

HO-CHUNK NATION COURT BULLETIN

What's up in Court
Vol. I No. 1
February 1, 1996

Court Begins Newsletter to Inform Public

Court Organization

The Court system is divided into three divisions consisting of the Supreme Court, Trial Court and Traditional Court. The powers and duties of the Supreme and Trial Court are set out in the Ho-Chunk Constitution. The Traditional Court which is newly established was created by the Ho-Chunk Nation Judiciary Act of 1995, which required the Trial Court to consult with the Elders about forming some form of Traditional means of dispute resolution.

The Elders were contacted by the Trial Court who began to meet in the summer of 1995 to discuss the format for either creating a panel to advise the Court System on Ho-Chunk tradition and customs or come up with a dispute resolution forum. The elders included Orville Greendeer, Donald Blackhawk, Bert Funmaker, Eli Youngthunder, Bill Blackdeer and Chuck Kingswan. After many meetings and much deliberation, the elders have expanded the number of members to include representatives from several other clans. Additional members presently include Morgan WhiteEagle, Douglas RedEagle, Herb Goodbear, Keith Snake and Gavin Pettibone.

The Traditional Court has stated that it is open for business and willing to accept cases regarding Ho-Chunk customs and traditions, as well as other disputes, if both parties consent to come before them.

Legislative Council in Madison, where he staffed the American Indian Study Committee and the State-Tribal Natural Resources Task Force.

While in law school, William served on the Moot Court Board, where he competed in the E. Evans Constitutional Law Competition taking First Place and Best Brief Honors with classmate and local area attorney Gerald Fox. William interned with the Oneida Tribal Law Office and was later appointed as a project assistant at the Great Lakes Indian Law Center, where after graduation he volunteered his time as a Supervising Attorney.

William's duties with the Trial Court will include legal research, drafting legal memoranda, assisting patrons of the Ho-Chunk Nation Court System Law Library housed at the Court Building on Hwy. 54 East and acting as a Marshall for the Ho-Chunk Supreme Court, as well as, editing this Bulletin. Welcome William!

The Trial Court staff now includes Court Clerks Helen Mike and Marcella Cloud, Bailiff Verdrie Kivimaki, and Chief Trial Judge Mark Butterfield and Trial Judge pro tem Robert Kittecon. The Legislature is in the process of selecting another Associate Judge for the Trial Court.

Supreme Court Doings

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Court Personnel

The Trial Court announces that it hired William Boulware, Jr. as its Staff Attorney/Law Clerk on January 15, 1996 for a one year appointment. William is originally from Fayetteville, North Carolina. He is a 1995 Graduate of the University of Wisconsin -Madison Law School and a 1990 graduate of Dartmouth College with a major in Native American Studies. He is a former staff intern for the Wisconsin

In news announced by the Legislative minutes Forrest M. Whiterabbit, Associate Justice of the Ho-Chunk Supreme Court was appointed by President Chloris A. Lowe, Jr. to be the Executive Director of the Department of Administration. At present it is anticipated that Mr. Whiterabbit's appointment which was confirmed by the Ho-Chunk Legislature will become effective in mid-to late February. This will create a vacancy on the Ho-Chunk Supreme Court, which will have to be filled by a special election.

January Filings

In this section of the Bulletin the Ho-Chunk Nation Court System will post cases which have been filed in Court in the previous month. Children's cases will not be listed to protect those involved. This section will include case names, numbers and a subject listing the type of case that was filed. Cases filed in the Ho-Chunk Court System are public and all cases, with the exception of children's cases, are open for inspection by the membership of the Ho-Chunk Nation and interested members of the public.

At present the most frequent cases filed are Indian Child Welfare or ICW cases, Personnel cases and Appeals from the Ho-Chunk Nation Gaming Commission. Several other provisions of existing ordinances give the Courts the power to review decisions but as of yet these have seldom been used, such as Enrollment, Elections, and Recycling.

Case Name, # & Type

Dallas White v. H.C. Enrollment Office,
CV 96-01 Appeal of Enrollment

determination.

Anna R. Funmaker v. Dornbos,
CV 96-02 Personnel/Employment appeal

Dennis Funmaker v. Dornbos,
CV 96-03, Personnel/Employment appeal.

Christine M. Hall v. H.C. Dept. Of Social Services,
CV 96-04, Personnel/Employment Appeal.

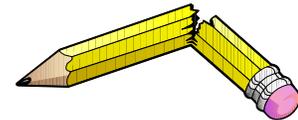
How to File a Case

Filing a case in the Ho-Chunk Nation Court System is actually quite simple. The Court accepts all cases within its jurisdiction. However, to file a case the plaintiff or filer must pay the filing fee or file a request for a waiver of the filing fee due to inability to pay.

The first document in a Court case is called a "Complaint." A Complaint is a document which tells the Court: 1. Who the parties to the case are; 2. What the dispute is about; 3. What the plaintiff or filer wants the Court to do about the dispute, that is what relief is the filer asking for? Does the plaintiff or filer want the Court to award him/her job back, gaming license back, damages, an order to the defendant to do something, or not do something. The Complaint should also state how the Trial or Traditional Court has jurisdiction to hear the case and what if any Ho-Chunk Nation Constitutional provisions, laws, customs and traditions are involved.

The Complaint should include a short and simple statement of the relevant facts that gave rise to the dispute. The Court has developed sample forms for those interested in filing cases to use as examples. These include a sample complaint,

sample answer, and sample motion. It is also important to note that no complaint can be accepted by the Clerk of Court unless the filer signs the Complaint, and lists their address and phone number. The Complaint should be typed or neatly written on 8½ x 11 inch paper with the caption at the top and the body of the statements double spaced.



Once the Complaint is filed, the filing fee either is paid or waived by the Court, the Court will fill out a summons and have it served upon the defendant. The summons will tell the defendant that they have twenty days or so to file an answer to the complaint. Failure to answer the complaint may result in the plaintiff winning the case by default (or non-opposition). This is like a sports team winning because its opponent fails to show for the game. This is unlikely to occur. At present no case has resulted in a default judgement for the plaintiff.

Upon the service of the summons the case has begun. Later a preliminary hearing or scheduling conference between the parties will be set to discuss how the case is to proceed.

Next issue -- **Discovery**

Legal Definitions

In this section of the Bulletin, the Court will give a short

explanation of words commonly used in the Legal proceedings.

Plaintiff is a person who brings an action, complains or sues.

Defendant is a person defending or denying the suit. He or she is the person or entity being sued.

Motion is an application to or a request of a court or judge for a **Filing fee** is the fee charged by the court to initiate a court proceeding.

Court Costs

The Ho-Chunk Trial Court is part of a separate branch of government of the Ho-Chunk Nation. It is a government cost mandated by the new Ho-Chunk Constitution. In order for it to meet its needs it charges all parties fees to utilize its services. The fee schedule was recently enacted by Administrative Order of the Chief Trial Judge. The Court charges fees for the following items:

Filing Fee	\$35
Service of Summons in person	\$12
Service of Summons by Mail	\$3
Copying	.05/per copy
Service of Process by Courts	.30/per mile

Recent Decisions

Ho-Chunk Nation Legislature v. Chloris Lowe,
CV 95-28 Appeal to the Supreme Court; Stay of Trial Court Proceedings granted.

Ed Cournoyer v. Ho-Chunk Gaming Commission,
CV 95-13 Appeal of the Gaming

ruling or order directing some act be done.

Parties are the persons or entities who are directly interested in or actively concerned in the prosecution and defense of any legal proceeding.

Injunction is a legal device that requires a person or entity to do or refrain from doing a particular Commission decision.



Related Legal Matters

There are several upcoming conferences where Federal Indian law will either be a focal point or an important part of the discussion. For those interested:

*Coming Together of the Peoples Conference hosted by the Indigenous Law Students at the UW Law School in Madison, WI to be held at Memorial Union, Madison, WI February 23 and 24, 1996. The Conference is open to the Public at no cost.

*The Federal Bar Association's Federal Indian Law Conference is held annually in Albuquerque, NM. This year's conference will be on April 11 and 12, 1996 at the Marriot Hotel.

thing.

Subpoena is a command to appear at a certain time and place to give testimony on a certain matter.

*The Sovereignty Conference, formerly hosted by UW Stevens Point will be held this year at Keshena, WI and hosted jointly by UW Stevens Point and the Menominee Nation Community College on March 7th and 8th, 1996.

Renovation Plans for Court Building

As some of you know the Court Building was the site of the old WWBC offices off Hwy. 54 East in Black River Falls, WI. The Building was originally designed as four elderly apartments but due to lack of suitable water and other reasons, was converted for use as Tribal offices. Due the opening of the new Trial Office Building in the Industrial Park, the old Executive offices became available for use by the newly created Ho-Chunk Nation Judiciary. The problem is that the building was never designed for that use and must be revamped to be suitable as a Court building.

At present the Supreme Court, Trial Court and Traditional Court elders are all using the old WWBC conference room for court sessions and meetings. This hardly allows any room for spectators or interested members of the public. That is why the Court is soon to undergo a renovation to put in a Courtroom and revamp the building for better use of space. Two of the four existing bathrooms will be removed as will the kitchen fixtures in the four apartments.

The renovation will hopefully meet the immediate needs of the Ho-Chunk Nation Judiciary. The Court will be donating or selling all of the reusable fixtures that are not recycled in the renovation and use the proceeds for the renovation project.

It is presently expected that the following will be surplus property for distribution or sale:

- 3 range hoods
- 3 kitchen cabinet sets (upper)
- 1 kitchen cabinet & counter top w/ sink.
- 2 or 3 toilets
- 3 baths w/ back splash assembly
- 2 bathroom sinks and cabinets
- 2 small medicine cabinets and mirrors
- 3 standard water heaters (electric)
- various fanfold closet doors
- Closet shelves and hanger rods.

It is expected that renovations might begin as early as mid February and will last three to four months. During the interim the Court System will stay in the same place but move to the two back trailers on the site during the renovations.

Renovations are expected to be done by Kraemer Brothers and design work by Paul Pink.



HO-CHUNK NATION COURT BULLETIN

What's up in Court
Vol. I No. 2
March 1, 1996

An Informed and Empowered Public

Legal Training

Last year the Court System sponsored training by the National Indian Justice Center to train Guardian Ad Litem [GAL] in Tribal Court. Although there were over 20 trainee's, the Tribal Court has discovered that many of the participants were either unable or unwilling to accept GAL appointments. A Guardian Ad Litem is a court appointed advocate for the Child in Indian Child Welfare cases.

Another reason the Court is looking for interested persons to serve as GAL's, is the fact that certain tribal areas have no trained GAL to represent children who have ICW cases near them. The areas under-served are Minneapolis-St. Paul, Wisconsin Rapids, Madison, Tomah, and Black River Falls. A GAL is paid up to \$200 per case plus

expenses such as mileage, postage, fax and long distance charges actually incurred on a case. A GAL must have available transportation, a phone, as well as the ability to communicate well both orally and in writing. GAL's often are required to appear in Court for the children they represent.

Lay Advocate Training

The Trial Court is looking for persons interested in training to become lay advocates. A lay advocate is a person trained in the law who is able to represent people in Tribal court. A lay advocate would be trained in the procedures of Court and the laws applicable to the case. Lay advocates are like lawyers but without the extensive three year training lawyers receive in Law School.

At the present time there are insufficient numbers of lay advocates available to represent parties in Tribal Court. Anyone interested in this type of training should contact acting Clerk of Court Marcella Cloud to be put on the list of potential trainees. The Court is looking for funding for limited training of lay advocates in the near future.

Bar News

The Ho-Chunk Nation Court system is in the process of establishing a HCN Bar for all attorneys practicing and wishing

to practice before the Nation's courts. The HCN Bar, once established, will detail services and training that can be provided to facilitate the practice of law within the Ho-Chunk Courts. The HCN Bar, we hope, will provide a forum for both government and private practice attorneys, lay advocates, Indians and non-Indians, and others interested in the field of Indian law and general practice. The HCN Bar is intended to foster relationships between attorneys and others involved with the legal issues of concern to the Ho-Chunk Nation and other tribal governments. Prospectively, the HCN Bar plans to sponsor CLE seminars and contribute to the Court Bulletin.

The HCN Bar is in its pre-infancy stages. The initial plan is to compile a current of list of individuals already admitted to practice before the court to create a directory, develop individual files on each person admitted to practice, design a brochure explaining the services that may be provided and establish an attorney's oath or affirmation of service. With the establishment of the HCN Bar, it will require that many presently admitted attorneys complete an application form and other pertinent information necessary to set up individual files and to issue HCN Bar cards which will be maintained by the court administrator. More information will be developed and other ideas explored. If you have any

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additional suggestions please contact the Court.

On March 8, 1996, the newly appointed Trial Court Associate Judge Joan Greendeer Lee will be inaugurated. A reception is tentatively scheduled to follow the inauguration ceremony. Judge Lee is presently living in the Washington D.C. area and will be serving part-time until such arrangements can be made to accommodate the court schedule and Judge Lee's schedule. Judge Lee will serve as an Associate Trial Court Judge hearing a full case load.

Initially Judge Lee will attend training at a judicial college to aide her in the transition, as well as help prepare her for the diversity of cases she will be presiding over.

On a more personal note, Judge Lee is married to Mr. Toby Lee. She works for the U.S. Census Bureau in Washington, where she will continue to work until she assumes her full-time tenure with the trial court. Judge Lee has been with the U.S. Census Bureau for ten years, as a geographer helping Native Americans and Alaska Natives. Judge Lee spent much of her time, growing up in and around Wyeville, Wisconsin. She is the daughter of Orville Greendeer and the late Jean Day Greendeer. Her family lives in various parts of Wisconsin.

Welcome Judge Lee.

Supreme Court

Mary Jo Brooks-Hunter, Chief Justice, Debra Greengrass and Forrest Whiterabbit, Associate Justices of the Ho-Chunk Supreme Court have adopted the Rules of Admission

to Practice. All attorneys wishing to practice in the Ho-Chunk Courts must be admitted. The applicant must be at least eighteen (18) years of age, meet certain competency requirements, demonstrate good character and fitness and take a prescribed oath. The requirements for admission to practice in the Ho-Chunk Court System are available at the Nation's Court Building Hwy.54 East, Black River Falls.

The Ho-Chunk Supreme Court has also adopted the Rules for Appellate Procedure and are in the process of developing the Ho-Chunk Court Rules of Civil Procedure and Rules of Evidence. With Justice Whiterabbit's "impending" departure from the Court, the sitting Justices will be working hard to ensure that the rules necessary for the operation of a stable court system are in place.

We prematurely reported that Justice Whiterabbit might be leaving the Supreme Court. During the Sovereignty Conference held in Madison, Justice Whiterabbit stated that he has not made up his mind whether to accept the appointment to the Department of Administration.

February Filings

The following are cases that have been filed with the Ho-Chunk Nation Court System in the previous month. Children's cases will not be listed to protect those involved. Cases filed in the Ho-Chunk Nation Court System are public and all cases, with the exception of children's cases, are open for inspection by the membership of the Ho-Chunk

Court Personnel

Nation and interested members of the public.

Case Name, # & Type

Ho-Chunk Supreme Court Cases:

Ho-Chunk Legislature v. Lowe, SU 96-01, appeal taken to determine the Presidential powers and whether the President has exceeded his authority.

Lona Decorah v. Ho-Chunk Nation, SU 96-02, an appeal brought by the Nation was denied. The Supreme Court considered the issue "moot."

Ho-Chunk Trial Court Cases:

Carol J. Ravet v. Ho-Chunk Nation Health Department, CV-96-06, employment discrimination suit.

C&B Investments v. Ho-Chunk Health Bd. & Ho-Chunk Nation, CV 96-06, plaintiff is claiming a breach of written lease by the Nation.

Susan Bosgraff v. Ho-Chunk Casino, CV-96-07, CV-96-08, plaintiff has filed a suit involving an employee grievance of suspension and separately wrongful termination.

Laura Rozek v. Ho-Chunk Casino, CV-96-09, plaintiff has filed a wrongful termination.

Sandra Sliwicki. Rainbow Casino, CV-96-10, plaintiff has filed a wrongful termination lawsuit

Edward L. Frank v. Ho-Chunk Tours (P &P), CV-96-11, plaintiff has filed a wrongful termination

suit against Ho-Chunk Tours.

Gordon Snowball v. Ho-Chunk Casino, CV-96-12, plaintiff has filed an action for wrongful termination.

When there has been a violation of law or claim that there has been a violation of the law and an injury or harm has resulted, the public must ask itself who can file or petition the government for relief. When the relief sought is through the courts, an over simplified way to determine whether or not a person has standing to properly file a lawsuit in court is to ask yourself:

1. What action has taken place that created or caused the injury?
2. Have you been harmed?
3. How have you been harmed?
4. Is the injury or harm particularized, or individualized or specific to you, and is your injury or harm different from the injury or harm suffered by others?

And finally number,

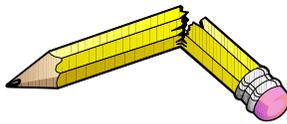
5. What relief or remedy will make you whole and is it likely to be granted. These are some of the things that the court will consider when the issue of standing is raised in the court.

Discovery

In order to plead or state a claim, the parties must have some understanding of the facts underlying the law suit or claim. They can gather those facts in many ways, by observation, personal knowledge, or conversations with anyone who will talk to them. However, people are sometimes reluctant to become involved in litigation or to produce pertinent information in the absence of being legally required to or legal compulsion.

Babcock v. Ho-Chunk Nation Department of Justice, CV-95-08, this case had been decided by the trial court on February 5, 1996. The defendant has filed a Motion for Re-Consideration in the trial court. The effect of this Accordingly, discovery rules provide a way for a party to obtain information about the case both from other parties in the case and from third parties not in the case.

