

1 For purposes of this decision, the Court notes that the petitioner was required to submit “a
2 notation to the case file wherein the respondent raised the defense of fraud,” on or before March
3 12, 2010. *Id.* at 6. On March 12, 2010, the petitioner submitted *Plaintiff’s [sic] Attorneys Fees &*
4 *Costs Itemization Related to Compel Discovery Dated October 19, 2009* (hereinafter *Cost*
5 *Itemization*) and attachments. This decision represents the second of three (3) separate orders
6 arising from the February 24, 2010 *Motion Hearing*. See *Order (Issuing Scheduling Directive)*,
7 CV 05-109 (HCN Tr. Ct., Mar. 3, 2010) at 1.
8

9 **APPLICABLE LAW**

10 **CONSTITUTION OF THE HO-CHUNK NATION**

11 **Art. IV - General Council**

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13 Sec. 2. Delegation of Authority. The General Council hereby authorizes the legislative
14 branch to make laws and appropriate funds in accordance with Article V. The General Council
15 hereby authorizes the executive branch to enforce the laws and administer funds in accordance
16 with Article VI. The General Council hereby authorizes the judicial branch to interpret and apply
17 the laws and Constitution of the Nation in accordance with Article VII.

18 **Art. VII - Judiciary**

19 Sec. 7. Powers of the Supreme Court.

20 (b) The Supreme Court shall have the power to establish written rules for the Judiciary,
21 including qualifications to practice before the Ho-Chunk courts, provided such rules are
22 consistent with the laws of the Ho-Chunk Nation.

23 **HO-CHUNK NATION JUDICIARY ESTABLISHMENT AND ORGANIZATION ACT, 1**
24 **HCC § 1**

25 **Subsec. 5. Rules and Procedures**

26 c. The Judiciary shall have exclusive authority and responsibility to employ personnel and
to establish written rules and procedures governing the use and operation of the Courts.

Subsec. 7. Subpoenas. Any Judge of the Trial Court, and if authority is delegated by the
Chief Trial Judge to the Clerk of Court, shall have authority to issue subpoenas to compel
attendance of witnesses or the production of documents or things. The failure to comply with a

1 subpoena shall subject the person not complying to the contempt power of the Court. A person
2 present in court may be required by the Court to testify in the same manner as if a subpoena was
issued.

3 DISCOVERY ACT, 2 HCC § 3

4 Subsec. 2. Findings.

5 c. The Nation has a right to disclose any information maintained by the Nation when
6 required in the best interest of the Nation, the administration of justice, or other applicable law.

7 Subsec. 3. Purpose and Intent.

8 This Act prescribes procedures for production or disclosure of any material contained in the files
9 of the Nation, any information relating to material contained in the files of the Nation, or any
10 materials or information acquired by any person while such person is or was an employee of the
11 Nation as a part of the performance of that person's official duties or because of that person's
12 official status, in any federal, state and tribal legal proceeding whether or not the Nation is a
party, including any proceeding in which the Nation is representing a tribal government or
employee, when a subpoena, order, request, or demand of a court or other authority is issued for
such material or information.

13 Subsec. 7. General Production or Disclosure in Proceedings in which the Nation is a Party.

14 a. In any proceeding in which the Nation is a party, no past or present official or employee
15 of the Nation shall, by oral or written testimony or any other means, in response to a request or
16 demand, produce or disclose any material contained in the files of the Nation, produce or
17 disclose any information relative to or based upon such material, or produce or disclose any
18 information or any material acquired because of the performance of that person's employment or
official status, without the prior written approval of the Attorney General. This Act shall not be
deemed to apply to those cases brought between or among the Legislative, Executive, or Judicial
Branches of the Ho-Chunk Nation in the Ho-Chunk Trial Court.

19 b. Whenever a demand for production or disclosure is made upon a past or present official
20 or employee under this Section, the official or employee shall immediately notify the Attorney
21 General. The Attorney General shall request a copy of the request or demand, a summary of the
material, information, or testimony sought, and its relevance to the proceeding.

