

HO-CHUNK NATION COURT BULLETIN

What's up in Court
Vol. 2 No. 1
January 1, 1997

1997 - Empowered, Enlightened & Prepared

Editor's Comments

Where there is Indian Country, there is tribal governmental authority. The Executive, Legislative and Judicial Branches of government work together to shape the framework of law in the Ho-Chunk Nation.

Today, in the United States we have three types of sovereign entities - the federal government, the states, and the Indian tribes. Each of the three sovereigns has its own judicial system, and each plays an important role in the administration of justice in this country.

What is critical for the empowerment of tribal government and tribal people are the use and development of their own resources and their own institutions. So in kind, I include an article that discusses the inherent power of the Court to the right to be briefed. What this means is the Court has the power and the right to be duly informed of the issues and the policies of the matters coming before it. These inherent powers have not been formally addressed by the tribal courts of the Ho-Chunk Nation, but have been pronounced in

Wisconsin state court proceedings recently.

In *Lee v. LIRC*, 202 Wis. 2d 559 (Ct. App. 1996), the appellate state court held that "in general, courts established by constitution have powers incidental to or inherent in judicial bodies, unless such powers are expressly limited by the constitution." This means, generally, that courts have the inherent power to facilitate the efficient conduct of judicial business. The state appellate court also summarized that courts have both the statutory and inherent authority to dismiss an action if the party seeking judicial relief fails to obey court orders.

Although, the above cases are not binding in any fashion on the HCN Court System, these cases do offer guidance and are informative of the inherent powers of the courts.

In the News . . .

In a case involving the constitutionality of the Interior Secretary's authority to acquire land in trust for Indian tribes under 25 U.S.C. § 465 and the ability to review such secretarial decisions, the United States Supreme Court issued an order vacating the judgement of the Eighth Circuit Court of Appeals, which had declared § 465 an unconstitutional delegation of legislative power. The Supreme Court remanded the case back to the Eighth Circuit with instructions that the court vacate the judgement of the District Court for the District of South Dakota, and remand the matter to the Secretary of the Interior for reconsideration of his administrative decision. *Department of the Interior et al. v. South Dakota, et al.*, No. 95-1956, 23 Indian L. Rep. 1069 (U.S. Sup. Ct., Oct. 15, 1996).

* Under the HCN CONSTITUTION every appeal is reviewable based on a final judgement or order, but not all appeals have to be granted. There is a distinction to be made between "review" under the Constitution and "accepting" an appeal. In *HCN*

Did You Know . . .

* Senator Ben Nighthorse Campbell, R- Colo., has been given a clear path to the chairmanship of the Senate Committee on Indian Affairs.

* The recently adopted Violence Against Women Act, Pub. L. 103-322, 108 Stat. 1092 - 1955 (1994), requires that protective orders issued in one jurisdiction be fully enforced in other jurisdictions. This Act specifically includes tribal courts in the requirement for Full Faith and Credit of protective orders. Because, some tribal courts do not have criminal jurisdiction over non-Indians, coordination with local state courts is essential to protect victims.

Legislature v. Chloris A. Lowe, Jr., SU 96-01, **Order** (HCN S. Ct. April 26, 1996), the HCN Supreme Court established a preliminary basis for accepting interlocutory appeals. In this case the Court rejected appellant's appeal for review, as the Court "did not see the matter as

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

appropriate for resolution at this point in time.” This language has been construed to mean that it was not ripe for appellate review.

The Court also set out the rule of law that the appellant needs to establish “any irreparable harm would result if this matter was not reviewed at this point,” and that the Court was concerned with “judicial economy.” *HCN Legislature v. Chloris A. Lowe, Jr.*, SU 96-01, **Order** (HCN S.C., April 26, 1996). The Supreme Court *Order* has delineated three requirements necessary for review: (1) ripeness, (2) irreparable harm, and (3) judicial economy.

HCN Legislation

Clarification: There has been much confusion about the Per Capita Voluntary Withholdings Resolution passed by the HCN Legislature on October 15, 1996. Resolution No. 10/15/96C provided that the Department of Treasury could, upon the consent of a tribal member, withhold child support from the November 1, 1996 per capita distribution. Since the adoption and passage of the Recognition of Foreign Child Support Orders and Claims Against Per Capita Ordinances, the Nation is required to first receive an Order from the Trial Court to honor such a claim. This means that any tribal member who has in the past voluntarily consented to the garnishment of his or her per capita to pay child support, with the exception of wage of assignments, must submit the voluntary consent form with the *Ho-Chunk Nation Legislature v. Chloris A. Lowe, Jr. and Jo Deen B. Lowe*, SU 96-09, (HCN S. Ct. December 15, 1996). The defendant/appellants appealed the *Administrative Order* of the trial court upon the removal of Judge pro

Tribal Trial Court, so that an Order may be issued. In the November issue of the Court Bulletin there was some confusion about the effect and duration of the resolution addressing the November distribution only.

The HCN Legislature has decided that voluntary consent for withholding from per capita requires a court order. All voluntary consents in effect prior to the November 1, 1996 distribution expired on November 1, 1996 and will not effect other per capita distributions unless there is a valid court order.

Legal Definitions:

Appealable Order. A decree or order which is sufficiently final to be entitled to appellate review, as contrasted with an interlocutory order which generally is not appealable until the case has been tried and judgement entered.

Appeal Bond. The court in its discretion may require the appellant to file a bond or provide other security to ensure payment of costs on appeal.

Appellate review. Examination of lower court proceeding by an appellate court to review and revise the judicial action of a lower court. Limits of the appellate jurisdiction are governed by statutes or constitution.

Breach. The breaking or violating of a law, right, obligation, or duty either tem Kittecon. The “crux” of the appeal was Judge Butterfield’s recusal from the case prior to Judge Kittecon’s assignment to preside over the matter. Upon Judge Kittecon’s request for removal from the case, Judge Butterfield, the Chief

by act, action or inaction. A breach exists where one party to a contract fails to carry out the terms, promise, or condition of the contract.

Compel. To urge forcefully; under extreme pressure

Doctrine. A rule, principle, theory or tenet of the law.

Equity. Justice administered according to fairness. The term “equity” denotes the spirit and habit of fairness, justness, and right dealing regulating the relations of people.

Fiat. A short order or warrant of a judge or magistrate directing some act to be done.

Harm. The existence of loss or detriment in fact of any kind to a person resulting from any cause.

Harmless error doctrine. The doctrine that minor or harmless errors during a trial do not require reversal of judgement by an appellate court. An error is “harmless” if the reviewing court, viewing the entire record, determines that no substantial rights of defendant were affected and that the error did not influence or had a very slight influence on the verdict. *U.S v. McCrady*, 774 F.2d 868, 874 (8th Cir. 1985).

Recent Decisions

Administrator for the trial court convened a conference in order to obtain input and direction from the parties on how they would proceed as to who would preside over the case. The defendant/appellant objected to Judge Butterfield’s intervention and

appealed. The HCN Supreme Court reversed the trial court's *Administrative Order* and remanded the matter to the Trial Court to be heard by Judge Greendeer - Lee.

In Re: Diane Lone Tree, CV 95-24 (HCN Tr. Ct. December 18, 1996). The Trial Court found the defendant Lone Tree in contempt of court for failing to obey a subpoena to appear and provide testimony at a civil trial involving an election dispute. The defendant was ordered to perform community service by providing an educational presentation in her legislative area on the judicial process and witness testimony in trial proceedings.

Roger Littlegeorge v. Jo Deen Lowe & Brian Pierson, SU 96-07, (HCN S. Ct. December 23, 1996). The HCN Supreme Court reversed the trial court's issuance of a default judgement against Ms. Lowe. The trial court had made no findings of fact nor reached any issue on the merits. The Supreme Court ruled that the status of defendant/appellant Lowe's attorney contract was similar to an issue pending in litigation and that the trial court's grant of a default judgement would adversely effect the pending litigation.

Melissa Smith v. Paul Smith, CV 96-79, (HCN Tr. Ct., Dec. 20, 1996), the petitioner was granted 29% of income (per capita) for enforcement of a child support order.

Jackson Foster Care, Eunice Greengrass and Carmella Root v. Karla Greengrass, CV 96-81 (HCN Tr. Ct., Dec. 20, 1996) The Court granted the Order entering on the record the defendant's consent of the attachment of their per capita distribution to pay for child support

and arrears.

December Filings

Supreme Court Cases:

Jerry Rockman v. JoAnn Jones, SU96-10. The Supreme Court accepted the appeal to review the imposition by the trial court of attorney's fee in favor of the defendant. The plaintiff had sought to voluntarily dismissed the case without prejudice and in avoidance of fees and costs. The parties agreed to the dismissal without prejudice, but the defendant sought fees and costs based on defendant's handling of the litigation and alleged abuses in filing the suit.

Anna Rae Funmaker v. Kathryn Doornbos, SU 96-12. This employment and age discrimination lawsuit was appealed to the Supreme Court by plaintiff appellant Funmaker on December 15, 1996. The appellant claims that the trial court, in part, ruled incorrectly in dismissing the age discrimination employment dispute.

C&B Investments v. Ho-Chunk Nation Health Board, and Ho-Chunk Nation, SU96-13. The plaintiff appellant is seeking judicial review of the trial court's ruling, finding that the claim is precluded as res judicata. The plaintiff was seeking to enforce the terms of a commercial lease.

Karena Day, HCN Exec. Admin. Officer, v. Berna Big Thunder, Sherry Wilson, and Brenda Anhalt as plaintiff intervenors and David Abangan, HCN Wo-Lduk Editor, SU 96-14. The defendant appellant appeals from the ruling of the trial court imposing a temporary injunction maintaining the status quo under a challenge that the terms of a

Settlement Agreement was breached by the defendant. The defendant Day appealed. The Supreme Court has granted the appeal and issued a Stay, halting the trial court's injunctive relief. No issues or merits have been addressed by the trial court.

Rainbow Casino and Ho-Chunk Nation v. Sandra Sliwicki, SU 96-15. The defendant appellant appeals the trial court ruling finding a violation of due process and notice to the plaintiff.

In Re: Diane Lone Tree, SU 96-16. The defendant appellant is seeking judicial review of the trial court's finding of contempt. The defendant was found have avoided appearing as a witness in a trial after being subpoenaed. The trial court ordered the defendant to perform community service.

Trial Court Cases:

In the Interest of Jessica Decorah by Mary Decorah v. HCN, CV 96-76. Petitioner filed claim seeking release of the per capita distribution for the benefit of her minor daughter.

Brian Hobart v. Majestic Pines Casino, CV 96-77. Plaintiff filed an employment grievance seeking review of and determination on claim of wrongful termination.

In the Interest of Mercedes Blackcoon by Dale Hozard v. HCN Enrollment, CV 96-78. Petitioner filed claim seeking release of the per capita distribution for the benefit of tribal adult incompetent.

Melissa Smith v. Paul Smith, CV 96-79. Plaintiff is seeking enforcement of a child support order against the defendant's per capita distribution.

Rhonda Funmaker v. John Holst, CV 96-80. Plaintiff is seeking enforcement of a child support order against the defendant's per capita distribution.

Jackson Foster Care, Eunice Greengrass and Carmella Root v. Karla Greengrass, CV 96-81. Plaintiffs are seeking enforcement of a child support order against the defendant's per capita distribution for support and arrears.

Katherine Snow v. Edward Decorah, CV 96-82. Plaintiff is seeking enforcement of a child support order against the defendant's per capita distribution.

Debra K. Crowe v. Foster D. Cloud, CV 96-83. Plaintiff is seeking enforcement of a child support order against the defendant's per capita distribution.

Winona Funmaker v. Matthew H. McKee, CV 96-85. Plaintiff is seeking enforcement of a child support order against the defendant's per capita distribution.

Dawn Young v. Dion Thompson, CV 96-86. Plaintiff is seeking enforcement of a child support order against the defendant's per capita distribution.

In the Interest of Myron Funmaker by Judith Thundercloud v. HCN, CV 96-87. Petitioner filed claim seeking release of the per capita distribution for the benefit of tribal elder.

Joan Whitewater v. Millie Decorah and Sandy Martin, CV 96-88. Plaintiff filed an action seeking review of employment grievance brought against the defendant on a personnel matter.

State of Wisconsin v. Marcel R. Decorah. CV 96-89. Plaintiff is seeking enforcement of a Consent of Order for Claims Against Per Capita distribution.

Kelley Thundercloud v. Wallace P. Greendeer, CV 96-90. Plaintiff is seeking enforcement of a child support order against the defendant's per capita distribution.

State of Wisconsin v. Arnold Cloud, CV 96-91. Plaintiff is seeking enforcement of a Consent of Order for Claims Against Per Capita distribution.