Discovery rules force or compel the parties and others



involved in a lawsuit to cooperate. There are four primary means of discovery (1) oral depositions or statements, (2) written interrogatories or questions, (3) requests for the production of documents or inspection of documents, and (4) physical and mental examinations.

Discovery is a way of uncovering information before trial. During discovery the parties will encounter limits the law places on information. The discovery process can be complicated, depending upon the rules involved. Generally, discovery allows the parties to gain information from the opposing party, while providing some protection for information that is privileged or confidential. The goal of discovery is to force the parties to cooperate to uncover the truth and build the factual background necessary to reach the truth.

Next issue -- **Pre-trial Conference**

Motion will re-open the case in part.

Standing:

Legal Definitions

The Court's short explanation of words commonly used in the Legal proceedings.

Affidavit is a written or printed statement of facts, voluntarily made, and confirmed by oath, usually sworn before a notary public.

Appeal is a proceeding taken to a higher court to review the decision of a lower court.

Appellant is the person who makes an appeal from one court to a higher court, i.e., from the trial court to the Supreme Court.

Default Judgment occurs when a person or party fails to appear, answer/plead or defend him or herself, then a judgment is entered by the court. This like an athletic contest where the other team does not show up to compete.

Notice has several legal meanings, but in general to have "actual notice" of a legal proceeding is to be informed of, have knowledge of or made aware of

a fact, situation or state of affairs. An **Order** is a mandate, command or direction given by rule, regulation or from an authority such as the Court or the Executive, i.e. Executive Order or Court Order.

Pleadings are the formal statements, or allegations of the respective parties stating their claims or defenses.

Plead is to make or file any

pleading or formal statement with the court.

Respondent is the party who answers or responds to the claims made either at the Trial or Appellate court levels.

Service of Process is the delivery to the party of notice of an action, a claim or a proceeding.

To Stay an order means to refrain from enforcing it. A **Stay** is the act of stopping a judicial proceeding or act by court order.

Ralph Babcock v. Ho-Chunk Gaming Commission, CV-95-08, In the appeal of employment disciplinary action, the trial court ruled in favor of the plaintiff, by reversing the Gaming Commission decision. The trial court ruled that the defendant failed to meet its burden of persuasion. The court ordered that the fine imposed be reimbursed to plaintiff, that the Commission's decision be expunged from plaintiff's personnel file and that plaintiff be paid lost wages.

In Re Application of John Goodbear, CV-95-11, Dismissed for failure to file statement in support of appeal of a Gaming Commission decision to condition the grant of a gaming license upon payment of a fine for violation of the Gaming ordinance.

Related Legal Matters

The following is a partial list of Indian law conferences or conferences that might be of interest to people concerned about Native Peoples.

*The Sovereignty Conference will be held March 7 and 8, 1996 in

Recent Decisions

Ho-Chunk Nation Legislature v. Chloris A. Lowe, Jr., SU-96-01, the Supreme Court issued an Order reversing the trial court's decision of recusal of the trial judge to hear matters in this case.

The Court held that a recusal cannot be partial. A judge must recuse himself or herself from the entire matter to prevent the appearance of impropriety. The Keshena, WI. It will be hosted jointly by UW Stevens Point and the Menominee Nation Community College.

*The Federal Bar Association's Indian Law Conference will be April 11 and 12, 1996 at the Marriot Hotel in Albuquerque, NM.

*The 9th Sovereignty Symposium, presented by the Supreme Court of Oklahoma, the Oklahoma Indian Affairs Commission and the Sovereignty Symposium, Inc, will be held at the Doubletree Hotel, Tulsa Oklahoma on June 3 thru 6, 1996.

Editors Page:

In the News: Minnesota Appellate Court Judge challenges tribal sovereignty. Judge R.A. Randall wrote a most unusual 69 page dissenting opinion calling tribal sovereignty a "myth." Judge Randall argued that "tribal sovereignty is illusory and that tribal courts are inferior." He continued that "Indian reservations and their inhabitants are semidependent or totally dependent wards of the federal government. This is reality. It is not sovereignty." I take issue with his stance and his opinion, and probably should not validate his opinion with a comment, but I cannot resist.

Court held that the trial judge erred in failing to recuse himself.

Harry Cholka v. Ho-Chunk Gaming Commission, CV-95-07, In the appeal of employment disciplinary action, the trial court affirmed part of the Gaming Commission's decision upholding a fine but reversed the ten day suspension and ordered back pay for the plaintiff.

To me, Sovereignty is synonymous with survival. Judge Randall suggests that "[t]he present system of so-called sovereignty sets American Indians apart as we once set American blacks apart." In all fairness to Judge Randall, there is a similarity to the physical and economic separation. But that is where the similarity ends and the significant differences begin. It has been federal Indian policy to deal with the perceived "Indian problem," since the before the era of President Andrew Jackson and his removal policies, by exterminating, assimilating, and isolating tribal people. The federal government entered treaty after treaty with tribal leaders, sometimes fraudulently, to reserve lands. These treaties were supposed to protect and reserve the right to hunt, fish, gather and live off the land, in exchange for giving up some lands. The more lands we gave up the more the federal government wanted. But, I digress.

To non-Indians, the concept of federal recognition may seem perplexing; to many Indians it is insulting. Federal recognition is the establishment of a legal relationship between the U.S. government and an Indian

tribe. The relationship that the federal government has with an Indian tribe is that of government to government. It is political in nature and political in form. It is not a race based relationship. American's treatment of or the U.S. government's relationship to blacks, that subjected millions to slavery and Jim Crow laws, was a blatant application or misapplication of the laws based on race. Laws meant to protect, and not denigrate, people were applied based on the single factor of color - race. The federal relationship with the tribes was based on power, control, possession of land, war and commerce.

The relationship that has developed from federal - tribal treaties, land patents, and the other historical tools, recognize tribal governments as sovereigns. The prevailing legal opinion is that tribes enjoy a limited sovereignty, rooted in the presence of the tribal governments before the existence of the U.S. Depending upon who is writing history, the U.S. government in its infancy owed its existence to the tribal Nations.

The one point of Judge Randall's dissenting opinion, I do agree with is his recognition that the U.S. government has broken almost all, if not every, major treaty it entered into with the tribes. The U.S. government's complete failure to keep its promise to Native Peoples, is more of a reflection upon the character of the U.S. government and its leaders, than a termination or denial of tribal sovereignty.

This is merely my opinion.
by William A. Boulware, Jr., Editor

is part of a separate branch of government of the Ho-Chunk Nation. The court charges all parties fees to utilize its services.

The Court fees are:

Filing Fee	\$35
Service of Summons in person	\$12
Service of Summons by Mail	\$3
Copying	.05/per copy
Service of Process by Courts	.30/per mile
Appellate filing fees	\$35
Admission to Practice	\$50

Court Costs

The Ho-Chunk Trial Court

HO-CHUNK NATION COURT BULLETIN

What's up in Court
Vol. I No. 3
April 1, 1996

A Friend of the Public and Voice of the Law

Bar News

The Ho-Chunk Nation Court system has established the Ho-Chunk Nation Bar Association for all attorneys, lay advocates, paralegals and law students practicing and/or wishing to practice before the Nation's courts. *Rules of Admission to Practice*, and admission requirements are available at the Court Building. There are some forms that must be completed for the HCN Bar Association member file that will be maintained by the Court. There is an Oath that will be administered and an application fee for admission to practice in the Ho-Chunk Courts.

There are plans to schedule seminars and conferences to better inform members of the law and help attorneys meet CLE obligations. It

is also the intention of the Court to help lay persons and students develop a better understanding about the law, but particularly Ho-Chunk law.

The Court has started distributing admission materials by request and according to the person listed as representative in existing cases. If you have not received a copy of the admission information, please contact Helen Mike, Assistant Clerk for the materials. The Court requests that the Attorney Data Form, supporting materials and the admission fee of \$50.00 accompany all petitions for Admission.

Chief Judge Butterfield has allowed some leniency for persons currently involved in pending cases to continue the representation without admission temporarily. However, as of February 23, 1996, the Ho-Chunk Nation Supreme Court *Rules of Admission* required of all attorneys, lay advocates, paralegals and law students representing persons other than themselves be admitted to practice.

In addition to the *Rules of Admission*, the *Rules of Appellate Procedure* have been adopted. The *Interim Rules of Civil Procedure* are in final draft form. Many attorneys have called to ask for guidance in court procedure. I have suggested utilizing the *Federal Rules of Civil Procedure*, which are subject to modification by the Tribal Courts, since the Fed. Civ. Rules are not binding on

the Ho-Chunk Courts.

Court Personnel

Helen Harden (formerly Mike), the Assistant Clerk of Court, thought she would instantaneously combust when she left Chicago to come work in Black River Falls. Helen said it was not easy to learn to be a polite Wisconsin driver. Crossing the border from Illinois to Wisconsin she would shout and make obscene gestures. Now, she "tsk-tsk" the rude antics of Illinois drivers when she notices them.

Helen is the daughter of Barbara Bentley, Bad River Ojibwa and Elwood Harden, Nebraska, Winnebago. Her mother worked for the BIA and her father was employed by the Department of Treasury in 1936 when they met in Washington D.C.. Her family was nomadic moving from Washington, to Kansas and then to Chicago. Helen was educated in the Chicago Public School system. She went on to attend Bacone College in Oklahoma, Northeastern Illinois University and Governors' State University in Chicago. Helen has held several public relations and service oriented jobs. She stressed that the most important was Noony, Che-wi and Gaga. Helen has two adult children, Barbara and Kenny, and three grandchildren- two boys and a girl.

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Associate Judge Greendeer-Lee

attended Judicial College in Reno, Nevada between March 17

Limits on the Court

Over the last few weeks the Court has been asked to comment on, give advisory opinions or advice on numerous issues. Generally, the Court has stated that it cannot provide such advice on legal issues without their being a case and controversy. What this means is that the Court is not suppose to offer academic advice or issue advisory opinions. The Legislature designs and drafts the laws of the Nation. The Executive Branch, with the enforcement and aide of the Department of Justice, enforces and executes the laws. The Court interprets the law or helps to resolve disputes about the law.

The nature of case law and the operation of the Court depends heavily on the facts and the laws to be applied. Each case is examined individually based on the facts and background information provided by the party filing the claim and the party defending against the claim. So when someone calls or writes with a question, the Court can only suggest certain options and limits the comments it makes so that it maintains an impartial and objective status and viewpoint.

The Court is here for the people, but we cannot provide individual legal counsel to parties nor can the Court offer legal advice on issues that may arise in Court. If there are questions about court procedure or practice, or questions about how to file a

through 29, 1996. After completing this two week intensive training and education seminar Judge Greendeer-Lee will return to Washington, D.C. prior to coming to Black River claim, the Court staff is prepared to help. The Court seeks to protect the rights and interests of the parties that appear in Court, but we can only do that if the Court remains unbiased.

March Filings

The following are cases filed with the Ho-Chunk Nation Court System in the previous month. Children's cases are not listed to protect those involved. Cases filed in the Ho-Chunk Nation Court System are public and all cases, with the exception of children's cases, are open for inspection.

Sarah A. Siegler v. Ho-Chunk Casino, CV-96-13. Employee is grieving her termination from the Ho-Chunk Casino, filed February 27, 1996.

Jean Day v. Ho-Chunk Nation Personnel Department, CV-96-15. The plaintiffs filed a personnel class action grievance on March 18, 1996, against the Personnel Department for failure to provide Notice on personnel policy changes regarding time missed for snow days.

Andrea Storm v. John Steindorf, Robert Mann, Daniel Brown, CV-96-16. Plaintiff filed this action on March 22, 1996, claiming racial discrimination in employment against three supervisors.

Angelina Waege v. Ho-Chunk Nation Department of Justice, CV-96-14. On March 22, 1996,

Falls to assume part-time duty as trial judge in May. It is anticipated Judge Greendeer-Lee will start hearing cases full-time.

plaintiff filed an action for wrongful termination and claiming persons acted beyond the scope of their authority.

Ralph Babcock v. Ho-Chunk Gaming Commission, CV-95-08 (February 5, 1996), *Motion to Reconsideration* granted (March 14, 1996). Dept. Of Justice filed a *Motion to Reconsideration* to object the application of the law, but not the verdict rendered in the above employee grievance.

Legal Standards

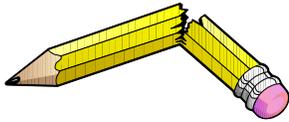
Ho-Chunk Case Law is growing and developing. The Court wants to encourage people practicing in the Ho-Chunk Courts to start using and citing to Ho-Chunk Case Law. For individuals not familiar with the phrase "case law," case law refers to the decided and reported cases of the Ho-Chunk Trial Court and Supreme Court that form and explain the Nation's body of law. Case law is sometimes referred to as Common law. Common law are those rules and principles derived from customs or judgements of the court. The following areas cited reference certain cases, making up the foundation for Ho-Chunk Case Law.

Preliminary Injunction: *Joyce Warner v. Ho-Chunk Election Board*, CV-95-003-010 (July 3, 1995).

Standing: *Loa Porter v. Chloris Lowe, Jr.*, CV-95-23 (Order,

March 1, 1996).

Motion to Dismiss: *Loa Porter v. Chloris Lowe, Jr.*, CV-95-23 (Order, March 1, 1996). Also See



is a procedural device used prior to trial to narrow the issues to be heard or tried, to secure stipulations or agreements about matters and evidence to be heard, and to take all other steps necessary to aid in the resolution of the case. Such conferences between opposing attorneys or parties may be called at the discretion of the court. The actions and discussions taken and agreed to at the conference are made the subject of a Court Order which controls the future of the case. Usually a pre-trial conference sets the dates for when witness lists are to be submitted and finalized, the date for preliminary hearings or the date any report to the court or motion must be file and when oral arguments will be heard in the case.

Next issue -- **Preliminary Hearing**

Legal Definitions

“Cases and Controversies,” this phrase embraces claims or contentions of parties brought to court for resolution. The claims brought to court are meant for the protection or enforcement of rights, or the prevention, redress,

Pierre Decorah v. Rainbow Casino, CV-95-018, (March 15, 1996).

Recusal: *JoAnn Jones v. Ho-Chunk Nation Election Board & Lowe*, CV-95-05 (August 14, 1995). Also See *Ho-Chunk* or punishment of wrongs. Whenever a claim, complaint or pleading by a party are presented in such a way that the court is capable of acting on it, that claim has become a case and controversy. The facts that support a claim are important in determining whether the Court can hear the case or has jurisdiction.

Jurisdiction is the power and authority of a court to hear and determine a judicial proceeding. Personal Jurisdiction is the legal power of the court to render a personal judgement against a party to an action or a proceeding. This is the power of a court over the parties.

Subject Matter Jurisdiction is the power of a particular court to hear the type of case that is before that court. A court is without authority to adjudicate a matter if it does not have jurisdiction or the ability to hear the case even if it has personal jurisdiction over the parties. For example, the trial court would have jurisdiction over tribal members or tribal employees, but if the case involved a criminal matter, like rape or murder, the tribal court would not have jurisdiction, due to federal law like the Major Crimes Act.

Judgement is the final decision of the court resolving the dispute and determining the rights and obligations of the parties.

Illegal means that something or some act or action is against the law or not authorized by law, that

Legislature v. Chloris A. Lowe, Jr., SU 96-01 (February 28, 1996).

Pre-trial Conference

the act would be invalid. Illegal implies a criminal element.

Lawful means legal or authorized by the law and not contrary to the law. The distinction between “lawful” and “legal” is that “lawful” looks at the substance of law while “legal” looks to the form of law. To say an act is lawful implies that it is authorized by law. To say that an act is legal means that it is done in accordance with the law.

Legal means that something or some act conforms to law or is according to the law and is not forbidden by law.

Unlawful means that something or some act or action is contrary to or prohibited by law. When someone disobeys or disregards a law, it is unlawful, but does not necessarily mean that it is criminal.

Pro se means that a person is representing himself/herself. Pro se is a Latin phrase meaning “for himself” or “in his own behalf.” People may refer to an individual as being “pro se” if that person does not hire or retain a lawyer and appears by himself or herself in court.

Remedy or Relief is usually the means by which a right is enforced or the violation of a right is prevented, redressed or compensated. When a person files a claim, they are usually seeking some sort of relief or remedy. When the court asks what the parties want that is usually the relief sought.

Sovereign means a person, body

or state in which independent and supreme authority is vested. Sovereign Immunity is a legal doctrine that precludes or prohibits a person or party from suing or bringing an action against a sovereign. For example a person might not be able to sue the United States, the Ho-Chunk Nation or the State of Wisconsin unless the U.S., Ho-Chunk Nation or State of Wisconsin consents to be sued.

Sovereignty is the supreme, absolute, and uncontrollable power by which any independent state is governed. Sovereignty is

Pierre Decorah v. Rainbow Casino, CV-95-018 (March 15, 1996). The Trial Court granted *Lewis Frogg v. Ho-Chunk Casino/Ho-Chunk Nation*, CV-95-019 (March 15, 1996). The Trial Court granted defendant's *Motion to Dismiss*, in part, as to the termination, but found that plaintiff was entitled to retro-pay conditioned on a performance evaluation to be provided.

Related Legal Matters

The following is a partial list of Indian law conferences.

*The Federal Bar Association's Indian Law Conference will be April 11 and 12, 1996 at the Marriot Hotel in Albuquerque, NM.

*Wind River Associates is also presenting a Seminar on Indian Water Rights and Code Development between April 24 - 26, 1996 at the Ramada Inn East, Albuquerque, NM. For more information contact Wind River Associates at (307) 332-5437.

*Law Prose, Inc. is sponsoring an Advance Legal Writing and Editing Seminar on May 9, and an

the supreme political authority providing control of the constitution and frame of government and its administration.

