak, publication must be in two consecutive issues. If publication is sought in a paper of general circulation, publication must be at least, once per week for four consecutive weeks. Proof of publication must be provided to the Clerk of Court.
1. Service of process may be made on a party by any means permitted in sections (a) through (e). Service of process may be made on a party by publication as outlined in section (1)(f) provided a preponderance of the evidence shows the Court that the party to be served lives in the area where the summons is to be published.

2. After the first successful service of process, the Court and the parties will then perform all written communications through regular mail at that address. Therefore, each party to an action has an affirmative duty to notify the Court, and all other parties, of a change of address within ten (10) calendar days of such change.

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

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

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

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

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

1. Notice by Telephone – When the parties are notified by telephone, documentation of the telephone call shall be filed in the record. Documentation of the call shall include who made the call, the name of the person to whom the Notice was directed, the telephone number called, the date and time of the call, and the name given by the person receiving the call.

2. Notice by Fax – When the parties are notified by fax, a call must be made confirming receipt of the fax. Documentation of the call must be included in the record. Documentation of the call shall include the name of the party confirming receipt of the fax notice, the time of the confirmation call, and a copy of the time-stamped fax.
(F) Service of Citations. Service of a Citation is accomplished by the issuing authorized tribal official serving the written Citation on the alleged violator via one of the methods of service described above. The issuing official shall indicate certification of service of the Citation or other evidence of delivery satisfactory to the Court on the face of the Citation.

Rule 6. Answering a Complaint or Citation.

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

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

(C) Answering a Citation.

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

2. If the defendant named in the Citation does not respond and pay the fine or penalty set forth in the Citation prior to the Preliminary Hearing, the defendant shall appear in Court at the date and time certain indicated on the Citation for the Preliminary Hearing. At the Preliminary Hearing the defendant shall admit or deny the allegations in the Citation. If the defendant admits the allegations the Court may consider any evidence presented by the defendant in imposing an appropriate fine or penalty. If the defendant denies the allegations in the Citation, the Court shall schedule a date for Trial.

Rule 54. Default Judgment.

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

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

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

2. If a defendant fails to pay the fine or penalty within the time allowed by the order for a Default Judgment, the Court shall enforce the judgment against the defendant’s per capita distribution as a debt to the Nation if the defendant is an enrolled member of the Nation, and/or find the defendant in contempt.
HO-CHUNK NATION COURT BULLETIN

THE JUDICIARY SECURES COMPETITIVE GRANT

On January 26, 2005, current Chief Judge Todd R. Matha submitted a grant proposal entitled, *Technological Enhancement of the Ho-Chunk Nation Judiciary*, to the Bureau of Justice Assistance (BJA) for funding under its 2005 Tribal Courts Assistance Program. On October 17, 2005, the U.S. Department of Justice, Community Oriented Policing Services (COPS) awarded the entire requested grant in the amount of $114,578.00 through its Tribal Technical Assistance Program. The grant will allow the Judiciary to acquire case management software, courtroom projector systems, electronic signature system, and a courtroom audio mixer. The remainder of the grant will be spent on the required training component.

The Judiciary demonstrated its commitment to judicial and technological advancement through the current technology it uses to increase public awareness. To inform members and the public of the Court’s jurisprudence, the Judiciary utilizes the internet. The judicial staff attorney publishes the monthly Ho-Chunk Nation Court Bulletin. This publication canvasses all tribal decisions and summarizes recent federal and state Indian law opinions. Also, the judicial webpage includes significant trial-level decisions, as well as all appellate judgments. Also, the Court holds an annual Law Day and Fun Run to increase awareness of the Judiciary.

The grant will allow the Judiciary to acquire judicial case management software. Currently, the Judiciary manually enters...
information into logbooks, case files, and paper calendars to track cases. Such software will allow a chronological list of issued decisions, electronic filing, electronic storage, as well as improve accessibility to the Judiciary. The software will allow administrative staff to monitor the remote access to electronic case files. The software will allow the Ho-Chunk Nation Department of Justice attorneys, as well as outside attorneys and advocates, the option of electronically filing documents on scheduled deadlines. The litigants and Judiciary will decrease spending for such items as postage when the litigants have access to a computer with the internet.

Second, the Judiciary will obtain courtroom projectors. The Judiciary often has pro se litigants as well as attorneys that are unfamiliar with the laws and the procedures of the Nation. The drop-down screens and ceiling projectors will adequately inform the parties of the applicable procedural rules and laws. Third, the electronic signature technology includes electronic signature pads and software enabling the Judiciary to transmit orders via e-mail. This feature will greatly aid the Supreme Court Justices who often work from satellite offices. Finally, the Judiciary will acquire two (2) audio mixers to interface with the installed sound system and digital courtroom recording system. Currently some of the audio recordings are difficult to listen to due to only a single channel allowing for recording. The sound overlap compromises the value of digital recording and thus the transcripts and official record.

The Judiciary anticipates beginning the first phase of the grant as soon as possible. The Judiciary envisions a significant reduction in its usage of paper documents. The Judiciary and litigants will be capable of electronically filing nearly all correspondences, including notices, motions, memoranda, and orders. Ultimately, the administrative staff will realize considerable time saving and litigants will gain ever greater access to the judicial process.

The Lac du Flambeau Band of Lake Superior Chippewa Indians (LDF) filed a federal lawsuit claim stating that the Ho-Chunk Nation’s compact unfairly protected the Ho-Chunk Nation from casino competition. The “no-compete” clause within the compact states that the Ho-Chunk would get a break in its state casino payment if another tribe won approval for an off-reservation casino, which would affect the Ho-Chunk’s gaming revenue.

On September 1, 2005, the Seventh Circuit held that the LDF has standing to object to a compact entered into between the Ho-Chunk Nation and the State. However, the decision also stated that since LDF did not respond to the Department of the Interior’s argument that judicial review was precluded by the Administrative Procedure Act (APA), it forfeited the argument. Finally, the Court did not address the issue of whether the suit must be dismissed under Civil Rule 19(b).

To meet the threshold of standing, three prongs must be met. First, the plaintiff must have suffered an injury in fact. Second, the injury must be fairly traceable to the challenged action of the defendant. Finally, it must be likely that the injury will be redressed by a favorable decision. See Lujan v. Defenders of Wildlife, 504 U.S., 555, 560 (1992). With regards to the first prong, the defendants argued that an injury arising out of the amended compact is not particular to LDF because it will affect all tribes in Wisconsin other than the Ho-Chunk Nation. LDF argued that since the Secretary passively approved the compact, then she created a disadvantage for other tribes when they seek state approval of off-reservation gaming. The Seventh Circuit determined that the defendant’s
reasoning was flawed. Simply because the injury will be shared by other tribes does not undermine LDF’s standing.

The second prong requires the injury must be fairly traceable to the challenged action of the defendant. The Secretary’s silence was the functional equivalent of an affirmative approval. By neither affirming, nor denying the compact, the silence enabled the injury, and it is fairly traceable to her.

The last prong dealt with redressability. Redressability examines the causal connection between the injury and the judicial relief requested. Here, the Court found that there is a substantial likelihood that the requested relief would alleviate the harm.

Generally, the APA confers upon persons “aggrieved by agency action” the right to seek judicial review of that action. The judicial review does not extend to an action that is “committed to agency discretion by law.” The Secretary argued that the Indian Gaming Regulatory Act (IGRA) allows for agency discretion to approve or disapprove a compact, and because LDF relies on the APA solely for subject matter jurisdiction, the case should be dismissed. LDF had the burden to establish that the APA authorizes the district court to entertain this lawsuit. Since LDF did not address whether the APA bars judicial review, LDF forfeits the point. Thus the Court upheld the district court’s decision, and dismissed the case.

The question becomes, could another Wisconsin tribe bring another lawsuit? Other persuasive precedent exists allowing a challenge under the APA to question the Secretary’s decision to approve a compact. The Ninth Circuit Court of Appeals stated in Artichoke Joe’s et al. v. Norton, that “to argue that the inclusion of specific remedies for some parties impliedly precludes all other parties and all other APA claims is not warranted.” 353 F.3d 712 (9th Cir. 2003) (emphasis added). The Court went on to further add that if a reviewing court agrees that the agency misinterpreted the law, it will set aside the agency’s decision and remand the case, regardless of whether the agency would or would not reach the same result for a different reason. For more information regarding Artichoke Joe’s, please refer to the HO-CHUNK NATION COURT BULLETIN, Vol. 10, No. 11.

INADVERTENT DESTRUCTION OF A PORTION OF NEW COURT BUILDING

On Monday, October 10, 2005, a construction firm mistakenly damaged Wa Ehi Hoci. The Judiciary requested the removal of the old courthouse, and the construction firm also began to demolish the new building, built in 2003.

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Wa Ehi Hoci damage
YOU’VE BEEN TRICKED!
The picture above is the removal of the old court building. The HCN Judiciary would like to wish you a Happy Halloween. The Judiciary will also be serving treats to youth on MONDAY, OCTOBER 31, 2005.

UPDATES FROM OUTSIDE COURTS

United States Supreme Court

Certiorari pending
Karr v. Pataki, No. 05-361 (filed September 15, 2005).

Peabody Western Coal Company v. Equal Employment Opportunity Commission, No. 05-353 (filed September 15, 2005).

Dalton v. Pataki, No. 05-368 (filed September 15, 2005).

Tenth Circuit Court of Appeals

Johnson v. Choctaw Management/Services Enterprise, Docket No. 04-7123 (10th Cir. 2005).
Ms. Johnson sought judicial review of a decision by the United States District Court for the Eastern District of Oklahoma dismissing her Title VII of the Civil Rights Act of 1964 (Title VII) claim against Choctaw Management/Services Enterprise (CM/SE) for lack of subject matter jurisdiction. The CM/SE was a business enterprise wholly owned by the Choctaw Nation of Oklahoma, a federally recognized Indian tribe. While Ms. Johnson conceded that Congress had expressly exempted Indian tribes from Title VII, she argued that the employer had waived tribal immunity by subcontracting to provide services for the federal government and by organizing itself as a for-profit corporation. The Court determined that she failed to address the basis underlying the employer's dismissal. Her sole claim against the employer was under Title VII. The employer based its motion to dismiss on Title VII's express exemption of Indian tribes from its coverage, not on tribal immunity, and the district court granted the motion based on Title VII's exemption. The judgment of the district court was affirmed.

Shawnee Tribe v. United States, Docket No. 04-3256 (10th Cir. 2005).
The Shawnee Tribe sought review of an agency decision under the Administrative Procedures Act that an abandoned military installation was not within its reservation boundaries and that it was not entitled to a property transfer. The United States District Court for the District of Kansas held that the Reservation was terminated by the Treaty with the Shawnees, May 10, 1854. The Tribe appealed. The site had been a United States Army munitions plant. When it no longer needed the property, the Army requested it be disposed of as "excess" property. After being federally recognized, the Tribe claimed that the entire property was within the boundaries of its remaining Reservation and requested that the Secretary of Interior transfer the property to the Department of the Interior in trust for the Tribe's benefit. While the appeal was pending, Congress passed legislation giving the Secretary of the Army specific discretion to convey the property to any entity selected by the county commissioners. The Secretary exercised his discretion and a sale was initiated. The court held that it could not give the Tribe a consideration-free transfer and all claims dependent on such relief were moot. The appellate court vacated the district court's judgment as to the Administrative Procedures Act claims but affirmed as to the remaining non-APA claims on the basis that the reservation had been extinguished and remanded for any further action consistent with the opinion.

Ninth Circuit Court of Appeals

Lewis v. Norton, Docket No. 03-17207 (9th Cir. 2005).
Lewis sued defendants, officials of the Department of Interior, the Bureau of Indian Affairs, and the
National Indian Gaming Commission, ordering defendants to order an Indian tribe to recognize them as members. The United States District Court for the Eastern District of California dismissed the case for lack of subject matter jurisdiction. The plaintiffs appealed.

The plaintiffs applied for membership with the Table Mountain Rancheria tribe, but the tribe never responded. The plaintiffs argued that they were entitled to recognition as members of the tribe, and therefore to share in the revenue of that tribe's very successful casino. The court determined that dismissal of the siblings' claim was warranted due to lack of subject matter jurisdiction. Tribal immunity barred the suit to force the tribe to comply with their membership provisions. The appellate court affirmed the district court's dismissal of the action citing to *Santa Clara Pueblo v. Martinez*, “their claim cannot survive the double jurisdictional whammy of sovereign immunity and lack of federal court jurisdiction to intervene in tribal membership disputes.”


Three retail store operators, who are Swinomish tribal members, challenged the dismissal of their suit by the United States District Court for the Western District of Washington. They brought suit against the State of Washington, the Governor, and the State Revenue Department, seeking a declaratory judgment to invalidate a cigarette tax as it applied to their Indian Tribe, imposed pursuant to the Tax Injunction Act (TIA).

The tribal members asserted that the cigarette tax contract under negotiation between the Tribe and the State violated the Indian Commerce Clause. The complaint requested a declaratory judgment that Washington revenue code sections were void and sought an injunction preventing them from enforcing the statutes or contracting with the Tribe. The Court held that the tribal members had standing to challenge due to the immediacy of the compact negotiations, and that the suit challenging the state’s authority to negotiate a cigarette tax contract was not barred by TIA.