State of Wisconsin v. Tricia Stabler, CV 96-92. Plaintiff is seeking enforcement of a Consent of Order for Claims Against Per Capita distribution.

Kathleen Waukau v. Eldon D. Powless, CV 96-93. Plaintiff is seeking enforcement of a child support order against the defendant's per capita distribution.

Joelene Smith v. Tammy Lang and HCN, CV 96-94. The plaintiff filed an employment dispute claiming that the defendant violated the HCN Constitution, Personnel Policies and Procedures and the HCN Head Start Charter and By-Laws.

and preparation as is possible. Any attorneys interested in assisted please contact the HCN Trial Court Staff Attorney for more information.

We congratulate the following person(s) on their admission to practice before the HCN Courts: Brent Smith, La Crosse, WI. Milton Rosenberg, Madison, WI. David J.W. Klauser, Madison, WI.

The following information may be helpful for the HCN Bar members, concerning filing papers by fax. The HCN Court Rules do not specifically provide for filing by fax, so for guidance *only* we look to the Wisconsin State Supreme Court. If there is a local rule that so provides, some papers may be filed by fax. Papers that may be filed by fax, given leave of the Court or under the guidance of local rule, are *only* those papers which do not require a filing fee.

Also, the Court requests that when a party files any documents or pleadings, that the party two hole punch the copy that is to be filed with the Court, and provide proof of service or a Certificate of Service that the opposing party has been served.

Words of Advice to the HCN Advocates

At this time the Court seeks to impart some words of wisdom to the lay advocates as they continue their preparations. Take time to think about what unique abilities you bring to your practice; take pride in your profession; take pride in your own personal practice and work; be comfortable in your surroundings and the people you surround yourself with; make your work a team effort so that it informs and

HCN Bar Association

The HCN Court System is seeking Bar members who would be interesting in serving as mentors to the tribal courts lay advocates as they prepare for Mock trials. The lay advocates are completing a year long training that seeks to condense as much practical and procedural advice

empowers your community beyond the individual client; prepare yourself and make sure Published in Volume 23, No. 10, October 1996 release of the Indian Law Reporter, is *Rowlee v. Majestic Pines Casino*, No. PRC95-011, 23 Indian L. Rep. 6218 (HCN Tr. Ct., Apr. 10, 1996). The HCN did not act unreasonably in requiring petitioner to provide a medical release before returning to work.

Published in Volume 23, No. 11, November 1996 release of the Indian Law Reporter, is *Simplot et al., v. Ho-Chunk Nation Department of Health*, CV 95-26, CV 95-27, and CV 96-05, 23 ILR 6235 (HCN Tr. Ct. Aug. 29, 1996)

Child Support Claims

The deadline for enforcement of Child Support Orders in January 15, 1997, 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:

to make time for yourself. Good Luck!

* Wisconsin State Bar Association Mid-Winter Conference in Milwaukee, will be conducted January 22 to 24, 1997.

* The Indian Law Section of the Wisconsin State Bar will meeting during the State bar mid-Winter convention on Friday, January 24, 1996. For more information contact Howard Bichler.

* Indigenous Law Students Association of the University of Wisconsin Law School will host the National Native American Law Student's Moot Court Competition on February 20 - 21, 1997 in Madison. For more information contact Michael Oeser at (608) 276-4065.

* On Saturday, February 22, 1997, ILSA will host the annual Coming Together of the Peoples Conference in Madison, WI for more information contact Leslie Parker - Cohen at (608) 241-9028.

* April 10 - 11, 1997, the Federal Bar Association will sponsor the 22nd Annual Indian Law Conference in Albuquerque, NM. For more information contact the FBA at (202) 638-0252.

* On Saturday, April 12, 1997, Professor Scott Taylor at the University of New Mexico will conduct a symposium on Taxation in Indian Country. For more information contact Professor Taylor at (505) 277-2113.

Indian Law Reporter

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

HCN Court Fees:

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. 2 No. 2
February 1, 1997

Case & Controversy . . .

Editor's Comments

One aspect of Sovereignty is the power of self-determination.

An Indian treaty is “not a grant of rights to the Indians, but a grant of rights from them.” *U.S. v. Winans*, 198 U.S. 371 (1905). The purpose of an Indian treaty was not to give rights to the Indians but to take away rights they possessed. Thus, Indians have a great many rights in addition to those described in treaties. Actually, any right not expressly removed or extinguished by a treaty or federal statute is reserved to the tribe. These rights not removed are a principal in Indian law known as the “reserved rights” doctrine.

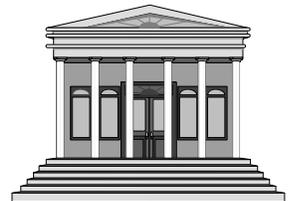
The undisputed existence of a general trust relationship between the United States and the Indian people was reaffirmed by the United States Supreme Court in *U.S. v. Mitchell*, 463 U.S. 206, 225 (1983). The Supreme Court recognized the existence of a trust relationship between the federal government and Indian people in its early decisions interpreting Indian treaties. Between 1787 and 1871, the United States entered into several hundred treaties with Indian tribes, often the Indians exchanged land for peace, annuities and protection etc.. These promises generally included a guarantee that the United States would protect the safety and well-being of tribal members. The Supreme Court has held that these promises create a trust relationship. The promises in treaties create a duty of protection toward Indians. *U.S. v. Kagama*, 118 U.S. 375, 384 (1886). See also *Seminole Nation v. U.S.*, 316 U.S. 286 (1942). The foundation of this unique relationship is trust. Put simply, the Indians “trust” the United States to fulfill the promises which were given in exchange for their land. The federal government’s obligation to honor this trust relationship and to fulfill its treaty commitments is known as its *trust responsibility*.

The courts have extended the trust responsibility to cover rights created and protected by federal statutes, agreements, and executive orders. Statutes, agreements and executive orders can create trust obligations in the same way that a treaty did. The trust responsibility imposes an independent obligation upon the federal government. The agreements they made require the federal government to advance Indian interests, including their interest in self-government. *White v. Califano*, 581 F.2d 697 (8th Cir. 1978); *McNabb v. Heckler*, 628 F. Supp. 544 (D. Mont. 1986), *aff’d*, 829 F. 2d 789 (9th Cir. 1987).

In the News . . .

Rep. Pryce (R) from Ohio is contemplating the re-introduction of the bill that failed to pass the Senate last year, that would undermine the Indian Child Welfare Act. The 1997 bill is similar to the bill introduced last year, that would effectively empower the state to determine eligibility and tribal enrollment in adoption cases. It would limit the ability of tribal governments to intervene in adoption actions, as well as deprive tribal governments of their inherent right to determine who is eligible for membership and to protect the interest tribes have in their youth.

Her new attempt to amend the ICWA reneges on a legislative compromise she had agreed to in conference last session. The compromise had the support of adoption advocates but was opposed by the right to life lobby. Cong. Pryce’s attempt to deviate from the Compromise worked out last year is opposed by Sen. Ben NightHorse Campbell (R-CO) and Sen. John McCain (R-



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AZ).

Did You Know . . .

- Three primary rules of treaty interpretation are: ambiguous expressions must be resolved in favor of the Indian parties concerned; Indian treaties must be interpreted as the Indians themselves would have understood them; and Indian treaties must be liberally construed in favor of the Indians. *Yankton Sioux Tribe of Indians v. Nelson*, 521 F. Supp. 463 (D.S.D. 1981).
- Treaties and agreements with Indian tribes should be liberally interpreted in favor of the Indians. *Choctaw Nation v. U.S.*, 121 F. Supp. 206 (1954).

HCN Legislation

HCN Resolution 1/14/97-C Approval of Extension and Modification of Attorney Special Counsel Contract.

HCN Resolution 1/14/97-A, Appointment of Justice Pro Tempore. The Hon. William A. Thorne, Jr., shall serve as justice pro tempore on the HCN Supreme Court in a limited fashion where a sitting justice has recused herself/himself.

Legal Definitions:

Abate means to quash or to do away with or nullify or diminish.

Abatement is a reduction or a decrease. For example to decrease, in whole or in part, a continuing charge, such as a debt or rent.

Compensatory, as in “compensatory damages”, is relief intended to compensate the injured party, to make good or replace the loss caused by the injury or harm. Compensatory damages are awarded to compensate, indemnify, or provide restitution. It is made to restore a party to a previous position, not to punish.

Damages may be monetary compensation or indemnity awarded by a court to any person who has suffered a loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act, omission or negligence of another.

Dismiss is to send away, to discharge or discontinue, to dispose of. For example a court may dismiss an action or lawsuit without further hearing or consideration.

Punitive, as in “punitive damages”, is the award of relief over and above what will compensate the plaintiff for her/his loss or injury. Punitive damages are intended to punish the perpetrator for his/her evil behavior and to deter such behavior in the future.



Recent Decisions

HCN Supreme Court:

Loa L. Porter v. Chloris Lowe, Jr., SU96-05 (HCN S. Ct., Jan. 10, 1997). The Supreme Court reversed and dismissed the lawsuit, finding that the plaintiff lacked standing to pursue the matter and that the plaintiff failed to exhaust administrative remedies.

* * *

C&B Investments v. Ho-Chunk Nation Health Board and Ho-Chunk Nation, SU96-13 (HCN S. Ct., Jan. 20, 1997). The Supreme Court dismissed the appeal as the plaintiff/appellant failed to file the appeal within the time allowed pursuant to the *HCN Rules of Appellate Procedure*.

HCN Trial Court Cases:

State of Wisconsin v. Melinda Blackcoon, CV 96-72 (HCN Tr. Ct., Jan. 3, 1997). The Court granted plaintiff's *Petition* to enforce an order for child support against the defendant's per capita distribution.

* * *

Coalition to Fair Government II, et al., v. Chloris A. Lowe, et al, CV 96-22, (HCN Tr. Ct., January 3, 1997), was a constitutional dispute where the plaintiff sought declaratory relief and invalidation of the actions taken at the General Council on April 27, 1996. The *Coalition* wanted to prevent the removal of legislators purportedly removed under HO-CHUNK NATION CONSTITUTION, ART. IX, § 1, as well as declare various other acts of the April 27, 1996 General Council null and void. This was of great importance to the separation of powers within the Ho-Chunk government and tested the checks and balances built into the HO-CHUNK NATION CONSTITUTION. A core issue in this case was whether the alleged removal of three Legislators of the Ho-Chunk Nation was accomplished in a Constitutional manner.

The Court found that the Notices given to the Legislators were defective in that the notice did not advise the Legislators of the violations of malfeasance the Legislators were accused of, even in broad terms sufficient to give any one of them the ability to respond in a meaningful way. *See Coalition v. Lowe and Whiterabbit*, CV 96-22 at 15-17 (HCN Tr. Ct. July 23, 1996).

The HCN Bill of Rights guarantees to every person within the Nation's jurisdiction that the Ho-Chunk Nation "in exercising its powers of self-government shall not: deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without the due process of law." HCN CONSTITUTION, ART. X, § 1(a)(8).

The Court also found the Notices were deficient because they were prepared and served by people without any authority to prepare and serve such notices. The General Council has never given the authority to issue charges of malfeasance to the General Council Planning Committee. The GCC exists through a delegation of authority from the HCN Legislature and has no independent authority that has not been delegated to it from either the Legislature or a General Council itself. *See HCN CONSTITUTION ART. IV, § 2.*

The Court additionally found that the burden of proof that a quorum for action of the General Council did not exist was on the plaintiffs, and that they had not carried that burden as to the "move around" vote. The Court noted in its decision that Mr. Lowe violated ROBERT'S RULES OF ORDER in continuing the meeting once it was clear an insufficient number were present to constitute a quorum. If ROBERT'S RULES were followed, the Court would be compelled to rule that all subsequent actions including the two recounts each with a different method were illegal and that the last 80/20 vote could not be valid even with a quorum.

The HCN CONSTITUTION, ART. IV, § 7 states that each action of the General Council shall require the presence of a quorum. Proceeding with the acknowledged lack of a quorum appeared to violate this section. The methods and means employed to remove the Legislators did not pass the requirements of the HCN CONSTITUTION, due process, and the General Council's own guidelines as indicated by its resolutions.

The General Council could have chosen to recall the Legislators, a more democratic method which does not require a showing of malfeasance and a lesser showing of notice, but they chose the harder route of removal. Removal requires notice and the right to be heard. Due to the violations, the actions to remove the three (3) HCN Legislators based on the April 27, 1996 General Council were stricken as unconstitutional and were permanently enjoined.

The Court found that the plaintiffs failed to prove a quorum could not have existed. If the proper method was to place the burden on the proponents of 80/20 to prove that a quorum existed on April 27, 1996, the Court noted that clear and convincing evidence did not support this. The Court was left with the decision being tipped by a presumption because there was no objectively verifiable proof of a quorum.