Recent Decisions

Loa Porter v. Chloris Lowe, Jr. CV-95-23 (March 1, 1996). The Trial Court Judge entered an *Order* denying defendant's *Motion to Dismiss* and reassigning the case in light of the recusal ruling in *Legislature v. Lowe*.

defendant's *Motion to Dismiss* based on plaintiff's failure to raise a constitutional claim or

Advance Legal Drafting Seminar on May 10, 1996 at the Marquette Hotel in Minneapolis, MN.

*Last year the Court System sponsored training by the National Indian Justice Center to train Guardian Ad Litem in Tribal Court. The Court will again this year conduct Guardian ad Litem training between May 13 - 15, 1996. More information will be published as it becomes available.

*The 9th Sovereignty Symposium, presented by the Supreme Court of Oklahoma, the Oklahoma Indian Affairs Commission and the Sovereignty Symposium, Inc, will be held at the Doubletree Hotel, Tulsa Oklahoma on June 3 thru 6, 1996.

*Indigenous Environmental Network Annual Conference sponsored by the Eastern Cherokee Defense League will be held at Big Cove Community in Cherokee, N.C., June 13-16, 1996.

Edward Creapeau v. Ho-Chunk Nation - Rainbow Casino, PRC-95-009, (March 13, 1996). The Court granted the *Motion to Dismiss* the grievance of an employment action. Plaintiff claimed that his supervisors failed to provide notice within three (3) working days pursuant to the PERSONNEL POLICIES AND PROCEDURES MANUAL. The Court held that plaintiff did receive notice in writing, and that notice is required when a disciplinary action is taken.

demonstrate a violation of the law.

Legal Citation Form

Examples:

Ho-Chunk Nation Constitution
Constitution, Article Number, Section, and Subsection.

HCN CONSTITUTION, ART. V
HCN CONSTITUTION, ART. XI, Sec. 7
HCN CONSTITUTION, ART. II, Sec. 1(a)

Ho-Chunk Nation Statutes
Name of the Statute or Ordinance, Chapter, Section/Part/Clause, page.

PERSONNEL POLICIES AND PROCEDURES MANUAL, Ch. 3, p.14.

PERSONNEL POLICIES AND PROCEDURES MANUAL, Ch. 12, Part B, p.82.

HCN Supreme Court Case Law
Name of case, Case No (date).

Johnson v. Department Inc.,

SU89-04 (August 14, 1995).

Smith v. Casino, SU94-11 (Order, December 1, 1993).

HCN Trial Court Case Law

Smith v. Jones, CV89-012 (March 1, 1996).

Hall v. Mail Man, CV92-09 (Order, November 30, 1995).

In the Interest of Minor Child XYZ, CU95-047 (January 23, 1994).

government of the Ho-Chunk Nation. The court charges all parties fees to utilize its services. The Court fees are:

Filing Fee	\$35
Service of Summons in person	\$12
Service of Summons by Mail	\$3
Copying	.05/per copy
Service of Process by Courts	.30/per mile
Appellate filing fees	\$35
Admission to Practice	\$50

Edited by *William Boulware, Jr.*

Lay Advocate Training

The Trial Court is looking for persons interested in training to become lay advocates. Please contact acting Clerk of Court Marcella Cloud or the Honorable Judge Butterfield for more information, (715) 284-2722.

Court Renovation

The Ho-Chunk Legislature has approved an additional \$53,000 needed to start the renovations of the Court building. Construction is tentatively scheduled to begin in mid-April. The Court will attempt to utilize alternative space to hold hearings and scheduling conferences. Once construction does begin, the Court staff will be physically located in the back sections of the existing building. The public will have to enter the Court House from the side doors between the construction site and the trailer additions. We apologize for any inconvenience this may create.

Court Costs

The Ho-Chunk Trial Court is part of a separate branch of



HO-CHUNK NATION COURT BULLETIN

What's up in Court
Vol. I No. 4
May 1, 1996

Knowledge is a Powerful Resource . . .

Indian Child Welfare Act of 1978.

In 1978, Congress passed a law dealing specifically with the removal and placement of Indian Children. The official citation for the Indian Child Welfare Act of 1978 is Public Law No. 95-608, 92 Stat. 3096 (Nov. 8, 1978), codified at 25 U.S.C. §§ 1901-1963, 1976 ed. (Supp. VI 1980) (herein after ICWA).

The ICWA is broad in scope, but limited in its application. The ICWA only applies to certain types of juvenile proceedings and certain preconditions must be met before the ICWA applies at all. State Court must provide notice of a proceeding involving an Indian Child to the Tribe. Whether the pending proceeding involves an "Indian Child," as defined by the ICWA, determines the rights of the parties and the Tribe.

Determining whether the child is an Indian child requires consideration of membership status of both the child and the parents, as well as the political status of the tribe in relation to the United States. The ICWA defines an Indian child as an unmarried person under 18 years of age, who is either a member of an Indian tribe or *is eligible for membership* in an Indian tribe and is the biological child of a member of an Indian tribe. 25 U.S.C. § 1903(4).

The definition of "Parent" within law is sometimes difficult to understand, particularly when it comes to understanding the law in relation to Indian children. The ICWA defines a parent as "any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. The definition of parent does not include a non-Indian, unless the non-Indian is the biological parent. The definition of parent also does not include an unwed father where paternity has not been acknowledged or established. 25 U.S.C. § 1903(9).

Proceedings covered by the ICWA includes state proceedings for

Congress recognized "that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children." INDIAN CHILD WELFARE ACT OF 1978, 25 U.S.C. §1901(3). The policies of the ICWA are to protect Indian children and to promote the stability and viability of Indian tribes and families. 25 U.S.C.

foster care placement or termination of parental rights, a right of intervention is given to the Indian custodian or Indian tribe, with no substantive distinction made of voluntary or involuntary proceedings, save the requirement of notice. Certain crimes and the award of custody in a divorce proceeding are *not* covered by the ICWA. The laws of Wisconsin have generally been favorable to protecting Indian children. Wisconsin Statute § 48.028, provides that the ICWA, 25 U.S.C. §§ 1911 to 1963, supersedes the provisions of Wis. chapter 48 in any child custody proceeding governed by the ICWA. While state statutes provide for the supremacy of the Indian Child Welfare Act, the state Supreme Court has held that where the "children's code provides additional safeguards, those safeguards should be followed. *In Re Interest of D.S.P.*, 166 W.2d 464, 480 N.W.2d 234 (1992). Generally speaking this does not erode the Nation's power nor the tribe's interest in protecting its future generations.

Attacks on the ICWA

§1902. Congress declared federal policy will protect the best interest and the placement of such children in foster care or adoptive homes which will reflect the unique values of Indian culture. *1974 Hearings*, note 9 at 8, reprinted in U.S. CODE CONG. AND AD. NEWS at 7350; *See* 25 U.S.C. § 1902 (1978). The ICWA is based on one fundamental

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assumption, that it is in the Indian child's best interest to protect its relationship to the tribe. *Telephone interview*, Aug. 9, 1979 and Oct. 10, 1979 with Bertram Hirsch, Association on American Indian Affairs. The underlying premise of the ICWA is that Indian tribes have a vital interest in **any** decision regarding whether Indian children should be separated from their families.

Most Tribal Leaders endorse the retention of sovereignty by Indian Nations over their own affairs. This is especially critical to Ho-Chunk due to the diversified and scattered land base. The Nation has seen the erosion of its sovereignty in Wisconsin by being subject to a great deal of State intrusion through the operation of Public Law 280. There should be strong opposition to any further erosion of Indian Sovereignty. The concept of self-determination by Indian people's over their on affairs is personified most in a Nation's autonomous ability to determine enrollment and membership. The Tribe's ability to say who is and who is not a member is the newest battle ground. An attack on the ICWA is only the most recent assault on tribal sovereignty.

Ohio Senator John Glenn and Ohio Congresswoman Pryce, introduced Senate Bill 764 and House Report 1148 respectively, which will modify the definition of "Indian child." The pending bills add a new definition concerning membership in an Indian tribe and affects the tribes' rights and power to determine its own membership. The dismantling of the ICWA strikes at the core and essence of the Tribe. If the Nation is unable to determine who its members are, or will be, the Nation is also denied the right to develop and teach its future leaders, as well as deprived of the

right to pass on the knowledge of its culture, traditions, customs and history. The U.S. Supreme Court in Williams v. Lee, 358 U.S. 217 (1959), ruled the that child rearing is an "essential tribal relation" and that the tribe possessed the requisite judicial authority to protect this "essential tribal relation." 358 U.S. at 219 (1959). The "[e]ssential tribal relations of child rearing and tribal identity" has long been recognized and protected by law. Wakefield v. Little Light, 347 A.2d 228, 237, 238 (Md. 1975).

Since its enactment in 1978, the ICWA has been bombarded with legal challenges and has withstood these attacks. The pending bills in the U.S. Senate and House of Representatives would amend the ICWA to the benefit of prospective non-Indian adoptive parents. The amendments include:

*Interfering with tribal determination of membership by allowing state courts to determine whether tribal membership standards and practices are consistently applied;

*Enrollment becomes the primary evidence of tribal membership in determining whether a child is Indian and should be protected under ICWA;

*Only permitting children who are tribal members to be protected under the ICWA if they were members prior to a child custody proceeding, potentially deprives the tribes of jurisdiction over some children who are residents and domiciled on the reservation because the children would be re-classified as non-Indian under the proposed changes to the ICWA.¹

¹Of course, since it often takes time to enroll new borns, many more children subject to adoption would be defined as non-Indians regardless of their blood quantum or families' ties to

The authors of these the pending bills have no understanding of the chronic removal of Indian children prior to the enactment of the ICWA. People motivated by political ends fail to appreciate that Indians are Indian forever, and that sovereignty means being respected in our determination of who is an Indian Child, and where and how that child should be raised.

HGN Bar Association

Admission to practice in the Ho-Chunk Courts is required by the *Rules of Admission*. All attorneys, lay advocates, and law students practicing in tribal court must submit completed applications for admission prior to their appearance in court. Petitions *pro hac vice* (for this one particular occasion) are allowed but is not an waiver of the requirement.

Court Personnel

Verdie Kivimaki is the new Assistant Clerk of Courts for the Ho-Chunk Nation Court System. Verdie is the daughter of Alice Mae Eades (Kingswan). She lives in Wyeville, Wis with her husband, Tim and their four sons. Verdie is an Area II member, who stays busy with her work and family. Verdie says that she is "pleased to be working with the Court" and enjoys having the chance to work with the "hardworking and conscientious individuals" that work in and deal with the Court. Verdie, the Court staff thanks you for staying with us. We appreciate all the work you do.

Other News

their culture.

Helen Harden Mike resigned from her position with Ho-Chunk Nation Court. The position of Bailiff/Process Server is presently open. It is expected to be a full time position in the near future.

Recent Decisions

Nettie Kingsley v. Ho-Chunk Nation: Personnel Department, PRC 93-026 (April 10, 1996), the Court ruled in this employment suit, that the Personnel Dept.’s interpretation that a “comparable position is one with equal wages” is a reasonable interpretation.

Susan Rowlee v. Majestic Pines Casino, PRC 95-011 (April 10, 1996), The Court granted the *Motion to Dismiss* of unfair treatment in employment. The Court held that “a medical release is necessary for the Nation to make reasonable accommodations,” and there is no violate the rights of a grievant by requiring employees to adhere to or follow a reasonably prudent policy outlined in the PERSONNEL POLICY AND PROCEDURES MANUAL.

• • •

Ho-Chunk Nation Legislature v. Chloris A. Lowe, Jr., SU 96-01 Order (April 26, 1996). The Ho-Chunk Nation Supreme Court denied the request to take an appeal of Legislature from *pro tempore* Judge Kittecon. The Supreme Court did not see the matter as appropriate for resolution at that time and that the appellant did not establish an irreparable harm would result if the matter was not reviewed.

April Filings

The following cases were filed in the Ho-Chunk Nation Courts. Cases filed in Court are public records except children’s cases,

Preliminary Hearing

is the first screening of a claim. It help the court determine whether there is enough evidence or facts to which are closed to protect those involved.

Max Funmaker v. Ho-Chunk Nation, CV-96-17, plaintiff petitioned for the release of per capita funds to him as guardian on behalf ward.

Melissa Johnson v. Ho-Chunk Nation, Dept. Of Education, CV-96-18, plaintiff filed a suit grieving her termination.

Donaldson June v. Kate Dornbas, CV 96-19, plaintiff filed suit grieving her layoff or separation from employment.

Rita Cleveland v. John Steindorf & Ho-Chunk Nation, CV-96-20, plaintiff filed a claim challenging the Executive’s reorganization of the Dept of Treasury as part of an employment grievance.

Conferences

*The 9th Sovereignty Symposium, presented by the Supreme Court of Oklahoma, the Oklahoma Indian Affairs Commission and the Sovereignty Symposium, Inc, will be held at the Doubletree Hotel, Tulsa Oklahoma on June 3 thru 6, 1996.

*Indigenous Environmental Network Annual Conference sponsored by the Eastern Cherokee Defense League will be held at Big Cove Community in Cherokee, N.C., June 13-16, 1996.

*Nat’l Indian Justice Center and HCN Trial Court will conduct Guardian ad Litem training June 17 - 19, 1996 in Black River Falls.

have a trial. Preliminary hearings help the parties try to reach an agreement without having to go to trial.

Legal Advice

The Ho-Chunk Nation employs several attorneys in the Department of Justice, as Legislative Counsel and as a Staff Attorney for the Courts. And although, many of the Nation’s attorneys would like to help individual tribal members, they cannot. The lawyers employed by the Tribe cannot represent individual tribal members or employees. These lawyers also cannot give legal advice about the merits or issues in a case. However, generally speaking many of the Nation’s attorneys can help explain procedure and direct you the laws that may be of use to you. Yet, it never hurts to ask questions.

H.C. - Legal Citation

Ho-Chunk Nation Constitution
HCN CONSTITUTION, ART. II, Sec. 1(a)

Ho-Chunk Nation Statutes
PERSONNEL POLICIES AND PROCEDURES MANUAL, Ch. 12, Part B, p.82.

HCN Supreme Court Case Law
Johnson v. Department Inc., SU89-04 (August 14, 1995).

HCN Trial Court Case Law
Smith v. Jones, CV89-012 (May 1, 1996).

In the Interest of Minor Child XYZ, JV95-047 (January 23, 1994).

Albuquerque, NM

The Court legal staff attended a two day conference on current legal, legislative and political events affecting Indian interests. During the conference, the Ho-Chunk Supreme Court met to revise & adopt the *Rules of Appellate Procedure* and complete a final draft of the *Rules of Civil Procedure*.

Court Costs

The Ho-Chunk Trial Court charges all parties fees to utilize its services. The Court fees are:

Filing Fee	\$35
Service of Summons in person	\$12
Service of Summons by Mail	\$3
Copying	.05/per copy
Service of Process by Courts	.30/per mile
Appellate filing fees	\$35
Admission to Practice	\$50

Edited by *William A. Boulware, Jr.*

HO-CHUNK NATION COURT BULLETIN

What's up in Court
Vol. I No. 5
June 1, 1996

Communal Strength & Legal Awareness

Editor's Comment:

by William A. Boulware, Jr.

In the Vol. 1 No. 4, May 1996 Court Bulletin, the article on "Indian Child Welfare Act of 1978" and the subsection "Attacks on the ICWA" was the opinion of the Editor and should not be taken to reflect the position of any the Judges or the HCN Court. ICW cases are examined on a case by case basis. Any determinations, findings or judgements rendered are done so under the strictest adherence to the law and are based on the facts of each individual case. This editor apologizes if he has led the readership to believe that the Court appears bias. I state unequivocally, that the May 1996 article reflects the opinion of the Editor and does not in any way reflect the position of the HCN Court or its Judges. The article was not an advisory opinion and should not be referred to as such.

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Laws to know about:

Ho-Chunk Nation Constitution:
the Supreme Law of the
Ho-Chunk Nation and
lands.

Ho-Chunk Nation Per Capita and
Distribution Ordinance

HCN Resolution for the Adoption
of Wisconsin Chapter 48,
Children's Code

HCN Open Meetings Act

Indian Reorganization Act, 25
U.S.C. § 417, (IRA)

Indian Gaming Regulatory Act, 25
U.S.C. § 2701 *et. seq.* (IGRA)

Court Personnel

Marcella Cloud is the Clerk of Courts for the Ho-Chunk Nation Court System. An enrolled tribal member, Marcella lives in Black River Falls, is active in the community and involved in the traditional ceremonies of the Ho-Chunk Nation. She is the daughter of Mr. Wilbur & Mrs. Emily Blackdeer. She has three brothers and three sisters and is the mother of three children. It seems there is a magic number three working for her. Marcella also is grandmother to three grandchildren.

Complaint

is also called a grievance or a petition. The complaint states the action or cause of action that a lawsuit is based on. For example, if a person is injured the complaint explains in detail how the person was injured, when they were injured, who they believe is responsible for the injury and why. The complaint names the plaintiff or the person who brings the lawsuit and the defendant or the person or entity being sued. The complaint is the document the announces the lawsuit to the defendant and explains to the Court the basis for the lawsuit and what remedy or relief the plaintiff wants. Simply stated, the Complaint is the way a person complains to the Court about the action, actions, conduct, behavior or failure to act of someone or thing.

Legal Definitions

Common law is nothing more than unwritten law, like custom or tradition based in local beliefs, applied, followed and adhered to. Final Appealable Order: the order must terminate the litigation and finally determine and dispose of the parties' rights as to the issues in the suit.

Final Decision: One which leaves nothing open to further dispute and which sets at rest the cause of action between the parties.

Final Decision Rule: prevents piece meal litigation by depriving the courts of appeal jurisdiction over non-final judgements.

Final Judgement: a judgement is final only if it determines the rights of the parties and disposes of all of the issues involved so that no further action by the court will be necessary in order to settle or determine the entire controversy. Interlocutory Appeal is an appeal of a matter or issue which does not determine or resolve the controversy, but which is necessary for a proper adjudication or exploration of the merits.