22 c. The Attorney General may approve any request for production or disclosure within the
23 scope of this Section and subject to Section 8 of this Act; provided, that:

24 (1) any production or disclosure shall be limited to the scope of the demand or the
request; and

25 (2) the Attorney General shall not approve production or disclosure to any proceeding
26 without such demand or request.

1 Subsec. 8. Non-Disclosure of Certain Information.

2 a. The Attorney General shall not approve disclosure, production, or testimony regarding
3 any material or information by any past or present Nation official or employee with respect to
4 any request or demand if:

4 (1) disclosure would violate federal or tribal law or regulation;

5 (2) disclosure would reveal confidential information maintained by the Nation as
6 confidential, including but not limited to medical and personnel files;

7 (3) disclosure would be contrary to the best interests of the Nation; or

8 (4) disclosure would reveal confidential communication between an attorney and
9 client.

10 b. The Attorney General shall not approve disclosure, production, or testimony, unless an
11 appropriate court finds a substantial showing of need for such information, if:

11 (1) disclosure would reveal attorney work-product prepared in anticipation of
12 proceedings; or

13 (2) disclosure would reveal intra-governmental communications regarding business
14 matters or inter-governmental communications.

15 c. The Attorney General shall not approve disclosure, production, or testimony, unless the
16 Attorney General determines that the administration of justice requires disclosure of such
17 information, if:

17 (1) disclosure would reveal the identity of a confidential source or informant, unless
18 the investigative agency and the source or informant have no objection;

18 (2) disclosure would reveal investigatory records compiled for law enforcement
19 purposes, and would interfere with enforcement proceedings or disclose investigative techniques
20 and procedures the effectiveness of which would thereby be impaired; or

21 (3) disclosure would improperly reveal trade secrets without the owner's consent.

22 TRIBAL ENROLLMENT & MEMBERSHIP CODE, 2 HCC § 7

23 Subsec. 4. Office of Tribal Enrollment.

24 b. The Office will maintain confidentiality of all Membership information consistent with
25 this Code and other applicable laws of the Nation.

26 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

1 Ch. I - Introduction to the Rules

2 Rule 1. Scope of Rules.

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

6 Ch. V - Discovery

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

12 Rule 38. Power to Compel.

13 The Court retains the inherent authority to compel disclosure of material it has cause to believe is
14 relevant to the mater [*sic*] before it.

15 FEDERAL RULES OF EVIDENCE¹

16 Art. IV - Relevancy and Its Limits

17 Rule 401. Definition of "Relevant Evidence".

18 "Relevant evidence" means evidence having any tendency to make the existence of any
19 fact that is of consequence to the determination of the action more probable or less probable than
20 it would be without the evidence.

21 **RELEVANT LAW**

22 HO-CHUNK NATION DISCOVERY ACT, HCNL.0011-95

23 Subsec. 7. General Production or Disclosure in Proceedings in which the Nation is a Party.

24
25 _____
26 ¹The Ho-Chunk Nation Supreme Court adopted the FEDERAL RULES OF EVIDENCE on for usage in all tribal judicial proceedings. *In re Adoption of Fed.R.Evid.* (HCN S. Ct., June 5, 1999).

1 (a) In any proceeding in which the Nation is a party, no past or present official or employee
2 of the Nation shall, by oral or written testimony or any other means, in response to a request or
3 demand produce or disclose any material contained in the files of the Nation, produce or disclose
4 any information relative to or based upon such material, or produce or disclose any information
5 relative to or based upon such material, or produce or disclose any information or any material
6 acquired because of the performance of that person's employment or official status, without the
7 prior written approval of the Attorney General

8 (b) Whenever a demand for production or disclosure is made upon a past or present official
9 or employee under this Section, the official or employee shall immediately notify the Attorney
10 General. The Attorney General shall request a copy of the request or demand, a summary of the
11 material, information, or testimony sought, and its relevance to the proceeding.

12 (c) The Attorney General may approve any request for production or disclosure within the
13 scope of this Section, subject to Section 8 of this act; PROVIDED, that:

14 (1) any production or disclosure shall be limited to the scope of the demand or the
15 request; and

16 (2) the Attorney General shall not approve production or disclosure to any proceeding
17 without such demand or request.