The Court made no ruling on the Veto Power resolution since the question of the power to alter the balance of power in the HCN CONSTITUTION by the General Council absent a Special Election was never briefed. Similarly, the Court declined to rule on the issue that 80/20 violates IGRA, since it also was never briefed.

[Editorial Note: this synopsis is rendered only to inform generally what has transpired in this case and is meant in no way to be a binding interpretation of Ho-Chunk Case Law. Additionally, the HCN Trial Court has made no endorsements of any of the positions taken by of any of the parties in this lawsuit. The Court provided a ruling on the law and based on the evidence submitted to it for judicial review.]

* * *

In the Interest of Maxine P. Johnson by Frank Johnson v. Ho-Chunk Nation Enrollment Dept., CV96-60 (HCN Tr. Ct., Jan. 3, 1997). The Court the release of the ward’s per capita trust funds to the petitioner as her legal guardian and for her benefit.

* * *

Daniel T. Williams v. Ho-Chunk Nation Division of Risk Management; Laura Soap, Bert Funmaker and Dr. J. Noble as Commissioners, CV96-44 (HCN Tr. Ct., Jan. 13,1997). The Court accepted a Settlement Agreement in this Insurance case.

* * *

Rhonda Funmaker v. John Holst, CV96-80 (HCN Tr. Ct., Jan. 13, 1997). The Court granted plaintiff’s *Petition* for enforce an order for child support against the defendant’s per capita distribution.

* * *

Roberta Greendeer v. Fredrick Greendeer, CV97-02 (HCN Tr. Ct., Jan. 14, 1997). The Court granted plaintiff’s *Petition* for enforce an order for child support against the defendant’s per capita distribution.

* * *

Shari Jo Link v. Nelson Anderson Funmaker, CV96-75 (HCN Tr. Ct., Jan. 15, 1997). The Court granted plaintiff’s *Petition* for enforce an order for child support against the defendant’s per capita distribution.

* * *

Tris Y. YellowCloud v. Jeffrey A. Link, CV97-07 (HCN Tr. Ct., Jan. 15, 1997). The Court granted plaintiff’s *Petition* for enforce an order for child support against the defendant’s per capita distribution.

* * *

Eileen Snowball v. Martin A. Falcon, CV96-55 (HCN Tr. Ct., Jan. 15, 1997). The Court granted plaintiff’s *Petition* for enforce an order for child support against the defendant’s per capita distribution.

* * *

Bonita Roy v. Paul Salloway, CV96-51 (HCN Tr. Ct., Jan. 15, 1997). The Court granted plaintiff’s *Petition* for enforce an order for child support against the defendant’s per capita distribution.

* * *

David Orozco v. Jovita Orozco, CV96-68 (HCN Tr. Ct., Jan. 15, 1997). The Court granted plaintiff’s *Petition* for enforce an order for child support against the defendant’s per capita distribution, in part.

* * *

Veronica Wilbur v. Bernard L. Crow, CV96-54 (HCN Tr. Ct., Jan. 15, 1997). The Court granted plaintiff’s *Petition* for enforce an order for child support against the defendant’s per capita distribution.

* * *

Nicole Ward v. Daryl DeCora, CV97-06 (HCN Tr. Ct., Jan. 15, 1997). The Court granted plaintiff’s *Petition* for enforce a stipulation order for child support made jointly by the defendant and plaintiff against the defendant’s per capita distribution.

* * *

State of Wisconsin, and Dawn Young v. Dion Thompson, CV96-86 (HCN Tr. Ct., Jan. 16, 1997). The Court granted plaintiff’s *Petition* for enforce an order for child support against the defendant’s per capita distribution.

* * *

Melissa McGill v. Jones Decorah, CV96-66 (HCN Tr. Ct., Jan. 16, 1997). The Court granted plaintiff’s *Petition* for enforce an order for child support against the defendant’s per capita distribution.

* * *

State of Wisconsin and Eunice G. Wamego v. Edward Troy Decorah, CV96-83 (HCN Tr. Ct., Jan. 27, 1997). The Court granted plaintiff’s *Petition* for enforce an order for child support against the defendant’s per capita distribution.

* * *

Sheila White Eagle v. Ho-Chunk Nation, CV96-30 (HCN Tr. Ct., Jan. 27, 1997). The plaintiff filed a lawsuit seeking judicial review of the denial of enrollment benefits, and medical assistance to her minor children. The Court found that plaintiff failed to meet the burden of proof necessary to establish the claim and harm, and failed to state a claim where relief could be granted by the Court.

* * *

State of Wisconsin v. Tricia R. Stabler, CV96-92 (HCN Tr. Ct., Jan. 27, 1997). The Court granted plaintiff's *Petition* for enforce an order for child support against the defendant's per capita distribution.

* * *

In the Interest of Maxine P. Johnson by Frank Johnson, CV96-60 *Order (Granted Motion to Modify)* (HCN Tr. Ct., Jan. 30, 1997). The Court granted defendant's request to modify the original order releasing additional trust funds to go toward payment of federal taxes due.

* * *

In the Interest of Mercedes Blackcoon by Dale Hazard v. Ho-Chunk Nation Enrollment Department, CV96-78 (HCN Tr. Ct., Jan. 30, 1997). The Court granted the release of per capita funds held in trust for the adult incompetent's care and benefit.

* * *

In the Interest of Jessica Loreda by Mary Decorah v. Ho-Chunk Nation Enrollment Department, CV96-76 (HCN Tr. Ct., Jan. 30). The Court granted the release of per capita funds held in trust for the minor married child of the petitioner with conditions imposed on the release of the funds.

* * *

Donaldson A. June v. Kate Doornbos, HCN Administration Dept., CV96-19 (HCN Tr. Ct., Jan. 30, 1997). The trial court on remand from the Supreme Court made and affirmed its original decision to grant a default judgment in the plaintiff's favor, based on the procedural delinquencies of the defendant.

January Filings



Supreme Court Cases:

Rainbow Casino, Ho-Chunk Nation v. Sandra Sliwicki, SU96-15. The defendant/appellate seeks appellate review of the trial court findings in this employment dispute.

* * *

In Re Diane LoneTree, SU97-01. Appellant filed an appeal of a civil contempt judgment issued by the Trial Court. The appellant was under a subpoena to appear as a witness in an election dispute.

The trial court found that the appellant failed to appear or obey the subpoena. The appellant is appealing the sanction of community service.

Trial Court Cases:

Lucy Snake v. Roger Snake, CV97-01. Petitioner seeks to register and enforce a foreign child support order against respondent's per capita distribution.

* * *

Roberta Greendeer v. Fredrick K. Greendeer, CV97-02. Petitioner seeks to register and enforce a foreign child support order against respondent's per capita distribution.

* * *

In the Interest of Lucinda Littlesoldier by Helen Littlesoldier v. Ho-Chunk Nation, CV97-03. Petitioner filed a request of release the per capita trust funds of an adult incompetent in her care, as the ward's legal guardian.

* * *

Verna M. Rieder v. Quentin Thundercloud, CV97-04. Petitioner seeks to register and enforce a foreign child support order against respondent's per capita distribution.

Ho-Chunk Housing Authority v. Lucinda Naquayouma, CV97-05. Plaintiff Housing Authority seeks to enforce state judgement of rental arrears owed to the Nation under the CLAIMS AGAINST PER CAPITA ORDINANCE.

* * *

Nicole Ward v. Daryl DeCora, CV97-06. Petitioner seeks to register and enforce a foreign child support order against respondent's per capita distribution.

* * *

Tris Yellow Cloud v. Jeffrey Link, CV97-07. Petitioner seeks to register and enforce a foreign child support order against respondent's per capita distribution.

* * *

Colette A. Guy v. John Cloud, CV97-08. Petitioner seeks to register and enforce a foreign child support order against respondent's per capita distribution.

* * *

Anita M. Carrimon v. Albert R. Carrimon, CV97-09. Petitioner seeks to register and enforce a foreign child support order against respondent's per capita distribution.

* * *

State of Wisconsin v. Marcus L. Big John, CV97-10. State seeks to register and enforce a child support award against the respondent's per capita distribution.

* * *

State of Wisconsin v. Isaac W. Greyhair, CV97-11. State seeks to register and enforce a child support award against the respondent's per capita distribution.

* * *

Chloris A. Lowe, Jr., v. Ho-Chunk Nation, Ho-Chunk Nation Legislature, Ho-Chunk Nation General Council, CV97-12. Plaintiff filed an action seeking a Temporary Restraining Order and Stay on the General Council's actions removing him from office on January 11, 1997; halting the HCN Legislature from appointing the Vice President to serve as President Pro Tempore, and requesting judicial review and reversal of the General Council's action on a claim of denial of due process under the Constitution.

* * *

Richard Mann v. Ho-Chunk Nation Housing & Public Works, CV97-13. Plaintiff filed a employment, wrongful termination lawsuit against the defendant, an agency of the Ho-Chunk Nation Government.

* * *

Neil T. McAndrew v. Lisa Miner McAndrew, CV97-14. Petitioner seeks to register and enforce a foreign child support order against respondent's per capita distribution.

* * *

State of Wisconsin v. Charles E. Hopinkah, CV97-15. State seeks to register and enforce a child support award against the respondent's per capita distribution.

* * *

In the Matter of Joseph White, CV97-16. Entry of Consent of Child Support Claim Against Per Capita.

* * *

In the Matter of Carson Funmaker, CV97-17. Entry of Consent of Child Support Claim Against Per Capita.

* * *

In the Matter of Brent Funmaker, CV97-18. Entry of Consent of Child Support Claim Against Per Capita.

HCN Supreme Court

The HCN Supreme Court will meet on February 22, 1997 at the Madison Ramada during the *Coming Together of Peoples Conference*. Part of the Supreme Court meeting will be open to the public. Notices detailing the agenda will be posted in advance at the Tribal Executive Building and circulated to the branch offices. The Supreme Court will meet again in March at a location that will be announced later and will also meet on April 11, 1997 in Albuquerque, New Mexico during the Federal Bar Conference on Indian Law.

HCN Bar Association

The HCN Court System is seeking Bar members who would be interesting in serving as mentors to the tribal courts lay advocates as they prepare for Mock trials. The lay advocates are completing a year long training that seeks to condense as much practical and procedural advice and preparation as is possible. Any attorneys interested in assisted please contact the HCN Trial Court Staff Attorney for more information.



Service Required.

When a party to an action files a motion or makes a request of the Court, due process requires that the moving party or the party making the request or motion, or filing additional papers *provide the opposing party a copy of the motion, papers or request*. In addition to providing a copy of the motion, supplemental papers, or request to the opposing party, the moving party or party making the request must also indicate in writing to the Court in the form of a *Certificate of Service* or *Affidavit of Service*, that the requesting party has mailed or served a copy of the motion or request to the opposing party. This is the most often noted

deficiency by the Clerk's office.

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 Ordinances

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.

ETHICS IN GOVERNMENT, §702(a)(1).

HCN APPROPRIATIONS AND BUDGET PROCESS ACT, Sec. 101

HCN Discovery Act of 1995, § 6(c)(1).

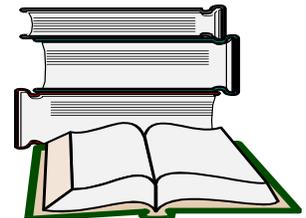
CLAIMS AGAINST PER CAPITA, §6.01(b).

HCN Supreme Court Case Law

Name of case, Case No. (HCN S. Ct., month, day, year).

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

Name of case, Case No. (HCN Tr. Ct., month, day, year).

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, JV95-047 (HCN Tr. Ct., January 23, 1994).

Rules of Civil Procedure

HCN Int. R. Civ. P. 11

HCN R. Civ. P. 6

HCN R. Civ. P. 19(B)

Rules of Appellate Procedure

HCN R. App. P. 5

Rules of Admission

HCN R. Adm. II

Conferences:

* Indigenous Law Students Association of the University of Wisconsin Law School will host the National Native American Law Student's Moot Court Competition on February 20 - 21, 1997 in Madison. For more information contact Michael Oeser at (608) 276-4065.

* On Saturday, February 22, 1997, ILSA will host the annual Coming Together of the Peoples Conference in Madison, WI for more information contact Leslie Parker - Cohen at (608) 241-9028.

* The Council Lodge Institute will conduct a Criminal, Civil Child Protection and Juvenile Delinquency Court Procedures for Tribal Courts training session, Feb. 24-28, 1997 in Las Vegas, NV. For more information contact CLI at 1-800-726-1674.

* March 3-5, 1997 National Indian Justice Center shall conduct training in Economic Strategies, contracting and liability issues for Tribes and Casino operation in Honolulu, HI. Contact NIJC at (707).