Nature of Sovereignty it is inherent in the nature of sovereignty not to be amenable to suit without consent.

Stare Decisis: the principle of stare decisis is the even handed, predictable, and consistent development of legal principles, reliance on prior judicial decisions, and the actual and perceived integrity of the judicial process. Stare decisis directs us to adhere to the holdings of our prior cases, but also to the explanations of the rules of law.

Recent Decisions

Coalition for Fair Government II v. Chloris A. Lowe, Jr. and Kathyleen Lone Tree - Whiterabbit, SU-96-02. On May 28, 1996 the HCN Supreme Court agreed to hear an appeal of the Trial Court decision granting a preliminary injunction staying the Special Election scheduled for May 22, 1996 for 30 days.

Donaldson June v. Kate Dornbas, HCN Department of Administration, CV-96-19 (May 22, 1996) A default judgement was entered in favor of the plaintiff. The defendant failed to timely and properly respond to the employee grievance and

The Ho-Chunk Nation

complaint filed. A Motion for Reconsideration has been filed by the defendant.

May Filings

The following cases were filed in the Ho-Chunk Nation Courts. Cases filed in Court are public records except children's cases, which are closed to protect those involved.

Roger Littlegeorge v. Chloris Lowe and Kathyleen Lone Tree - Whiterabbit, CV-96-21. Plaintiff filed the suit challenging the General Council's action from removing him as Chair of the Election Board.

Coalition for Fair Government II v. Chloris A. Lowe, Jr. and Kathyleen Lone Tree - Whiterabbit, CV-96-22. Plaintiffs filed the suit challenging the General Council's removal of 3 legislators and other actions taken on April 27, 1996.

Jerry Greengrass v. Ho-Chunk Nation Legislature, CV-96-23. Plaintiff filed the suit to enjoin the Legislature from hiring an attorney to represent the 3 legislators allegedly removed from office by the General Council.

Ho-Chunk Nation Legislature v. Chloris A. Lowe, Jr., Kathyleen Lone Tree - Whiterabbit, HCN General Council Planning Committee and HCN Election Board, CV-96-24. The Legislature filed the suit challenging the actions of the Executive as Chair of the April 27, 1996 General Council and challenging the validity of the resolutions passed by the General Council seeking to remove 3 Legislators from office. employs attorneys in the

Jacquelyn D. Wells v. Wesley D. Brockhaus, CV-96-25. Requesting the Tribal Court recognize and enforce a Milwaukee County Court Child Support Order.

Jacquelyn D. Wells v. Kurtis Brockhaus, Sr., CV-96-26. Requesting the Tribal Court recognize and enforce a Milwaukee County Court Child Support Order.

Marian Blackdeer v. Ho-Chunk Nation, CV-96-27. Plaintiff filed a petition for the release of per capita disbursements of a tribal member she is the guardian of.

Notice to GALs

All Guardian Ad Litem should file with the Court any requests for fees owed them for this 1995-1996 fiscal year. All requests for reimbursement or payment of fees should be submitted to the Court prior to June 30, 1996 in order to be timely processed before the close of the 1995-1996 Fiscal Year.

Conferences

*Indigenous Environmental Network Annual Conference sponsored by the Eastern Cherokee Defense League will be held at Big Cove Community in Cherokee, N.C., June 13-16, 1996.

*National Indian Justice Center and HCN Trial Court will conduct Guardian Ad Litem training June 17 - 19, 1996 in Black River Falls, WI.

Legal Advice

Department of Justice, staff

attorneys for the Legislature and one for the Judiciary. Many of these attorneys are often called for legal advice or to help individual tribal members. Although many would like to help, none of them formally can. The lawyers employed by the Tribe cannot represent individual tribal members or employees unless the person is being sued in their official capacity as a tribal official. These lawyers are here to protect the interest and rights of the Nation as a whole. Their duty and responsibilities as attorneys in to the Nation, their employer. Generally speaking, the Nation's attorneys can help explain procedure, direct you to the laws that may be of use to you and often explain to you the process and their interpretation of the law. In any case, it never hurts to ask them questions.

Rules for Admission

to practice before the HCN Courts were adopted on February 23, 1996 and require all persons, not representing themselves or appearing *pro hac vice*, to be regularly admitted members of the HCN Bar Association. All attorneys, lay advocates, and law students practicing in tribal court must submit completed applications for admission prior to their appearance in court. Petitions *pro hac vice* are allowed but is not an waiver of the requirement.

Any attorney, lay advocate, law student and other persons subject to the admission requirements must file a special appearance with the court when they appear for the first time in their first case before the Court. If the person appears or continues to practice in the HCN Courts the

person must pay the \$50 fee for admission and complete all requirements for admission.

HCN Bar Association

I take this opportunity to mention two items of importance. First I must stress the importance of the use and adherence to Ho-Chunk case law. There is a growing and expanding depth of cases which parties involved in litigation or preparing to file a lawsuit should be aware of. As most people are well aware, the Ho-Chunk Nation is a separate sovereign in the United States System and as such its legal system and courts are not necessarily bound by outside interpretations of law. All authority not cited directly from the expanses of Ho-Chunk cases is merely persuasive authority and the Courts are not bound by it.

Finally, this summer the HCN Court System will be attempting to assemble and conduct an open house for the public. Additional information and plans are being developed by the Court staff attorney. The Court anticipates that there will be a discussion of court rules, Ho-Chunk Laws and explanation offered on Court procedure. The Court will also attempt to conduct a fun run and other social activities.

Applications for Admission are still pending in some cases. Congratulations should be extended to the following people on their admission to practice before the HCN Courts:

- Ms. Sheila Corbine, Eau Claire, WI.
- Mr. Jeff S. Olson, Madison, WI.
- Mr. James Ritland, Black Rvr

- Falls, WI.
- Mr. Mark Goodman, Sparta, WI.
- Mr. Gerald Laabs, Black Rvr Falls, WI.
- Mr. Brian Pierson, Milwaukee, WI.
- Mr. Rick McArthur, Black Rvr Falls, WI.
- Mr. Larry Leventhal, Minneapolis, MN.
- Mr. Daniel Berkos, Mauston, WI.
- Ms. Colleen Baird, Black Rvr Falls, WI.
- Mr. William Gardner, Black Rvr Falls, WI.

Civil Procedure Rules

were adopted by the HCN Supreme Court on May 11, 1996. The Interim Rules of Civil Procedure are working rules and are evolving based on use and pragmatism.

Appellate Rules

The HCN Rules of Appellate Procedure were duly adopted by the HCN Supreme Court on April 13, 1996. As time passes, the Appellate Rules will reflect the changes and modifications of Court decisions, recommendations from those appearing before the court and efficiency in accommodating litigation practices. The Appellate Rules are evolving, but for the present the Court would appreciate a strict adherence and observation of all the Court Rules.

Court Costs

The Ho-Chunk Trial Court charges all parties fees to utilize its services. The Court fees are:

Filing Fee	\$35
Service of Summons in person	\$12
Service of Summons by Mail	\$3
Copying	.05/per copy
Service of Process by Courts	.30/per mile
Appellate filing fees	\$35
Admission to Practice	\$50

Edited by *William A. Boulware, Jr.*

Guardian Ad Litem

training in Tribal Court is scheduled for June 17 - 19, 1996 to be held at the Arrowhead Lodge in Black River Falls, WI. The Ho-Chunk Nation Court System is sponsoring the Training. The National Indian Justice Center will conduct the three (3) day training session. The training will provide a comprehensive presentation of substantive and practical information needed to effectively handle child ~~protection and child custody~~ cases. To apply for this session or to obtain more information contact Marcella Cloud, Clerk of Courts at 715-284-2722.

HO-CHUNK NATION COURT BULLETIN

What's up in Court
Vol. I No. 6
July 1, 1996

Due Diligence, Ethics & Knowledge . . .

Editor's Comment:

American Indian programs could face up to \$250 million in cuts if Congress approves the recommendation of the House and Senate Budget Committees. The House Budget Committee recommendations would reduce BIA programs by \$185 million. Sen John McCain, (R) Arizona, has proposed a bill stripping the BIA of most of its functions and powers and transferring them directly to the tribes. Under the bill 3/4 of the 10,000 BIA employees would be laid off. The BIA would be restructured to allow the tribes to have direct access and the duties formerly given to the BIA.

Remember the ICWA: The ICWA gives tribal courts authority over the adoption of children with enough Indian blood to qualify for tribal membership. As part of an adoption bill passed in the House of Representative, state courts now have jurisdiction to determine whether the

natural parents have "significant social, cultural or political affiliation with the tribe," to warrant the tribe's jurisdiction over the child's adoption.

The House of Representative voted to limit the tribes' power in the adoption of mixed blood Indian children. The Senate has not scheduled this bill for a vote, yet.

HCN Court History

The HCN Court System opened June 1, 1995, with a Trial Court Judge and three Supreme Court Justices. When the Tribal Court(s) were established the Wisconsin Winnebago Personnel Review Commission was terminated. Through the HCN CONSTITUTION, HCN JUDICIARY ACT OF 1995 and through other statutory provisions, the Court is empowered to hear "all cases and controversies arising under the Constitution, laws and customs of the Ho-Chunk Nation. The Court has been accepting various cases within its general Jurisdiction. The Court does not, at this time, hear criminal cases, probate or child delinquency cases. The Court uses custom as a parallel to common law to guide its decisions, when necessary. We invite you to visit the Court to see for themselves.

Filing a Lawsuit

The person who files a lawsuit is usually called the plaintiff. Sometimes, that person is referred to Much of the case load concerns employment, administrative,

as the petitioner or complainant. The plaintiff files a complaint in which the plaintiff must state the cause of action. The "cause of action" or reason(s) why the lawsuit is being filed must state in detail any violation of law, any wrong doing, or violation of traditional rights. In stating the injury or violation of law, the plaintiff should try to provide to the Court any information, papers or documents that may support their claim. The more factual information that can be included, the more complete the Court record can be. If the plaintiff fails to state the harm or basis in law for the lawsuit or alternatively fails to prosecute the case, it may be dismissed. When the court rules that a party has "failed to prosecute," it means that the plaintiff, who has the responsibility of stating the case and arguing the case, has failed to provide the necessary information to continue the lawsuit or in some cases the plaintiff does not appear at the Court hearings or did not file the proper paperwork. All parties have the responsibility to follow the court rules, and procedures, and abide by the Judge's *Orders* or Court instructions.

The *HCN Interim Rules Civil Procedure* are available in the Court library. These rules state what the procedures are and how the plaintiff must conduct themselves.

Cases & Process

enrollment, and constitutional claims like equal protection, due process,

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Edited by <i>William A. Boulware, Jr.</i>	

separation of powers. A large portion of the court docket is ICW, and family law: like marriage, divorce, and recognition of child support orders.

In these cases, lawsuits usually proceed as follows: A *Complaint* is filed. The *Summons* and *Complaint* are served on the defendant (Notice). The defendant files a written *Answer* or defends. A date for a scheduling conference is arranged. The parties are sent a *Notice* of the hearing. The judge will then issue a *Scheduling Order*. The various *Motions* are filed, discovery starts and submission of witness lists are provided to the Court. If there are any dispositive motions, i.e. *Motions to Dismiss*, *Motion for Summary Judgement*, etc., the Court will schedule a hearing, similar to a preliminary hearing on the *Motion* filed or at the parties request. Hearings on *Motions* are not guaranteed. The hearings are primarily to help the parties sort through conflicts and to aide the Court in determining the issues involved in the dispute. A Pre-Trial hearing is conducted shortly before the date of the trial. The dates for the pre-trial hearing and the trial are stated in the initial *Scheduling Order*. A second *Notice* of the trial date may be mailed to the parties. The final stage in a case is the trial. After the judgement or final Order, the parties may seek an appeal to the HCN Supreme Court, or with permission from the Trial Court, file a *Motion for Reconsideration*. This type of *Motion* is permissive or within the Trial Court's discretion to grant or deny review.

Court Personnel

On June 3, 1996, the Ho-Chunk Court building opened its

doors to Kelly Dougherty. Kelly is a third year law student at the University of Wisconsin - Madison. Kelly actually grew-up in Hatfield, WI. Kelly will be working primarily with the Trial Court Judges and the Staff attorney on the court case log, developing the Clerk of Court manual, conducting legal research and designing office procedures that will help ensure efficient and effective use of the legal resources. We welcome Kelly to Ho-Chunk Country and a fun summer.

Guardian Ad Litem

August 5-7, 1996 in Milwaukee, Wisconsin the National Indian Justice Center (NIJC) will conduct a "Child Advocacy and Guardians Ad Litem" training session. The NIJC will conduct a three (3) day training session designed for judges, advocates, clerks, law enforcement, social services, probation personnel and others involved in tribal child protection and child custody actions. The guardian ad litem's duty is to assist the court in its governmental function of seeing that justice is done to those who are defenseless and who are the objects of the special concern of government - its children.

The Trial Court is recruiting Ho-Chunk Tribal members to represent Ho-Chunk children in Indian Child Welfare cases before the Court. The Milwaukee training will be at no charge (*free*) to a limited number of eligible Ho-Chunk members. The Court is especially interested in providing Guardian Ad Litem from Milwaukee, Madison, the Twin Cities, Tomah, LaCrosse, Wisconsin Rapids and Wisconsin Dells. Interested tribal members should contact Marcella Cloud, Clerk of Court, at the HCN Trial Court for

more information at (715) 284-2722. There is a tuition charge for all others. For more information contact NIJC, Nicole Myers at (707) 762-8113.

Did You Know . . .

In Wisconsin, parents with custody of a minor child are liable for personal injuries their child caused if the child's actions were "willful, malicious or wanton." The state law provides that parents may be liable for up to \$2,500 resulting from each act of a child, in addition to taxable costs, and attorneys fees. Effective July 1, 1996, parents will become liable for up to \$5,000 for damage caused by their children in the commission of a crime.

Legal Definitions

An Adjudication is a formal pronouncement of a judgement, determination or entry of a judgement.

An Affidavit is a written statement of facts, made voluntarily and confirmed by an oath or affirmation of the person stating the facts as they know them.

Amicus curiae means "friend of the court." A person with a strong interest or view on a subject matter of a case may petition the court to file a brief in a particular case.

To Enjoin is to require a person, by injunction, to perform/do or abstain/stop some act or conduct.

Res judicata a thing or matter that has already been settled by judgement or previous Court decision.

Slander is the speaking of malicious, and false words tending to injury a person's reputation or office.

Recent Decisions

**Melissa A. Johnson v. Ho-Chunk Nation Education Department*, CV 96-18 (June 5, 1996). Case was dismissed on the defendant's Motion to Dismiss. Plaintiff failed to appear for preliminary hearing and has filed no subsequent motion since the Complaint was filed March 28, 1996.

**Roger Littlegeorge v. Chloris A. Lowe, Jr. and Kathyleen Lone Tree - Whiterabbit, as Chairman and Secretary of the April 27, 1996 General Council*, CV 96-21 Order (June 4, 1996). This case was an employee grievance and presented to the trial court without proceeding through administrative review process. Stipulations were reached that the General Council's removal of plaintiff from employment was outside the constitutional authority of the General Council. Plaintiff dismissed his suit against defendant Whiterabbit.

**Edward Fronk v. Ho-Chunk Tours*, CV-96-11 *Default Judgement* (June 19, 1996). Plaintiff grieved his termination from the HC Tours. Plaintiff failed to appear for the pre-trial and trial. Case was dismissed and judgement entered against plaintiff. Defendant has opportunity to recoup costs.

**Donaldson June v. Kate Doorbos, Ho-Chunk Nation Administration Dept.*, CV-96-19, *Judgement (Re: Motion for Reconsideration)*. Defendant's Motion to Reconsideration was granted, however the Court affirmed the default judgment against defendant. The plaintiff has exhausted his administrative remedies, defendant failed to file a timely Answer, and sovereign immunity did not bar the suit.

**Laura C. Rozek v. Ho-Chunk Casino, Ho-Chunk Nation*, CV-96-09, *Default Judgement*. Case was dismissed for plaintiff's failed to

appear for trial.

**Tracy Schnick and Raymond Thundercloud v. Ho-Chunk Nation*, PRC95-003, PRC95-002, *Judgement*. The two cases were consolidated, and the Court dismissed the case without prejudice due to plaintiffs' failure to state a legal basis for the claim(s) and plaintiff's failure to timely amend the complaint as directed by the Court.

June Filings

The following cases were filed in the Ho-Chunk Nation Courts. Cases filed in Court are public records except children's cases, which are closed to protect those involved.

**Charles M., William III., and Percy Miner v. Geraldine Swan*, CV 96-28, plaintiffs filed this action of replevin. Plaintiffs allege that property was wrongly given to the defendant. The plaintiffs seek to have defendant return the property to them.

**Jean M. Stacy Snow v. Barry Lee Blackhawk*, CV 96-29, plaintiff filed an action to establish paternity, enforcement of child support and garnishment of wages.

**Sheila White Eagle v. Ho-Chunk Nation*, CV-96-30, plaintiff is suing the defendant for denial of enrollment of her two children.

**Roger Littlegeorge v. JoDeen Lowe and Brian Pierson*, CV 96-31, plaintiff filed an action challenging the validity of attorney contracts pursuant to Ho-Chunk and federal law.

Lay Advocate Training

In August 1996 training will be conducted to help people afford reasonable and competent representation in court through the training of lay advocates who will be

versed in court procedure and law.