See Page 2.

**Sixth Circuit Court of Appeals**


Plaintiff claimed that prison rules regulating hair length violated his right to practice his religious beliefs and were in violation of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). The United States Supreme Court reversed a decision overturning a temporary injunction the prisoner had won and remanded for further consideration.

The prisoner was a native American of Cherokee ancestry serving a life sentence in the Ohio prison system. While incarcerated, he began to practice a native religion which prohibited him from cutting his hair. The temporary injunction he had won allowed him to maintain long hair. The court held that in granting the injunction, the district court had substituted its judgment for that of prison officials by determining that certain prisoners who did not pose a significant safety risk and had sincerely held religious beliefs should be allowed to maintain long hair. While the district court was not required to blindly accept any policy justification offered by state officials, the district court's analysis did not reflect the requisite deference to the expertise and experience of prison officials, as required by case law interpreting the Religious Freedom Restoration Act of 1993 and RLUIPA.

**First Circuit Court of Appeals**


Plaintiffs sued defendants, the Secretary of the U.S. Department of the Interior and a Bureau of Indian Affairs official, seeking to enjoin the Secretary's decision to accept a parcel of land located in the town into trust for the benefit of the Narragansett Indian Tribe. The U.S. District Court for the District of Rhode Island granted defendants’ motion for summary judgment, and plaintiffs appealed.

Plaintiffs alleged that the Secretary of the Interior violated § 706 of the Administrative Procedure Act (APA), when she took a parcel of land in trust for
the benefit of the Narragansett Indian Tribe, that the Secretary lacked authority to accept the parcel, and that the acquisition was unconstitutional. The court of appeals held that the Narragansett Indian Tribe was a federally-recognized tribe, which existed at the time of the Indian Reorganization Act of 1934. Thus, the Secretary possessed authority to accept lands into trust for the benefit of the Narragansett Tribe. In addition, the court found that Secretary did not violate the Rhode Island Indian Claims Settlement Act of the APA when she accepted the land into trust, and the trust could be unrestricted, thus removing the land from the criminal and civil jurisdiction of the State of Rhode Island. The district court's judgment was 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). 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

SEPTEMBER 1, 2005
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court denied the petitioner’s request for recognition and enforcement because the monies are to be withheld for child support credit only and not for court costs, sheriff’s fees or other non-child support costs. Although these fees remain the respondent’s obligation, per capita interception for payment of these fees is not permissible under Ho-Chunk Law.

The Court had to determine whether to grant the petitioner’s motion to modify. The respondent failed to respond within the prescribed timeframe. The Court granted the petitioner’s request to modify.

The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).
The Court had to determine whether to grant the petitioner’s motion to modify. The respondent failed to respond within the prescribed timeframe. The Court granted the petitioner’s request to modify.

SEPTEMBER 7, 2005
The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

The Court had to determine whether to grant full faith and credit and/or comity to a foreign child support order against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

SEPTEMBER 19, 2005
The Court had to determine whether to grant full faith and credit and/or comity to a foreign child support order against the respondent’s wages. 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 enforce two (2) standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

The Court had to determine whether to grant full faith and credit and/or comity to a foreign child support order against the respondent’s wages. 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 enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to amend child support arrearage withholding with a certified accounting statement. The Court granted the motion.

SEPTEMBER 20, 2005
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

SEPTEMBER 21, 2005
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

The Court had to determine whether to grant full faith and credit and/or comity to a foreign child support order against the respondent’s wages. 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 amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

The Court had to determine whether to grant full faith and credit and/or comity to a foreign child support order against the respondent’s wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

SEPTEMBER 26, 2005

The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

SEPTEMBER 27, 2005

The respondent requested a termination of withholding for child support arrears in a motion because the respondent paid the arrears in full. Thus, the Court ordered the Treasury Department to cease withholding.

The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

SEPTEMBER 28, 2005

The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

The Court had to amend the current child support withholding in order to guarantee compliance with the
the Ho-Chunk Nation Recognition of Foreign Child Support Orders Ordinance, 4 HCC § 2.8b(3).

**September 29, 2005**

*Kerry Thompson v. Paul F. Sallaway; Jennifer L. White Eagle v. Paul F. Sallaway; Bonita L. Roy v. Paul F. Sallaway, CS 98-08, 00-14, 05-76, Reissued Order (Modifying and Enforcing Child Support) (HCN Tr. Ct., Sept. 29, 2005). (Matha, T).*

The Court had to determine whether to enforce another foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.


The Court had to amend the current child support withholding in order to guarantee compliance with the Ho-Chunk Nation Recognition of Foreign Child Support Orders Ordinance, 4 HCC § 2.8b(3).

**Civil Garnishment**

**September 7, 2005**

*State Collection Service v. Patrick Roberge, CG 05-76 Order (Declining to Enter Judgment) (HCN Tr. Ct., Sept. 7, 2005). (Matha, T).*

The Court has instituted standard procedures for the processing of civil garnishment actions. After the filing of a Petition to Register & Enforce a Foreign Judgment or Order (hereinafter Petition), the Court will confirm the employment status of the respondent correspondence with the Ho-Chunk Nation Department of Personnel. The Court will return the initial pleading and filing fee of the petitioner in the event that the Ho-Chunk Nation has severed the employment relationship with the respondent. In the instant case, the petitioner informed the Court of its desire to release the current garnishment with the express approval of the creditor.

**September 12, 2005**

*State Collection Service v. Mikeleen A. Finucan, CG 05-77 Order (Default Judgment) (HCN Tr. Ct., Sept. 12, 2005). (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 timeframe. The Court granted the petitioner’s request for recognition and enforcement.

*Robert Mobley v. Sarah Lemieux, CG 05-77 Order (Directing Repayment of Funds) (HCN Tr. Ct., Sept. 12, 2005). (Matha, T).*

The Court must determine whether the defendant satisfied her acknowledged debt obligation to the plaintiff. The defendant presented evidence demonstrating satisfaction and additionally alleged overpayment through weekly wage garnishment. The Ho-Chunk Nation Payroll Division corroborated the defendant’s contention. Therefore, the Court orders the plaintiff to repay the overage to the defendant.

*Alliance Collection Agencies, Inc. v. Debra Swantek, CG 05-78 Order (Default Judgment) (HCN Tr. Ct., Sept. 12, 2005). (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 timeframe. The Court granted the petitioner’s request for recognition and enforcement.

**September 14, 2005**

*Alliance Collection Agencies, Inc. v. Crystal Wilson, CG 04-43 Order (Granting Motion to Modify) (HCN Tr. Ct., Sept. 14, 2005). (Matha, T).*

The petitioner filed a Motion to Modify the Current Order for Additional Interest. The petitioner indicated that the respondent owes further interest. The respondent failed to file a timely response to
the motion to modify. Therefore, the Court grants the petitioner’s request for relief.

**SEPTEMBER 19, 2005**

*Alliance Collection Agencies, Inc. v. Donna Pabst, CG 05-82 Order (Default Judgment) (HCN Tr. Ct., Sept. 19, 2005). (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 timeframe. 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 timeframe. The Court granted the petitioner’s request for recognition and enforcement.

*Alliance Collection Agencies, Inc. v. David Roach, CG 05-81 Order (Satisfaction of Judgment) (HCN Tr. Ct., Sept. 19, 2005). (Matha, T).*

The petitioner filed the Petition to Register & Enforce a Foreign Judgment or Order. However, prior to the entry of a decision, the petitioner filed a satisfaction of judgment pursuant to the *Ho-Chunk Nation Rules of Civil Procedure*, Rule 59. This document indicated that the respondent had been relieved of the debt obligation.

*Augusta Housing Management Co. v. Ardith Snowball, CG 05-80 Order (Default Judgment) (HCN Tr. Ct., Sept. 19, 2005). (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 timeframe. 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 timeframe. The Court granted the petitioner’s request for recognition and enforcement.

**September Cases**

**SEPTEMBER 8, 2005**

*Ho-Chunk Nation Department of Treasury et al. v. Amanda Colburn, CV 04-51 Order (Dismissal without Prejudice) (HCN Tr. Ct., Sept. 8, 2005). (Matha, T).*

The Court must determine whether to dismiss the instant action due to a failure to effectuate service of process. Agents of the Court could not locate the defendant at the address provided in the initial pleading, and the Court has no information
regarding the defendant’s present whereabouts. The Court dismisses the case without prejudice.

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

SEPTEMBER 9, 2005
The Court must determine whether to enter an order for the purposes of facilitating the DNA testing of an incarcerated tribal member. The Court denies the plaintiff’s request for relief on several constitutional grounds. The Ho-Chunk Nation Constitution imparts authority to the Ho-Chunk Nation Supreme Court “to establish written rules for the Judiciary.” Consequently, the Supreme Court adopted the HCN R. Civ. P. to “govern all proceedings.” The instant case is void of any reference to the grounds for subject matter jurisdiction.

SEPTEMBER 13, 2005
The Court had informed the non-presiding judge, Chief Judge Todd R. Matha of the scheduled Settlement Conference. Chief Judge Matha recognizes the obvious merit in convening a mediation session, but respectfully questions the authority of the General Council’s legal representative to accept settlement terms. Only the General Council can either consent to an offer of settlement or delegate an individual or entity to do so on its behalf. The Court declined to convene the Settlement Conference absent an offer of proof of such delegation.

SEPTEMBER 19, 2005

The petitioner asserted that she cannot meet the directives as issued by the respondents regarding the extension to vacate the property. However the petitioner has failed to meet her burden as defined by Rule 60. Essentially, the petitioner could not establish the presence of irreparable harm.

SEPTEMBER 28, 2005
The Court granted petitioner’s motion to appear by telephone.

SEPTEMBER 29, 2005
The Court granted respondent’s motion to appear by telephone.

CHILDREN’S TRUST FUND (CTF)
SEPTEMBER 8, 2005
The Court convened a Fact-Finding Hearing to consider the merit of the petitioner’s Petitioner for Release of Per Capita Distribution. The petitioner failed to appear, and did not notify the Court of an inability to attend the proceeding. Therefore, the Court dismissed the instant case without prejudice.

The Court employs the standard enunciated in the PER CAPITA DISTRIBUTION ORDINANCE, 2 HCC §12.8c to assess the merit of the parent’s request. The petitioner failed to appear, and did not notify the Court of an inability to attend the proceeding. Therefore, the Court dismissed the instant case without prejudice.
benefit from the purchase” of a household item, the Court applies the rule of proportionality.

**SEPTEMBER 12, 2005**


The Court released funds from J.E.M.’s CTF account, for costs associated with orthodontic procedures. The petitioner submitted a payment history statement which confirmed proper use of the funds. The Court accepts this accounting.


The Court released funds from C.T.W.’s CTF account, for costs associated with orthodontic procedures. The petitioner submitted a payment history statement which confirmed proper use of the funds. The Court accepts this accounting.


The Court released funds from M.C.G.’s CTF account, for costs associated with orthodontic procedures. The petitioner submitted a payment history statement which confirmed proper use of the funds. The Court accepts this accounting.


The Court must determine whether to retain the entire contempt fine withheld from the petitioner’s per capita distributions. The petitioner failed to submit an accounting prior to the date upon which the Court indicated that it would purge the fine. Yet, the contempt fine served its remedial purpose of compelling obedience with standing judicial directives. Therefore, the Court will release the majority of the accumulated contempt fine to the petitioner.

**SEPTEMBER 21, 2005**

*In the Interest of Minor Child, C.Y.B., DOB 05/04/92, by Charles A. Brown v. Ho-Chunk Nation Office of Tribal Enrollment, CV 02-104 Order (Default Dismissal Order) (HCN Tr. Ct., Sept. 21, 2005). (Gouty-Yellow, T).*

The Ho-Chunk Supreme Court remanded this case to the Trial Court after reversing the Trial Court’s decision and required the Court to hold a hearing to obtain the requisite factual information. Proper notice occurred, however a Default Dismissal Order was entered due to the non-appearance of the plaintiff.

**SEPTEMBER 23, 2005**

*In the Interest of Minor Child, M.L.D., DOB 04/05/01, by Terry T. Deloney v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-58 Order (Petition Granted) (HCN Tr. Ct., Sept. 23, 2005). (Matha, T).*

This case concerns whether the petitioner can access monies from the Children’s Trust Fund to pay for minimal emergency housing benefits when prior residence was destroyed by fire. The Court granted such request.

**SEPTEMBER 26, 2005**

*In the Interest of Minor Child, C.V.H., DOB 02/25/93, by Chris Hanson v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-78 Order (Petition Granted) (HCN Tr. Ct., Sept. 26, 2005). (Gouty-Yellow, T).*

The Court determined that the parent can access monies on behalf of the minor child from the Children’s Trust Fund to pay for the costs associated with orthodontic procedures. The Court granted a release of funds to satisfy the request of the petitioner.