18 Subsec. 8. Non-Disclosure of Certain Information

19 (a) The Attorney General shall not approve disclosure, production, or testimony regarding
20 any material or information by any past or present Nation official or employee with respect to
21 any request or demand if:

22 (1) disclosure would violate federal or tribal law or regulation;

23 (2) disclosure would reveal confidential information maintained by the Nation as
24 confidential, including but not limited to medical and personnel files;

25 (3) disclosure would be contrary to the best interests of the Nation; or

26 (4) disclosure would reveal confidential communication between an attorney and
client.

(b) The Attorney General shall not approve disclosure, production, or testimony, unless an
appropriate court finds a substantial showing of need for such information, if:

(1) disclosure would reveal attorney work-product prepared in anticipation of
proceedings; or

(2) disclosure would reveal intra-governmental communications regarding business
matters or inter-governmental communications.

1 (c) The Attorney General shall not approve disclosure, production, or testimony, unless the
2 Attorney General determines that the administration of justice requires disclosure of such
information, if:

3 (1) disclosure would reveal the identity of a confidential source or informant, unless
4 the investigative agency and the source or informant have no objection;

5 (2) disclosure would reveal investigatory records compiled for law enforcement
6 purposes, and would interfere with enforcement proceedings or disclose investigative techniques
and procedures the effectiveness of which would thereby be impaired; or

7 (3) disclosure would improperly reveal trade secrets without the owner's consent.

8 **FINDINGS OF FACT**

9 1. On July 25, 2007, the petitioner served the respondent *Plaintiff's [sic] Second Set of*
10 *Interrogatories & Second Request for Production of Documents* (hereinafter *Discovery Request*
11 *II*). *Plaintiff's [sic] Prehearing Br. in Supp. of Mot. to Compel Disc. & Mot. for Costs, Fees, &*
12 *Sanctions* (hereinafter *Prehearing Brief*), Att'y Aff. at 1. The following discovery issues remain
13 unresolved:
14

15 a. "Interrogatory No. 5: For each category of documents listed in Interrogatory No.
16 2, please identify whether the HCN has retained such documents for the following persons, and
17 if so, the location of the documents: B. Michelle Chamberlain." *Id.*, Ex. A at 5.

18 i. The respondent objects to petitioner's interrogatory 5B on relevancy
19 grounds since it relates to request for production 3. *Mot. Hr'g* (LPER at 7, Feb. 24, 2010,
20 02:43:40 CST).

21 b. "Interrogatory No. 6: For each category of documents listed in Interrogatory No. 2
22 where the defendant [sic] responded in Interrogatory No. 5 that such documents were not
23 retained, provide an explanation of the reason why the documents were not retained for each of
24 the following persons: B. Michelle Chamberlain." *Prehr'g Br.*, Ex. A at 5.
25
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1 i. The respondent objects to petitioner's interrogatory 6B on relevancy
2 grounds since it relates to request for production 3. LPER at 7, 02:43:40 CST.

3 c. "Request No. 3: Please provide a copy of all documents (including, as defined in
4 the definitional section above, audio recordings of, e.g., meetings, e-mail messages in hard copy,
5 paper format) relating to Michelle Chamberlain." *Prehr'g Br.*, Ex. A at 11.

6 i. The respondent objects to request for production 3 on two (2) grounds:

7 a. relevancy, LPER at 7, 02:43:32 CST; and

8 b. the respondent believes the DISCOVERY ACT requires the petitioner
9 to obtain a court order to release petitioner's request for production 3. *Id.* at 7,
10 02:42:38 CST.

11 d. "Request No. 2: Please provide a copy of all documents (including, as defined in
12 the definitional section above, audio recordings of, e.g., meetings, and e-mail messages in hard
13 copy, paper format) relating to Leilani Chamberlain, except those previously provided in
14 response to Plaintiff's [*sic*] First Request for Production of Documents." *Prehr'g Br.*, Ex. A at
15 11.

16 i. The respondent believes the DISCOVERY ACT requires the petitioner to
17 obtain a court order to release petitioner's requests for production 2. LPER at 7, 02:42:38
18 CST.