Conferences

* Wisconsin Trial Lawyers, 8th Annual Summer Seminar, July 12 & 13, 1996 at Egg Harbor, Door County. For more information: (414) 868 - 2325

*8th Annual Environmental Conference in Austin, TX, August 1-2, 1996. For more information: Sharmane Ford at (512) 495-6404

*Law Week's 18th Annual Constitutional Law Conference, Sept. 6-7, 1996 at the National Press Club in Washington, D.C. For information call 800-452-7773 or 202-452-4323

*1996 Federal Bar Association Convention will be held September 18-21 in Portland, Oregon. For information call (202) 638-0252

HCN Bar Association

encourages the use and adherence to Ho-Chunk case law, and stresses the binding nature of HC Court holdings. The HCN Court System will be conducting an open house, tentatively planned for August. The Court also hopes to conduct an Annual Review of Court Rules and provide a forum to discuss emerging legal issues and Ho-Chunk Law.

We congratulate the following people on their admission to practice before the HCN Courts:

Mr. David Ujke, BR Falls, WI.
Mr. John Fredericks III, Boulder, CO.

Mr. Charles Kreimendahl, Dodgeville,

Mr. John Espinosa, BR Falls, WI.

Mr. Michael Murphy, BR Falls, WI.
Mr. William Boulware Jr., BR Falls, WI.

Mr. Steven Kelly, Boulder, CO.

Mrs. Laura Soap, BR Falls, WI.

Court Costs

The HCN Court fees are:

Filing Fee	\$35
Service of Summons in person	\$12
Service of Summons by Mail	\$3
Subpoena	\$1
Service by Courts	.30/per mile
Copying	.05/per copy
Faxing	\$0.25
Tapes of Hearings	\$5
Certified Copy of Court Order	.50 per page
Registration of Foreign Orders	\$10
Appellate filing fees	\$35
Admission to Practice	\$50

HO-CHUNK NATION COURT BULLETIN

What's up in Court
Vol. I No. 7
August 1, 1996

The Strength of History, the Power of Law

Editor's Comment:

There is more to heritage and culture than the clothes we wear or the language we learn to speak. Clothes can be taken off or put on, words can be forgotten or created anew. It is the heart that must change, that must grow, that must be understood. And part of understanding and being understood is the freedom to differ. The freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order. May the order of the heart reign supreme through the Nation.

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Edited by <i>William A. Boulware, Jr.</i>	

A bill passed by the U.S. House of Representatives on July 22, 1996, previously approved by the U.S. Senate, that mandates a detailed study of the effects of legalized gambling has been submitted to President Clinton for signature. Section 704 creates the National Gambling Impact and Policy Commission. The Commission is charged with the responsibility of conducting the study that will include an examination of the rapid growth of Indian gaming and issues regarding the relationship of IGRA to state laws. Specific areas to be included in the study are the effects of gambling on federal, state, local and Tribal government revenues and an assessment of alternative sources of revenue for these entities. The study will further address the effects of gambling on individuals, families, businesses and the economy, the role of advertising promoting gambling and the effects of gambling on depressed economic areas. Problem gambling will be examined, as well as the relationship between gambling and crime and how this relationship is being addressed through enforcement and regulation.

Contempt Power

A contempt of court is a disregard of the authority of the court. The object of a contempt proceeding or order is to vindicate the court's authority and deter similar behavior. All courts have the inherent power to punish for contempt. *Anderson v. Dunn*, 19 U.S. 204, 227 (1821). By their very creation, courts are vested with the "power to impose silence, respect, and decorum in their presence, and submission to their lawful mandates." Because the contempt power is inherent, it does not depend on legislative authorization. Whether the contempt order or citation can be summarily or immediately imposed or whether it requires a fact finding hearing depends on the nature of the conduct. Where contempt occurs in the presence of the court, the judge may punish the contempt summarily, without a hearing. This is the direct contempt power. Indirect contempt is odious conduct occurring beyond the vision and hearing of the court. The indirect contempt power is limited by constitutional due process guarantees.

The Court's right to punish summarily without a hearing allows the judge to immediately put a stop to the type of conduct that disrupts the court proceeding. Contempt power is an ancient right. If contempt is committed in the face of the court, the offender may be instantly apprehended

and imprisoned, at the discretion of the judge, without any further proof or examination. Just

On August 5-7, 1996 in Milwaukee, Wisconsin, the National Indian Justice Center (NIJC) will conduct a "Child Advocacy and Guardian Ad Litem" training session. The guardian ad litem's duty is to assist the court in its governmental function of seeing that justice is done to those who are defenseless and who are the objects of the special concern of government - its children.

The Court is recruiting Ho-Chunk Tribal members to serve as guardian ad litem for Ho-Chunk children in Indian Child Welfare cases coming before the Trial Court. The Milwaukee training will be at no charge (*free*) to a limited number of eligible Ho-Chunk members. The Court is especially interested in providing Guardian Ad Litem from Milwaukee, Madison, Twin Cities, Tomah, LaCrosse, Wisconsin Rapids and Wisconsin Dells. Interested tribal members should contact Marcella Cloud, Clerk of Court, at the HCN Trial Court for more information at (715) 284-2722.

Did You Know . . .

BIA: Senator Larry Pressler, (R) South Dakota is drafting an amendment the BIA Budget Proposal that would require tribes to sign agreements to pay state and local sales and excise taxes on new lands being transferred to trust status. Pressler said he would work to get Senate support for the bill and expand it to include the payment of property taxes as a part of the agreement that must be negotiated before land can be

thought you should know!

transferred into tribal trust. At press time the amendment had not been introduced.

ICWA: The Senate Indian Affairs Committee voted to kill a measure that would make it easier for adults of any race or ethnic background to adopt a child with American Indian ancestry. According to Senator Daniel Inouye, (D) - Hawaii, the proposed provisions would have seriously undermined the sovereign authority of Indian tribal governments and their efforts to preserve Indian families. The measure had it passed would have amended the 1978 Indian Child Welfare Act, giving state courts a greater say in who can adopt child found to be eligible for membership in an Indian tribe.

The Indian Child Welfare Act allows Indian tribes to claim jurisdiction over the adoption of an Indian or part Indian child. The law has become the focus of Congressional attention because of the problems faced by a non-Indian Ohio couple that has been fighting to adopt twin girls who are 1/32 Pomo Indian.

Idaho taxing: The Idaho State Tax Commission is considering allowing its counties to impose taxes on lands belonging to tribal members within reservations. The Idaho Attorney General concluded that lands owned by tribal members on reservation should be charged property taxes by counties unless the lands are held in trust by the federal government or subject to restrictions on their conveyance to others.

Guardian Ad Litem

Court Personnel

Tari Pettibone, the new HCN Court Bailiff & Process Server says hello to the Nation and general public. She comes from a large family. Tari is the youngest of eight siblings. Her parents are Gavin and Vaughn Pettibone. Tari has three children, one girl and two boys. Rylan is eight, Leland is seven and Cheyenne is six years old. Tari started working for the Court in mid-July. She and her family have spent much of the summer out at Lake Arbutus. They really enjoy swimming and having cook-outs. The kids also enjoy spending time with their grandparents. Tari plans on rounding out the summer with a few road trips on the weekends with the family. In closing, Tari wanted to mention that she "really enjoys the friendly atmosphere and am glad to be a part of this Office." Thank you Tari and welcome to Court.

Court Brown Bag!

On Wednesday, August 7, 1996 at the Ho -Chunk Nation Trial Court in Black River Falls, WI., all interested persons are invited to participate in a Juvenile and Children's Law update. The Court requests that interested people contact the Court ahead of time to let us know you wish to attend and that you convene in the Court Law Library at 11:45 a.m.. The State Bar will begin the audio program and discussions at 12:00 p.m. and it lasts until 1:45 p.m.. The Wisconsin State Bar is coordinating a Telephone Seminar detailing Wisconsin Acts

77, 275 and 353 which creates changes in the treatment of juveniles and children under Wisconsin law. Topics covered include GAL duties, Grounds for TPR, CHIPS jurisdiction, confidentiality of records, parental liability, discovery and sanctions.

Aggrieved Party is one whose legal right is infringed upon or violated by an act or conduct another. The person harmed is said to have suffered a loss or injury.

Appearance, in a legal sense, means "coming into court as a party to a suit, either in person or by an attorney, whether as the plaintiff or defendant.

Hearsay is a term applied to testimony given by a witness who tells, not what he or she knows personally, but what others have told him or her.

Prima facie is Latin for "at first sight" or "on the face of it." The term usually means what can be determined from the first appearance or disclosure.

Recent Decisions

Coalition for Fair Government II v. Chloris A. Lowe, Jr. and Kathyleen Lone Tree - Whiterabbit, SU 96-02, *Memorandum and Order* (June 29, 1996). Supreme Court determined that the Trial Court grant of a preliminary injunction was not clear error nor an abuse of discretion. The preliminary injunction was proper, the case is remanded to the Trial Court for a full factual hearing.

Geraldine Y. Deere v. Ho-Chunk Nation Personnel Dept., CV 96-19 *Order* (July 9, 1996). Plaintiff sued the defendant for non-compliance with a WWPRC

Legal Definitions

Ad Litem is Latin meaning "for purposes of the suit." For example a guardian ad litem is appointed to prosecute or defend

Order. The case was voluntarily dismissed on plaintiff's motion. However, the Court concluded that res judicata precluded the Court from reviewing a claim previously decided by the WWPRC.

Kathleen Mallo v. Ho-Chunk Gaming Commission, CV 95-29 *Order* (July 12, 1996). Plaintiff attempted to appeal a Gaming Commission decision revoking her gaming license. The Court concluded that the costs imposed by the Gaming Commission prior to seeking an appeal must be paid. The equal protection of the laws is not denied by the imposition of costs as a precursor to judicial review. The Court did limit the kind of costs sought to be imposed to those within traditional definition of legal costs. The costs of the salaries of the Gaming Commissioners and investigators were stricken as not clearly covered by the legislative language.

Diane Kirby v. Ho-Chunk Gaming Commission, CV 95-30 *Order* (July 17, 1996). The plaintiff sought relief from the Gaming Commission's denial of her transfer. The Court held that plaintiff's right to due process has not been violated and that the imposition of costs by the Gaming Commission prior to seeking judicial review was not a violation of the equal protection of the laws.

a suit on behalf of a minor or adult incompetent.

Admissions are confessions, concessions or voluntary acknowledgments made by a party of certain facts.

Loa L. Porter v. Chloris Lowe, Jr., CV 95-23 *Order* (July 18, 1996). The Court re-affirmed its earlier ruling that the plaintiff does have standing to bring the suit challenging a re-organization plan by the Executive. The defendant's Motion to Dismiss was denied. The Court also concluded that the HCN Constitution does enumerate an executive privilege, similar to that recognized by the U.S. Constitution. This second part of the decision is being appealed.

*Also the Court would like to announce that the *Coalition for Fair Government II, v. Chloris A. Lowe Jr., et al.*, CV-96-22 *Order (Re: Preliminary Injunction)* (May 21, 1996) *reissued* (July 23, 1996) for publication in the Indian Law Reporter.

July Filings

The following cases were filed in the Ho-Chunk Nation Courts. Cases filed in Court are public records except children's cases, which are closed to protect those involved.

Kate Doornbos, HCN Dept. Of Administration v. Donaldson A. June, SU 96-03, Appeal Pending. Appeal of trial court decision denying a *Motion to Dismiss*. Appellant asserts that the trial court improperly waived the sovereign immunity of the Nation by ruling that a plaintiff is not required to exhaust administrative

remedies if to do so would be futile.

Ho-Chunk Casino, Ho-Chunk Nation v. Lewis A. Frogg, SU 96-04, Appeal Pending. Appeal of trial court decision awarding 4% raise based on failure to timely file a performance evaluation. Appellant asserts that the trial court lacked jurisdiction to hear

Francis P. Rave v. HCN Gaming Commission CV-96-33, Plaintiff appeals his termination from the Ho-Chunk Bingo Hall, requesting that the decision of the Gaming Commission be overturned, that his gaming license be returned and that he be reinstated to his position as a floor checker and caller.

Crystal E. Akeen v. Carlos E. Nakai, CV 96-34, Plaintiff filed suit seeking back and current child support, payment of medical bills that insurance does not cover and half the cost of child care.

Annabelle Lowe v. Serena YellowThunder CV-96-35, Plaintiff filed suit, requesting that the defendant be ordered to pay a loan that plaintiff obtained for her from a bank in the amount of \$1200 plus interest.

the case because Mr. Frogg did not exhaust the administrative review process, that the trial court improperly waived the Nation's sovereign immunity, that the trial court has violated the HCN Constitution by exercising the functions of the Legislature and Executive Branch, and that the trial court incorrectly decided that Mr. Frogg was entitled to a merit increase.

have their **completed applications** submitted with the HCN Trial Court by **August 14, 1996**.

HCN Law Day

On August 30, 1996 from 8:30 am until 3:30 in the afternoon there will be an open house at the Court Building. The Court will host a few panel discussions of the Court Rules & Procedures. The Nation's attorneys from the Department of Justice, the Legislature and ICW will be sitting on panels discussing the Nation's laws, and state and federal laws effecting the Nation. The scope of the law day and open house is to inform the tribal members, the public-at-large and the members of the Ho-Chunk Nation Bar Association about the function of the HCN Courts.

The schedule has to be confirmed. But the itinerary has the Court opening its doors at 9:00 am with a panel discussion conducted by the Legislative Counsel, assistant counsel and a few attending Area Representatives. At 10:00 am the HCN Department of Justice takes the stage to explain the role and function of the Justice Dept and the duties of the Attorney General. Each of the tribal attorneys will have the opportunity

U.W. Stevens Point v. Orbert Goodbear CV-96-32. Plaintiff requests an *Order to Enforce* a state court judgement in the amount of \$14,903.25 and that the defendants wages and per capita distribution be garnished to satisfy the judgement.

to briefly discuss the area of law in which they practice and answer questions from the audience about their practice areas. At 11:00 am the Indian Child Welfare office, representative by Sheila Corbine and staff persons from ICW will discuss the Nation's Children's Code and other rules and laws affecting the protection and interests of Ho-Chunk children and families. There will be a break for lunch. The activities will resume at 1:00 pm with the HCN Supreme Court Justices and the Trial Court Judges convening to answer questions on court procedure and court rules. Finally, the day will end with a relaxing 2 mile run that will begin and end at the Court Building. We hope this will be a suitable end with a little laughter after an interesting day in Court.

For more information please contact the Trial Court for more information. The Court will distribute more information in the near future.

Conferences

*Law Week's 18th Annual Constitutional Law Conference, Sept. 6-7, 1996 at the National Press Club in Washington, D.C. For information call 800-452-7773 or 202-452-4323

*1996 Federal Bar Association

Lay Advocate Training

In September 1996 training will be conducted to help people afford reasonable and competent representation in court through the training of lay advocates who will be versed in court procedure and law.

All persons interested in participating in the training and serving as a lay advocate **must**

Convention will be held September 18-21 in Portland, Oregon. For information call (202) 638-0252

Copying	.05/per
copy	
Faxing	\$0.25
Tapes of Hearings	\$5
Certified Copy of Court Order	
	.50 per
page	
Registration of Foreign Orders	
	\$10
Appellate filing fees	\$35
Admission to Practice	\$50

HCN Bar Association

encourages the use and adherence to Ho-Chunk case law, and stresses the binding nature of HC Court holdings. The HCN Court System will be conducting an open house, planned for August 30, 1996. The Court also hopes to conduct an Annual Review of Court Rules and provide a forum to discuss emerging legal issues and Law.

We congratulate the following people on their admission to practice before the HCN Courts:

- Ms. Jo Deen B. Lowe, BRF, WI.
- Mr. Michael J. Devanie, La Crosse, WI.

Also for your information:

The following cases have been published in the Indian Law Reporter. *Cholka v. Ho-Chunk Gaming Commission*, CV 95-07, 23 Indian L. Rep. 6075 (HC Tr. Ct., Feb. 5, 1996) and *Creapeau v. Ho-Chunk Nation - Rainbow Casino*, PRC-95-009, 23 Indian L. Rep. 6078 (HC Tr. Ct., Mar. 13, 1996), and *Kingsley v. Ho-Chunk Nation, Personnel Dept.*, is slated for publication in the July 1996 issue of the Indian Law Reporter.

Court Costs

The HCN Court fees are:

Filing Fee	\$35
Service of Summons in person	
	\$12
Service of Summons by Mail	\$3
Subpoena	\$1
Service by Courts	.30/per mile

HO-CHUNK NATION COURT BULLETIN

What's up in Court
Vol. I No. 8
September 1, 1996

Empathy & Tribal Law

Editor's Comment:

The Ho-Chunk Nation will be a corporate sponsor of the AIDS Walk Wisconsin. Tribal members, employees and friends are encouraged to join us in this effort. A team of walkers presenting the Ho-Chunk Nation will carry a HCN banner on September 22, 1996 on Milwaukee's lakefront. AIDS Walk Wisconsin honored the HCN by designating one of the six rest stops along the walk route as the HCN rest stop. The HCN rest stop will provide entertainment, refreshments and prizes for participants in the Walk. Please join us if you have the time, and if not stop by one of the tribal enterprises or offices to make a pledge.

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Edited by <i>William A. Boulware, Jr.</i>	

The Americans with Disabilities Act (ADA), 42 U.S.C. §12101 *et seq.*, and its predecessor, the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*, bar discrimination against the disabled in the workplace. Although, the HCN has not specifically adopted the ADA, the HCN does have an Equal Employment Opportunity policy codified within the HCN Personnel Policies and Procedures. Chapter 1. The Equal Employment policy is to be applied without regard to any individual's sex, race, religion, national origin, pregnancy, age, marital status, sexual orientation, or physical handicap.

To be protected by the ADA an individual must be a person with a condition or disease that affects a major life activity, who can perform the essential functions of the job with or without a reasonable accommodation. Regulations issued pursuant to the Rehabilitation Act requires the employer to make a "reasonable accommodation to the known physical or mental disabilities unless the accommodation would be an undue hardship. The ADA

similarly absolves the employer from making an accommodation that would be an undue hardship or an action requiring significant difficulty or expense." Both the ADA and Rehabilitation Act require an employer to make "reasonable accommodations" to enable disabled individuals to work, unless those accommodations are an "undue hardship."