**SEPTEMBER 27, 2005**

*In the Interest of Minor Child, A.T.H., DOB 03/24/88, by Tom Hopinkah v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-20 Order (HCN Tr. Ct., Sept. 27, 2005). (Gouty-Yellow, T).*
This case concerns whether CTF monies can be accessed for fees associated with a juvenile action, i.e. attorneys’ fees and restitution along with the cost of private school. The Court grants a release of funds in part and denies the request in part. The decision to hire counsel, specifically the attorney chosen was the guardian’s decision and as such is the guardian’s responsibility to pay. Similarly, restitution is the juvenile’s responsibility to pay, and in the event he or she is unable to pay, the cost falls to the guardian. The cost of private school expenses shall be held open per the petitioner’s request.

**SEPTEMBER 30, 2005**


This case concerns whether CTF monies can be accessed to acquire children’s clothing and miscellaneous school supplies and to pay for contact lenses. The Court grants a release of funds in part and denies the request in part. The petitioner sustains her family on an annual income above the poverty level. The Court denies the release of CTF monies to purchase clothing. The provision of school supplies does not constitute a basic necessity of life, but certainly implicates an educational concern. The Court shall grant these expenses given the special financial need of the family. The Court shall also grant the request for contact lenses expenses, representing a health and welfare necessity, since it has granted similar past requests.

**SEPTEMBER 6, 2005**

*Stephany Hughes v. HCN Gaming Comm’n et al., CV 05-41 Order (Motion Hearing) (HCN Tr. Ct., Sept. 6, 2005). (Matha, T).*

Upon the defendants’ request, the Court shall convene a hearing so as to grant the defendants the ability to argue its *Motion to Dismiss and Motion to Affirm*, and to provide the plaintiff the opportunity to offer a response.

**SEPTEMBER 20, 2005**

*Ho-Chunk Casino et al. v. Rory Emerson et al., CV 04-36 Order (Granting Extension) (HCN Tr. Ct., Sept. 20, 2005). (Matha, T).*

The Court granted the extension request in order for the plaintiff’s attorney to establish the basis for the Court’s subject matter jurisdiction.

**SEPTEMBER 28, 2005**

*Kevin Kuehl v. Ho-Chunk Casino Table Games, CV 05-23 Order (Denying Motion to Amend Scheduling Order) (HCN Tr. Ct., Sept. 28, 2005). (Gouty-Yellow, T).*

A *Trial* was scheduled to occur. However, defendant’s counsel submitted a *Motion and Order to Amend Scheduling Order* one (1) day prior to the *Trial* based solely upon the agreement of the parties. The motion as filed was denied based upon the discretion of the Court.

**SEPTEMBER 29, 2005**

*Kevin Kuehl v. Ho-Chunk Casino Table Games, CV 05-23 Order (Motion Hearing) (HCN Tr. Ct., Sept. 29, 2005). (Gouty-Yellow, T).*

The Court determined to convene a hearing to grant the defendants the ability to argue the *Motion for Summary Judgment*, and to provide the plaintiff the opportunity to offer a response.

**INCOMPETENT TRUST FUND (ITF)**

**SEPTEMBER 19, 2005**

*In the Interest of Brian Nicklous Ford, DOB 09/03/86, by Alaine Ava Yingst v. Ho-Chunk Nation*
Office of Tribal Enrollment, CV 05-59 Motion to Appear Telephonically & Order (HCN Tr. Ct., Sept. 19, 2005). (Matha, T).
The Court granted petitioner’s motion to appear by telephone.

September 20, 2005
The Court convened a Fact-Finding Hearing to consider the merit of the petitioner’s Petitioner for Release of Per Capita Distribution. The petitioner failed to appear, and did not notify the Court of an inability to attend the proceeding. Therefore, the Court dismissed the instant case without prejudice.

September 22, 2005
The Court employs different reasoning when the petitioner seeks a release from his or her CTF for the purposes of providing shelter for their own minor children. In adult CTF cases, the Court refrains from granting extensive or ongoing housing assistance requests because to do so would nullify the intent of the graduation requirement. However, the Court grants the request for children’s clothing and a child’s bed.

September 29, 2005
The Court released funds from the ITF account for the costs associated with a vehicle purchase, insurance, fuel and respite care. The petitioner submitted a payment history statement, which confirmed the proper use of funds.

Juvenile
September 9, 2005
The Court must determine whether to appoint a permanent guardian for the minor children. After a careful weighing of all the presented evidence, the Court deems such an appointment within the minor children’s best interest.

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 (Appointment of Permanent Guardian) (HCN Tr. Ct., Sept. 9, 2005). (Gouty-Yellow, T).
The Court must determine whether to appoint a permanent guardian for the minor children. After a careful weighing of all the presented evidence, the Court deems such an appointment within the minor children’s best interest.

September 12, 2005
The Court convened a Review Hearing on September 6, 2005. The Court has determined to continue the order until further order of the Court.

The Court entered its Order (Conditional Acceptance of Transfer) informing the foreign jurisdiction and the parties of the Court’s intention of assuming jurisdiction over the pending juvenile action. However one of the parties voiced his opposition to the contemplated transfer and withdrew the Motion for Transfer to Tribal Court. The Court vacates its decision.

September 14, 2005

The Court must determine whether to appoint a temporary guardian of the minor children. After a careful weighing of all the presented evidence, the Court deems such an appointment not within the minor children’s best interests.

SEPTEMBER 15, 2005
In the Interest of Minor Child: T.V.F., DOB 02/18/02, JV 03-14 Order (Granting Telephonic Appearance) (HCN Tr. Ct., Sept. 15, 2005). (Gouty-Yellow, T).

The Court granted petitioner’s motion to appear by telephone.

SEPTEMBER 16, 2005

The Court must determine whether to terminate the Temporary Guardianship of the minor. After a careful weighing of all the presented evidence, the Court deems such a termination is within the minor children’s best interest.

SEPTEMBER 19, 2005
In the Interest of Minor Children: M.L.D., DOB 05/23/91; M.L.H., DOB 08/18/97; M.H., DOB 02/18/99; M.H., DOB 02/09/00, JV 05-15-18 Order (Dispositional Requirements) (HCN Tr. Ct., Sept. 19, 2005). (Gouty-Yellow, T).

The Court conducted the Dispositional Hearing. At the Hearing, the Court had to assess the extent and scope of the dispositional recommendations proposed by the Ho-Chunk Nation Child & Family Services.

SEPTEMBER 21, 2005
In the Interest of Minor Children: M.B.K., DOB 04/29/00; A.J.K, DOB 11/12/03, JV 04-04-05 Order (Granting Telephonic Appearance) (HCN Tr. Ct., Sept. 21, 2005). (Matha, T).

The Court granted petitioner’s motion to appear by telephone.

SEPTEMBER 26, 2005

The Court intended to conduct the continued Child Protection Review Hearing in accordance with the HO-CHUNK NATION CHILDREN AND FAMILY ACT, 4 HCC § 3. However the Court is appointing counsel from the University of Minnesota Law School Indian Child Welfare Clinic. As soon as the Court and the Clinic finalize the details regarding the provision of legal representation, counsel will be appointed.


The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo as necessary for the protection of the children.


The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court performed the review and modified the order to reflect substantial compliance on the part of both parents.


The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court performed the review and determined to maintain the status quo.

SEPTEMBER 27, 2005
In the Interest of Minor Child: D.R.W., DOB 08/12/04, JV 05-07 Order (Denying Motion to
The Court must determine if the Motion to Reconsider, as filed by the petitioner meets the requirements of the Ho-Chunk Nation Rules of Civil Procedure, Rule 58(B), and if such Motion should be granted. The Court determines that the Motion should be denied due the absence of any action by the Court within thirty-days following the filing.

SEPTEMBER 28, 2005
In the Interest of Minor Children: D.L.H., DOB 08/03/97; A.M.H., DOB 12/25/95; D.M.H., DOB 02/16/92; D.L.H., DOB 03/25/89, JV 03-20-23 Order (Child Protection Review Hearing) (HCN Tr. Ct., Sept. 28, 2005). (Gouty-Yellow, T).
The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo as necessary for the protection of the children.

SEPTEMBER 29, 2005
In the Interest of Minor Child: A.J.C., DOB 04/03/92, JV 04-01 Order (For Telephonic Appearance) (HCN Tr. Ct., Sept. 29, 2005). (Gouty-Yellow, T).
The Court granted petitioner’s motion to appear by telephone.

In the Interest of Minor Child: R.B., DOB 06/23/95, JV 02-18 Order (Show Cause) (HCN Tr. Ct., Sept. 29, 2005). (Matha, T).
The Court ordered that the father and physical custodian of the minor child arrange visitation between the siblings and arrange for suitable counseling for each child. The father and physical custodian has not complied with the order. The Court shall convene a Show Cause Hearing to provide the father an opportunity to explain why the Court should not hold him in contempt of court.

SEPTEMBER 30, 2005
The Court conducted a Child Protection Review Hearing. The Court had to assess the extent of

SEPTEMBER 30, 2005
In the Paternity of A.M.B. v. Travis G. Jacobsen, CS 05-84. (Matha, T).

In the Paternity of A.M.B. v. Travis G. Jacobsen, CS 05-85. (Matha, T).

Civil Garnishment

SEPTEMBER 6, 2005
State Collection Service v. Angeline Decorah, CG 05-86. (Matha, T).

SEPTEMBER 9, 2005
Quick Cash Loans v. Wayne Falcon, CG 05-87. (Matha, T).

SEPTEMBER 15, 2005
Gundersen Lutheran Medical Center, Inc. v. Rose A. Lemke, CG 05-88. (Matha, T).

SEPTEMBER 23, 2005
Dane Co. Cir. Co. v. Jerry D. Williams, Jr., CG 05-89. (Matha, T).

Gundersen Clinic Ltd. v. Lucy K. Snake, CG 05-90. (Matha, T).

SEPTEMBER 28, 2005
Quick Cash Loans v. Mindy Stensven, CG 05-91. (Matha, T).


State Collection Agencies, Inc. v. Paul McKittrick, CG 05-93. (Matha, T.)


Alliance Collection Agencies, Inc. v. Robert W. Hiles, Sr., CG 05-95. (Matha, T).

Alliance Collection Agencies, Inc. v. Crystal Wilson, CG 05-96. (Matha, T).


Alliance Collection Agencies, Inc. v. Tamela Shubert, CG 05-98. (Matha, T).

Civil Cases

SEPTEMBER 1, 2005

SEPTEMBER 2, 2005
In the Interest of Minor Child: C.V.H., DOB 02/25/93, by Chris Hanson v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-78. (Matha, T).

SEPTEMBER 13, 2005
Gloria J. Visintin v. Robert Pulley Ho-Chunk Housing Rental Property, CV 05-79. (Gouty-Yellow, T).

SEPTEMBER 16, 2005
In the Interest of Shawn W. Maisells v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-80. (Gouty-Yellow, T).

SEPTEMBER 19, 2005
In the Interest of Minor Child: C.S., DOB 07/10/95, by Tara Snowball v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-81. (Matha, T).

SEPTEMBER 21, 2005
Ho-Chunk Nation v. Corvettes on the Isthmus, Brian Newlun, Barbara Newlun, CV 05-82. (Matha, T).

SEPTEMBER 23, 2005


SEPTEMBER 28, 2005
Ho-Chunk Nation Department of Housing, Property Management Division v. Sammy L. Griner, Jr. and Elizabeth Rodriguez, CV 05-85. (Matha, T).
Supreme Court

No recent filings.

Upcoming National Events


**HCN Judiciary Fee Schedule**

**Filing Fees**
- Complaint .............................................. $50.00
- Petition for Release of Per Capita Distribution (Children’s Trust Fund) ....................... $50.00
- Motion to Appear Pro Hac Vice ................. $35.00
- Appellate Filing Fee ................................... $50.00
- Petition to Register and Enforce Foreign Judgment/Order ........................................... $20.00
- Marriage License Fee .............................. $50.00

**Court Fees**
- Copying .................................................... $0.10/page
- Faxing ..................................................... $0.25/page (sending & receiving)
- CD of Hearings ....................................... $12.50/CD
- Deposition Videotape ............................... $10.00/tape
- Certified Copies ....................................... $0.50/page
- Equipment Rental .................................... $5.00/hour
- Admission to Practice ......................... $50.00

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

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

**Ho-Chunk Nation Code**
Ordinance/Act Name Title Number HCC Section.
ELDER PROTECTION ACT, 4 HCC § 1.
EMPLOYMENT RELATIONS ACT, 6 HCC § 5.
(for detailed citation information consult LEGISLATIVE ORGANIZATION ACT, 2 HCC § 11.36)

**HCN Supreme Court Case Law**
Case Name, Case Number (HCN S. Ct., month, day, year).

**HCN Trial Court Case Law**
Case Name, Case Number (HCN Tr. Ct., month, day, year)

**Ho-Chunk Nation Rules of Civil Procedure**
HCN R. Civ. P. 19(B)
THE SUPREME COURT:  
THE BUSH ERA

"The voters will know I'll put competent judges on the bench, people who will strictly interpret the Constitution and will not use the bench to write social policy. And that's going to be a big difference between my opponent and me. I believe that -- I believe that the judges ought not to take the place of the legislative branch of government, that they're appointed for life and that they ought to look at the Constitution as sacred. They shouldn't misuse their bench. I don't believe in liberal, activist judges. I believe in -- I believe in strict constructionists. And those are the kind of judges I will appoint." [1st Presidential Debate, October 3, 2000; transcript CNN]

-George W. Bush

President George W. Bush has already appointed two (2) Supreme Court Justices to the United States Supreme Court. President Bush has cited Justices Antonin Scalia and Clarence Thomas as his models for future Supreme Court nominees. These appointments have wide implications for reproductive rights, civil rights, personal privacy, workers’ rights, the environment, and separation of church and state. However much of Indian Country is thinking… what does this mean for Indian Country? President Bush promoted Judge John Roberts’ Supreme Court nomination to Chief Justice after Chief Justice Rehnquist’s death on September 3, 2005. Bush initially nominated Roberts to fill the vacancy left by Justice O’Connor’s resignation. On September 22, 2005, the Senate Judiciary Committee confirmed Roberts. Just one week later, the Senate confirmed Judge John Roberts as Chief Justice of the Supreme Court by a vote of 78-22. Chief Justice Roberts became the
seventeenth Chief Justice. He is the youngest Chief Justice at the age of 50, since John Marshall took office in 1801 at age 46. Chief Justice Roberts assumed the chief position when the Court returned to session on Monday, October 3, 2005.