19 e. "Request No. 5: Please provide a copy of the last official membership roll that
20 lists the Plaintiff [*sic*] as a member of the HCN and the first HCN membership roll that excludes
21 the Plaintiff's [*sic*] name from the list of HCN members on the roll." *Prehr'g Br.*, Ex. A at 11.
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1 i. The respondent believes the DISCOVERY ACT requires the petitioner to
2 obtain a court order to release petitioner's requests for production 5. LPER at 7, 02:42:38
3 CST.

4 2. Pursuant to the Court's request, on March 12, 2010, the petitioner submitted Exhibit B,
5 *Defendant's [sic] Answer to First Set of Interrogatories and Request for Documents* (hereinafter
6 *Discovery Answer*). See *Order (Issuing Scheduling Directive)* at 6.

7 3. Within the *Discovery Answer*, the respondent asserts that removal from the Ho-Chunk
8 Nation membership roll affects an individual's right to distribution of the corpus of their per
9 capita trust fund. *Cost Itemization*, Ex. B at 16. The respondent further responded that the reason
10 for loss of the right to the funds is due to fraud and misrepresentation. *Disc. Answer* at 16-17.

11 4. The respondent argues that interrogatories 5 and 6 and request for production 3, regarding
12 the petitioner's mother, are not of consequence to the writ of mandamus filed, and, therefore, are
13 not relevant to the proceeding. LPER at 11, 02:58:32 CST.

14 5. The petitioner responded that the disputed interrogatories and requests for production are
15 relevant since the respondent answered a previous interrogatory by asserting an affirmative
16 defense of fraud. *Id.* at 12, 03:00:48 CST; see also *Cost Itemization*, Ex. B at 16.

17 6. The respondent further asserts that petitioner's requests for production 2, 3, and 5,
18 relating to the petitioner's and Michelle Chamberlain's, petitioner's mother, respective
19 enrollment records are confidential, and a Court order is required for the Attorney General to
20 release the information. LPER at 9, 02:49:17, 02:52:24 CST.

21 7. The petitioner asserts a substantial need for the confidential enrollment files of the
22 petitioner and Michelle Chamberlain in order to prepare an argument against the respondent's
23 affirmative defense of fraud. *Id.* at 10, 02:54:24 CST. Specifically, the petitioner asserts the
24 affirmative defense of fraud. *Id.* at 10, 02:54:24 CST. Specifically, the petitioner asserts the
25 affirmative defense of fraud. *Id.* at 10, 02:54:24 CST. Specifically, the petitioner asserts the
26 affirmative defense of fraud. *Id.* at 10, 02:54:24 CST. Specifically, the petitioner asserts the

1 presence of a substantial need for Leilani Chamberlain’s enrollment file since the corpus of the
2 trust has not vested due to disenrollment. *Id.* at 10, 02:54:24. Additionally, the petitioner asserts a
3 need for Michelle Chamberlain’s enrollment file since petitioner’s enrollment was based on “the
4 lineage and evidence produced by Michelle Chamberlain.” *Id.* at 11, 02:57:36 CST.

6 DECISION

7 The stated purpose of discovery is to enable the parties to uncover evidence relevant to
8 the action, and the Court must ensure that the parties experience reasonabl[y] open discovery.
9 *HCN R. Civ. P.*, Ch. V, Intro. The prevailing definition of relevant evidence is exceedingly
10 broad, that being: evidence having any tendency to make the existence of any fact that is of
11 consequence to the determination of the action more probable or less probable than it would be
12 without the evidence. FED. R. EVID. 401. Thus, in order to adequately prepare for trial, parties
13 should be allowed broad discovery regarding issues raised during the pendency of an action
14 unless the request is prohibited by law or irrelevant.