* The Council Lodge Institute will conduct an Indian Child Welfare Act (Basic/Advance 30 hours) training March 17-21, 1997 in Albuquerque, NM. For more information contact CLI at 1-800-726-1674

* The Council Lodge Institute will conduct a Basic Indian Law training April 9-11, 1997 in Reno, NV. For more information contact CLI at 1-800-726-1674

* April 10 - 11, 1997, the Federal Bar Association will sponsor the 22nd Annual Indian Law Conference in Albuquerque, NM. For more information contact the FBA at (202) 638-0252.

* On Saturday, April 12, 1997, Professor Scott Taylor at the University of New Mexico will conduct a symposium on Taxation in Indian Country. For more information contact Professor Taylor at (505) 277-2113.

* In June, 1997 National Indian Justice Center shall conduct training on Workplace Issues: Tribal Government and Casino Operations, and Environmental Protection in Indian Country in San Diego, CA. Contact NIJC at (707) 762-8113.

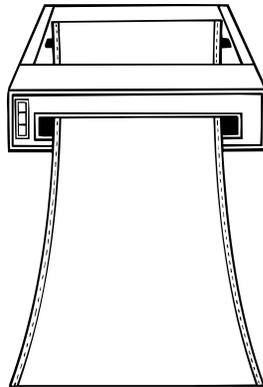
* In July 1997 National Indian Justice Center shall conduct training in Judicial Techniques for Tribal Court Judges in San Francisco, CA. Contact NIJC at (707) 762-8113.

* In August, 1997 National Indian Justice Center shall conduct training in Improving Tribal Governments and Advanced Probate Law and Will drafting in Minneapolis, MN. Contact NIJC at (707) 762-8113.

* In October, 1997 National Indian Protecting Indian Families and NV. Contact NIJC at (707) 762-

* In November, 1997 National Indian Contracting and Personnel Issues, Diego, CA. Contact NIJC at (707)

* In December, 1997 National Indian Advance Indian Housing Law, and Las Vegas, NV. Contact NIJC at



Justice Center shall conduct training in Children and Tribal Court Advocacy in Reno, 8113.

Justice Center shall conduct training in and Alternative Dispute Resolution in San 762-8113.

Justice Center shall conduct training in Drafting Documents for Tribal Governments in (707) 762-8113.

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

Publication

In Volume 23 of the Indian Law Reporter, the HCN Supreme Court case: Jones v. Ho-Chunk Nation Election

Board, et al., No.CV95-05, (HCN Sup. Ct., Aug. 15, 1995) was published and cited at 23 Indian L. Rep. 6248.

HO-CHUNK NATION COURT BULLETIN

What's up in Court
Vol. 2 No. 3
March 1, 1997

Basic Indian Law . . .

Editor's Comments

Sovereign Immunity

The principle of sovereign immunity is a constitutional limitation on the judicial power established in HCN CONSTITUTION, ART. VII, [t]hat the Ho-Chunk Nation (HCN) may not be sued without its consent. [It is a fundamental rule of law.] The doctrine of sovereign immunity and whether a waiver of that immunity exists is fundamental when interpreting the HCN Constitution. The entire judicial power granted by the Constitution does "not embrace [the] authority to entertain a suit brought by private parties against the government without consent given." *Ex parte State of New York*, 256 U.S. 490, 497 (1921). The Nation, as a government, must consent to be sued before it can be sued.

The immunity of a sovereign, like Ho-Chunk Nation, may be waived, and the HCN Trial Court has held that the HCN may consent to suit against it in its own court. *Pierre Decorah v. Rainbow Casino*, CV 95-18 (HCN Tr. Ct., March 15, 1996); *Lewis Frogg v. Ho Chunk Casino, Ho-Chunk Nation*, CV 95-19 (HCN Tr. Ct., March 15, 1996) *rev'd*, *Ho Chunk Casino v. Lewis Frogg*, (HCN S. Ct., Oct. 8, 1996) (reversed on other grounds). However the Nation's consent must be unequivocally expressed. *See, C&B Investments v. HCN Health Dept., and HCN*, CV 96-06 (HCN Tr. Ct., Nov. 21, 1996) *cert. denied*, *C&B Investments v. HCN Health Dept., and HCN*, SU 96-13 (HCN S. Ct., Jan. 20, 1997). Although the Ho-Chunk Legislature has the power to abrogate the Nation's immunity, pursuant to the HCN CONSTITUTION, ART. X.

The Trial Court's decisions establish that an unconsenting sovereign is immune from suits brought in court by her own citizens as well as by citizens of another jurisdiction. There may be a question, however, whether a particular suit is a suit against the government. It is clear that in the absence of consent, a suit in which the Nation or one of its agencies or departments is named as the defendant is prevented by ARTICLE XII (a). This jurisdictional bar applies regardless of the nature of the relief sought. *See, e. g., Missouri v. Fiske*, 290 U.S. 18, 27 (1933) ("Expressly applying to suits in equity as well as at law, the Eleventh Amendment [similar to the HCN CONSTITUTION, ART. XII in function] necessarily embraces demands for the enforcement of equitable rights and the prosecution of equitable remedies when these are asserted and prosecuted by an individual against a State").

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

In the News . . .

Under the GENERAL ALLOTMENT ACT OF 1887, the United States allotted certain lands to individual members of Indian tribes. Eventually, as land passed down from the original owners to their descendants, the parcels of land fragmented into many little parcels of land. Congress discontinued the Allotment Act, but the interests continued to be split among heirs until some are as small as 50 square inches.

In 1983, Congress enacted the INDIAN LAND CONSOLIDATION ACT, § 207 of which required that the tiniest parcels of land revert to tribal ownership when the individual owner died. In 1987, the U. S. Supreme Court ruled that the law violated the Constitution's ban on government taking of private property without fair compensation. *Hodel v. Irving*, 481 U.S. 704 (1987). Congress amended the law, narrowing it to affect land interests representing 2 percent or less in a parcel that earns less than \$100 in any of the five years prior to the decedent's death.

On January 21, 1997, the U.S. Supreme Court struck down § 207 of

the Act. *Babbitt et al., v. Youpee*, US Sup. Ct., No. 95-1595. The Act requires small shares of Indian land owned by individual tribal members to revert to the tribes when the owner dies. Voting 8-1, the Court said that the law amounts to an unconstitutional taking of private property without fair compensation. U.S. CONSTITUTION, AMENDMENT V. Justice Ginsberg wrote that “the amendment did not solve the law’s constitutional problems.” The law is based on income generated by the land rather than the actual value of the land. Justice Ginsberg that the economic impact of the amended law might still be palpable. However, Justice Stevens, the lone dissenter, said the legislative remedy was justified because the federal government had a strong interest in minimizing fractional ownership of land. Justice Stevens asserted that consolidating the land would pave the way to productive development of tribal property.

* * *

Some State Laws can’t be enforced in Indian Country

The Minnesota Court of Appeals ruled that Minnesota may not enforce some state traffic laws on Indian reservations. The state court of appeals relied on the U.S. Supreme Court rulings that said state law may be applied to Indians on their reservation only if Congress granted that authority to the state. In 1987, the Supreme Court stated that state laws apply on reservations only if the law relates to criminal or prohibited behavior, but not behavior that is simply being regulated. The Minnesota Appeal Court said that the traffic laws, i.e. speeding, driving without a license, driving without insurance, driving without a seat belt, and failure to have a child restraint seat, regulate behavior and cannot be enforced on the reservation. [This ruling is not binding in Wisconsin.]

* * *

State Can Protect Sacred Indian Site

California’s 2nd Circuit Court of Appeals ruled that the State of California can bar a university from building on land considered sacred by American Indians. The court reversed a lower court decision that said protecting the site would amount to the state endorsing a specific religion. The 2nd Circuit said that California can set aside land considered historically religiously significant without violating the first amendment.

* * *

Tribal Appeals Court Orders halt to Chemotherapy

An Indian Appeals Court in Nevada ordered the doctors at the University of California Davis Medical Center to immediately stop chemotherapy treatments to a 12 year old Paiute boy while he undergoes a 120-day holistic Indian cure for cancer. On January 13, 1997, the Inter-Tribal Court of Appeals of Nevada said it has no evidence that Indian medicine would not work to cure the boy’s Hodgkin’s disease and it is, therefore, a legitimate alternative to western medicine. The Sacramento District Attorney ordered that the boy begin receiving chemotherapy after his mother, Katherine Quartz, refused the treatment for him. Quartz favors holistic medicine. Last August the Walker River Paiute Tribal Court took custody of the boy and ordered that he undergo holistic treatment and chemotherapy. The appeals court said that the boy may undergo 120 days of holistic medicine with CAT scans every 30 days to monitor his progress.

* * *



Wisconsin’s drive to repeal Gaming

Gambling opponents in Wisconsin have vowed to launch another push to eliminate the state lottery and curb tribal casinos. Sen. Fred Risser (D-Madison) will introduce a resolution to repeal the 1987 amendment to the state constitution that legalized the lottery. Sen. Robert Welch (R-Redgranite) said he will introduce legislation that requires the state legislature to ratify any gaming compacts with Indian tribes. Sen Welch represents the 14th Senate District, which includes Sauk County, where the Ho Chunk Casino is located.

* * *

Housing and Power to Control it

The Native American Housing Assistance and Self-Determination Act gives tribes control of their own housing programs. Under the Act, HUD will award block grants to tribes and their designated housing authorities to develop their own programs to need housing needs. Final regulations for the Act, P.L. 104-330, must be published by Sept. 1, 1997.

Did You Know . . .

- Pursuant to HCN 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 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.
- 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 mandates 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 first be filed in 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 1 of this Article 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 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. The removal or conditioned suspension of an employee based on a violation of law is an equitable remedy within the power of the HCN Trial Court to order.

HCN Supreme Court

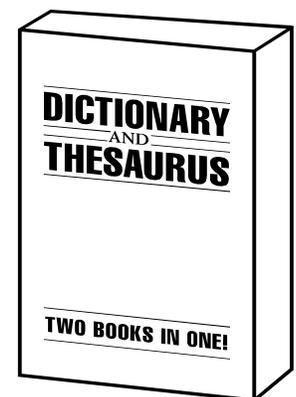
On February 22, 1997, in Madison, the HCN Supreme Court has adopted a revised set of *HCN Rules of Civil Procedure*. The rules have immediate effect as of February 22, 1997. Copies are available by mail or upon request to the trial court.

* * *

Associate Justice Forrest Whiterabbit’s term on the HCN Supreme Court expires in June 1997. The qualifications for an Associate Justice are that he or she shall have been admitted to practice before the HCN Courts and not have been convicted of a felony. The position will be for a four (4) year term.

Legal Terms:

Comity: The term comity refers to a concept of courtesy; complaisance; respect; a willingness to grant a privilege, not as a matter of right, but out of deference and good will. BLACK’S LAW DICTIONARY 242 (5th ed. 1979). The United States Supreme Court has stated: “Comity is not a rule of law, but one of practice, convenience and expediency. It is something more than mere courtesy, which implies only deference to the opinion of others, since it has a substantial value in securing uniformity of decision, and discouraging repeated litigation of the same question. But its obligation is not imperative. . . . Comity persuades; but it does not command. It declares not how a case shall be decided, but how it may with propriety be decided. . . . It demands of no one that he shall abdicate his individual judgment, but only that deference shall be paid to the judgments of other coordinate tribunals.” *Mast, Food & Co. v. Stover Mfg. Co.*, 177 U.S. 485, 488-89 (1900). The issue of whether tribal courts should respect the state or federal court determinations are matters of judicial comity. This Court may defer or exercise jurisdiction as a matter of comity. The doctrine of comity may require, if justice is better served, that a court give recognition and enforcement to a sister court’s



order, judgments or findings. *See generally In Re Custody of Sengstock*, 165 Wis.2d 86 (Ct. App. 1991). Specifically the circuit court in *Sengstock* was required to give recognition and enforcement to the tribal court's orders.

If a matter within the judiciary's core of exclusive authority, the court may abide an adjudication of another court as a matter of comity or courtesy. Compliance is at the discretion of the judiciary and is not mandated. Comity is designed to promote proper relations between the courts of different jurisdictions. The Court shall review and recognize the judgments and orders of state courts and other courts to the same extent the other jurisdiction extends such recognition or comity to the judicial records, orders and judgments of this Court.

de novo review or hearing de novo means a "new hearing or a hearing for the second time, contemplating an entire trial in the same manner in which the matter was originally heard and a review of the previous hearing. Hearing a matter de novo, the court hears the matters as a court of original jurisdiction and not appellate jurisdiction.

Recent Decisions



HCN Trial Court Cases:

In the Interest of Mercedes Blackcoon by Dale Hazard v. HCN Enrollment, (HCN Tr. Ct., January 30, 1997). Case was brought on behalf of and for the release of trust funds for the benefit of an adult ward.