Chief Justice Roberts will have a critical role in Indian policy over the next few decades. On one occasion, Chief Justice Roberts appeared before the U.S. Supreme Court regarding Indian issues, and lost. Justice Roberts argued for the respondent in *Rice v. Cayetano*. Mr. Rice was a Hawaiian citizen without the requisite ancestry to be a "Hawaiian" under state law, but nonetheless, applied to vote in Office of Hawaiian Affairs trustee elections. He was neither "native Hawaiian," nor "Hawaiian" as defined by the statute. He marked through the words "am also Hawaiian and," then checked the form "yes." His application was denied. The Supreme Court held that the voting structure under the statute granted the vote exclusively to persons of defined ancestry. The state, in enacting the statute, used ancestry as a racial definition and for a racial purpose. The ancestral inquiry was forbidden by the Fifteenth Amendment. The electoral restriction enacted a race-based voting qualification, which denied the right to vote on account of race in violation of the United States Constitution. Roberts represented the State and argued that the classification was based on trust-beneficiary status or a duty under a fiduciary relationship rather than race. Also, Congress had recognized the political status of Native Hawaiians as indigenous people. The Court disagreed and struck down the statute.

On another occasion, the Supreme Court noted that Congress, in passage of the 1971 Alaska Native Claims Settlement Act, had turned away from its traditional relationship with other Native American tribes and largely ended the Indian country concept in Alaska. In 1997, Chief Justice Roberts argued before the Supreme Court for the state in *Alaska v. Venetie*, opposing an attempt by the interior villages of Venetie and Arctic Village to assert authority within Indian Country to tax and regulate land use on 1.8 million acres of land the villages own. *Alaska v. Venetie*, 522 U.S. 520 (1998). Venetie's government claimed authority to levy $161,000.00 in taxes on a state contractor that built a local school for the Yukon Flats village. The tribe argued that its lands were Indian Country, and, therefore, companies working there were subject to its governmental powers. Chief Justice Roberts wrote, “accordingly, the village is not sovereign over the land and lacks authority to tax non-members doing business upon it.” In a unanimous opinion, the justices agreed with Roberts and held that Congress in passing ANCSA, "clearly" extinguished reservations in Alaska and the sovereignty associated with them.

On October 3, 2005, President Bush appointed Harriet Miers who later withdrew her nomination on October 27, 2005, due to a lack of a public record. He proceeded to appoint Samuel A. Alito, Jr. on October 31, 2005; popular media has dubbed him “Scalito” meaning that his decisions are akin to Antonin Scalia. Justice Alito is a former Reagan administration official who served as assistant solicitor general from 1981-85, during which time he argued 12 cases before the Supreme Court. In 1990, former President George H.W. Bush nominated him to the 3rd U.S. Circuit Court of Appeals, and he was unanimously confirmed by a voice vote of the Senate. Justice Alito, in a decision last year in *Blackhawk v. Pennsylvania*, sided with a Lakota Indian who claimed he derived spiritual powers from two black bears and demanded that the state waive fees imposed on those who keep wildlife. The decision displayed sensitivity of religion.

The Supreme Court Justices’ interpretations and application of the United States Constitution, federal statutes and federal common law dramatically impact state, tribal and federal jurisdictions. Justices nominated by the President, and confirmed for life by the Senate, impact the daily lives of Americans for years after any single presidential term. Discerning any particular ideological approach of men proves difficult, at best. However both individuals are being lauded as strict constructionists. Currently, a radio ad in support of Judge Alito’s confirmation is running throughout Wisconsin. It states, “Judge Alito believes judges should faithfully interpret the law, not advocate political agendas.” Supreme Court
Justice Thomas addressed how a strict constructionist viewpoint of the U.S. Constitution would affect Indian law in his concurrence in *United States v. Lara*. Justice Thomas stated,

I write separately principally because the Court fails to confront these tensions, a result that flows from the Court's inadequate constitutional analysis. I cannot agree with the Court, for instance, that the Constitution grants to Congress plenary power to calibrate the "metes and bounds of tribal sovereignty." Unlike the Court, I cannot locate such congressional authority in the Treaty Clause, or the Indian Commerce Clause. Additionally, I would ascribe much more significance to legislation such as the Act of Mar. 3, 1871 that purports to terminate the practice of dealing with Indian tribes by treaty. The making of treaties, after all, is the one mechanism that the Constitution clearly provides for the Federal Government to interact with sovereigns other than the States. In my view, the tribes either are or are not separate sovereigns, and our federal Indian law cases untenably hold both positions simultaneously.

Under a permissible interpretation of his decision, Thomas appears to promote greater tribal sovereignty. While Justice Antonin Scalia did not join Justice Thomas’s concurrence, Justice Scalia perceives “that the Constitution… is in its nature the sort of ‘law’ that… has a fixed meaning…” 57 U. Cin. L. Rev. 849, 852. In his 1989 law review article, Justic Scalia envisioned that his “dissents from nonoriginalist thinking” would at times garner majority support. Id. at 864. The Bush appointees may turn Justice Scalia’s hope into a common occurrence. Justice Scalia's hope may turn into a common occurrence if the newly-appointed Justices support originalist thinking.

If the newly-nominated Justices adhere to their strict constructionist viewpoints, would tribes return to the status they held at the time of the 1787 Constitutional Convention instead of the status conferred upon them through over 200 years of evolving, and often times, federal common law? In the *Lara* concurrence, Justice Thomas lends credence to the foregoing assertion stating that, “[f]ederal Indian policy is, to say the least, schizophrenic. And this confusion continues to infuse federal Indian law and our cases.” Will the newly constituted Court continue this schizophrenic trend in Indian law or “return” to an original interpretation of the Constitution?

CHIEF JUDGE
TODD R. MATHA
BECOMES
WTJA AND NAICJA
BOARD MEMBER

On October 7, 2005, the Wisconsin Tribal Judges Association, Inc. held its annual meeting in Neopit, WI on the Stockbridge-Munsee Community Reservation. Chief Judge Matha was elected to serve a two year term as at-Large Board Member.

Then on October 27, 2005, the National Tribal Court Judges Association, Inc. held its annual meeting in Green Bay, WI on the Oneida Reservation. Chief Judge Matha was elected as Region 10 Director. Region 10 includes Illinois, Indiana, Michigan, Minnesota, and Wisconsin.

HCN SUPREME COURT
TO ADD RULE 63 TO
HCN RULES OF CIVIL
PROCEDURE

The Ho-Chunk Nation Supreme Court would like to invite responses to the attached,
amended Ho-Chunk Nation Rules of Civil Procedure by January 7, 2005. You can find the amendments in Appendix A located on page 27 of this issue. You can provide written comments to mendthoff@ho-chunk.com or mail them to Mary K. Endthoff, Supreme Court Clerk, P.O. Box 70, Black River Falls, WI 54615. The Supreme Court has approved a specific revision to the Ho-Chunk Nation Rules of Civil Procedure, by adding a specific rule, Rule 63, as an emergency stopgap measure while the rule is posted for comment.

Wa Ehi Hoci to Close for Christmas and New Year’s Holiday

On Friday, December 23, 2005, the Court will close at noon due to the Christmas holiday. The Court will re-open Tuesday, December 27, 2005. All pleadings or filings ordinarily due on December 23, 2005 may be filed on the next full business day, December 27, 2005.

On Friday, December 30, 2005, the Court will close at noon due to the New Year’s holiday. The Court will re-open Tuesday, January 3, 2006. All pleadings or filings ordinarily due on December 30, 2005 may be filed on the next full business day, January 3, 2006.

UPDATES FROM OUTSIDE COURTS

United States Supreme Court

Certiorari pending

Skokomish Indian Tribe v. Tacoma Public Utilities, Docket No. 05-434 (filed October 3, 2005).


Certiorari denied


In re Kanon’ke:haka Kaianereh’ko:wa Kanon’ses:neh, Docket No. 05-165 (denied October 11, 2005).

Dalton v. Pataki, Docket No. 05-368 (denied November 28, 2005).

Karr v. Pataki, Docket No. 05-361 (denied November 28, 2005).

District of Columbia Circuit Court of Appeals

Secretaries of the Interior and Treasury, appealed an order of the United States District Court for the District of Columbia reissuing its historical accounting injunction in a class action brought by beneficiaries of Individual Indian Money (IIM) accounts, under the Administrative Procedure Act and the Declaratory Judgment Act, regarding defendants' failure to comply with trust duties under various federal acts.
After the court had reversed contempt charges against defendants, the district court, without a hearing, reissued its prior injunction that had expanded the scope of the accounting beyond the plan submitted by defendants and precluded the use of statistical sampling. Defendants argued that the reissuance of the injunction was an abuse of discretion. On review, the Court agreed that the reissuance of the injunction was an abuse of discretion. The Court decided that it was unreasonable to require a detailed historical accounting of money the government has been managing for American Indians, saying the bookkeeping chore would "take 200 years." Even though statutes offered little guidance in defining the scope of a historical accounting, the district court should have given substantial deference to the Department of Interior's plan as the actor with primary responsibility for working out compliance with the statutory mandate. Instead, the district court invoked the common law of trusts and treated the character of the accounting as its domain. Further, the district court relied on its earlier contempt findings to justify a remedy and failed to consider subsequent developments and progress made by defendants in fulfilling their fiduciary duties. Finally, the district court completely disregarded relevant information about the costs of the injunction. The Court vacated the order reissuing the injunction.

Tenth Circuit Court of Appeals

Shivwits Band of Paiute Indians v. Utah, Docket No. 05-5068 (D.C. Cir. 2005).

Utah appealed from the grant of summary judgment entered in favor of the Shivwits Band of Paiute Indians, holding that Utah lacked authority to regulate billboard advertising displays erected by a sign company on land held in trust by the federal government for the Shivwits Band of Paiute Indians.

Based on circuit precedent, the court was compelled to find, in light of the Indian trust land exemption in the Quiet Title Act, that the district court lacked subject matter jurisdiction over defendants' challenge to the decision of the Bureau of Indian Affairs (BIA) to take the property at issue into trust for the band. The district court erred in reviewing the trust acquisition and in concluding that the BIA acted arbitrarily and capriciously by failing to conduct a pre-acquisition, and in directing a post-acquisition, environmental assessment (EA). Whether the EA was conducted in good faith was deemed moot. Utah had argued that the billboards placed on the land owned by the Shivwits Band of Paiute Indians constituted visual pollution in a unique scenic area in southwestern Utah and violated the federal Highway Beautification Act. Enforcement of the Highway Beautification Act, on trust land was reserved for the federal government. Allowing the state to exercise control over the land would have threatened Congress's overriding objective of encouraging tribal self-government and economic development. The court upheld a lower court ruling and found that the state failed to prove that it has a substantial interest in regulating the land. The state could not exercise its police power to regulate the land at issue. The court affirmed the judgment of the district court.

North Dakota District Court


La Vallie sued defendant United States and Bureau of Indian Affairs (BIA) under the Federal Tort Claims Act, alleging that Standing Rock Sioux tribal officer, William Ebarb, used excessive force when arresting him. The government argued that it was immune from suit because the arresting officer was not a federal law enforcement officer. The court was persuaded by precedent, and found that tribal officers were not federal law enforcement officers for purposes of the Federal Tort Claims Act. In this case, although tribal officers and the BIA worked closely together and the BIA provided direct supervision for tribal officers, that relationship did not transform the arresting officer into a federal law enforcement officer. The arresting officer was enforcing tribal law at the time of the alleged assault and there was no evidence that he routinely, or even sporadically, acted to enforce
federal law. The agreement between the Standing Rock Sioux Tribe and the BIA did not confer federal law enforcement powers to officers, such as the arresting officer, who were hired through a grant program. Moreover, that agreement specifically addressed the issue of immunity and clearly stated that the agreement was not to be construed to waive either entity's immunity. Since the officer was a tribal police officer, the government was immune from suit as to any alleged tortious actions, which the officer might have taken.

New York District Court

*Oneida Indian Nation of New York v. Madison County*, Docket No. 5:00-CV-506 (D.N.D. 2005).

The Oneida Nation filed an action against Madison County, which sought to prevent the county from assessing and enforcing property taxes against the Nation's property. The county filed a motion to dismiss and a motion for summary judgment. The Nation filed a motion for summary judgment.