15
16 Although answers to interrogatories are not admissions or defenses, they oftentimes
17 prove relevant, if not vital, during several stages of litigation, *e.g.*, summary judgment
18 proceedings. *Donna L. Peterson v. HCN Compliance Division*, CV 98-51 (HCN Tr. Ct., Jun. 22,
19 1999) at 3-4. The respondent’s interrogatory responses raised issues of fraud and
20 misrepresentation as justification for dissolution of a minor’s trust fund. *Supra Finding of Fact*
21 3. The response not only puts fraud in issue, but also opens the question as to who committed
22 the fraud and misrepresentation. Further, the record indicates that the petitioner’s enrollment was
23 based on “the lineage and evidence produced by Michelle Chamberlain.” LPER at 11, 02:57:36
24 CST. Therefore, information related to Michelle Chamberlain may be relevant.

1 In addition to a relevancy objection regarding Michelle Chamberlain’s enrollment file
2 and related interrogatories, the respondent also asserted a DISCOVERY ACT objection. The
3 petitioner requested that the respondent produce enrollment files for Michelle and Leilani
4 Chamberlain, and specific official membership lists. *Supra Finding of Fact 1c – 1e*. The
5 respondent maintains that it cannot furnish the requested documents without a court order since
6 they are deemed confidential. LPER at 7, 02:42:38 CST.

7
8 The respondent fails to provide the Court with a direct citation establishing an enrollment
9 file as confidential. However, the DISCOVERY ACT defines confidential as “any statement,
10 document, or process of the Nation, which arises either from a fiduciary or privileged
11 communication or is protected as a matter of applicable law.” DISC. ACT, § 3.4b. As such, the
12 Attorney General must not release information if “disclosure would reveal confidential
13 information maintained by the Nation as confidential, including but not limited to medical or
14 personnel files[.]” *Id.*, § 3.8a(2). This language does not directly declare that an enrollment file is
15 confidential, nor does it directly exclude it from such a designation. Nevertheless, the TRIBAL
16 ENROLLMENT AND MEMBERSHIP CODE (hereinafter MEMBERSHIP CODE) establishes that “the
17 [Enrollment] Office will maintain confidentiality of all Membership information consistent with
18 this Code and other applicable laws of the Nation.” MEMBERSHIP CODE, 2 HCC § 7.4b. Read
19 together, the laws persuasively indicate that enrollment files (including disenrollment
20 information) and membership lists are maintained as confidential by the Nation. Confidential
21 information is protected from disclosure by the DISCOVERY ACT.

22
23 The ACT directs that “[i]n any proceeding in which the Nation is a party, no . . . present
24 official . . . of the Nation shall . . . , in response to a request or demand, produce or disclose any
25 material contained in the files of the Nation . . . without the prior written approval of the
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1 Attorney General.” DISC. ACT, § 3.7a. Yet, “[t]he Attorney General shall not approve disclosure,
2 production, or testimony regarding any material or information by any . . . present Nation
3 Official . . . with respect to any request or demand if . . . disclosure would reveal confidential
4 information maintained by the Nation as confidential. . . .” *Id.*, § 3.8a(2). Additionally, if parties
5 establish a substantial need for protected information, the Court may order the Attorney General
6 to release information if: “(1) disclosure would reveal attorney work-product prepared in
7 anticipation of proceedings; or (2) disclosure would reveal intra-governmental communications
8 regarding business matters or inter-government communications.” *Id.*, § 3.8b. On its face, the
9 statute suggests that the Court can only order the release of protected information subject to
10 paragraph 8b, which does not include information classified as simply confidential. The question
11 then becomes whether the Court has the authority to compel the Attorney General to disclose
12 confidential information maintained by the Nation.
13

14 Examining the ACT in its entirety, the Court may seemingly order discovery of
15 confidential information when a party presents a substantial showing of need for the information.
16 “The Nation has a right to disclose any information maintained by the Nation when required in
17 the best interests of the Nation, the administration of justice, or other applicable law.” *Id.*, § 3.2c.
18 This language mitigates against a strict interpretation of the DISCOVERY ACT. Furthermore,
19 precedent establishes that the ACT “directly or indirectly provides for an exception when ‘an
20 appropriate court finds a substantial showing of need for such information.’” *Joseph Decorah v.*
21 *Ho-Chunk Nation*, CV 02-47 (HCN Tr. Ct., Oct. 22, 2002).² A reasonable interpretation of the
22 DISCOVERY ACT would not result in disclosure of information also protected by federal law. The
23 interpretation simply means that through its inherent authority, the Court acts within its
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25 ² Although the *Decorah* decision rested upon the 1995 HO-CHUNK NATION DISCOVERY ACT, the language of the
26 current version of the DISCOVERY ACT is virtually identical to its predecessor. As such, the Court may still rely on
the analysis of that case.