Although the goals of the ADA are to open employment opportunities that were previously closed to the disabled, the procedural environment for answering allegations of disability discrimination are not easily understood. This is where the Courts are utilized as a forum for employees to air their grievances and for employers to defend their practices.

The ultimate determination is for the Court based on the complaining party to establish (1) membership in a protected class; (2) as adverse employment decision (3) in circumstances from which an inference of discrimination can be drawn. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817 (1973); *Texas Dep't of Community Affairs v. Burdine*,

450 U.S. 248, 252-53 (1981). For additional persuasive information look to *Vande* that the HCN Judiciary Act of 1995 provides for the establishment of a forum for Traditional Dispute Resolution. The Judiciary is directed to seek the "assistance of the elders of the Ho-Chunk Nation" to establish a traditional forum to provide "guidance and to assist the Judiciary" with the resolution of cases and controversies involving members.

Presently, the Traditional Court has convened on Monday mornings. It has been the practice of the Elders to maintain an oral tradition regarding the issues discussed. All parties coming before the Traditional Court must voluntarily consent to come before the Elders to seek advice on Ho-Chunk custom and tradition.

Bound & Determined

There are certain legal concepts and doctrines that bar parties who received an adequate opportunity to litigate their claims from filing subsequent court actions based upon the same claims or issues. These preclusive doctrines are **claim preclusion**, **estoppel by record** and **issue preclusion**.

The doctrine of **claim preclusion** or *res judicata* makes a final judgement in one proceeding conclusive or binding in all subsequent actions between the same parties as to all matters that were litigated or might have been litigated in the first proceeding. In order to apply claim preclusion or *res judicata* the two actions must concern the

Zande v. State of Wisconsin Dep't of Admin., 44 F.3d 538 (7th Cir. 1995).

same transaction. There must be an identity of the parties; identity of the causes of action; and a final judgement on the merits in a court of competent jurisdiction.

The doctrine of **estoppel by record** prevents a party from relitigating what was actually litigated - or which could have been litigated in a former proceeding. For estoppel by record to apply it must be the same cause of action and must involve the same parties from the prior litigation.

The doctrine of **issue preclusion** or **collateral estoppel** bars relitigation of an issue of law or fact that has already been litigated and decided in a prior action. Issue preclusion is a narrower doctrine and requires courts to conduct a "fundamental fairness" analysis that allows the courts to consider the rights of all parties to a full and fair adjudication.

Legal Definitions

Default is defined by Black's Law Dictionary as "an omission or failure to perform a legal or contractual duty;" the failure to "observe a promise or discharge an obligation."

The legal definition of **Defend** is "to deny," or "to contest and endeavor to defeat a claim or demand made against a person in a court of justice."

Evidence is any probative matter such as "testimony, writings, material objects, or other things presented that are offered to

Did You Know . . .

prove the existence or nonexistence of a fact."

Foreign Order is an order issued from another tribe, state or jurisdiction.

Resolution is a formal expression of the opinion or will of an official body or a public assembly, adopted by vote; as a legislative resolution.

Sua sponte is a Latin phrase interpreted as meaning "of his or her own will," "voluntarily" or "without prompting or suggestion," on ones own accord.

Subpoena duces tecum is a court process initiated by a party in litigation compelling production of certain specific documents and other items relevant to the facts in issue in a pending judicial proceeding which are in the custody or control of another person or body.

A **Trust** is a legal entity created for the benefit of certain designated persons under the laws of the state or nation and under a valid trust instrument.

Pre-Trial Orders

Pre-trial orders control the subsequent course of the case unless modified by a subsequent order. The Order, once entered, controls the scope and course of discovery and the trial. The pre-trial conference and order are a vital part of the procedural scheme. The function and purpose of a Pre-trial Order provides guidance and clarity in

the conduct of the case. It also determines which of the claims pleaded will actually be tried. The claims, issues, procedure, and evidence are limited by the order and the course of the trial is thereby narrowed to expedite the proceeding.

Since the Pretrial Order controls what happens at trial, counsel should pay close *Jean Day, et al. v. Ho-Chunk Nation Personnel Dept.*, CV 96-15, Order (August 21, 1996), an employment dispute was filed individually and on behalf of the employees of the HCN Employee Assistance Program disputing notice and application of the HCN PERSONNEL PROCEDURES relating to compensation for hours missed from work due to snow day closure of tribal enterprises. The defendant was granted Summary Judgement, as there was no material fact in dispute.

Anne Rae Funmaker v. Kathryn Doornbos and the Ho-Chunk Nation, CV 96-02, and *Dennis Funmaker v. Kathryn Doornbos and the Ho-Chunk Nation*, CV 96-03, Order (Re: Motion to Dismiss) (August 22, 1996). Plaintiffs filed suit challenging the HCN Personnel Dept's denial of opportunity to interview for a posted position. The action filed by Dennis Funmaker was dismissed for lack of standing and failure to state a claim. The claim asserted by Anne Rae Funmaker was also dismissed since the HCN Personnel Procedures does not required all candidates be interviewed nor that all applicants are entitled to an interview as of right. Plaintiff Anna Rae Funmaker, also asserted that she had been denied the job because of her age. The age discrimination claim is still being considered by

attention to its content. This fact cannot be over-emphasized. If a claim or issue is omitted from the Order, it is forever waived. Although, the HCN Court System has yet to address many of these issues, it is relevant to the development of the Court's rules and evolution. The pre-trial order is treated as superseding the pleadings and establishing the the Judge. All other counts were dismissed.

Marian Blackdeer v. Ho-Chunk Nation Enrollment Dept., CV 96-27, Order (August 22, 1996). Petitioner requested the release of per capita distributions on behalf of her adult daughter who is disabled. Petitioner stated a "special needs" claim supported by evidence and documentation of special need and attempts to exhaust other tribal, state and federal entitlement programs. The petition was granted requiring a strict accounting of the released monies on behalf of this adult incompetent pursuant to the HCN Per Capita Distribution Ordinance, § 6.01(b).

Roger Littlegeorge v. Jo Deen B. Lowe, CV 96-31 Order (Re: Hearing on Motion for Entry of Default Judgement) Oral arguments on the Motion for Entry of Default Judgement was postponed until Sept. 9, 1996. The Court imposed sanctions, denying defendant any affirmative defenses due to the untimely filing of defendant's Answer, 43 days late.

Lonnie Simplot v. Ho-Chunk Nation Department of Health, CV 95-26; *Linda Severson v. Ho-Chunk Nation Department of Health*, CV 95-27; and *Carol J. Ravet v. Ho-Chunk Nation*

issues to be considered at trial. "Issues not preserved in the pre-trial order are eliminated from the action."

Preparing a pre-trial order is a necessary litigation exercise.

Recent Decisions

Department of Health, CV 96-05 Order (Granting Motion for Summary Judgement). Plaintiffs filed a claim asserting that the HCN Health Department had violated the Personnel Procedures by improperly laying them off, denying them access to the Administrative Review Process and denying them due process. Plaintiff also made a claim of racial discrimination in employment, which was not addressed in this Order and is set for a separate Trial. The Court ruled that the plaintiffs' right to due process were violated, that the notice provided to the plaintiffs were defective, and that the layoff was improper and illegal.

August Filings

The following cases were filed in the Ho-Chunk Nation Courts. Cases filed in Court are public records except children's cases, which are closed to protect those involved.

Sherri Redcloud v. Marlin Redcloud, CV 96-36, Plaintiff has filed a Petition To Register and Enforce a Child Support Order for another jurisdiction.

Sherri Redcloud v. Maynard Rave, Sr., CV 96-37, Plaintiff has filed a Petition To Register and Enforce a Child Support Order for

another jurisdiction.

Walter I. Hare, Jr., In the Interest of Julia Anne Hare York v. Ho-Chunk Nation, CV 96-38. The petitioner file a Petition for the Release of Per Capita funds of his minor daughter. Petitioner has to demonstrate special need.

Gary Funmaker v. Ho-Chunk Nation, CV 96-39. Plaintiff filed a petition seeking the release of the per capita funds of a minor child.

Angie Waege v. Steve Camden, CV 96-40. Plaintiff filed a Complaint, and Petition for a

All persons interested in participating in the training and serving as a lay advocate **must** have their **completed applications** submitted with the HCN Trial Court.

Conferences

*1996 Federal Bar Association Convention will be held September 18-21 in Portland, Oregon. For information call (202) 638-0252.

HCN Court Library:

- American Indian Reports
- Annual Survey of Wisconsin Laws
- Code of Federal Regulations
- Federal Practice and Procedure
- Federal Reporter 2d Series
- Federal Reporter 3d Series
- Federal Rules of Judicial Civil Procedure
- HCN Resolutions (1993 - 1996)
- HCN Legislature Laws, Ordinances
- HCN Legislative Minutes
- Indian Child Welfare Act
- Indian Law Reporter, vol. 16 -23
- Shepard's Causes of Action 2d
- Sutherland's Statutory

Temporary Restraining Order and Injunction. Plaintiff alleges libel, slander and defamation of character.

Carol Naquayouma v. Ho-Chunk Nation, CV 96-41. Plaintiff has petitioned the Court for the release of par capita payments, as the guardian of an adult elder male ward.

Kim Getts v. Ho-Chunk Casino, CV 96-42. Plaintiff has filed a Complaint seeking review of an employment dispute and grievance. The plaintiff alleges a violation of the HCN PERSONNEL Construction United States Law Week, Vol. 63 -65

Wigmore on Evidence, vol. 1 - 5
Wisconsin Attorney's Desk Reference
Wisconsin Civil Litigation Forms Manual
Wisconsin Court Rules
Wisconsin Judicial Benchbooks, I - V
Wisconsin Statutes (2 sets)

Periodicals:

- ABA Journal
- Federal Lawyer
- HCN Court Bulletin
- Indian Gaming
- Legal Review- NARF
- Litigation News- State Bar Section
- Tribal Court Record
- Wisconsin Lawyer
- Wisconsin Opinions
- Wisconsin State Bar Newsletter

HCN Bar Association

encourages the use and adherence to Ho-Chunk case law, and stresses the binding nature of HCN Court holdings.

PROCEDURES relating to compensation upon promotion or demotion.

Lay Advocate Training

On September 16 - 18, 1996 training will be conducted in Carter, WI, within the sovereign lands of the Forest Count Potawatomi Community, to help people afford reasonable and competent representation in tribal courts through the training of lay advocates who will be versed in court procedures and law.

The HCN Court System conducted an open house on August 30, 1996. Presentations were made by the HCN Legislature and Legislative Counsel, by the HCN Department of Justice, the Indian Child Welfare Office and ICW Legal Counsel. There were two panels convened representing the HCN Supreme Court and the Trial Court. The panels responded to questions from the audience and directed their presentations to inform the public of what the various legal departments

The Court hopes Law Day will become an annual function providing a forum to discuss emerging legal issues and law. The HCN Court is applying for CLE credits for the panel discussions conducted. Interested attorneys should register their name with the HCN Trial Court Staff Attorney.

We congratulate the following people on their admission to practice before the HCN Courts:

- Richard Symonds, WI Rapids, WI.
- Susan M.J. Bauman, Madison, WI.

Gerald Fox, Black River Falls, WI.

Indian Law Reporter

Some persons practicing and appearing before the HCN Courts have expressed a concern about gaining access to the trial and supreme court opinions. As of April this year, some - not all of the HCN Trial Court Opinions have been published in the Indian Law Reporter, which is a standard text available in most law libraries and at the Court Law Library as well. The Court Bulletin, from time to time, will provide the citations for the published opinions.

The Staff Attorney also maintains a notebook of all final decisions, judgements and orders. Copies of the opinions and orders are available at the cost of \$0.05 per page.

Service by Courts	.30/per mile
Copying	.05/per
copy	
Faxing	\$0.25
Tapes of Hearings	\$5
Certified Copy of Court Order	
	.50 per
page	
Registration of Foreign Orders	
	\$10
Appellate filing fees	\$35
Admission to Practice	\$50

HCN S. Ct. Meeting

The HCN Supreme Court will be meeting at 9:00 a.m. on Saturday, August 31, 1996 at the HCN Court Building in Black River Falls, WI. This will be a public meeting. All interested persons are encouraged to attend. The Supreme Court will conduct their first Annual review of the HCN Court Rules. On the agenda are proposals to revise the HCN Interim Rules of Civil Procedure, Appellate Procedure, and a proposal to adopt Rules of Professional Conduct for Attorneys.

Court Costs

The HCN Court fees are:

Filing Fee	\$35
Service of Summons in person	\$12
Service of Summons by Mail	\$3
Subpoena	\$1

HO-CHUNK NATION COURT BULLETIN

What's up in Court
Vol. I No. 9
October 1, 1996

Law and Legislation in Indian Country

Editor's Comment:

On May 24, 1996, President Clinton signed an Executive Order directing federal agencies to protect the integrity of and accommodate access to sacred sites on federal lands. The text of the Order reads: "By the authority vested in me as President by the Constitution and laws of the United State, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered: In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred Indian religious sites.

In the News:

The U.S. Court of Federal Claims in Washington, D.C., has ruled that the United States should compensate the Alabama-Coushatta Indians for 3.4 millions acres of land taken 109 years ago by white settlers. The July 22 opinion involves a tribal claim filed in 1983 arguing that the United States failed to protect tribal land after annexing Texas in 1845 and therefore owes the Alabama-Coushattas for the ensuing losses. The Court found that the tribe established aboriginal title to the land by continuous and exclusive use over an extended period of time. The Court said that the United States did not act to protect the tribe's occupancy of the land and determined that the federal government was responsible for losses incurred between 1845 and 1954.

Register and Enforce a Foreign Child Support Order." If a person is doing this without legal assistance or an attorney, they may get a sample complaint and modify the sample form to fit the court requirements or simply write a detailed letter including, at a minimum, all the information listed below. The Motion should include the name, address, telephone number of the person filing the claim and the same information for the person the claim is against. The Motion should state whether the person or persons are tribal members. The Motion should state whether the person filing the claim against wages, per capita, or both. The Motion should have attached to it a copy of the original child support order, and an accounting statement from the original court of the back child support owed, if any. The cost of registering the child support order is \$10.

The HCN Department of Justice, Acting Attorney General Gary Brownell has indicated that the HCN will honor any and all duly recognized child support orders registered and enforced in tribal court. This does not mean that if the Motion to Register and Enforce is filed in the tribal trial court that an order will be issued right away. This means that the Motion is filed in the tribal court, and hearing is scheduled as required by law and then after a hearing to determine the validity of the existing order, the Court will then grant or deny enforcement. This may take as little as 20 days

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Edited by <i>William A. Boulware, Jr.</i>	

Did You Know . . .

RECOGNITION OF FOREIGN CHILD SUPPORT ORDER ORDINANCE was adopted by the HCN Legislature August 20, 1996. The party seeking to register and enforce an existing child support order must file with the HCN Trial Court a written petition or motion. The Motion should be entitled "Motion to

or as long as six months. All cases involving enforcing child

Pursuant to the newly enacted CLAIMS AGAINST PER CAPITA ORDINANCE, adopted September 6, 1996, the HCN Trial Court may enforce claims against per capita distributions only for federal tax levies, child support orders, and money or debts owed to the Ho-Chunk Nation by a tribal member. The Ordinance specifically provides that the Nation "shall not recognize or enforce any claim, garnishment, levy, attachment, assignment or other right or interest in a Per capita Share" less the claim is recognized under Section 103 relating to federal taxes, child support or debts owed to the HCN Nation. This provision prohibits the Court from awarding, even in default, any claim against the per capita share or distribution in this case.

Federal Law

Congress acted within its powers by making it a federal crime to fail to pay a past due child support obligation and then flee across state lines. An obligation to pay money to a recipient in another state comes within the broad definition of "interstate commerce." This was the finding by the Second Circuit Court of Appeals in *United States v. Sage*, No. 96-1001 (August 12, 1996).

Appeals

A party seeking an appeal of a trial court decision on filing a Notice of Appeal must provide: a Notice of Appeal, including the grounds upon which the appeal is being sought, the appeal fee of \$35, a copy of the decision,

support against per capita distributions resolved prior to judgement or order being appealed and a certificate or affidavit of service. All of these are required under the HCN Appellate Rules. If there has been a monetary judgement or money award the party seeking the appeal must, in addition to the items listed above, must include a cash deposit or bond in the amount of the money award or judgement or seek a waiver of the cash deposit or bond. The granting of the waiver is within the discretion of the Supreme Court.

State Procedure: The issue of Notice and Appeal and filing by fax or facsimile transmission was recently addressed by the Wisconsin Supreme Court. Although the State Court rulings are not binding upon tribal courts, we take this opportunity to encourage the observation of this decision. In *Pratsch v. Pratsch*, No. 96-0262 (May 28, 1996) the issue addressed was whether a notice of appeal can be filed by fax or facsimile transmission. The Wisconsin Court and the Wisconsin Statutes provide that "only those papers that do not require a filing fee may be filed by facsimile transmission." The Wisconsin Court of Appeals concluded that a notice of appeal is a paper that requires payment of a filing fee and therefore a party is not permitted to file a notice of appeal by fax or facsimile.

Recent Decisions

Jason Reimer v. Ho-Chunk Nation Gaming Commission, CV 95-02 (Sept. 16, 1996), the claim filed by plaintiff was remanded to

October 15, 1996 will effect the November 1, 1996 distributions. the Gaming Commission to make a determination on whether proper notice and due process was denied the plaintiff in preparation for a show cause hearing.

Roger Littlegeorge v. Jo Deen Lowe , Brian Pierson, CV 96-31 (Sept. 20, 1996) the plaintiff was granted a default judgement on defendant's failure to timely answer and defend against the complaint. The defendant was temporarily removed from office as Attorney General for 30 days or until such time as the defendant receives an approved attorney contract. The defendant has appealed.