In the Interest of Jessica Decorah by Mary Decorah v. HCN, (HCN Tr. Ct., January 30, 1997). Petitioner requested the release of trust funds for the benefit of an adult ward.

Donaldson A. June v. Kate Doornbos, HCN Administration Department (HCN Tr. Ct. May 22, 1996) *Motion for Reconsideration* (HCN Tr. Ct. June 24, 1996) *Erratum* (HCN Tr. Ct. July 17, 1996) *rev'd and remanded Doornbos, HCN Administration Department v. Donaldson A. June* (HCN S. Ct. July 16, 1996); *Donaldson A. June v. Kate Doornbos, HCN Administration Department* (HCN Tr. Ct. January 30, 1997). This employment case was remanded and reconsidered by the trial court after review by the Supreme Court, Trial court affirmed its original default judgment on behalf of the plaintiff.

Catherine E. Snow v. Edward T. Decorah, (HCN Tr. Ct. January 31, 1997). Petitioner sought to register and enforce a child support order against the respondent's per capita share.

Debra K. Crowe v. Foster D. Cloud, (HCN Tr. Ct. February 3, 1997). Petitioner sought to register and enforce a child support order against the respondent's per capita share.

In the Interest of Mary Littlegeorge by Sara Abbott v. Ho-Chunk Nation Enrollment Department, (HCN Tr. Ct. February 14, 1997). Petitioner requested the release of trust funds for the benefit of an adult ward.

Lucy Snake v. Roger Snake, (HCN Tr. Ct., February 14, 1997). Petitioner sought to register and enforce a child support order against the respondent's per capita share.

Kelley Thundercloud v. Wallace P. Greendeer, (HCN Tr. Ct., February 14, 1997). Petitioner sought to register and enforce a child support order against the respondent's per capita share.

February Filings

Supreme Court Cases:

In Re: Diane Lonetree, SU96-16, Order for Oral Argument. Appellant appealed the trial court's imposition of five (5) hours of community service in a contempt proceeding. The appellant failed to appear to provide testimony in an election dispute. This case is scheduled for oral argument on Saturday, March 8, 1997.

Ho-Chunk Nation Legislature v. Chloris A. Lowe, Jr. and Jo Deen B. Lowe, CV95-28. The matter is presently before the HCN Supreme Court. The trial court's denial of a Motion to Dismiss, and Motion of Recusal. Status of the case is pending, given the request to withdraw by counsel.

Truth, Equality, Justice



Trial Court Cases:

Barbara Decorah v. Jones Decorah, CV97-19. Petitioner seeks to enforce a foreign child support order against the respondent's per capita.

Tammy Garvin, CV97-20 *Consent for Entry of Order*. The party has voluntarily consented for an Entry of Order to enforce a foreign child support order against their per capita.

Anna Carufel v. Athena I. Goetz, CV97-21. Petitioner, Aunt, is petitioning the court to compel the respondent, the biological mother to provide child support and child maintenance for the minor child in the custody of the petitioner.

George Thunder Hindsley, CV97-22. Petitioner for the release of trust funds for a deceased minor. This is a probate suit for an account less than \$10,000.

Shawn Blackdeer v. Armand Blackdeer, CV97-23. Petitioner seeks to enforce a foreign child support order against the respondent's per capita.

Sara White Eagle v. Timothy King, CV97-24. Petitioner seeks to enforce a foreign child support order against the respondent's per capita.

Roxanne Johnson v. Loren J. Rave, CV97-25. Petitioner seeks to enforce a foreign child support order against the respondent's per capita.

HCN Bar Association

- Reminders to all Guardian ad Litem (GAL), that you must file a written reports, preferably before the case is heard by the judge.
- Also the normal annual fee per child is \$200.00, which will be withheld pending the completion of all written reports due to the Court.
- The Court will likely conduct additional annual training and follow-up for GALs in May. The judges are considering attendance for the GAL continuing legal education as mandatory. Comments by the GALs to the Chief Judge are welcome.
- Like the United States Postal Service, be there rain, sheet, snow, or ice, come strong wind, hurricane, tidal waves, blizzard or fire, the Ho-Chunk Nation Court System is usually open from 8:00 a.m. to 4:30 p.m.. The Judiciary does not follow the dictates of the Executive Branch when there a closure of the tribal offices. The Court will post an Administrative Order and will attempt to provide public service announcements on the radio to indicate in advance if the court will be closed. Always presume the Court will be open and hearings will take place.

Service and Notice

When the initial *Complaint* and *Summons* are filed, the HCN Trial Court provides service. Certified mail costs \$3.00, or personal service is \$12.00 plus mileage. When it is necessary the appropriate law enforcement agency or service company may serve the *Complaint* and *Summons*. The charge for a firm agent or law enforcement officer may vary from \$25 to \$125.00. The payment of these costs are the responsibility of the party needing to serve the *Complaint*.

A *Certificate of Service* or *Affidavit of Service* notifies the Court that the opposing party has been informed. It is important that the *Certificate* or *Affidavit of Service* be filed at the same time the motion, petition or request is made or immediately thereafter. The *Certificate* or *Affidavit of Service* informs the Court that the moving party has the told the other party of its action.

REMEMBER: When a party to an action files a motion or makes a request of the Court, the moving party or the party making the motion or filing must:

- (1) provide the opposing party with a copy of the motion or papers submitted to the Court;
- (2) provide in writing to the Court in the form of a *Certificate of Service* or *Affidavit of Service*, notice that the requesting party has mailed or served a copy of the papers to the opposing party;
- (3) the *Certificate of Service* or *Affidavit of Service* must have the your name, the date, and indicate how you served the other party (i.e. U.S. Mail, federal express, fax etc.), and it must state on what day or date the motion, petition, or papers were forwarded to the other party.

An example of the language used in certifying service is provided below:

A true and correct copy of the foregoing was sent to the following parties of record this ___ day of _____, 1997, _____ (here list the name or names of the opposing party being provided a copy of the documents or materials you are filing with the Court by sending a properly addressed postage pre-paid envelope).

Signature: _____.Date: _____.

Legal Citation Form

Examples:

Ho-Chunk Nation Constitution

Constitution, Article Number, Section, and Subsection.

HCN CONSTITUTION, ART. XI, Sec. 7

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

Ho-Chunk Nation Ordinances

Ordinance Name, Chapter number, Section/Part/Clause, page.

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

CLAIMS AGAINST PER CAPITA, §6.01(b).

HCN Supreme Court Case Law

Name of case, Case No (HCN S. Ct., month, day, year).

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

Name of case, Case No. (HCN Tr. Ct., month, day, year).

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

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

Rules of Civil Procedure

HCN R. Civ. P. 19(B)

Rules of Appellate Procedure
HCN R. App. P. 5

Conferences:

- The Council Lodge Institute will conduct a Child Protection Team training March 5 - 7, 1997 in San Diego, CA. For more information contact CLI at 1-800-726-1674
- The Minnesota Institute Legal Education is conducting an "Indian Law Update" on Friday, March 7, 1997 at the Marriott City Center. For more information call (612) 339-8573.
- The Council Lodge Institute will conduct an Indian Child Welfare Act (Basic/Advance 30 hours) training March 17-21, 1997 in Albuquerque, NM. For more information contact CLI at 1-800-726-1674
- The Council Lodge Institute will conduct a Basic Indian Law training April 9-11, 1997 in Reno, NV. For more information contact CLI at 1-800-726-1674
- April 10 - 11, 1997, the Federal Bar Association will sponsor the 22nd Annual Indian Law Conference in Albuquerque, NM. For more information contact the FBA at (202) 638-0252.
- National American Indian Court Judges Association's 1997 National Tribal Judicial Conference will be held at the Oneida Nation, Green Bay, Wisconsin from April 27 through April 30, 1997.

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 mil
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



Notable Quote

"Fundamental Difference"

by Alice Walker

To acknowledge our ancestors means

We are aware that we did not make ourselves; That the line stretches all the way back perhaps to God or to gods. We remember them because it is an easy thing to forget That we are not the first to suffer, rebel, fight, love and die. The grace with which we embrace life, in spite if the pain, The sorrow is always a measure of what has gone before.

Court's Note:

Worth Reading,

Worth Knowing,

Worth Practicing!

All judges should adhere to standards of professionalism and courtesy, good manners and dignity. This is the responsibility of each justice, judge, court commissioner, lawyer, lay advocate, clerk, and other personnel of the court and those persons appearing in court. Parties involved in litigation and those coming to observe should maintain a cordial and respectful demeanor and be guided by a fundamental sense of integrity and fair play in all their professional activities.

HO-CHUNK NATION COURT BULLETIN

What's up in Court
Vol. 2 No. 3
April 1, 1997

Indian Affairs: Questions and Answers.

What is the legal status of American Indian, Alaska Natives?

The United States Constitution, Article 1, § 8 vests the Federal Government with the authority to engage in relations with the tribes, not over them. In the 1830's Chief Justice John Marshall, articulated the fundamental principle that "tribes possess a nationhood status and retain inherent powers of self-government." *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 561 (1832).

States generally have no authority over tribal government activities, to be distinguished from individual tribal members. Tribal governments are not subordinate to state governments, and they retain the right to enact and enforce stricter or more lenient laws and regulations than those of neighboring state(s). The Tribal-to-State relationship is also one of a government - to - government. (The federal government has remained silent to the plight of Native Hawaiians)

Who is an American Indian, Alaska Native or Native Hawaiian?

As a general principle an Indian is a person who is of some degree Indian blood and who is recognized as an Indian by a tribe and or the United States. No single federal or tribal criterion established a person's identity as an Indian. Government agencies use differing criteria to determine eligibility for programs and services. Tribes also have varying eligibility criteria for membership. The definitions and legal status criteria differs for Alaska Natives and is clarified by the Alaska Native Claims Settlement Act of 1971, and for Native Hawaiians the policy has been that of ½ Native Blood and demonstrative evidence of ancestry.

It is important to understand the difference between the ethnological term "Indian" and the political/legal term "Indian." (For most Native Hawaiians, the federal government has viewed them as South Pacific Islanders.) The protections and services provided by the United States on behalf of tribal members flow not from an individual's status as an American Indian in an ethnological sense, but because the person is a member of a tribe recognized by the United States has a special trust relationship which entails certain legally enforceable obligations and responsibilities.

What are the inherent powers of Tribal self-government?

Tribes possess all powers of government except those which have been expressly extinguished by Congress or which the Supreme Court have ruled are inconsistent with the overriding national interests of the federal government. Tribes possess the right to form their own government; to make and enforce laws, both civil and criminal; to tax; to establish membership; to license and regulate activities within their jurisdiction; to zone; and to exclude persons from tribal territories. These listed powers are not exhaustive, there is much greater possibility in the inherent powers of self-government. Limitations on tribal powers are few, and include the same limitations applicable to states, e.g., neither tribes nor states have the power to make war, engage in foreign relations, or coin money.

What is meant by tribal self-determination and self-governance?

The federal concepts of self-determination and self-governance laws, tribes have been accorded the authority to control and operate federally-funded and administered programs whenever tribal governments choose to do so. Self-determination and self-governance laws and policies affirm the belief that local problems are best resolved at the local level using collective resources of the Nation.

What does the phrase "Federally Recognized Indian Tribe or Band" mean?

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

Recognition in its legal sense means that the United States recognizes a government-to-government relationship with a tribe and that a tribe exists politically in what is termed a “domestic dependent nation status.” Federally recognized tribes possess certain inherent rights of self-government and entitlement to certain federal benefits, services, and protection because of the special trust relationship.

What is the jurisdiction of Tribal Courts?

Tribal courts have civil jurisdiction over Indians and non-Indians who either reside or do business on the reservation. Tribal courts have criminal jurisdiction over tribal offenses committed by American Indians occurring in Indian Country. Criminal jurisdiction in Indian Country is governed by federal law set out primarily in Title 18 United States Code §§ 1151, 1152, and 1153. Under these statutes, the United States expressly retained jurisdiction over major crime committed by Indians and crimes against Indians committed by non-Indians.

Are American Indians and Alaska Natives citizens?

American Indians and Alaska Natives are citizens of the United States and of the states in which they reside. Indians were granted citizenship pursuant to the Indian Citizenship Act of 1924. 8 U.S.C. § 1401. Later amendments clarified that the Act applied to Alaska Native as well.

What are “treaty rights”?

From 1777 to 1871, United States relations with individual Indian Nations were conducted through treaty negotiations. These “contracts

among nations” created unique sets of rights for the benefit of each of the treaty-making tribes. Those rights, like other treaty obligation of the United States are “the supreme law of the land.”