1 discretion to order disclosure of information protected by the DISCOVERY ACT when justice so
2 requires.

3 The Ho-Chunk Nation General Council delegated exclusive constitutional authority to the
4 Ho-Chunk Nation Supreme Court “to establish written rules for the Judiciary.” CONST. OF THE
5 HO-CHUNK NATION (hereinafter CONSTITUTION), ART. VII, § 7(b); *see also* HCN JUDICIARY
6 ESTABLISHMENT & ORG. ACT (hereinafter JUDICIARY ACT), 1 HCC § 1.5c; *Bonnie Smith v. HCN*
7 *Gaming Comm'n*, SU 01-02 (HCN S. Ct., May 11, 2001) at 2. Pursuant to this delegation, the
8 Supreme Court adopted the *Ho-Chunk Nation Rules of Civil Procedure* on May 11, 1996, which
9 “govern the procedure of the Trial Court in all actions and proceedings.” *HCN R. Civ. P.* 1.
10 Specifically, the Supreme Court affirmed that “[t]he Court retains the inherent authority to
11 compel disclosure of material it has cause to believe is relevant to the matter before it.” *HCN R.*
12 *Civ. P.* 38; *see also Producers Releasing Corp. de Cuba v. PRC Pictures, Inc.*, 176 F.2d 93, 95
13 (2d Cir. 1949) (noting that a court possesses inherent authority to compel a party to produce
14 relevant evidence).

15
16 The Ho-Chunk Nation Legislature has consistently observed that “[a]ny Judge of the
17 Trial Court . . . shall have the authority to issue subpoenas to compel attendance of witnesses or
18 the production of documents or things.” JUDICIARY ACT, § 1.7. In doing so, the Legislature did
19 not create, but rather recognized an inherent authority flowing from the constitutional delegation
20 of the judicial power.³ *See* CONST., ARTS. IV, § 2. ““The inherent powers of . . . courts are those
21 which “are necessary to the exercise of all others.”” *Chloris Lowe, Jr. v. HCN Legislature*
22 *Members Elliot Garvin et al.*, CV 00-104 (HCN Tr. Ct., Mar. 22, 2004) at 21 (quoting *Roadway*
23

24
25
26 ³ The Legislature, as well as the Supreme Court, has explicitly acknowledged the presence of inherent judicial powers. CONTEMPT ORDINANCE, 2 HCC § 5.3; *HCN R. Civ. P.* 38.

1 *Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980) (quoting *United States v. Hudson*, 11 U.S. 32,
2 34 (1812)); see also *State v. Holmes*, 315 N.W.2d 703, 709 (Wis. 1982). More specifically,

3 “[t]he right to resort to means competent to compel the production of
4 written, as well as oral, testimony seems essential to the very existence
5 and constitution of a Court of common law, which receives and acts upon
6 both descriptions of evidence, and could not possibly proceed with due
7 effect without them.”

8 *Wilson v. United States*, 221 U.S. 361, 372 (1911) (quoting *Amey v. Long*, 103 Eng. Rep. 653,
9 658 (K.B. 1808)) (tracing the origin of a subpoena *duces tecum*).⁴

10 Consequently, it appears illogical and improper for the Attorney General, the supervisor
11 of the litigant’s attorney, to determine whether a request meets the administration of justice,
12 thereby determining the extent of discovery. A strict interpretation of the DISCOVERY ACT
13 vesting the Attorney General with such authority would seemingly violate the separation of
14 powers and infringe on the Court’s constitutionally delegated authority to render fundamental
15 judicial determinations. CONST., ARTS. III, § 3, IV, § 2. As discussed, a relevant procedural rule
16 affirms that “[t]he Court retains the inherent authority to compel disclosure of material it has
17 cause to believe is relevant to the matter before it.” *HCN R. Civ. P.* 38. Hence, the neutral party,
18 *i.e.*, the Court, whose inherent authority includes the power to compel, should make scope of
19 discovery determinations. Consistent with its inherent authority and previous case law, the Court
20 may order production of confidential information protected by the DISCOVERY ACT when the
21 parties demonstrate a substantial need for the requested information.