The Nation contended that its lands were not subject to taxation and could not have been foreclosed upon. In granting judgment in favor of the Nation, the court determined that the doctrine of abstention did not apply because the case did not fit into the three categories of cases that were subject to abstention. In addition, a dismissal was not necessary based on concurrent jurisdiction because there was no inconvenience in proceeding with the state action. Moreover, the federal in personam action was not foreclosed by the state in rem proceeding. The remedy of foreclosure was not available to the county because the Nation's properties were inalienable under 25 U.S.C.S. § 177. Second, the Nation was immune from suit to collect unpaid property taxes. Third, the notice provided to the Nation of the date the redemption period expired failed to comport with due process because it was significantly shorter than two years. Fourth, the United States Court of Appeals for the Second Circuit's finding that the Nation's reservation was not disestablished was not abrogated by *Sherrill*, and New York state law exempted reservation land from taxation. *Sherrill v. Oneida Indian Nation*, 125 S. Ct. 2290 (2005). The Court noted that a district court should not permit the taking of a sovereign nation's land against its will by foreclosure or any other means, without the express approval of the United States government. The court granted the motion filed by the Nation, but the county's motions were denied.

District of Columbia District Court


Numerous experts testified that the Internet and Intranet Technology systems were at a significant risk of unauthorized access. Despite years of advice, admonitions, warnings, and corrective actions by other offices, Congress, and the court, the agency had not segregated trust data onto secure servers or implemented secure systems as had been promised years earlier. While progress was laudable, there were continuing risks to that data. The evidence showed the agency had not properly emphasized trust data in its security efforts. The appellate court held the agency, as a fiduciary, was required to maintain and preserve trust data. Corruption or loss of that data, much of which was irreplaceable, would be irreparable injury to the beneficiaries' interests in the case. If the data was not secure, the agency could not carry its fiduciary duties forward. Regardless of pending challenges to the form of relief that had been granted, the evidence shown at the extensive evidentiary hearing was clearly contrary to the reports the agency had been providing to the court, including the many improper certifications and accreditation of IT systems in the previous year. Therefore, disconnection was warranted.

The preliminary injunction was granted. All IT systems that had or provided access to Individual Indian Trust Data had to be disconnected from the Internet, the agency's intranet, and from all connections with any contractors, Tribes, or others. Reports of compliance were ordered to be filed, and connection was limited specified abbreviated periods for necessary financial transactions.
Hearings would be held on any future proposal to reconnect.

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). 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

OCTOBER 3, 2005
Steven J. Stygar v. Terrie Holmes, CS 05-80, Order (Cessation of Child Support Arrears from Wages) (HCN Tr. Ct., Oct. 3, 2005). (Gouty-Yellow, T). The Court orders that the Ho-Chunk Nation Department of Treasury, Payroll Division, cease withholding from the respondent’s wages for child support arrears.

Carmelita Varela v. George Myron Plamann, CS 99-52 Order (Modifying and Enforcing Child Support) (HCN Tr. Ct., Oct. 3, 2005). (Gouty-Yellow, T). The Court had to amend the current child support withholding in order to guarantee compliance with the Ho-Chunk Nation Recognition of Foreign Child Support Orders Ordinance, 4 HCC § 2.8b(3).

State of Wisconsin/Jackson County v. Lance D. Rave, CS 05-65 Default Judgment (Enforcing Child Support) (HCN Tr. Ct., Oct. 3, 2005). (Matha, T). The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

OCTOBER 10, 2005
State of Wisconsin/Cynthia Fowler, CS 99-01 Notice (Child Turning 18 – Requiring Proof of Enrollment) (HCN Tr. Ct., Oct. 10, 2005). (Matha, T). The minor child turned eighteen (18) years of age. In accordance with state law, the respondent’s obligation ends when the child turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

OCTOBER 11, 2005
State of Wisconsin/Jackson County v. James L. Pettibone, CS 00-07 Notice (Child Turning 18 – Requiring Proof of Enrollment) (HCN Tr. Ct., Oct. 11, 2005). (Gouty-Yellow, T). The minor child turned eighteen (18) years of age. In accordance with state law, the respondent’s obligation ends when the child turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.
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The Court previously entered judgments to enable the recognition and enforcement of a foreign order for child support against the respondent’s per capita payments. The Court, however, has become aware of the untimely passing of the respondent, Morgan Decorah. The Court accordingly closed this case and extended its sincerest condolences to the family of Mr. Decorah.

OCTOBER 12, 2005
Tari Pettibone v. Wallace P. Greendeer, CV 97-57
The minor child turned eighteen (18) years of age. In accordance with state law, the respondent’s obligation ends when the child turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

OCTOBER 13, 2005
The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

The Court issued this order to correct a clerical mistake made in the previous order.

The Court enters this Reissued Order to correct a clerical error within its findings of fact that affected the enforcement of the underlying child support order. The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

The Court issued this order to correct a clerical mistake made in the previous order.

OCTOBER 14, 2005
The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

OCTOBER 18, 2005
The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

The petitioners submitted a certified copy of the Motion and Order for Dismissal and a certified copy of the account history. The Court orders the Ho-Chunk Nation Department of Treasury to cease withholding from the respondent’s per capita for current child support and child support arrears.

The petitioner filed proof of enrollment within the prescribed time frame. Therefore, the existing order remains unchanged.

The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN
CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

OCTOBER 19, 2005
The Court issued a Notice (Child Turning 18 – Requiring Proof of Enrollment). The respondent’s obligation for current child support ends when the child turns eighteen (18) years of age. The Court orders the Ho-Chunk Nation Department of Treasury to cease withholding from the respondent’s per capita for child support.

The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

The Court redirect prior per capita payments held by the child support agency in the above-captioned case. The Court orders that the impounded funds be redirected to the third party custodian.

The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

The Court had to amend the current child support withholding in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

The Court denied the Motion for Reconsideration because the respondent failed to address the five (5) issues allowed by the Ordinance. The respondent’s primary argument addressed his change in circumstance and ability to pay said amount. Such an issue is reserved to the issuing court and must be argued at that level.

OCTOBER 20, 2005
The Court issued a Notice (Child Turning 18 – Requiring Proof of Enrollment). The respondent’s obligation for current child support ends when the child turns eighteen (18) years of age. The Court orders the Ho-Chunk Nation Department of Treasury to cease withholding from the respondent’s per capita for child support.

NOVEMBER 22, 2005
The Court had to determine whether to enforce a standing foreign child support order against the respondent’s wages. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s wages. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

Civil Garnishment
OCTOBER 12, 2005
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified timeframe. 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 filed a timely response, and the Court convened a Fact-Finding Hearing, resulting in weekly wage deductions.

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

Gunderson Lutheran Medical Center, Inc. v. Rose A. Lemke, CG 05-88 Order (Default Judgment) (HCN Tr. Ct., Oct. 12, 2005). (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 timeframe. The Court granted the petitioner’s request for recognition and enforcement.

OCTOBER 13, 2005
The Court previously issued a default judgment against the respondent. The petitioner filed a correspondence indicating that the petitioner has “discharged [the respondent] from further liability.” The Court recognizes that the debt has been satisfied.

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“discharged [the respondent] from further liability.” The Court recognizes that the debt has been satisfied.

The Court previously issued a default judgment against the respondent. The petitioner filed a correspondence indicating that the petitioner has “relieved [the respondent] of any further obligation.” The Court recognizes that the debt has been satisfied.

OCTOBER 20, 2005
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified timeframe. 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 timeframe. 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 timeframe. The Court granted the petitioner’s request for recognition and enforcement.

OCTOBER 21, 2005
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

OCTOBER 31, 2005
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified timeframe. 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 timeframe. The Court granted the petitioner’s request for recognition and enforcement.

The Court determined to grant full faith and credit to a foreign judgment. Dane County Circuit Court filed a certified copy of its money judgment against the debtor, representing an assessment of judicial fines and penalties. The Court recognizes and enforces the foreign judgment out of due respect to its state counterpart.

NOVEMBER 1, 2005
The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified timeframe. 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 filed a timely response in the form of a bankruptcy notice of an automatic stay. The Court denied the petitioner’s request for recognition and enforcement.

**NOVEMBER 3, 2005**
*Wolpoff & Abramson v. Beverly Reynolds, CG 05-83 Order (Satisfaction of Judgment) (HCN Tr. Ct., Nov. 3, 2005). (Matha, T).*
The Court previously issued a default judgment against the respondent. The petitioner filed a correspondence indicating that the petitioner has “discharged [the respondent] from further liability.” The Court recognizes that the debt has been satisfied.

**NOVEMBER 8, 2005**
*NCO Attorney Network v. Kristina A. Littlewolf, CG 05-106 Order (Default Judgment) (HCN Tr. Ct., Nov. 8, 2005). (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 timeframe. The Court granted the petitioner’s request for recognition and enforcement.

*Alliance Collection Agencies, Inc. v. Sheila L. Cleveland, CG 05-107 Order (Default Judgment) (HCN Tr. Ct., Nov. 8, 2005). (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 timeframe. The Court granted the petitioner’s request for recognition and enforcement.

*Credit Acceptance Corporation v. George L. Dahlgren, CG 05-101 Order (Default Judgment) (HCN Tr. Ct., Nov. 8, 2005). (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 timeframe. The Court granted the petitioner’s request for recognition and enforcement.

**NOVEMBER 9, 2005**
*Mile Bluff Clinic v. John and Cynthia Kellerman, CG 05-109 Order (Default Judgment) (HCN Tr. Ct., Nov. 9, 2005). (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 timeframe. The Court granted the petitioner’s request for recognition and enforcement.

*Gundersen Clinic, Ltd. v. Troy and Tara Swallow, CG 05-108 Order (Default Judgment) (HCN Tr. Ct., Nov. 9, 2005). (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 timeframe. The Court granted the petitioner’s request for recognition and enforcement.

*Griffin Westerman v. Louie Filipovich a/k/a Ljubisa Filipovich, CG 05-20 Order (Granting Motion to Modify) (HCN Tr. Ct., Nov. 9, 2005). (Matha, T).*
The petitioner filed a request, which the Court considers a motion to modify. The petitioner indicates that the respondent has initiated a bankruptcy proceeding, and asks the Court to suspend the case. The Court directs the Ho-Chunk Nation Department of Treasury to cease withholding until further notice from the Court.

**NOVEMBER 15, 2005**
*Rebecca Hopinkah v. William Hopinkah, CG 05-116 Ex Parte Motion, Affidavit Order to Appear Pro Hac Vice (HCN Tr. Ct., Nov. 15, 2005). (Matha, T).*
An attorney requested to appear Pro Hac Vice on behalf of the petitioner. The attorney met the requirements as stated under *HCN R. Civ. P. 16(B).*
The Court granted the party’s request to appear by telephone.

NOVEMBER 21, 2005
Gunderson Clinic, Ltd. v. Gregory D. and Barbara Gromoff, CG 05-111 Order (Default Judgment) (HCN Tr. Ct., Nov. 21, 2005). (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 timeframe. The Court granted the petitioner’s request for recognition and enforcement.

NOVEMBER 22, 2005
The petitioner requested that the judgment in the above-entitled matter be amended to indicate that the judgment remains unsatisfied, but that the garnishment shall be dismissed due to the defendant’s filing for bankruptcy.

NOVEMBER 23, 2005
The Court previously issued a default judgment against the respondent. The petitioner filed a correspondence indicating that the petitioner has “PAID [the account] IN FULL.” The Court recognizes that the debt has been satisfied.

Civil Cases
OCTOBER 3, 2005
The Court had to determine whether to grant the relief requested by the plaintiffs. The defendant failed to respond within the specified timeframe. The Court granted the plaintiffs’ requested relief.

OCTOBER 19, 2005
The Court granted the party’s request to appear by telephone.

The Court granted the party’s request to appear by telephone.

OCTOBER 20, 2005
The plaintiff on her Motion requests an Order for Dismissal of all claims in the complaint pursuant to Rule 56(B). The Court grants an Order for Dismissal.

NOVEMBER 3, 2005
Patsy Prescott v. Travis Prescott et al., CV 04-41 Order (Relief Granted) (HCN Tr. Ct., Nov. 3, 2005). (Gouty-Yellow, T).
The Court must determine whether to order DNA testing so that an eligible minor may progress through the enrollment process. The Ho-Chunk Nation Office of Tribal Enrollment requires DNA testing of all applicants for enrollment. The Court finds that to the extent that a DNA test is required, the Court orders such testing. Mr. Prescott is to undergo DNA testing at Jackson Correctional Institution.

The Court had to determine whether to award the plaintiff the relief requested in his initial pleading as modified by a subsequent filing. The Court afforded the defendant the opportunity to respond to
the Complaint. The defendant filed a timely answer, admitting, in part, to an outstanding debt obligation. The Court deems that extension of the stated traditional principle into the present context proves reasonable and just. Although the tribe would not have traditionally dealt in terms of currency, the sanctity and attendant responsibilities of an agreement were recognized and self-evident. The Court grants a judgment against the defendant for the undisputed amount.