Melanie Stacy West v. Harrison Funmaker, CV 96-48, (Sept. 24, 1996) the petitioner and respondent jointly filed a consent decree. The agreement provides that respondent-father will provide child support through an allocation taken from respondent's quarterly per capita distribution.

September Filings

The following cases were filed in the Ho-Chunk Nation Courts. Cases filed in Court are public records except children's cases, which are closed to protect those involved.

Kelly Hammes v. Chloris Lowe, Karena Day, Gloria Logan, John Steindorf, Mary Walsh, Sandy Martin, Martin Henry and Cindy Dippman, as officials and employees of the Ho-Chunk Nation, CV-96-43, Plaintiff seeks relief on claims of denial of equal protection of the law, deprivation

of liberty and property without due process and denial of the right to redress a grievance. The plaintiff alleges violations of the Indian Civil Rights Act, the HCN Constitution and the HCN *Kathy Ruditys, Tammy Schoone, and Jim Wanty v. HCN Enrollment*, CV 96-45, plaintiff seeks to challenge the determination of enrollment of herself and others. The dispute is whether or not the individual plaintiff met the required blood quantum level.

In the Interest of Bruce O'Brien, Elethe Nichols v. Ho-Chunk Nation Enrollment Department, CV 96-46, Petitioner seeks the release of per capita distribution on behalf of elder-ward.

Dr. Jeremy Rockman v. JoAnn Jones, CV 96-47, the plaintiff filed a tort action to collect unpaid wages for work performed for the defendant, as Chairperson of the WWBC.

Melanie Stacy West v. Harrison Funmaker, CV 96-48, the petitioner and respondent jointly sought to file a consent decree to enforce a child support order against respondent's per capita distribution.

In the Interest of Roberta June Goodbear v. Ho-Chunk Nation, CV 96-49, Petitioner seeks the release of per capita distributions for the health care and maintenance of adult incompetent.

Lisa Harrison v. Rex Whitegull, CV 96-50, Petitioner seeks to register and enforce a foreign child support order.

Bonita Roy v. Paul Sallaway, CV

Personnel Policy and Procedures.

Daniel T. Williams v. HCN Division of Risk Management, Laura Soap, Bert Funmaker, and Dr. J. Noble, as Commissioners, 96-51, Petitioner seeks to register and enforce a foreign child support order.

David Abangan, Wo-Lduk Editor v. Karena Day, Executive Administrative Officer, CV 96-52, The plaintiff Newspaper alleges that the defendant violated the Personnel Policies and Procedures by improperly reversing a termination of one the newspaper's employees.

HCN Bar Association

The HCN Court System conducted an open house on August 30, 1996. Presentations were made by the HCN Legislature and Legislative Counsel, by the HCN Department of Justice, the Indian Child Welfare Office and ICW Legal Counsel. The HCN Supreme Court and the Trial Court responded to questions from the audience and directed their presentations to inform the public of the various legal departments. The Court hopes Law Day will become an Annual Function providing a forum to discuss emerging legal issues and law. The HCN Court is applying for CLE credits for the panel discussions conducted.

It is the responsibility of attorneys and advocates to explain to their clients courtroom decorum. For example, it is inappropriate to bring food or drinks into the courtroom. This includes the prohibition on

CV 96-44, Plaintiff seeks relief from the Commission on the denial of a disability claim.

chewing-gum and minimizing the amount of movement and noise within the courtroom.

We congratulate the following person(s) on their admission to practice before the HCN Courts:

Gary F. Brownell, BFR, WI.

Indian Law Reporter

Published in Vol. 26, August 1996, *Pierre Decorah, Jr., v. Rainbow Casino*, CV 95-018, 23 Indian L. Rep. 6128 (Ho-Chunk Tr. Ct., Mar. 15, 1996).

HCN S. Ct. Meeting

The HCN Supreme Court held a meeting at 9:00 a.m. on Saturday, August 31, 1996 at the HCN Court Building in Black River Falls, WI. The HCN Supreme Court pursuant to its constitutional authority and under the Judiciary Act of 1995, has adopted by reference the Wisconsin State Rules of Professional Conduct for Attorneys.

The next meeting of the HCN Supreme Court will be held on October 19 and 20, 1996 at the HCN Court Building in Black River Falls. On Saturday, October 19, 1996, the Supreme Court will conduct a review of the Interim Rules of Civil Procedure, Rules of Appellate Procedure and begin action to promulgate the Rules of Ethics. On Sunday, October 20, 1996, the Court will entertain new business on Bar Admissions and administrative tasks. The Court will also conduct closed deliberations.

GAL Reception

On Thursday, September 26, 1996, the HCN Trial Court hosted a reception and information sharing meeting with the Guardian ad litem for the Ho-Chunk Nation. Staff and personnel from the Department of Health, Social Services, Mental Health, Domestic Abuse Program, Education, Indian Child Welfare Office, Department of Justice and the Jackson County Social Services met with the Guardian ad litem to supply them with names, contacts, and information that may aid them in performing their duties for the trial court.

HCN Court Fees:

Filing Fee	\$35
Service of Summons in person	\$12
Service of Summons by Mail	\$3
Subpoena	\$1
Service by Courts	.30/per mile
Copying	.05/per copy
Faxing	\$0.25
Tapes of Hearings	\$5
Certified Copy of Court Order	.50 per page
Registration of Foreign Orders	\$10
Appellate filing fees	\$35
Admission to Practice	\$50

HO-CHUNK NATION COURT BULLETIN

What's up in Court
Vol. I No. 10
November 1, 1996

Sovereignty & the importance of Indian Law

Editor's Comment:

Several questions have been raised by tribal members regarding the Children's Trust Fund. Roger Littlegeorge brought a suit on behalf of the children of the Ho-Chunk Nation, petitioning the Court to compel the HCN President to establish an irrevocable trust. See *Littlegeorge v. Chloris A. Lowe, Jr. et al.*, CV 95-20. Particularly, people wanted to know what Trusts are and how Trust Funds are used, set up and the purpose that they serve. The HCN Legislature established A Children's Trust Fund (CTF) and Trusts for individual tribal members who are considered legal incompetents. The CTF and

other Trusts effect per capita distribution and access to those funds are governed by the HCN PER CAPITA DISTRIBUTION ORDINANCE.

In general, trust funds have a variety of functions. This summary of trusts and trust funds are not meant to be binding on the Courts or the Nation, nor are the Editor's comments the opinion of the Court. Again, this is general information for the public and is not the opinion of the Tribal Courts. If you have more questions, please contact a local attorney or possibly the HCN Legislature to answer any questions you might have.

A trust creates a fiduciary relationship with respect to property. In the case of the Children's Trust Fund, the Ho-Chunk Nation through the investing financial institutions, are the trustee of the monetary assets held for enrolled Ho-Chunk children. The property is held by the Ho-Chunk Nation. The Ho-Chunk Children have a vested interest in the property, but its does not belong to them, per se. The Nation controls, and has possession of and title to the trust funds. The Nation determines when the trusts

funds can be release and under what conditions. The children and the Nation are the owners. The minor children have a future interest in the money when they reach the age eighteen.

The trust and the creating document imposes an obligation on the Nation as trustee to manage the trust for the benefit of the children. In a awkward legal sense the trust funds are the property of the children subject to certain legal conditions imposed by the Nation.

The Children's Trust Fund is a fund that has created a "future interest" for the children. What this means is that the trust was set up for the benefit and well being of minors. The assets of the trust are not released to the minors until they are eighteen (18) years old, pursuant to the Per Capita Distribution Ordinance. This release clause constitutes the creation of a future interest. A future interest does not entitle the owner to possession or enjoyment of the benefits of the property or assets of the trust until a future time, in this case when the minor reaches the age of 18.

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Edited by <i>William A. Boulware, Jr.</i>	

In the News . . .

The U.S. Supreme Court set aside a federal appeals court ruling that barred the Department of Interior from placing land in

Also in the News, the state of Wisconsin prohibits a paternity action brought against a deceased father. The State has a statute that prohibits a paternity action or an action to establish paternity after the alleged father has died. There is a presumption of paternity if the child was conceived during the marriage of the mother and alleged father. The State courts do not allow such an action in cases where a person seeks to prove or establish paternity when the alleged father is deceased. This is primarily because of Wis. Stat. 767, sometimes called the "deadman statute." The statute basically says that dead men cannot speak nor testify to the truth or untruth of statements made in favor or against them. The State Courts have incorporated, in part the deadman statutes in interpreting the laws that govern paternity actions.

Other happenings in Ho-Chunk Country, many tribal members are seeking petitions for enrollment or challenging enrollment determinations based on blood quantum. Because the Nation uses and relies on State birth records from Wisconsin Vital Records, it is important to establish paternity of a person *while the alleged father is still alive*. State law also provides that only certain people are allowed or have standing to bring a paternity action. In instances where the alleged father has died, paternity actions cannot be maintained, unless there is an appointed personal representative legally

trust for a federally recognized Indian tribe. The Supreme Court effectively overturned a ruling by the U.S. 8th Circuit Court of Appeals that prevented the Department of Interior from named by the deceased alleged father. In such cases a posthumous paternity action is allowable under State law.

Federal Law

*The U.S. 2nd Circuit Court of Appeals, which is not binding on this Court nor the 7th Circuit Court of Appeals - including Wisconsin, held that a construction business owned and operated by the Mashantucket Pequot tribe in Connecticut is subject to OSHA. The Court held that Indian tribes do not possess absolute sovereignty and that they are subject to statutes of "general application." *Reich v. Mashantucket Sand & Gravel and Occupational Safety and Health Review Commission*, Docket No. 95-4200 (September 6, 1996).

*The Bureau of Indian Affairs has a trust duty to oversee the commercial lease arrangements of lands allotted to tribal members. In *Brown v. United States*, the Court of Appeals for the Federal Circuit held that under the Tucker Act, the United States through the BIA has a duty to compel the lessees of allotted land to meet proper reporting obligations under the terms of the lease. The Court stated that the federal government has assumed "control" or "supervision" over the commercial leasing program so therefore it had trust responsibilities to the allottee.

acquiring 91 acres of lands near the South Dakota reservation of the Lower Brule Sioux.

*Citizen Suit provisions or citizen enforcement actions. These are ordinances or laws that allow individual citizens of the Nation to seek compliance and enforcement of the law by filing an individual lawsuit against the government, an agency of the government or an agent or official of the government. Citizen suit provisions are intended to enlist the public in enforcing the Nation's laws set by the Legislature.

*PERSONNEL POLICIES AND PROCEDURES MANUAL. The February 17, 1995 Interim Personnel Committee Minutes per approved by the HCN Legislature, except for the dissolution motion and section VI (b) authorizing the Executive Director of Personnel to interpret the Personnel Policies and issue memo opinions about the employment policies. This issue came to the attention of the Court recently, when reviewing in detail the Personnel Manual that includes Section VI(b) in the manual and an attached memo explaining the purpose and function. However, the full minutes of the legislative meeting reveal this portion VI(b) of the Interim Personnel Committee were never approved.

*Listed below are recently passed ordinances of the HCN which include: Claims Against Per Capita Ordinance, Recognition of Foreign Child Support Orders Ordinance, Confirmation Process for Executive Directors, Attorney Compensation Resolution No. 10/15/96B, Claims Against Per Capita Voluntary Consent

HCN Legislation

Resolution No. 10/15/96C, and signature Authority for Contract Entered Into on Behalf of the HCN.

Legal Definitions:

Affirm, to affirm a judgement or order means to declare that it is valid or correct. When an Default is an omission or failure to do that which ought to be done.

Default Judgement is a judgement entered against a party who has failed to defend against a claim that has been brought by another party.

Hearsay is a term applied to testimony given by a witness who relates, not what he or she knows personally, but what others have told him or her, or what he or she has heard others say.

Presumption is an inference in favor of a particular fact. A presumption is a legal device that operates in the absence of other proof.

Liability is the degree to which a party is held liable, responsible or obligated in law or equity.

Over-ruled or Reversal is the act of a higher court reserving or overturning a judgement reached by the lower court. To reverse a judgement means to overturn it by contrary decision, make it void, undo or annul it for error, or a contrary interpretation of law.

Prima facie is Latin for "at first sight" or "on first appearance." For example a prima facie case is a case based on facts presumed to be true unless disproved by some evidence to the contrary.

appellate court affirms a decision of a lower court, it allows the decision to stand as rendered.

Attachment is the legal process of seizing another's property in accordance with a judicial order for the purpose of satisfying a judgement.

Attest means to bear witness to or

Remand is to send back. The act of an appellate court when it sends a case back to the trial court and orders the trial court to conduct limited new hearings or an entirely new trial, or to take some other further action.

Stay is the act of stopping a judicial proceeding by the order of a court. To "stay" an order or decree means to hold it in abeyance, or refrain from enforcing it.

Recent Decisions

Ho Chunk Casino and Ho-Chunk Nation v. Lewis Frogg, SU96-04, **Decision** (HCN S.Ct., Oct. 8, 1996). The Supreme Court reversed the Trial Court ruling granting the plaintiff/appellee a 4% pay increase based upon a retroactive performance evaluation.

Ho-Chunk Nation Department of Health v. Simplot, Severson and Ravet, SU96-06, **Order (Dismissing Appeal)** (HCN S.Ct., Oct. 11, 1996). The Supreme Court granted the appellant/defendant's Motion to voluntarily dismiss the appeal. The trial court judgement found in favor of the plaintiff's employment grievance.

to affirm as true or genuine.

Authority is synonymous with permission. A person or body acts with authority or has permission to act based on a lawful delegation of power or the right to exercise powers.

Donaldson A. June v. Kate Doornbos, SU96-03, **Decision** (HCN S.Ct., Oct. 15, 1996). The Court reversed in part the award of a default judgement against the appellant/defendant. The Supreme Court held that without personal service according to *HCN Int. R. Civ. P.* 54, the trial court may not enter a default judgement, and affirmed the lower court ruling of entry of default pursuant to *HCN Int. R. Civ. P.* 5(B) and 19. The Supreme Court remanded the case for further findings to the HCN Trial Court.

Loa Porter v. Chloris Lowe, Jr., CV95-23 **Judgement** (HCN Tr. Ct., Oct. 2, 1996). The Court granted the plaintiff's Motion for Injunctive Relief. The Court found that the defendant had violated the HCN Dept. Of Social Services and Dept. of Health Establishment Acts, that the defendant had violated the Constitution by exercising the powers of the Legislature, and that the defendant had reorganized the above departments without legislative approval. The injunction prevents any further reorganization without legislative approval and compels the defendant to restore the affected departments to the status quo.

Charles M., Percy, and William Miner, III. v. Geraldine Swan,

CV96-28, **Order (Denying Motion to Dismiss)** (HCN Tr. Ct., Oct. 4, 1996). Plaintiff's Motion to Dismiss was denied. The Court found that there was a fact in dispute and that the matter involved Ho-Chunk custom regarding the property of deceased tribal members.

Jacquelyn D. Wells v. Kurtis Brockhaus, CV96-26, **Order (Enforcing Child Support)** (HCN

Gale S. White v. Department of Personnel and Ho-Chunk Nation, CV95-17, **Judgement** (HCN Tr. Ct., Oct. 14, 1996). The Court issued an judgement in favor of the plaintiff, in part. The plaintiff had grieved an employment suspension and termination. The Court found that defendant had the discretionary authority to terminate the plaintiff, for signing a contract without Legislative authority. The plaintiff was awarded damages against the defendant for failing to provide notice of why she was suspended.

Sherri Red Cloud v. Marlin J. Red Cloud, CV96-36 **Order (Enforcing Child Support)** (HCN Tr. Ct., Oct. 15, 1996). The Court granted the plaintiff's motion to enforce a Jackson County child support Order.

Sherri Red Cloud v. Maynard Rave, Sr., CV96-37 **Order (Enforcing Child Support)** (HCN Tr. Ct., Oct. 15, 1996). The Court granted the plaintiff's motion to enforce a Jackson County child support Order.

In the Interest of Gary Alan Funmaker, Sr. v. Ho-Chunk Nation, CV96-39 **Judgement (Petition Denied)** (HCN Tr. Ct.,

Tr. Ct., Oct. 9, 1996). The Court granted the plaintiff's motion to enforce a Milwaukee County child support Order.

In re: Julia Hare York, by Walter I. Hare v. HCN Enrollment Dept., CV96-38, **Order (Granting Per Capita Distribution in part)** (HCN Tr. Ct., Oct. 9, 1996). The Court released trust funds to an emancipated 17 year old, finding that the minor tribal member was married, wanted to contribute to Oct. 18, 1996). Plaintiff sought the release of the trust funds of his two minor children. The Court denied the petition, since the plaintiff failed to demonstrate a special need existed and that the release of such funds was for the health, education, and welfare of the minor children.

October Filings

Carol Smith v. Rainbow Casino, and Bernice Cloud, CV 96-54. Plaintiff filed an employment grievance and claim for unfair treatment and harassment.

Christie Flick v. Orin White Eagle, CV 96-56. The plaintiff filed a motion to enforce a Jackson County child support Order.

Karena Day v. Kevin Day, CV 96-57.

The plaintiff filed a motion to enforce a Jackson County child support Order.

Vicki Houghton v. John C. Houghton, Jr., CV 96-58. The plaintiff filed a motion to enforce a La Crosse County child support Order.

Steven Camden v. Ho-Chunk Nation Gaming Commission, CV 96-59. Plaintiff filed an action

the support of herself and her family. The Court found that a special need did exist.

Jacquelyn D. Wells v. Wesley D. Brockhaus, CV96-25, **Order (Enforcing Child Support)** (HCN Tr. Ct., Oct. 10, 1996). The Court granted the plaintiff's motion to enforce a Milwaukee County child support Order.

alleging abuse of power, and discretion by the HCN Gaming Commission, claiming a conflict of interest and ethical violation in conducting the proceeding.