Editor’s Statement

The dormant Indian Commerce Clause of the United State’s Constitution was a delegation of power from the states and the people (colonist) to the Union to negotiate and control trade of goods with the Indian tribes. This was authority or power to regulate trade with Indians not over them. Such authority cannot be exercised without the consent of the Indians. However, United States Supreme Court has stated that the federal government can regulate Indians, and has interpreted the Commerce Clause to mean that Congress has plenary power over Indians and Indian Tribes.

In the News . . .

The State of Wisconsin adopts a new medical “do-not-resuscitate” law. Under the new law, which became effective January 18, 1997, a person requesting the do-not-resuscitate (DNR) bracelet must be at least 18, not pregnant, and have a terminal condition, a medical condition such that resuscitation would be unsuccessful or cause significant physical pain and harm outweighing the possibility of successful resuscitation. An attending physician may issue a DNR order only if the patient requests and signs the order. This physician places the bracelet onto the patient’s wrist and documents the patient’s medical record.

Familiarize yourself:

TRIBAL SELF-GOVERNANCE ACT OF 1994 (Pub. Law. 103-413)

SNYDER ACT OF NOVEMBER 2, 1921, 42 Stat. 208.

GENERAL ALLOTMENT ACT OF 1887 (Dawes Act), 24 Stat. 388.

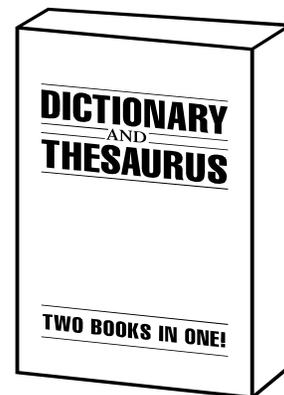
NON-INTERCOURSE ACT, 25 U.S.C. § 177.

INDIAN REORGANIZATION ACT OF 1934, 25 U.S.C.A. § 461 *et seq.*

ALASKA NATIVE CLAIMS SETTLEMENT ACT, Pub. Law. 92-203.

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, as amended Pub. Law. 93-638.

AMERICAN INDIAN RELIGIOUS FREEDOM ACT, Pub. Law. 95-341.



ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT, Pub. Law. 96-487.

Legal Terms:

Actual notice has been defined as notice expressly and actually given to a person. Notice is considered actual notice when the person to be informed knows of the existence of a fact.

Constructive notice is information or knowledge of a fact imputed by law to a person.

Enrollment is the act of registering, enrolling and recording, to show affiliation, nationality, or membership.

Fiduciary means a person holding the character of a trustee, a person having a duty to act primarily for another's benefit. The term is used to refer to a person having duties involving good faith, trust, special confidence and candor towards another.

Jurisdiction is the power to decide a matter in controversy. It defines the powers of a court to inquire into facts, apply the law, make decisions, and declare judgement.

Notice, a person has notice if he knows the fact, has reason to know it, should know it, or has been given notification of it.

Paternity is the state or condition of a father, the relationship of a father.

Paternity Suit is a court action to determine whether a person is the father of a child.

Recent Decisions

HCN Supreme Court:

Geraldine Swan v. Charles M., Percy and William Miner III, SU96-08 (HCN S. Ct., March 8, 1997) the Supreme Court dismissed the appeal of the defendant/appellant pursuant to *HCN Rules of Appellate Procedure* 12(b). The Supreme Court affirmed

the trial court's denial of a *Motion to Dismiss*. The matter is now pending before the trial court.

Ho-Chunk Nation Legislature v. Chloris A. Lowe, Jr. and Jo Deen Lowe, SU96-09 (HCN S. Ct., March 25, 1997) the Supreme Court denied the appeal of the defendant/appellant. The appellant Lowe failed to make a timely appeal pursuant to *HCN Rules of Appellate Procedure* 7(b).

Jeremy Rockman v. Jo Anne Jones SU96-10 (HCN S. Ct., March 24, 1997) the Supreme Court affirmed and dismissed the appeal finding that the trial court properly exercised its discretion in ordering the plaintiff/appellant to pay costs and fees of \$570.60.

Anna Rae Funmaker v. Kathryn Doornbos, SU96-12 (HCN S. Ct., March 25, 1997) the Supreme Court affirmed the trial court's decision finding no error of law. The trial court had ruled that there was no violation of the Personnel Policies and Procedures affording the appellant some right which needed to be protected.

Karena Day, HCN Executive Admin. Dir. v. David Abangan, HCN Wo-Lduk Editor, Berna Big Thunder, Sherry Wilson, Brenda Anhalt, SU96-14 (HCN S. Ct., March 8, 1997) the Supreme Court issued a Notice of Intent to Dismiss the matter.

HCN Trial Court Cases:

State of Wisconsin, Stuart A. Taylor v. Tammy (Garvin) Taylor, CV96-69 & CV97-20 (HCN Tr. Ct., March 17,

1997) the Trial Court entered Judgement recognizing the request for entry of consent of a claim against the respondent's per capita share.

Chloris A. Lowe, Jr., v. HCN, HCN Legislature and HCN General Council, CV97-12 (Order Denying Preliminary Injunction) (HCN Tr. Ct., March 21, 1997) the Trial Court denied plaintiffs request for a preliminary injunction finding that the named defendant's were immune from suit and that the plaintiff had not alleged that any defendant had acted beyond the scope of their authority.

Verna M. Rieder v. Quentin Thundercloud, CV97-04 (HCN Tr. Ct., March 26, 1997) the Trial Court dismissed the Motion to Register and Enforce a child support order as the child involved has obtained the age of 18 and pursuant to the original order the defendant is no longer obligated to provide support once the child obtains the age of 18.

State of Wisconsin v. Cynthia Hopinka, CV97-36 (HCN Tr. Ct., March 26, 1997) the Trial Court granted the entry of Order of a Claim Against her Per Capita share for child support.

Sara WhiteEagle v. Timothy King, CV97-24 (HCN Tr. Ct., April 4, 1997) granting enforcement of a Wood County Child Support Order.

Colette Guy v. John S. Cloud, CV97-08 (HCN Tr. Ct., April 3, 1997) granting enforcement of a Monroe County Child Support Order

Kristina M. Heath v. George O. Stacy, CV97-26 (HCN Tr. Ct., April 3, 1997) granting enforcement of a Shawano County Child Support Order.

March Filings

Supreme Court Cases:

Rainbow Casino, Ho-Chunk Nation v. Sandra Sliwicki, SU96-15, the Supreme Court on March 24, 1997 issued a *Notice for Extension* allowing additional time for it to issue a decision in this employment grievance.

In Re Diane Lonetree, SU96-16, the HCN Supreme Court issued a Stay of Judgement on March 8, 1997. The trial court had imposed a community service sanction against the defendant for failure to appear and to provide evidence and testimony in an Election challenge.

Trial Court Cases:

Catherine Shegonee v. Daniel Youngthunder, CV97-28, plaintiff is seeking to enforce an Order for Child Support.

Gloria Visintin v. HCN Office of the President, CV97-29, the plaintiff filed an employment grievance claiming a violation of law and unfair treatment in employment.

Eric Lonetree v. HC Casino et al., CV97-30, the plaintiff filed this employment lawsuit claiming a violation of the Personnel Policies.

Roy Littlegeorge v. HCN Gaming Commission, CV97-31, the plaintiff is seeking review of a Gaming Commission Decision and Order.

Levi Aaron Lincoln, Sr., v. Louise

Kathy Ruditys, Tammy Schoone, and Jim Wanty v. HCN Enrollment Dept., CV96-45 (HCN Tr. Ct., April 7, 1997) matter dismissed for failure to prosecute.

Marcella Snowball v. Alfred Marlene Lincoln, CV97-32, plaintiff is seeking to enforce an Order for Child Support.

Karen J. Smith v. Lot L. Smith II, CV97-33, plaintiff is seeking to enforce an Order for Child Support.

Charlene Smolenski v. Jeffrey Link, CV97-34. plaintiff is seeking to enforce an Order for Child Support.

State of Wisconsin v. Arnold J. Crone, CV97-35, the state is petitioning for recognition and enforcement of an Order for Child Support.

State of Wisconsin v. Cynthia Smith, CV97-36, the state is petitioning for recognition and enforcement of an Order for Child Support.

State of Wisconsin v. John Goodbear, CV97-37, the state is petitioning for recognition and enforcement of an Order for Child Support.

State of Wisconsin v. Barbara Gromoff, CV97-38, the state is petitioning for recognition and enforcement of an Order for Child Support.

State of Wisconsin v. Zachary Thundercloud, CV97-39, the state is petitioning for recognition and enforcement of an Order for Child Support.

State of Wisconsin v. Robert Blackdeer, CV97-40, the state is petitioning for recognition and

Snowball, Jr., CV97-27 (HCN Tr. Ct., April 7, 1997) granting enforcement of child support issued by the Kickapoo Nation of Kansas

enforcement of an Order for Child Support.

State of Wisconsin v. Robert Blackdeer, CV97-41, the state is petitioning for recognition and enforcement of an Order for Child Support.

Michelle R. DeCora v. John Steindorf, CV97-42, the petitioner is seeking to enforce a claim for child support.

In the Interest of Sterling Cloud by Lionel Cloud, CV97-43, the petitioner has filed a Motion seeking to release the per capita trusts funds on behalf of Sterling Cloud.

State of Wisconsin v. Fredrick Greendeer, CV97-44, the state is petitioning for recognition and enforcement of an Order for Child Support.

State of Wisconsin v. Betsy Falcon, CV97-45, the state is petitioning for recognition and enforcement of an Order for Child Support.

State of Wisconsin v. Dean Hopinka, CV97-46, the state is petitioning for recognition and enforcement of an Order for Child Support.

State of Wisconsin v. Wayne R. Blackdeer, CV97-47, the state is petitioning for recognition and enforcement of an Order for Child Support.

Emmett Walker, Jr., v. HC Casino, Carole Laustrup, B. Decorah, Wayne

Winter and P. Decorah, CV97-48, the plaintiff filed a employment claim against the Ho Chunk Casino and the supervisors, claiming a violation of tribal law.

Gary Snowadzki v. Ho Chunk Casino, et. al., CV97-49, the plaintiff filed a complaint against the Casino * May 12 - 13, 1997, the HCN Tribal Court will host a Moot Court Training for 14 Wisconsin Tribal Judges Association Advocacy Candidates.

* The HCN Supreme Court is considering revisions to the HCN Rules of Appellate Procedure. During its meeting scheduled for Albuquerque, New Mexico on April 11, 1997, the Court will review suggestions and proposed drafts to the current rules. If there are additional suggests or comments relating to improving the Appellate Rules please direct them to the Clerk of Court for the HCN Supreme Court Chief Justice.

* The HCN Trial Court would like to extend its appreciation to those members of the Bar offering to serve as mentors to HCN Lay Advocates currently participating in the Advocacy Candidates Training Program.

* As a general note, the HCN Court System will again this year sponsor a fun run, HCN Law Day, Guardian ad Litem training and additional Advocacy training. Future issues of the Court Bulletin will contain more information on these projects as it becomes available.

claiming a violation of the employment laws of the Nation.

Martin L. Henry v. HCN Gaming Commission, CV97-50, is seeking judicial review of and remedy for actions taken by the Gaming Commission.

Tribal Judicial Conference will be held at the Oneida Nation, Green Bay, Wisconsin from April 27 through April 30, 1997.

* In July 1997 National Indian Justice Center shall conduct training in Judicial Techniques for Tribal Court Judges in San Francisco, CA. Contact NIJC at (707) 762-8113.

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 each tape
Certified Copies	.50 per page
Registration of Foreign Orders	\$10
Appellate filing fees	\$35
Admission to Practice	\$50

HCN Bar Association

* Renewal of HCN Bar Membership is required by July 1, 1997.

Conferences:

* National American Indian Court Judges Association's 1997 National

HO-CHUNK NATION COURT BULLETIN

What's up in Court
Vol. 2 No. 5
May 1, 1997

Indian Affairs: Questions and Answers.

Editor's Statement

Law is one of the methods by which a community constitutes its own identity. Just as Indian peoples are not living in the permanent idealized timeless past where non-Indians often place them romantically (and thus only a marginal part of the social reality), but instead like all communities are changing from pressures from within and without. Tribal courts in applying and interpreting tribal codes, ordinances, constitutions, and custom, as well as federal and state law, adapt law to meet ongoing needs.

Tribal courts must continually build legitimacy within the tribe, both among tribal members and the tribal legislature or council. Every court's opinion must build legitimacy. The difference between state and federal courts and tribal courts is that the legitimacy of the state and federal courts are rarely challenged while tribal courts have only recently begun to throw off the chains of colonialism. As a result, tribal courts do not yet have the same degree of respect among the public as do state and federal courts.