November 7, 2005
Cornelius Decora v. Adam Hall et al., CV 03-25 Order (Denying Motion to Dismiss & Granting Motion to Amend) (HCN Tr. Ct., Nov. 7, 2005). (Gouty-Yellow, T).

The plaintiff seeks an order directing that his four named children be enrolled as members of the Ho-Chunk Nation. The defendants have moved to dismiss the Complaint. The Court denies the Motion to Dismiss. The plaintiff has moved to amend the Complaint. The Court grants the Motion to Amend.

November 9, 2005
Ho-Chunk Nation Department of Housing, Property Management Division v. Mary J. Fisher et al., CV 05-34 Order (Satisfaction of Judgment) (HCN Tr. Ct., Nov. 9, 2005). (Matha, T).

The Court granted a money judgment against the defendants, and directed the Ho-Chunk Nation Department of Treasury to withhold per capita income to satisfy the debt obligation to the Nation. The plaintiff filed a Satisfaction of Judgment. The Court recognizes that the debt has been satisfied.

November 9, 2005
Ho-Chunk Nation Treasury Department et al. v. Shante Lowery-Roby, CV 05-64 Order (Satisfaction of Judgment) (HCN Tr. Ct., Nov. 23, 2005). (Matha, T).

The Court granted a money judgment against the defendant. The plaintiff filed a Satisfaction of Judgment. The Court recognizes that the debt has been satisfied. The Court accepts this accounting and hereby informs the parties of its intent to close this case within ten (10) days absent any objection from the parties within that time period.

Children’s Trust Fund (CTF)
October 10, 2005

The Court previously released funds from the CTF account of the minor children to improve their quality of life. The petitioner failed to submit an accounting confirming the specified use of the funds within the specified timeframe. The Court ordered a Show Cause Hearing to allow the petitioner the opportunity to explain why the Court should not hold her in contempt of court.

October 12, 2005

The Court released funds from the CTF account of S.S.G., DOB 02/05/94, to pay for costs associated with orthodontic procedures.

October 13, 2005

The Court convened a Fact-Finding Hearing to consider the merit of the petitioner’s Petition for Release of Per Capita Distribution. The petitioner failed to appear, and did not notify the Court of an inability to attend the proceeding. Therefore, the Court dismissed the instant case without prejudice.

October 14, 2005

The Court convened a Fact-Finding Hearing to consider the merit of the petitioner’s Petition for Release of Per Capita Distribution. The petitioner
failed to appear, and did not notify the Court of an inability to attend the proceeding. Therefore, the Court dismissed the instant case without prejudice.

**OCTOBER 19, 2005**

*In the Interest of Minor Child: C.V.H., DOB 02/25/93, by Chris Hanson v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-78 Order (Accounting Accepted) (HCN Tr. Ct., Nov. 1, 2005). (Matha, T).*

The Court released funds from the CTF account to pay for the costs associated with orthodontic procedures. The Court accepts this accounting and hereby informs the parties of its intent to close this case within ten (10) days absent any objection from the parties within that time period.

*In the Interest of Minor Child: J.M.K., DOB 06/24/88, by Angela Kelly v. HCN Office of Tribal Enrollment, CV 05-76 Order (Dismissal without Prejudice) (HCN Tr. Ct., Oct. 14, 2005). (Gouty-Yellow, T).*

The Court convened a Fact-Finding Hearing to consider the merit of the petitioner’s Petition for Release of Per Capita Distribution. The petitioner failed to appear, and did not notify the Court of an inability to attend the proceeding. Therefore, the Court dismissed the instant case without prejudice.

**OCTOBER 18, 2005**

*In the Interest of Adult CTF Beneficiary: Rainelle M. Decorah, DOB 01/26/05 v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-67 Order (Partial Granting of Petition) (HCN Tr. Ct., Oct. 18, 2005). (Matha, T).*

The Court requested that the petitioner submit the required accounting.

*In the Interest of Minor Child: S.L.C., DOB 08/28/89, by Angeline Dowling v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-56 Order (Requesting Accounting) (HCN Tr. Ct., Nov. 1, 2005). (Matha, T).*

The Court requested that the petitioner submit the required accounting.

**OCTOBER 24, 2005**


The Court must determine whether the parent can access monies on behalf of her minor children from the Children’s Trust Fund (hereinafter CTF) to pay for the costs associated with the purchase of clothing, bedroom furniture and bedding, and satisfy unpaid medical bills. Regrettably, the Court must deny the request due to the extreme passage of time.

*In the Interest of Minor Children: M.L.D., DOB 05/23/91; M.L.H., DOB 08/18/97; M.H., DOB 02/19/99; M.H. 02/09/00, JV 05-15-18 Order (Release Impounded Per Capita Funds) (HCN Tr. Ct., Nov. 1, 2005). (Gouty-Yellow, T).*

The Court impounded the respondent’s per capita funds based upon the physical placement of a minor child. The Court directs the Ho-Chunk Nation Department of Treasury to release the respondent’s impounded per capita distribution.
November 4, 2005


The Court convened a Fact-Finding Hearing to consider the merit of the petitioner’s Petition for Release of Per Capita Distribution. The petitioner failed to appear, and did not notify the Court of an inability to attend the proceeding. Therefore, the Court dismissed the instant case without prejudice.

November 7, 2005

In the Interest of: Shawn W. Maisells, DOB 01/23/86 v. HCN Office of Tribal Enrollment, CV 05-80 Order (Dismissal without Prejudice) (HCN Tr. Ct., Nov. 7, 2005). (Gouty-Yellow, T).

The Court convened a Fact-Finding Hearing to consider the merit of the petitioner’s Petition for Release of Per Capita Distribution. The petitioner failed to appear, and did not notify the Court of an inability to attend the proceeding. Therefore, the Court dismissed the instant case without prejudice.

November 9, 2005


The Court must determine whether the parent can access monies on behalf of the minor child from the Children’s Trust Fund (hereinafter CTF) to pay for costs associated with private school tuition and expenses for a musically-gifted student. The Court grants a release of funds to satisfy the stated requests.

November 15, 2005


The Court released funds from the CTF account to pay for the costs associated with orthodontic procedures. The Court accepts this accounting and hereby informs the parties of its intent to close this case within ten (10) days absent any objection from the parties within that time period.

November 21, 2005


The Court released funds from the CTF account of J.R.H., DOB 05/19/88, to pay for costs associated with orthodontic procedures.

November 22, 2005


The Court released funds from the CTF account for costs associated with orthodontic procedures. The petitioner submitted a payment history statement, which confirmed proper use of the funds. The Court accepts this accounting.

Employment

October 12, 2005


The Court determined to convene a hearing to grant the defendants the ability to argue the Motion for Summary Judgment, and to provide the plaintiff the opportunity to offer a response.

Ho-Chunk Casino et al. v. Rory Emerson Thundercloud et al., CV 04-36 Order (Granting
Motion to Dismiss) (HCN Tr. Ct., Oct. 12, 2005). (Matha, T).
The defendants failed to file timely responsive pleadings, but the Court declined to grant a default judgment due to a failure to adequately establish the basis for the Court’s subject matter jurisdiction within the Complaint. Rather than file an amended pleading, the plaintiffs sought a voluntary dismissal.

OCTOBER 13, 2005
The defendants failed to file timely responsive pleadings, but the Court declined to grant a default judgment due to a failure to adequately establish the basis for the Court’s subject matter jurisdiction within the Complaint. Therefore, the Court requires the plaintiffs to file an amended pleading.

The Court had to determine whether to default judgment. The defendant failed to respond within the specified timeframe. The Court granted the plaintiff’s request for a money judgment on the basis of a violated contractual agreement.

The Court had to determine whether to default judgment. The defendant failed to respond within the specified timeframe. The Court granted the plaintiff’s request for a money judgment on the basis of a violated contractual agreement.

The Court granted the party’s request to appear by telephone.

OCTOBER 20, 2005
The plaintiff filed the Motion to Reopen Discovery and accompanying Request for Additional Documents. The defendants filed a response on October 14, 2005, in which they “do not object to the plaintiff’s request… on the condition that both parties be allowed to submit supplemental arguments via letter, memorandum, or brief upon the conclusion of the new discovery period.” Consequently, the Court granted the plaintiff’s motion.

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

OCTOBER 21, 2005
The plaintiff failed to respond to the defendant’s motion to dismiss, which it based upon a prolonged period of inactivity by the plaintiff. The Court dismisses the case with prejudice.

OCTOBER 25, 2005
The Court responded to a motion to dismiss submitted nearly eleven (11) months after the plaintiff filed the initial pleadings. During this time, the parties extensively utilized the motion process, resulting in several decisions, one of which received appellate scrutiny. Ultimately, the parties agree to conclusively dispense with the consolidated case. The Court dismisses the case with prejudice.

NOVEMBER 2, 2005
The parties stipulated and agreed to settle the above-captioned case pursuant to a voluntary agreement.

**November 3, 2005**

*Nyree Dawn Kedrowski v. Ho-Chunk Nation Department of Treasury/Payroll et al., CV 05-11 Order (Dismissal without Prejudice) (HCN Tr. Ct., Nov. 3, 2005). (Matha, T).*

The plaintiff neglected to reschedule the initial scheduling conference after failing to attend the proceeding, and after the Court provided her the opportunity to do so. Therefore, the Court dismissed the instant case without prejudice.

Kevin Kuehl *v. Ho-Chunk Casino Table Gares (sic) Department, CV 05-23 Order (Dismissal) (HCN Tr. Ct., Nov. 3, 2005). (Gouty-Yellow, T).*

The plaintiff neglected to provide a Response, after the Court provided him the opportunity to do so. Therefore, the Court dismissed the instant case without prejudice.

**November 15, 2005**

*HCN Treasury Department et al. v. Corvettes on the Isthmus et al., CV 05-82 Scheduling Order (HCN Tr. Ct., Nov. 15, 2005). (Matha, T).*

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

**November 22, 2005**

*Sheryl A. Cook v. Tammi Modica et al., CV 05-21 Order (Final Judgment) (HCN Tr. Ct., Nov. 22, 2005). (Matha, T).*

The Court must determine whether to reverse the defendants’ decision to terminate the plaintiff’s employment. The Court concurs with the defendants’ conclusion due to the level of the infraction, *i.e.*, leaving a front casino door unlocked after closing. Additionally, the Court holds the plaintiff’s legal arguments unpersuasive.

*Nicholas Joseph Kedrowski v. Gaming Commissioners et al., CV 05-01 Order (Granting Motion to Dismiss) (HCN Tr. Ct., Nov. 28, 2005). (Matha, T).*

The defendants contend that the plaintiff filed an untimely initial pleading, constituting a violation of the relevant statute of limitations. The Court agrees that this defense bars the plaintiff’s claims as indicated by the clear language of the legislation.

**Incompetent Trust Fund (ITF)**

**October 11, 2005**


The Court previously released funds from the ITF account for the welfare of an incompetent member. The petitioner failed to submit an accounting confirming the use of the funds within the specified timeframe. The Court convened a Sanction Hearing to allow the petitioner the opportunity to explain why the Court should not impose contempt sanctions. The Court ordered the guardian to replenish the depleted ITF account of the incompetent member, since the petitioner admitted that she failed to fulfill her statutory duty.

**October 12, 2005**


The Court released funds from the CTF account for costs associated with housing, household items and entertainment-related expenses. The petitioner submitted a payment history statement, which confirmed proper use of the funds. The Court accepts this accounting.

**October 20, 2005**

*In the Interest of Adult Incompetent: H.C., DOB 01/31/31 v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-72 Order (Motion Granted) (HCN Tr. Ct., Oct. 20, 2005). (Gouty-Yellow, T).*
The Court must determine whether the permanent guardian can access monies on behalf of an adult incompetent member from the ITF to pay for costs associated with ongoing care, GAL fees and cost of adversary counsel. The Court grants a release of the funds to satisfy the request of the guardian.

**November 2, 2005**

*In the Interest of B.F.N., DOB 09/03/86, by Alaine A. Yingst v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-59 Ex Parte Motion, Affidavit, and Order to Appear Pro Hac Vice (HCN Tr. Ct., Nov. 2, 2005). (Matha, T).*

An attorney requested to appear Pro Hac Vice on behalf of the petitioner. The attorney met the requirements as stated under *HCN R. Civ. P. 16(B).*

**November 4, 2005**

*In the Interest of Gerald Greendeer, DOB 01/31/31 by Alma Miner v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-16 Order (Petition Granted) (HCN Tr. Ct., Nov. 4, 2005). (Gouty-Yellow, T).*

The Court must determine whether the guardian can access monies on behalf of the ward from the ITF to pay for the costs associated with satisfying debts that the ward has incurred. The Court grants a release of funds to satisfy the stated requests.

**November 8, 2005**

*In the Interest of Gerald Greendeer, DOB 01/31/31 by Alma Miner v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-16 Order (Release of Ferrell Payment) (HCN Tr. Ct., Nov. 8, 2005). (Gouty-Yellow, T).*

The Court granted a release of funds to pay for the costs associated with satisfying debts that the ward has incurred, however the Ferrell debt was reserved until verification was received. Thus, the Court ordered Fifth Third Bank to release the debt immediately.