Frank Johnson, Sr. v. Ho-Chunk Nation Enrollment, CV 96-60. Petitioner is seeking release of per cap trust funds for the benefit of an adult incompetent tribal member in petitioner's care.

Harrison Funmaker v. Tamera Funmaker, CV 96-61. The plaintiff filed a motion to enforce a Wood County child support Order.

Paul Smith v. Melissa McGill, CV 96-62.

The plaintiff filed a motion to enforce a Wood County child support Order.

Daivd Ujke v. Ho-Chunk Nation, CV 96-63. Plaintiff filed an action claiming breach of contract. Plaintiff is seeking damages in the amount allegedly due under the terms of an attorney contract with the HCN.

Ho-Chunk Nation Bar Association

We congratulate the following person(s) on their

admission to practice before the HCN Courts:

Judith Maves-Klatt, La Crosse, WI.

Frank M. Tuerkheimer, Madison, WI.

Melanie E. Cohen, Madison, WI.

Did you know . . .

Pursuant to HCN

The HCN Trial Court is a court of general jurisdiction. The HCN Constitution expressly provides that the Trial Court shall have original jurisdiction over **all** cases and controversies, both criminal and civil, in law or in equity, arising under the Constitution, laws, customs, and traditions of the Ho-Chunk Nation.

There is no inferred or express limitation to the scope of tribal court jurisdiction. The HCN Constitution directs that **any** case or controversy “arising within the jurisdiction of the Ho-Chunk Nation shall be filed in the Trial Court before it is filed in any other Court. This Constitutional mandate directs all parties that any case or any controversy arising within the jurisdiction of the Ho-Chunk Nation must preside to the HCN Trial Court. The Constitution defines the parameters of jurisdiction in Article I, § 2. The jurisdiction of the Ho-Chunk Nation shall extend to all territory set forth in Section I of Article I and to any and all persons or activities therein, based upon the inherent sovereign authority of the Nation and the People or upon Federal Law.

The Trial Court is empowered to issue all remedies in law and in equity including injunctive and declaratory relief and all writs including attachment

Constitution, Article IV, § 2 the General Council delegates and “authorizes the legislative branch to make laws and appropriate funds in accordance with Article V.” The General Council, in turn, authorized the “judicial branch to interpret and apply the laws and Constitution of the Nation in accordance with Article VII.” The Ho-Chunk people grant all

and mandamus. Remedies in law are those defined by ordinance, statute or some binding expression of the legislature. A remedy in law is also the means by which a right, established by statute or common law - custom or tradition in the case of tribes - is enforced or a violation of a right is prevented, redressed, or compensated. Equitable relief or an equitable remedy is an injunction, or specific performance ordered instead of money damages.

HCN Legal Citations

Examples:

Ho-Chunk Nation Constitution

Constitution, Article Number, Section, and Subsection.

HCN CONSTITUTION, ART. V

HCN CONSTITUTION, ART. XI, Sec. 7

HCN CONSTITUTION, ART. II, Sec. 1(a)

Ho-Chunk Nation Statutes

Name of the Statute or Ordinance, Chapter, Section/Part/Clause, page.

PERSONNEL POLICIES AND PROCEDURES MANUAL, Ch. 3, p.14.

PERSONNEL POLICIES AND

inherent sovereign powers of the people to the General Council, who then through the adoption of the HCN Constitution authorized the separation of functions, under Article III, 3 and defined the powers and established the responsibilities of the legislature, executive and judicial branches of government.

PROCEDURES MANUAL, Ch. 12, Part B, p.82.

HCN Supreme Court Case Law

Name of case, Case No (HCN Tr. Ct. or HCN S. Ct. date).

Johnson v. Department Inc., SU89-04 (HCN S. Ct. August 14, 1995).

Smith v. Casino, SU94-11 (Order, HCN S. Ct. December 1, 1993).

HCN Trial Court Case Law

Smith v. Jones, CV89-012 (HCN Tr. Ct. March 1, 1996).

Hall v. Mail Man, CV92-09 (Order, HCN Tr. Ct. November 30, 1995).

In the Interest of Minor Child XYZ, DOB 10-01-89, JV95-47 (HCN Tr. Ct. May 23, 1994).

Indian Law Reporter

Published:

Coalition for Fair Government II v. Lowe, Jr., et al., CV 96-22, **23 Indian L. Rep. 6181** (HCN Tr. Ct., July 23, 1996)

Frogg v. Ho-Chunk Nation Casino, et al., CV 95-019, **23 Indian L. Rep. 6197** (HCN Tr. Ct., Mar. 15, 1996).

Conferences:

* Child Protection, November 6, 7, and 8, 1996 in Anchorage, AK. Council Lodge Institute at (800) 726-1674.

* The 8th Annual Conference on Environment and Development in Indian Country, Nov, 7-8, 1996 in Albuquerque, NM. For more information contact the ABA Service Center (800) 285-2221.

* Changing Nature of Competition Development and Environmental Protection in Indian Country, Nov. 7-8 in Washington, D.C. (800) 285-2221.

* The 2nd Annual National Indian Housing Legal Conference, sponsored by HUD's Office of Native American Programs, Nov. 13-14, 1996, Santa Fe, New Mexico. No fee for Registration. For registration information contact ICF Kaiser Information line at (703) 934-3392.

* Advanced Child Abuse seminar with "Emphasis on the Child as a Victim and Witness" on Nov. 13, 14, & 15, 1996 in Las Vegas, NV. Council Lodge (800) 726-1674.

* Forestry, Fish & Game Enforcement program in Las Vegas, NV on Nov. 13, 14, and 15, 1996. Council Lodge (800) 726-1674.

* Domestic Violence in Indian Country on Dec. 4, 5, and 6, 1996 in Las Vegas, NV. Council Lodge (800) 726-1674.

* Council Lodge Institute is sponsoring a Basic Indian Law course in Reno, NV starting Dec. 11, 12 and 13, 1996. Council Lodge (800) 726-1674.

* Native Juvenile Delinquency in Reno, NV on Dec. 11, 12, & 13, 1996. For more information contact Council Lodge (800) 726-1674.

Service of Summons in person	\$12
Service of Summons by Mail	\$3
Subpoena	\$1
Service by Courts	.30/per mile
Copying	.05/per copy
Faxing	\$0.25
Tapes of Hearings	\$5
Certified Copy of Court Order	.50 per page
Registration of Foreign Orders	\$10
Appellate filing fees	\$35
Admission to Practice	\$50

HCN Court Fees:

Filing Fee \$35



HO-CHUNK NATION COURT BULLETIN

What's up in Court
Vol. I No. 11
December 1, 1996

Sovereignty what will it be in 1997

In the News . . .

Time ran out on an amendment to Indian Child Welfare Act. The House recess prevented a vote on the bill, seeking to change the rules governing the adoption of Indian children by non-Indians. The Senate approved the legislation. The bill did not have the support needed in the House to be brought to the floor for a vote. The United States Dept of Justice and Tribal governments objected to any attempt to pass legislation that would dilute tribal sovereignty.

Did You Know . . .

* The Tenth Circuit Court of Appeals held on Oct. 7, 1996 that the CLEAN WATER ACT gives Indian tribes power to set water quality standards that are more stringent than federal standards and makes them enforceable against upstream dischargers. Although a tribe may not enforce effluent limitations or standards beyond reservation

boundaries, the 1987 Amendments to Title 33 U.S.C. 1370 affecting Indian tribes does not prevent tribes from exercising their inherent sovereign power to set water quality standards that are more stringent than those under federal law. *Albuquerque, N.M. v. Browner*, 65 USLW 2244 (CA 10, No. 93-2315, 1996)

* HUD's Office of Native American Programs has published a comprehensive Tribal Housing Code, including eviction and foreclosure procedures. No single code can meet the needs of all tribes. This sample code provides a series of options for tribes to consider in evaluating and adapting the document to meet the needs of their specific tribe.

* The National Indian Justice Center has developed a comprehensive Model Probate Code with commentary. It covers general probate provisions, wills, intestate succession, family rights/protections, inheritance by non-Indians/fractionated heirship, administration of intestate estates, probate of wills, and guardianship. The Model Probate Code contains provisions which would allow tribes to take advantage of provisions included in the Indian Land Consolidation Act of 1983/1984.

attorney that does not possess a contract which has been approved" by the HCN Legislature and the "Secretary of the Interior or is pending approval by the Secretary of the Interior." This Resolution provides that "any person seeking to authorize any payment contrary" to this Resolution is "acting contrary to the Ho-Chunk Nation Constitution" and federal law.

HCN Per Capita Voluntary Consent Withholdings, Resolution 10/15/96C allows the HCN Department of Treasury to comply with the wishes of those tribal members who have previously agreed to a voluntary attachment of their per capita distributions for purposes of child support obligations.

HCN Signature Authority of Contracts Entered into on Behalf of the Ho-Chunk Nation, Resolution 3/12/96B provides that the Nation amends its policy as of October 18, 1996 by requiring legislative approval for all contracts over \$500.01 and contracts under \$500.00 when the scope of services provided under such contract is not contemplated within an approved annual departmental budget.

Legal Definitions:

Appearance is coming into court as party to a suit, either in person or through an attorney, whether as plaintiff or defendant.

Binding Authority is sources of law that must be taken into account by a

HCN Legislation

HCN Attorney Compensation, Resolution 10/15/96B provides that the Nation shall withhold "any payments at any

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Edited by <i>William A. Boulware, Jr.</i>	

judge in deciding a case.

Citation of Authority means references to legal authorities or precedents such as the constitution, statutes, ordinances, reported cases, in arguments in court, briefs, motions or legal opinions, to substantiate or affirm the positions taken and advanced.

Due Date, in general is the particular day on or before which something must be done to comply with the law, a court order, court rules or contractual obligations.

Legal injury is a violation or invasion of a legal right.

Persuasive Authority are those sources of law that offer guidance and information but are not binding upon a court or judge in making a decision. *See* Binding Authority.

Recent Decisions

Kim Getts v. Ho Chunk Casino, CV 96-42, **Judgement** (HCN Tr. Ct., Nov. 4, 1996), the plaintiff filed an employment grievance against the defendant claiming back pay. The case was dismissed for failure to state a claim and failure to meet the burden of proof.

Jeremy Rockman v. Jo Anne Jones, CV 96-47, **Order** (HCN Tr. Ct. Nov. 8, 1996) appeal pending. The plaintiff sought to enforce an oral contract for services against the defendant. The plaintiff later filed a voluntary dismissal. The Court dismissed the case without prejudice but assessed costs against the plaintiff. The plaintiff is appealing the costs awarded to the defendant.

In re Roberta Goodbear by Shirley Sahr, Guardian, CV 96-49, **Order**

(HCN Tr. Ct. Nov. 14, 1996) the Court granted in part the release of per capita funds, as petitioned, after a finding of special needs and exhaustion of other available resources.

Melissa McGill v. Paul Smith, CV 96-62, **Judgement** (HCN Tr. Ct., Nov. 15, 1996) Petitioner was granted recognition and enforcement of a foreign child support order against the defendant's per capita distribution.

In re Bruce Patrick O'Brien by Elethe Nichols, Guardian, v. HCN Enrollment, CV 96-46, **Order** (HCN Tr. Ct. Nov. 15, 1996), the Court granted in part the release of per capita funds, as petitioned, after a finding of special needs and exhaustion of other available resources.

Annabelle Lowe v. Serena Yellow Thunder, CV96-35, **Judgement** (HCN Tr. Ct. Nov. 15, 1996), plaintiff filed an action seeking to enforce an oral agreement with the defendant for monies loaned to pay for repairs to an automobile. The Court found that the plaintiff had agreed to repay the loan; that the defendant obtained the loan for the plaintiff conditioned on repayment; and that the parties understood the agreement, and had mutually agreed to be bound by it. There was no dispute of any material facts, and the evidence and stipulations supported a binding oral agreement. The Court held that the defendant was obligated to repay the loan amount.

Gordon Snowball v. Ho-Chunk Nation, CV 96-12, **Dismissal** (HCN Tr. Ct. Nov. 20, 1996), plaintiff's lawsuit was dismissed according to

HCN Int. Rules of Civil Procedure 56. There had been no action in this case for more than six months.

Gary D. Skenandore v. Majestic Pines Casino, PRC95-012 **Dismissal** (HCN Tr. Ct. Nov. 20, 1996), plaintiff's lawsuit was dismissed according to *HCN Int. Rules of Civil Procedure 56*. There had been no action in this case for more than six months.

Tracey McCoy v. Ho-Chunk North, PRC95-013, **Dismissal** (HCN Tr. Ct. Nov. 20, 1996), plaintiff's lawsuit was dismissed according to *HCN Int. Rules of Civil Procedure 56*. There had been no action in this case for more than six months.

Orrin Cloud v. Ho-Chunk Casino, CV 95-21, **Dismissal** (HCN Tr. Ct. Nov. 20, 1996), plaintiff's lawsuit was dismissed according to *HCN Int. Rules of Civil Procedure 56*. There had been no action in this case for more than six months.

Max Funmaker v. Ho-Chunk Nation, CV 96-17, **Dismissal** (HCN Tr. Ct. Nov. 20, 1996), plaintiff's lawsuit was dismissed according to *HCN Int. Rules of Civil Procedure 56*. There had been no action in this case for more than six months.

C&B Investments v. HCN Health Department and HCN, CV 96-06, **Judgement** (HCN Tr. Ct. Nov. 21, 1996), the plaintiff filed an action for damages for breach of a commercial lease. The case was dismissed as res judicata, and based on sovereign immunity. The plaintiff failed to establish that the defendant, Nation waived its immunity from suit.

Anne Rae Funmaker v. Kathryn Doornbos and HCN, CV 96-02, **Judgement** (HCN Tr. Ct. Nov. 22, 1996), plaintiff filed an action seeking review of the hiring of an allegedly less qualified individual. The plaintiff alleged a violation of the Personnel Policies and Procedures and claimed a denial of the right to be interviewed. The Court recognizes no such right. The plaintiff also claimed age discrimination. The case was dismissed in favor of the defendant. The plaintiff failed to show age discrimination or a violation of any right protected by law.

Decorah, CV 96-65, plaintiff seeks to register and enforce a foreign child support order from a County Court against the plaintiff's per capita.

Melissa McGill v. Jones Decorah, CV 96-66, plaintiff seeks to register and enforce a foreign child support order from the Racine County Court against the plaintiff's per capita distribution.

In re: Mary Littlegeorge by Sara Abbott, CV 96-67, the petitioner and guardian, requested on behalf of an adult ward the release of the tribal member's adult Incompetent Trust Funds.

David Orozco v. Janita Orozco, CV 96-68, the plaintiff is seeking to register and enforce a foreign child support order from a Texas State Court against the plaintiff's per capita distribution.

Stuart Taylor v. Tammy Taylor Garvin, CV 96-70, the plaintiff is seeking to register and enforce a foreign child support order from the Jackson County Circuit Court against the plaintiff's per capita distribution.

State of Wisconsin v. Dallas White, CV 96-70, voluntary consent for recognition of a foreign child support order against defendant's per capita.

State of Wisconsin v. Waldo Stacy, CV 96-71, voluntary consent for recognition of a foreign child support order against defendant's per capita.

State of Wisconsin v. Melinda Blackcoon, CV 96-72, voluntary consent for recognition of a foreign child support order against per capita.

State of Wisconsin v. Christopher Cloud, CV 96-73, voluntary consent for recognition of a foreign child support order against defendant's per capita.

HCN Bar Association

The Supreme Court of Wisconsin, Board of Bar Examiners, on November 21, 1996 approved the Ho-Chunk Nation Law Day for six (6.0) continuing legal education credits. Individual lawyers must report their hours of actual attendance on a timely filed CLE Form 1. A list of attorneys who registered has been provided to the Board of Bar Examiners.

Child Support Claims

The deadline for enforcement of Child Support Orders in January 15, 1996, as the next quarterly payments will be February 1, 1997. This means that the HCN Court Trial Court must have issued an order recognizing and enforcing the foreign child support order by January 15, 1997. It is not sufficient simply to have filed by that date. The order must be **issued** by that date. Prior to an order being issued, the enforcement action requires notice to the defendant of at least 20 days and then additional time must be allowed if the defendant requests a hearing on the matter. Thus waiting to the last minute to file a claim could result in a delayed order.

Conferences:

November Filings

Supreme Court Cases:

HCN Legislature v. Chloris A. Lowe, Jr. and Jo Deen Lowe, SU 96-09, The defendants/appellants, filed an appeal of the removal of Judge Kittecon and the status of assigning a new judge.

Miner v. Swan, SU96-08, The defendant/appellant, Swan, appealed the trial court's denial of a Motion to Dismiss. This matter is pending.

Littlegeorge v. Lowe and Pierson, SU96-07, The defendant/appellant appealed the trial court's entry of default judgement. The Supreme Court issued a Stay of the trial court proceedings. This matter is still pending.

Loa Porter v. Chloris Lowe, Jr., SU 96-05, the defendant/appellant appealed an injunction issued by the trial court halting actions restructuring various departments without legislative approval.

Trial Court Cases:

Catherine E. Snow v. Edward T.

* Council Lodge Institute is sponsoring a Basic Indian Law course in Reno, NV starting Dec. 11, 12 and 13, 1996. Council Lodge (800) 726-1674.

* Native Juvenile Delinquency in Reno, NV on Dec. 11, 12, & 13, 1996. For more information contact Council Lodge (800) 726-1674.

HCN Court Fees:

Filing Fee	\$35
Service of Summons in person	\$12
Service of Summons by Mail	\$3
Subpoena	\$1
Service by Courts	.30/per mile
Copying	.05/per copy
Faxing	\$0.25
Tapes of Hearings	\$5
Certified Copies	.50 per page
Registration of Foreign Orders	\$10
Appellate filing fees	\$35
Admission to Practice	\$50