At the same time, tribal courts must also establish legitimacy in the outside community. Tribal Courts do the work of sovereignty under the constant threat that non-Indian legal society acting through

Congress or the Courts may react to one tribal dispute out of thousands, and because of public reaction against the opinion or anti-Indian / anti-sovereignty sentiment, take jurisdiction away from all tribes and all tribal courts. This is not far-fetched, attorneys should remember *Oliphant v. Suquamish Indian Tribe et. al.*, 435 U.S. 191 (1978) (Indian tribal courts do have inherent criminal jurisdiction to try and to punish non-Indians, and hence may not assume such jurisdiction unless specifically authorized by Congress). It was assumed that the tribes did not have such jurisdiction absent a congressional statute or treaty provision to that effect. Congress' actions during the 19th century reflected that body's belief that Indian tribes do not have inherent criminal jurisdiction over non-Indians. The presumption, commonly shared by Congress, the Executive Branch, and lower federal courts, is that tribal courts have no power to try non-Indians, carries considerable weight. Congress reasoned that by submitting to the overriding sovereignty of the United States, Indian tribes necessarily yield the power to try non-Indians except in a manner acceptable to Congress.

Remember *Ex Parte Crow Dog*, a U.S. Supreme Court case up-holding tribal authority over a murder of one Indian by another on a reservation. The national outcry resulted in Congress passing the Major Crimes Act divesting tribes of much criminal jurisdiction.

Tribal communities have adapted tribal courts to reflect tribal community values. The HCN Courts are the courts and institutions of the Ho-Chunk Nation. Giving respect to the tribal courts means that you are respecting yourself as a people and showing pride in the inherent sovereignty you possess as a people.

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

Indian



**Logos &
Mascots**

State of Wisconsin**OPINION NO. OAG 25-92,**

80 Op. Att'y Gen. 321 (1992)

September 17, 1992

The State Superintendent Department of Public Instruction in 1992 requested an opinion from the

Wisconsin Statute § 118.13 provides: Pupil discrimination prohibited. (1) No person may be denied admission to any public school or be denied participation in, be denied the benefits of or be discriminated against in any curricular, extracurricular, pupil services, recreational or other program or activity because of the person's sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

Through § 118.13(3)(a)2. the Legislature gave the superintendent of public instruction the power to create rules to administer this anti-discrimination statute. Pursuant to its statutory authority, the Department of Public Instruction (Department) established Wisconsin Administrative Code, chapter PI 9 provides:

"Discrimination" means any action, policy or practice, including bias, stereotyping and pupil harassment, which is detrimental to a person or group of persons and differentiates or distinguishes among persons, or which limits or denies a person or group of persons opportunities, privileges, roles or rewards based, in whole or in part, on sex, race, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability, or which perpetuates the effects of past discrimination. Wis. Admin. Code § PI 9.02(5) (1986).

"Pupil harassment" means behavior towards pupils based, in whole or in part, on sex, race, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability which substantially interferes with a pupil's school performance or creates an intimidating, hostile or offensive school environment. Wis. Admin. Code § PI 9.02(9) (1986).

"Stereotyping" means attributing behaviors, abilities, interests, values and roles to a person or group of persons on the basis, in whole or in part, of their sex, race, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability. Wis. Admin. Code § PI 9.02(14) (1986).

Section 118.13 prohibits discrimination against

Wisconsin Attorney General on whether the use by public schools of American Indian logos, mascots or nicknames, singly or in combination, come within the purview of § 118.13 of the Wisconsin statutes? Wisconsin's Attorney General answered yes. Part of the opinion is reprinted below.

a member of a protected class in a program or activity approved or sponsored by the school board. The rule defines discrimination as any action, policy or practice of a school that affects a person or a group of persons. This includes stereotyping and pupil harassment. The rule further defines stereotyping as attributing behavior, abilities, interests, values or roles to a protected class, and it defines pupil harassment as behavior toward a protected class which creates an intimidating, hostile or offensive school environment. In addition, such actions must be detrimental and perpetuate effects of past discrimination. Webster's New Collegiate Dictionary 310 (1977) defines detrimental as something "harmful" or "damaging."

American Indians are a protected class that has been subjected to discrimination in the past. It is entirely possible that an American Indian logo, mascot or nickname could cause an American Indian harm by reinforcing a stereotype and/or creating an intimidating or offensive environment, thus perpetuating past discrimination. Therefore, the language of the statute and the rule is comprehensive enough that an American Indian logo, mascot or nickname used by a public school could be a violation of §118.13.

American Indian logos, mascots and nicknames, however, are not *per se* violations of §118.13. Certainly not all images or nicknames depicting a protected class are intrinsically negative or offensive.

Neither the statute nor the rule expressly or impliedly require intent for a general finding of discrimination. Had the Legislature wanted findings of discrimination to apply only to intentional acts, it would have so provided. Therefore, if discrimination is found to exist, it exists regardless of intent.

In conclusion, The Attorney General is of the opinion that Wisconsin Administrative Code chapter PI 9 is consistent with legislative intent, and American Indian logos, mascots and nicknames used by public schools may violate §118.13, whether or not they are intended to be discriminatory.

In the News . . .

Following a fourteen-month period for public review and comment, the Inter-American Commission on Human Rights has completed its work on establishing indigenous rights standards for all countries of the Americas, including the United States. The proposed declaration addresses collective and individual human rights, and specifically recognizes the right to self-government, and cultural, social, economic and property rights.



The United States has already expressed in its 1996 comments its unwillingness to support provisions recognizing collective rights and affirming the right to self-government. The U.S. recommended in its comments that references to “rights” of indigenous peoples in the declaration be changed to “goals.” The U.S. comments seem inconsistent with domestic policy and federal Indian law. More on point, in the submission of the comments by the U.S. without first consulting tribal governments reflects a disturbing disregard for the government-to-government relation between the tribes and the U.S. The revisions submitted by the U.S. for the proposed declaration were rejected in their entirety by the Inter-American Commission.

If you wish to express your thoughts or concern on the U.S.’s position on the declaration direct your calls and comments to:

Michael Dennis, Legal Advisor
L/HRR Room 3422,
U.S. Dept. Of State
2201 C. Street, N.W.,
Washington, D.C. 20520
(202) 647-4065

or

Elizabeth Homer, Director
Office American Indian Trust
U.S. Dept. Of Interior
1849 C Street, N.W.,
Washington, D.C. 20240
(202) 208-3338.

amicus curiae: a friend of the court
certiorari: to be informed of
de novo: a new afresh
habeas corpus: you have the body
in camera: in chambers/ in private
in limine: at the very beginning
nunc pro tunc: now for then
prima facie: sufficient on its face
pro hac vice: for this one particular occasion
res ipsa loquitur: the thing speaks for itself
res judicata: a matter adjudged
respondeat superior: let the master answer
sine qua non: without which not, i.e. an indispensable condition
sua sponte: of his or her own will or motion
sui generis: of its own kind or class

Recent Decisions

HCN Supreme Court:

Ho-Chunk Nation Legislature v. Chloris A. Lowe, Jr. and Jo Deen B. Lowe, SU96-09 (HCN S. Ct., April 23, 1997) the Supreme Court denied the appellant/defendant’s Motion for Reconsideration. The appellant sought review of a denial of a request for an appeal. The original appeal had been denied because it was ruled untimely. The case was dismissed.

In re Diane Lonetree, SU96-16 (HCN S. Ct., April 14, 1997) the Supreme Court reversed in part the ruling the trial court. The Court confirmed the trial court’s ability to impose a contempt sanction, but held in this case that the imposition of contempt was unfavorable as charge against the appellant/defendant became moot upon entry of judgement in *Gail Funmaker v. HCN Election Board*, CV95-10 (HCN Tr. Ct., July 7, 1996, the underlying case.

Chloris A. Lowe, Jr. v. HCN, HCN Legislature and HCN General Council, SU97-01, (HCN S. Ct., April 23, 1997) the appellant/plaintiff filed an appeal of the trial court denying a preliminary injunction of his removal from office. The appellant/plaintiff sought an injunction enjoining the Primary Election of April 12, 1997. The Supreme Court denied the request for an injunction. The Supreme Court ruled that the issue was moot as the appellant failed to make a timely motion.

HCN Trial Court Cases:

Terms: Literal Latin

*The sheer volume of child support enforcement cases are numerous. The 20 child support cases decided this month are listed without comment.

Colette Guy v. John S. Cloud, CV97-08 (HCN Tr. Ct., Apr. 3, 1997); Sara WhiteEagle v. Timothy King, CV97-24(HCN Tr. Ct., Apr. 4, 1997); Marcella Snowball v. Alfred Snowball, Jr., CV97-27 (HCN Tr. Ct., Apr. 7, 1997); Barbara Decorah v. Jones Decorah, CV97-19 (HCN Tr. Ct., Apr. 9, 1997); In the Matter of Brent M. Funmaker, CV97-18 (HCN Tr. Ct., Apr. 9, 1997); Charlene Smolenski v. Jeffrey Link, CV97-34 (HCN Tr. Ct., Apr. 9, 1997); Roxanne Johnson v. Loren James Rave, CV97-25 (HCN Tr. Ct., Apr. 14, 1997); State of Wisconsin, ex rel., v. Wayne Robert Blackdeer, CV97-47(HCN Tr. Ct., Apr. 15, 1997); State of Wisconsin v. Betsy M. Falcon, CV97-45 (HCN Tr. Ct., Apr. 15, 1997); In Re the Interest of Carson Funmaker, CV97-17, (HCN Tr. Ct., Apr. 15, 1997); Jacquelyn D. Wells v. Wesley D. Brockhaus, CV96-25 (HCN Tr. Ct.,Apr. 15, 1997); State of Wisconsin v. Joseph L. White , CV97-16 (HCN Tr. Ct., Apr. 15, 1997); State of Wisconsin v. Barbara A. Gromoff, CV97-38 (HCN Tr. Ct., Apr. 15, 1997); State of Wisconsin v. Dean Hopinka, CV97-46 (HCN Tr. Ct., Apr. 15, 1997); Karen J. Smith v. Lot L. Smith, II., CV97-33 (HCN Tr. Ct., Apr. 15, 1997); State of Wisconsin ex rel., Exhilda Goodbear v. John Goodbear, CV97-37 (HCN Tr. Ct.,Apr. 15, 1997); State of Wisconsin v. Fredrick K. Greendeer, CV97-44 (HCN Tr. Ct., Apr. 15, 1997); State of Wisconsin v. Arnold J. Crone, CV97-35 (HCN Tr. Ct., Apr. 17, 1997); Shari Jo Link v. Nelson Anderson Funmaker, CV96-75 (HCN Tr. Ct., Apr. 25, 1997).

Kathy Ruditys et al., v. Ho-Chunk Nation Enrollment Dept., CV96-45 (HCN Tr. Ct., Apr. 7, 1997) the case was dismissed by the court for plaintiffs' failure to prosecute.

In the Interest of Lucinda L. Littlesoldier by Helen Littlesoldier v. HCN Enrollment Dept., CV97-03 (HCN Tr. Ct., Apr. 9, 1997); the petitioner was granted the release of monies for the trust account of an adult incompetent for her benefit.

Ho-Chunk Housing Authority v. Lucinda Naquayoma, CV97-05 (HCN Tr. Ct., Apr. 9, 1997) the plaintiff was granted the enforcement of a foreign order in a collection action for a debt owed the Nation for delinquent rent.

Kristina M. Heath v. George O. Stacy, CV97-26 (HCN Tr. Ct., Apr. 3, 1997);

In the Matter of the Estate of George Thunder Hindsley, CV97-22 (HCN Tr. Ct., Apr. 14, 1997) the court granted in part the release of monies to the estate and parent of the deceased minor child in this probate action.

Francis P. Rave, Sr., v. Ho-Chunk Nation Gaming Commission, CV96-33 (HCN Tr. Ct., Apr. 23, 1997) the Trial Court granted the petitioner's Motion for Judicial Review and remanded the matter to the Gaming Commission consistent with its findings that the Gaming Commission relied upon information outside the record of the Show Cause Hearing and that the petitioner had been denied notice and the opportunity to defend against such information.

Crystal Akeen v. Carlos D. Naki, CV96-34 (HCN Tr. Ct., Apr. 23, 1997) the matter was dismissed for failure of the plaintiff to prosecute.

Renea A. Perez v. Roger D. Wallace, CV96-74 (HCN Tr. Ct., Apr. 25, 1997) the matter was dismissed on petitioner's Voluntary Dismissal Motion.

Diane Kirby v. Ho-Chunk Gaming Commission, CV95-30 (Apr. 25, 1997) the trial court issued a Order providing notice of intent to dismiss. The matter had been remanded to the Gaming Commission for a letter of costs in order for the plaintiff to seek review of the Commission decision. The petitioner has not moved the case forward.

April Filings

Supreme Court Cases:

Chloris A. Lowe, Jr. v. HCN, HCN Legislature and HCN General Council, SU97-01, the appellant/plaintiff filed an appeal of the trial court denying a preliminary injunction of his removal from office and a request to enjoin a special election.