22 As stated above, the respondent raised issues of fraud and misrepresentation in relation to
23 the petitioner’s disenrollment, citing such behavior as justifications for barring disbursement of
24 per capita funds. *Disc. Answer* at 16-17. The petitioner’s enrollment depended upon information

25 ⁴ The CONSTITUTION confers authority upon the Court to award both legal and equitable remedies. CONST., ART.
26 VII, § 5(a); see also generally *Kirkwood*, CV 04-33 (HCN Tr. Ct., Feb. 11, 2005) at 14-17 (analyzing the historical
distinction between actions at law and equity).

1 provided by Michelle Chamberlain. Further, the respondent asserts as an affirmative defense that
2 disenrollment justifies the trustee's retention of the petitioner's trust. As such, the petitioner
3 argues that access to the enrollment files proves necessary in preparation for trial. Still, the
4 respondent objects to the relevancy of the request for Michelle Chamberlain's enrollment file
5 and interrogatories related to the location of her enrollment information. Logically, the
6 petitioner's enrollment file is relevant to a cause of action implicating her enrollment status.
7 However, this somewhat obvious assessment does not automatically mean her mother's entire
8 enrollment file also becomes relevant. The petitioner cannot claim an entitlement to Michelle
9 Chamberlain's file. Like all enrollment files, the information contained within Michelle
10 Chamberlain's file remains confidential and subject to the protection of the DISCOVERY ACT. On
11 the one hand, the confidential nature of and speculative need for the file raises judicial reluctance
12 to direct the release of Michelle Chamberlain's enrollment file. On the other hand, the
13 petitioner's enrollment faltered on information provided by Michelle Chamberlain. In fairness,
14 the Court cannot ignore this information and still comply with broad discovery practices.
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16 The Court can order "production *in camera* to preserve privacy" of confidential files that
17 may contain relevant information. *Louella A. Kelty v. Jonette Pettibone et al.*, CV 98-49 (HCN
18 Tr. Ct., Mar. 4, 1999) at 13. **THEREFORE**, balancing the confidential nature of enrollment
19 files and the practice of allowing broad discovery of relevant information, the Court finds that
20 Michelle Chamberlain's enrollment file and related interrogatories are relevant since the
21 petitioner must prepare for litigation regarding fraud and misrepresentation. The respondent must
22 answer the remaining interrogatories on or before Friday, May 21, 2010. **ADDITIONALLY**,
23 the Court recognizes that both Leilani and Michelle Chamberlain's files may contain information
24 subject to additional protections, *e.g.*, federal law, and orders the respondent to deliver any
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1 protected information contained within Leilani and Michelle Chamberlain's files for *in camera*
2 inspection on or before Monday, May 10, 2010. **FINALLY**, in accordance with the DISCOVERY
3 ACT, the Court finds a substantial need for the confidential enrollment files. The respondent, by
4 and through the Attorney General, must produce Leilani and Michelle Chamberlain's enrollment
5 files, excluding any information submitted for *in camera* inspection, all other documents cited
6 within request for production 2, and the last official membership roll listing the petitioner as a
7 Ho-Chunk Nation member and the first in which the respondent removed the petitioner's name,
8 on or before, May 21, 2010.

9
10 **IT IS SO ORDERED** this 26th day of April 2010, by the Ho-Chunk Nation Trial Court
11 located in Black River Falls, Wisconsin within the sovereign lands of the Ho-Chunk Nation.

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13 _____
14 Honorable Todd R. Matha⁵
15 Chief Trial Court Judge

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25 _____
26 ⁵ The Court appreciates the assistance of Law Clerk Rebecca L. Maki in the preparation and drafting of this opinion.

Ho-Chunk Nation Court System
P.O. Box 70
Black River Falls, WI 54615
(715) 284-2722 or 800-434-4070