**November 22, 2005**

*In the Interest of Adult Incompetent: Oliver S. Rockman v. Ho-Chunk Nation Office of Tribal Enrollment, CV 97-117 Order (Granting Release of Per Capita Funds) (HCN Tr. Ct., Nov. 22, 2005). (Gouty-Yellow, T).*

The Court must determine whether the guardian can access monies on behalf of the ward from the ITF to account for a spending allowance. The Court grants a release of funds to satisfy the stated requests.

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**General Council**

**October 8, 2005**

*Forrest Funmaker et al. v. Alvin Cloud et al., CV 05-86 Order (Denial of Motion) (HCN Tr. Ct., Oct. 8, 2005). (Matha, T).*

The Court denied the plaintiffs' October 6, 2005 *Motion for Expedited Consideration.* A plaintiff may not seek expedited consideration of an initial pleading. The applicable rules do not contemplate judicial resolution of a cause of action within less than five (5) days. Rather, a party may seek expedited consideration of a motion, provided that the movant first satisfies the standard set forth within the rule.

**October 20, 2005**

*Ona Garvin v. Ho-Chunk Nation Election Board et al., CV 05-90 Order (Motion Hearing) (HCN Tr. Ct., Oct. 20, 2005). (Gouty-Yellow, T).*

The Court convened a hearing so as to grant the plaintiffs the ability to argue the *Motion for Preliminary Injunction,* and to provide the defendant the opportunity to offer a response.

*Clarence Pettibone v. HCN General Council et al., CV 03-77 Order (Granting Telephonic Appearance) (HCN Tr. Ct., Oct. 20, 2005). (Gouty-Yellow, T).*

The Court granted the party’s request to appear by telephone.

**November 2, 2005**

*Ona Garvin v. Ho-Chunk Nation Election Board et al.; Dallas White Wing v. Ho-Chunk Nation Election Board et al., CV 05-90, -93 Order (Denying Preliminary Injunction) (HCN Tr. Ct., Nov. 2, 2005). (Gouty-Yellow, T).*

On September 17, 2005, the Ho-Chunk Nation General Council enacted General Council Resolution “O” providing for the recall of plaintiff, Ona Garvin, from her office as a member of the Ho-Chunk Nation Legislature. On September 17, 2005,
the Ho-Chunk Nation General Council enacted General Council Resolution “N” providing for the recall of plaintiff, Dallas White Wing from his office as a member of the Ho-Chunk Nation Legislature. Both plaintiffs seek a Preliminary Injunction to enjoin the defendants from acting in furtherance of the General Council resolutions. The Court denies the request for a Preliminary Injunction. The Court adopted a four-part test for the purpose of evaluating requests for preliminary injunctions. The Ho-Chunk Nation Supreme Court later sanctioned the use of the incorporated federal standard. The only issue before the Court was the question of whether the plaintiff could establish by a reasonable likelihood that he or she would prevail at trial. The answer to this question depends primarily on the plain language of the constitutional provision in question. This is a case of first impression. The issue of reasonableness does not apply to notice as there are no notice requirements. The opportunity to be heard does not attach to this section as there is not a requirement to be heard. As this Court and the Ho-Chunk Supreme Court have held on prior occasions, the removal provisions of the Ho-Chunk Constitution are substantially different than the recall provisions. The Court denied the plaintiffs’ request for an injunction.

NOVEMBER 9, 2005
Dallas White Wing v. Ho-Chunk Nation Election Board et al., CV 04-99 Order (Granting Motion to Dismiss Defendant Legislature and Election Board) (HCN Tr. Ct., Nov. 9, 2005). (Gouty-Yellow, T).

On October 23, 2004, the Ho-Chunk Nation General Council enacted General Council Resolution 25 providing for the removal of the plaintiff from his office as a member of the Ho-Chunk Nation Legislature. The Ho-Chunk Nation Supreme Court later sanctioned the use of the incorporated federal standard. The only issue before the Court was the question of whether the plaintiff could establish by a reasonable likelihood that he or she would prevail at trial. The answer to this question depends primarily on the plain language of the constitutional provision in question. This is a case of first impression. The issue of reasonableness does not apply to notice as there are no notice requirements. The opportunity to be heard does not attach to this section as there is not a requirement to be heard. As this Court and the Ho-Chunk Supreme Court have held on prior occasions, the removal provisions of the Ho-Chunk Constitution are substantially different than the recall provisions. The Court denies the plaintiffs’ request for an injunction.

NOVEMBER 9, 2005
Dallas White Wing v. Ho-Chunk Nation Election Board et al., CV 04-99 Order (Granting Motion to Dismiss Defendant Legislature and Election Board) (HCN Tr. Ct., Nov. 9, 2005). (Gouty-Yellow, T).

On October 23, 2004, the Ho-Chunk Nation General Council enacted General Council Resolution 25 providing for the removal of the plaintiff from his office as a member of the Ho-Chunk Nation Legislature. On November 18, 2004, the Court issued its Preliminary Injunction. On January 31, 2005, the plaintiff filed the Motion to Amend the Complaint and the Amended Complaint. Defendants Legislature and Election Board filed a letter in response on February 14, 2005. Defendant HCN General Council filed a reply on February 15, 2005. The petitioner filed a response to defendant HCN General Council on February 16, 2005. A number of considerations must be reviewed to find good cause. Principally good cause focuses on whether, an issue that according to Black’s Law Dictionary, “a substantial reason amounting in law to a legal excuse for failing to perform an act required by law” exists. In the case at hand, the plaintiff was not required to file a Motion to Amend, he was only required to file said matter in a specified manner. The plaintiff failed to file the motion according to the permissive deadline, which then requires the Court to provide leave and a showing of good cause. The plaintiff fails to provide any good cause explanation in this Motion to Amend. The only discernable reason is to provide additional facts that were not available at the time of filing of the Complaint. The Ho-Chunk Trial Court has permissive rules regarding both complaints and answers and expects additional facts to come forward throughout the proceedings. The Court denies the Motion to Amend as good cause does not exist.

NOVEMBER 10, 2005
Dallas White Wing v. Ho-Chunk Nation Election Board et al., CV 04-99 Order (Denying Motion to Amend Complaint) (HCN Tr. Ct., Nov. 10, 2005). (Gouty-Yellow, T).

On October 23, 2004, the Ho-Chunk Nation General Council enacted General Council Resolution 25 providing for the removal of the plaintiff from his office as a member of the Ho-Chunk Nation Legislature. On November 18, 2004, the Court issued its Preliminary Injunction. On January 31, 2005, the plaintiff filed the Motion to Amend the Complaint and the Amended Complaint. Defendants Legislature and Election Board filed a letter in response on February 14, 2005. Defendant HCN General Council filed a reply on February 15, 2005. The petitioner filed a response to defendant HCN General Council on February 16, 2005. A number of considerations must be reviewed to find good cause. Principally good cause focuses on whether, an issue that according to Black’s Law Dictionary, “a substantial reason amounting in law to a legal excuse for failing to perform an act required by law” exists. In the case at hand, the plaintiff was not required to file a Motion to Amend, he was only required to file said matter in a specified manner. The plaintiff failed to file the motion according to the permissive deadline, which then requires the Court to provide leave and a showing of good cause. The plaintiff fails to provide any good cause explanation in this Motion to Amend. The only discernable reason is to provide additional facts that were not available at the time of filing of the Complaint. The Ho-Chunk Trial Court has permissive rules regarding both complaints and answers and expects additional facts to come forward throughout the proceedings. The Court denies the Motion to Amend as good cause does not exist.

NOVEMBER 18, 2005

On September 17, 2005, the Ho-Chunk Nation General Council enacted General Council Resolution 25 providing for the recall of plaintiff, Ona Garvin, from her office as a member of the Ho-Chunk Nation Legislature. On September 17, 2005,
the Ho-Chunk Nation General Council enacted General Council Resolution “N” providing for the recall of plaintiff, Dallas White Wing from his office as a member of the Ho-Chunk Nation Legislature. Both plaintiffs seek a Preliminary Injunction to enjoin the defendants from acting in furtherance of the General Council resolutions. The Court grants the request for a Preliminary Injunction.

Upon remand after a Fact Finding Hearing, the plaintiffs further defined and presented arguments pertaining to separation of powers, as defined in the HCN Constitution Art. III. §3, which provides that one branch of government cannot “exercise” the powers of another branch and how that article interacts with Art. V. §6, which mandates that districts’ elect their own legislative representatives. This issue is placed squarely against the backdrop of governmental responsibility. Herein, a member of the Ho-Chunk Nation submitted a resolution that was presented at the 2005 Ho-Chunk General Council meeting that contained language that mandated a tribal-wide recall election. This action creates a conflict in which one branch of government, the Ho-Chunk General Council is exercising the power of another branch of government by mandating an action that is in conflict with another article of the same Constitution. These issues weigh in favor of the plaintiffs reasonable likelihood of success on the merits.

NOVEMBER 28, 2005
Dallas White Wing v. Ho-Chunk Nation Election Board et al., CV 04-99 Order (Denying Motion to Continue Trial Date) (HCN Tr. Ct., Nov. 28, 2005). (Gouty-Yellow, T).

On November 15th, 2005, the Court conducted a Pre-Trial Conference to review the case. At that time counsel, for defendant Ho-Chunk Nation General Council, Attorney Michael Mullen, verbally requested an adjournment of the trial date. The stated basis was a generalized statement that pending litigation involving Dallas Whitewing under Case No. CV 05-93 may in fact render the issues in this case moot. Plaintiff Whitewing’s counsel, Glenn C. Reynolds joined in this issue and added that his client would not be available for the trial based on an injury. The Court directed both Counsel Mullen and Reynolds to submit a motion and brief in support of said motion, not to exceed five (5) pages on the mootness issue no later than November 22, 2005, at 4:30 p.m. On November 22, 2005, Counsel Mullen submitted a motion entitled, General Council Defendants Motion for Continuance of Trial Date without a brief on the mootness issue. On November 22, 2005, Counsel Reynolds submitted a letter and the doctor’s report from Dallas Whitewing’s surgery. The letter neither contained a brief regarding the mootness issue, nor provided a prognosis regarding Mr. Whitewing’s ability to attend the trial as scheduled for the week of December 5, 2005. The Court could not find good cause to grant an adjournment.

Juvenile
OCTOBER 10, 2005

The Court deems that the appointment of the temporary guardian of the named children is not necessary and that the issue of best interests cannot be reached in accordance with the CHILDREN’S ACT.

OCTOBER 11, 2005

The Court deems that the appointment of the permanent guardian of the named children is in the best interests of the children in accordance with the CHILDREN’S ACT.

OCTOBER 13, 2005

The Court terminated the child support withholding at the hearing. The Court ordered the Ho-Chunk Nation Department of Treasury to cease withholding from the respondent’s per capita for current child support.
OCTOBER 14, 2005

The Court conducted a Child Protection Review Hearing. The Court continued the Hearing in order for the mother of the minor children to obtain representation.

The Court must determine whether to terminate the Temporary Guardianship Order. After a careful weighing of all the presented evidence, the Court determines that the termination is in the best interest of the named child.

The Court must determine whether to establish a child support obligation of the minor children. The Court erected a financial obligation.

The Court determined to order the respondent to pay child support for the minor child in question while the child is in the care of a third party custodian.

The Court determined to order the respondent to pay child support for the minor children in question while the child is in the care of a third party custodian.

NOVEMBER 1, 2005

In the Interest of Minor Children: M.L.D., DOB 05/23/91; M.L.H., DOB 08/18/97; M.H., DOB 02/19/99; M.H., DOB 02/09/00, JV 05-15-18 Order (Erratum) (HCN Tr. Ct., Nov. 1, 2005). (Gouty-Yellow, T).
The Court issued this order to correct a clerical mistake made in the previous order.

NOVEMBER 2, 2005

The Court appointed a GAL in this matter.

NOVEMBER 3, 2005
In the Interest of Minor Children: M.J.B., DOB 11/01/02, E.B., DOB 09/01/04 JV 05-26-27 Order (Conditional Acceptance of Transfer) (HCN Tr. Ct., Nov. 3, 2005). (Matha, T).
The Court determined whether to conditionally accept transfer of a State of Minnesota children’s case in which the minor children, either enrolled or eligible for enrollment with the Ho-Chunk Nation, are subject to foster care placement. After reviewing the Motion for Transfer, the Court shall not decline transfer of this action.

The Court issued an order allowing the parent to access monies on behalf of her minor children from the Children’s Trust Fund (CTF) to pay for costs associated with the family mortgage. The petitioner failed to submit payment as ordered by this Court and is found to be in contempt of court. Upon receipt of all payment the contempt finding shall be dismissed.

In the Interest of Minor Children: M.L.D., DOB 05/23/91; M.L.H., DOB 08/18/97; M.H., DOB 02/19/99; M.H., DOB 02/09/00, JV 05-15-18 Reissued Order (Erratum) (HCN Tr. Ct., Nov. 4, 2005). (Gouty-Yellow, T).
The Court issued this order to correct a clerical mistake made in the previous order.

The Court convened a hearing to determine if the underlying matter could proceed to trial. The Court finds that the petition fails due to the lack of proper processing, the failure to properly serve, the lack of consent, the presence of a guardian for the minor children and further that the matter as filed does not meet the intent and purpose of the law.

In the Interest of Minor Child: A.C.L., DOB 08/13/01, JV 04-22 Order (Voluntary Dismissal) (HCN Tr. Ct., Nov. 22, 2005). (Gouty-Yellow, T).
The petitioners for temporary guardianship filed a Motion to Withdraw Petition for Temporary Guardianship. The Court dismisses the guardianship portion of the case without prejudice.

In the Interest of Minor Children: P.M.S., DOB 01/14/91; P.A.S., DOB 01/14/91, JV 98-06-07 Review Hearing Order (HCN Tr. Ct., Nov. 28, 2005). (Gouty-Yellow, T).
The Court conducted a Review Hearing. The Court determined to maintain the status quo as necessary for the children.

Domestic Violence
October 17, 2005
On September 15, 2005, the Court issued an Ex Parte Emergency Order for Protection. At the hearing, the petitioner had not retained a Domestic Abuse Legal Advocate and failed to present evidence capable of demonstrating the occurrence of domestic abuse. The Court, therefore, denied extending the underlying Protection Order.

Supreme Court
OCTOBER 31, 2005
The Court issued this Scheduling Order to establish dates and deadlines for the instant case.

NOVEMBER 10, 2005
Dallas Whitewing v. Ho-Chunk Nation General Council et al., SU05-10 Scheduling Order & Order (Granting Stay) (HCN S. Ct., Oct. 31, 2005).
While Chief Justice Hunter participated in the consideration of whether to grant the appeal and stay in this matter, the Chief Justice exercised her discretion to voluntarily recuse herself to avoid the appearance of impropriety. There should be no doubt that a decision in this matter is not influenced by the potentiality of personal considerations and therefore the Chief Justice voluntarily recuses herself due to the fact that the Chief Justice was also the subject of a recall request at the same General Council as the appellants.
The nature of the case is a challenge to what procedures are applicable in a recall of a Legislator by the HCN General Council. The appellants suggest that there are important facts that undermine the validity of the tribal wide versus district wide vote for recall. The Supreme Court found that the appellant has met the preliminary burden. The case is remanded directly to the HCN Trial Court to conduct a fact-finding hearing on the disputed issues regarding voting at General Council. The Trial Court is to make a complete factual record.

Trial Court

Child Support

OCTOBER 7, 2005
State of WI – Sauk Co. v. Francina I. Williams, CS 05-86. (Matha, T).

OCTOBER 14, 2005
Kitty Khamphouy v. Charles Fox, CS 05-87. (Gouty-Yellow, T).

OCTOBER 18, 2005
Carissa L. Drake v. Cody A. Winters, CS 05-88. (Matha, T).
Amanda M. Rosio v. Cody A. Winters, CS 05-89. (Matha, T).

OCTOBER 19, 2005

OCTOBER 21, 2005
State of Wisconsin v. Justin C. Decora, CS 05-91. (Gouty-Yellow, T).
Michelle M. Spatz v. Michael J. Radke, CS 05-93. (Gouty-Yellow, T).

OCTOBER 28, 2005

NOVEMBER 10, 2005

Civil Garnishment

OCTOBER 7, 2005

Recent Filings

NCO Attorney Network v. Angie Shegonee, CG 05-100. (Matha, T).

Credit Acceptance Corporation v. George L. Dahlgren, CG 05-101. (Matha, T).

Creditor Recovery Service v. Mary Locey, CG 05-102. (Matha, T).

Creditor Recovery Service v. Tina Habert, CG 05-103. (Matha, T).

NCO Attorney Network Services v. Esther M. Wolfe n/k/a Young Thunder, CG 05-104. (Matha, T).

OCTOBER 14, 2005
Cottonwood Financial Services v. Audrey Goodbear, CG 05-105. (Matha, T).


OCTOBER 17, 2005
Alliance Collection Service Inc. v. Sheila L. Cleveland, CG 05-107. (Matha, T).

OCTOBER 19, 2005
Gundersen Clinic, Ltd. v. Troy & Tara Swallow, CG 05-108. (Matha, T).


OCTOBER 24, 2005
Cottonwood Financial Services v. Melissa Thunder, CG 05-110. (Matha, T).

Gundersen Clinic, Ltd. v. Gregory D. & Barbara Gromoff, CG 05-111. (Matha, T).

OCTOBER 28, 2005
Black River Memorial v. Alberta E. & Keith Decorah, CG 05-112. (Matha, T).

NOVEMBER 10, 2005

Discover Financial Services v. Troy E. Swallow, CG 05-114. (Matha, T).

NCO Attorney Network v. Preston Thompson, CG 05-115. (Matha, T).

NOVEMBER 15, 2005

Alliance Collection Agencies v. Betty Granger, CG 05-117. (Matha, T).

Alliance Collection Agencies v. Lawrence Walker, CG 05-118. (Matha, T).

Creditor Recovery Service v. Dana Kaddatz, CG 05-119. (Matha, T).

NOVEMBER 28, 2005
Quick Cash Loans v. Jeffrey Dayton, CG 05-120. (Matha, T).

Dr. William Christian v. Jack Peterson, CG 05-121. (Matha, T).

NOVEMBER 29, 2005
Martin’s School of Hair Design of Oshkosh, Ltd. v. Tasheena R. Cloud, CG 05-122. (Matha, T).

Creditor Recovery Service v. Missy J. Redcloud, CG 05-123. (Matha, T).

Civil Cases

OCTOBER 6, 2005
Forrest Funmaker et al. v. Alvin Cloud et al., CV 05-86. (Matha, T).

OCTOBER 13, 2005
In the Interest of Minor Children: E.S.M., DOB 07/29/92; M.M., DOB 07/14/95; C.M., DOB 01/13/98, by Angela R. Mike v. Ho-Chunk Nation Enrollment Department, CV 05-87. (Gouty-Yellow, T).
Ho-Chunk Nation Home Ownership Program v. Troy Nakai, CV 05-88. (Gouty-Yellow, T).

OCTOBER 14, 2005
Forrest Funmaker et al. v. Gail Rave, CV 05-89. (Gouty-Yellow, T).

Ona Garvin v. Ho-Chunk Nation Election Board & Mary Ellen Dumas, CV 05-90. (Gouty-Yellow, T).

Thomas Quimby v. Ho-Chunk Nation, CV 05-91. (Gouty-Yellow, T).

OCTOBER 21, 2005
In the Interest of Minor Children: T.A.C., DOB 10/31/87; T.A.C., DOB 02/19/90; R.G.C., DOB 07/27/92, by June White Thunder v. Ho-Chunk Nation Enrollment Department, CV 05-92. (Matha, T).

Dallas White Wing v. Ho-Chunk Nation General Council et al., CV 05-93. (Gouty-Yellow, T).

OCTOBER 31, 2005
In the Interest of: C.J.S., DOB 09/25/86, by Cary Smith v. Ho-Chunk Nation Enrollment Department, CV 05-94. (Matha, T).

November 3, 2005
Ho-Chunk Nation Property Management v. Evans Littlegeorge Jr., CV 05-95. (Matha, T).


November 14, 2005
In the Interest of Minor Child: J.R.H., DOB 05/19/05, CV 05-99. (Matha, T).

November 15, 2005
In the Interest of: J.M.L., DOB 01/24/86, CV 05-100. (Matha, T).

November 21, 2005
In the Interest of Decedent: Justin Contreras, CV 05-101. (Gouty-Yellow, T).

November 22, 2005
In the Interest of Minor Child: G.F., DOB 03/01/93 by Mary Fletcher v. Ho-Chunk Nation Enrollment Department, CV 05-102. (Gouty-Yellow, T).


November 28, 2005

Juvenile

October 11, 2005
In the Interest of M.M.M., DOB 12/18/01, CS 05-25. (Gouty-Yellow, T).

October 31, 2005
In the Interest of M.J.B., DOB 11/01/02, CS 05-26. (Matha, T).

In the Interest of E.B., DOB 09/01/04, CS 05-27. (Matha, T).

November 10, 2005
In the Interest of A.P.H., DOB 08/26/05, CS 05-28. (Gouty-Yellow, T).

November 23, 2005
In the Interest of V.M.B., DOB 06/26/89, CS 05-29. (Gouty-Yellow, T).

In the Interest of M.L.E.B., DOB 05/18/90, CS 05-30. (Gouty-Yellow, T).

In the Interest of D.J.B., DOB 09/21/99, CS 05-31. (Gouty-Yellow, T).

Domestic Violence

November 7, 2005
Ruth Funmaker v. James Alan Funmaker, DV 05-04. (Gouty-Yellow, T).
Supreme Court

November 8, 2005
Dallas Whitewing v. Ho-Chunk Nation General Council et al., SU 05-10.

November 10, 2005
Ona Garvin v. Ho-Chunk Nation General Council et al., SU 05-11.
HO-CHUNK NATION COURT SYSTEM
JUDICIARY AND STAFF
Supreme Court–Mary Jo B. Hunter, Chief Justice
Mark D. Butterfield, Associate Justice
Dennis Funmaker, Associate Justice
Traditional Court – Earl Blackdeer
Donald Blackhawk
Dennis Funmaker
Jim Greendeer
Douglas Greengrass
Desmond Mike
Gavin Pettibone
Douglas Red Eagle
Preston Thompson, Jr.
Eugene Thundercloud
Morgan White Eagle
Clayton Winneshiek
Trial Court – Todd R. Matha, Chief Judge
Tina Gouty-Yellow, Associate Judge Pro Tempore
Clerk of Court, Trial Court – Marcella Cloud
Assistant Clerk of Court, Trial Court – Selina Joshua
Bailiff/Process Server – Albert Carrimon
Administrative Assistant – Jessi Cleveland
Staff Attorney – Amanda R. Cornelius
Supreme Court Clerk – Mary Endthoff

* 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 Judiciary Fee Schedule

Filing Fees
- Complaint.................................$50.00
- Petition for Release of Per Capita Distribution (Children’s Trust Fund) .................$50.00
- Motion to Appear Pro Hac Vice...........$35.00
- Appellate Filing Fee......................$50.00
- Petition to Register and Enforce Foreign Judgment/Order .........................$20.00
- Marriage License Fee...................$50.00

Court Fees
- Copying ....................................$0.10/page
- Faxing ....................................$0.25/page (sending & receiving)
- CD of Hearings ..............................$12.50/CD
- Deposition Videotape ......................$10.00/tape
- Certified Copies .........................$0.50/page
- Equipment Rental .........................$5.00/hour
- Admission to Practice ...................$50.00

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

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

Ho-Chunk Nation Code
Ordinance/Act Name Title Number HCC Section.
ELDER PROTECTION ACT, 4 HCC § 1.
EMPLOYMENT RELATIONS ACT, 6 HCC § 5.
(for detailed citation information consult LEGISLATIVE ORGANIZATION ACT, 2 HCC § 11.36)

HCN Supreme Court Case Law
Case Name, Case Number (HCN S. Ct., month, day, year).

HCN Trial Court Case Law
Case Name, Case Number (HCN Tr. Ct., month, day, year)

Ho-Chunk Nation Rules of Civil Procedure
HCN R. Civ. P. 19(B)
Rule 63.  **Judicial Review of Administrative Adjudication.**

(A) Any person aggrieved by a final agency decision may request that the Ho-Chunk Nation Trial Court review such decision by filing a *Petition for Administrative Review* with the Court within thirty (30) calendar days of such decision, unless otherwise provided.

1. The following laws provide for filing within thirty (30) days:
   - Employee Relations Act of 2004
   - Ho-Chunk Nation Insurance Review Commission Ordinance
   - Ho-Chunk Nation Tribal Employment Rights Ordinance

2. The following laws provide for filing within forty-five (45) days:
   - Gaming Ordinance

3. The following laws provide for filing within one hundred and eighty (180) days:
   - Tribal Enrollment and Membership Act

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

(C) The petitioner shall file copies of the *Petition for Administrative Review* upon all parties to the action. The petitioner shall promptly file *Proof of Service* with the Court.

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

1. The petitioner may request an opportunity to supplement the evidentiary record within an Employee Grievance Review Board appeal, provided that the petitioner demonstrates that the Board:
   - excluded relevant evidence as defined by the *Federal Rules of Evidence*, Rule 401; or
   - failed to consider evidence that could not reasonably have been discovered prior to the Employee Grievance Review Board hearing.

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

(1) If the petitioner alleges one of the conditions stated in *HCN R. Civ. P.* 63(D)(1)(a-b), then the Court shall convene a hearing to determine whether to include supplemental evidence in the administrative record. The Court shall announce the briefing schedule, which shall resemble the schedule set forth in *HCN R. Civ. P.* 63(E), in a written decision after the hearing.

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

(1) admitted exhibits, including an explanation for refusing any offered exhibits;

(2) a transcript of the proceedings, which may be in digital or other electronically recorded format, sufficiently clear so that the Court may determine what transpired in the proceedings;

(3) any other material relied on by the agency in making its determination; and/or

(4) any supplemental evidence received pursuant to *HCN R. Civ. P.* 63(D)(1)(a-b).

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

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

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

(1) The Employee Relations Act of 2004 mandates that the Trial Court may only set aside or modify a Board decision if it was arbitrary and capricious.

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

(K) Either party may appeal the Trial Court’s decision to the Ho-Chunk Nation Supreme Court.