Trial Court Cases:

Millie Smith v. Kevin M. Smith, CV97-51, the petitioner has moved to enforce a foreign order for child support against the respondent's per capita distribution.

In the interest of A.J.C. & F.F. by Kathy Stacy, CV97-

52, the petitioner is seeking to gain permanent guardianship of the two minor children in her care.

Roxanne Price v. HCN Dept. of Social Services, CV97-53, plaintiff has filed an action challenging her termination from the HCN Dept. of Social Services.

Eliza M. Green v. Montgomery James Green, CV97-54, the petitioner has moved to enforce a foreign order for child support against the respondent's per capita distribution.

State of Wisconsin v. Patrick Funmaker, CV97-55, the petitioner has moved to enforce a foreign order for child support against the respondent's per capita distribution.

Larry M. Domenget v. Dolores A. Greendeer, CV97-56, the petitioner has moved to enforce a foreign order for child support against the respondent's per capita distribution.

State of Wisconsin v. Wallace P. Greendeer, CV97-57, the petitioner has moved to enforce a foreign order for *Delite Woodworth v. Jean Day, Director of Personnel Dept.*, CV97-62, the plaintiff is suing the defendant alleging wrongful termination of her employment within the Personnel Department

Rosemarie C. Funmaker v. Dennis Funmaker, CV97-63, the petitioner has moved to enforce a foreign order for child support against the respondent's per capita distribution.

Nettie Kingsley v. HCN Election Board, CV97-64, the plaintiff seeks to have a new primary election. The plaintiff alleges violations of the Election Board Ordinance by the Election Board effectively denied tribal members the opportunity to vote.

Roberta Greendeer v. HCN Election Board, CV97-65, the plaintiff challenges the certified results of the Election Board. The plaintiff challenges the Area IV election results alleging improper conduct by Election Officials by failure to open the polls at 8:00 a.m., and violation of election procedures.

State of Wisconsin v. Tyrone L. DeCorah, CV97-66, the petitioner has moved to enforce a foreign order for child support against the respondent's per capita distribution.

State of Wisconsin v. William J. Greendeer, CV97-67,

child support against the respondent's per capita distribution.

Tammy Temple v. HCN Ho Chunk Casino et al., CV97-58, the plaintiff has filed an employee grievance against the Casino and management personnel for harassment and unfair treatment in an employment dispute.

In the Interest of Chauncy P. Wilson by Mary Wilson v. HCN Enrollment, CV97-59, the petitioner seeks the relief of money from the minor's trust account for educational supplies and equipment.

In the Interest of Zachary Mitchell by Celena Mitchell v. HCN Enrollment, CV97-60, the petitioner is seeking the release of money from the minor's trust account.

Casey Whitegull v. Harriet M. Whitegull, CV97-61, the petitioner has moved to enforce a foreign order for child support against the respondent's per capita distribution.

the petitioner has moved to enforce a foreign order for child support against the respondent's per capita distribution.

State of Wisconsin v. Morgan K. Decorah, CV97-68, the petitioner has moved to enforce a foreign order for child support against the respondent's per capita distribution.

HCN Bar Association

* Renewal of HCN Bar Membership is required by July 1, 1997.

* May 12 - 13, 1997, the HCN Tribal Court will host a Moot Court Training for 14 Wisconsin Tribal Judges Association Advocacy Candidates.

HINTS excerpted with permission from Gerald C. Sternberg, also appeared in the Wisconsin Lawyer (April 1997 p. 17): Follow these procedures to reduce the likelihood of having a grievance filed against you and to increase your client satisfaction.

SCR 20:1.1 - Competence. Do not handle any legal matter if you are not competent in that area of the law, even if you need the work, unless you work with another

lawyer who is competent to handle it.

SCR 20:1.2 - Scope of Representation. Whether in civil or criminal litigation, do not ever settle a case for a client without the client's decision to settle it. Settlement terms must be consistent with the client's instructions.

SCR 20:1.3 - Diligence. Have an effective tickler system so that each matter is calendared in your diary and also in your secretary's diary. The tickler should be at least a few days prior to any hearing so that you are aware of the due date for any work on the case and have time to do it. Avoid doing tasks at the last minute. Maintain a workable case load. In emergencies, make certain to apply for extensions. Do not schedule two matters for the same time.

Conferences:

- The 1997 State Bar of Wisconsin Annual Convention will be held in Milwaukee, June 26 & 27, 1997.
- In July 1997 National Indian Justice Center shall

Conduct training for Tribal Court Judges in San Francisco, CA.. Contact NIJC at (707) 762-8113.

- United Nations Working Group on Indigenous Populations, July 28 - August 1, 1997, United Nations Headquarters, Geneva, Switzerland, Contact Julian Berger, UN Center for Human Rights (41 22) 917-1234, ext. 3413.

Notice of Intent to Raise Court Fees

The Trial Court hereby gives public notice of its intent to consider raising fees and costs for some routine matters such as copying, subpoena's, service of process, preparation of tapes etc. The current rates of fees and costs are listed in the bulletin. The recent budget cut by the HCN Legislature requires the Court to be more self sufficient than in the past, therefore the Court is considering raising copying costs to \$.10 or \$.15 per page, Tape duplication from \$5 to \$10, etc. Filing fees and Admission to practice are set by the SC

HCN Court Fees:



Court Absorbs 17% Budget Cut.

On March 21, 1997, the HCN Legislature cut budgets across the three branches of government including the Judiciary to make up for projected shortfalls in Casino revenue. The amount cut from the existing FY 1996-97 Judiciary Budget was \$151,007 which amounted to 16.7% of the total budget. This is a large amount to cut at the end of the fiscal year. It will require the Court to curtail some activities, such as training and travel. It will also require the Court to consider how to soften the impact of these cuts. In a related matter the Court submitted its FY 1997-98 Judiciary Budget at \$100,000 less than last year. This is possible because the Court has completed furniture, computer acquisitions and finished funding a one year project for the training of Lay Advocates.

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 each tape
Certified Copies	.50 per page
Registration of Foreign Orders	\$10
Appellate filing fees	\$35
Admission to Practice	\$50

Comic Relief

Massachusetts Bar Association Journal reported the following questions asked during trials:

“The youngest son, the twenty-year-old, how old is he?”

“Did he kill you?”

“How many times have you committed suicide?”

Q: “Can you describe the individual?”

A: “He was about medium height with a beard.”

Q: "Was this a male or female?"

Q: "You said the stairs went down to the basement?"

A: "yes."

Q: "And these stairs, did they go up also?"

HO-CHUNK NATION COURT BULLETIN

What's up in Court
Vol. 2 No. 6
June 1, 1997

Indian Law, Policy & Affairs.

Editor's Statement:

I joined the staff of the Ho-Chunk Nation Court on January 15, 1996, six months after its creation. Now, 17 months later, June 17, 1997 will be my last day with the Ho-Chunk Nation Trial Court.

There has been a fury of business and lawsuits to deal with in the Court. There have been more than 225 civil lawsuits passing through the court and across my desk. We have built the beginnings of a comprehensive central law library, established an informative monthly court newsletter, created a user-friendly legal system with forms and brochures, and laid the foundation and basis for a thriving court system with the training of lay advocates, guardian ad litem, and expansion of HCN Bar members.

The Nation hosted its first of many future annual law days, focusing deliberately on the laws of, and issues effecting, this Nation. There have been training sessions and conferences that served to enhance the knowledge and skill of the staff. We have so much work to do, so much further to go; and yet we have managed to accomplish a lot in a very short period of

time. The Court opinions have been published in the Indian Law Reporter, as well as having been commented on at national conferences.

It has been both a learning experience and a legal baptism. My knowledge of law and politics has been reshaped and expanded. There has been much development and lots of problem solving, and over the next few years I hope to look back to this experience and reflect upon my own growth as a person, a lawyer and a human. There is so much this Nation offers and has so much more it can achieve and develop. I extend a gracious thank you to the Traditional, Trial, and Supreme Courts for helping to educate me. On June 18, 1997, will be my first day of work for the Ho-Chunk Nation in the HCN Department of Justice. I look forward to continuing to serve this Nation.

State of Wisconsin:

Governor Thompson's 1997-98 budget includes a child support initiative that increases child support and maintenance collections in Wisconsin. To increase collections and comply with federal law, Governor Thompson's budget establishes a system where occupational, drivers, recreational, and professional licenses or permits are withheld, not renewed, restricted or suspended for failure to make court-ordered payments of child support. Under the Federal Personal Responsibility and Work Opportunity Act of 1996, States are required to non-renew, revoke or suspend licenses for failure to comply with court-ordered payments. An individual subject to the terms of the Act is allowed 20 days to request a hearing on the matter. Governor Thompson's budget also allows for the enforcement of a lien upon all property of a person in arrears.

In the News:

The United States Supreme Court ruled on April 28, 1997 that the Fort Berthold Tribal Court does

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

not have civil jurisdiction over a personal injury lawsuit between two non-Indians arising out of an automobile accident, which that occurred on a highway maintained by the state but located within the Tribe's reservation. The decision was issued by the Court in an unanimous opinion written by Justice Ginsburg in *Strate v. A-1 Contractors*, No. 95-1872, April 29, 1997.



The Supreme Court rejected arguments presented by the Tribes and the United States, and reasoned that the tribal court's adjudicatory jurisdiction is controlled by the Court's 1981 decision, *Montana v. United States*, 101 S. Ct. 1245 (1981). The Court's decision is adverse to tribes, finding that a tribal court lacked jurisdiction to adjudicate a tort action between non-Indians that occurred on a state highway within the reservation. The Court indicated that a tribe might be found to have civil jurisdiction over acts of non-members occurring on non-Indian land if one of the three exceptions were established, specifically if (1) Congress, by statute or treaty, enlarged tribal court jurisdiction to include such civil actions; or (2) where the nonmember enters into a consensual relationship with the tribe; or (3) the activity of the nonmembers directly affects the tribe's political integrity, economic security, health or welfare. The Court concluded that none of these exceptions applied in *Strate v. A-1 Contractors*. This opinion addresses only the issue of tribal court jurisdiction over a civil suit which occurred on a state maintained highway where all parties to the case were nonmembers. The Court did not address the established rules that relate to tribal jurisdiction over trust or Indian owned land, or proceedings where one or more of the parties are Indian. Nothing in the opinion suggests that the Court intended to make any change to the established legal principals that govern such cases.

On the Wind . . .

. . . Robert Loescher, a member of the Tlingit tribe and executive vice president of Natural Resource Management for Sealaska Native Corporation, was named to the federal commission that will study the effects of legalized gambling.

. . . Pledging to educate members of Congress about the obligations the federal government has to Indian tribes,

a bipartisan group of House representatives said it will form a special caucus to focus on American Indian issues. Unfortunately, the committee will not include any American Indians.

. . . The Military will allow American Indians in the armed services to use peyote in their religious services, according to draft regulations released April 15, 1997 from the Department of Defense. The new policy applies to any of the 9,262 enrolled American Indians serving in the military. Under the 1994 American Indian Religious Freedom Act, it permits peyote use by the Native American Church members who are also enrolled members of Indian tribes. One may then use peyote and answer "no" to the armed services when asked about drug use. The draft guidelines still prohibit drugs, including peyote, use, possession, to be brought aboard military vehicles, vessels, aircraft or onto military installations without permission of the installation commander.

. . . U.S. District Judge Barbara Crabb ruled that three bands of the Chippewa tribe may interview Department of Interior officials under oath as well as introduce documents beyond the administrative record to establish that Minnesota congressmen and the White House were improperly enlisted to oppose the bands' plan to build a casino. The Red Cliff, Lac Courte Oreilles and Mole Lake bands asserted that improper political pressure derailed plans to open a casino at the St. Croix Meadows dog track in Wisconsin. 929 F. Supp. 1165 (W.D. Wis., 1996)



Legal Definitions:

Contempt is a willful disregard or disobedience of a public authority. There is civil contempt, contempt of Congress, contempt of Court and direct contempt.

Contempt Power is the inherent power of every court to punish a person for contempt of its judgements or decrees and for conduct within or proximate to the court which is contemptuous.

Counsel of Record is the attorney whose appearance has been filed with court papers.

Dicta are the expressions in court opinions which go beyond the facts before the court and therefore are the individual views of the judge and are not binding in subsequent cases as legal precedent.

Escheat is the reversion or conveyance of property to the Indian Country is part of the public domain set apart for use, occupancy and protection of Indian peoples. *Youngbear v. Brewer*, 415 F. Supp. 807, 809.

Indian Lands are real property ceded to the U.S. by Indians, commonly to be held in trust for Indians.

Indian Reservation is land reserved or set aside by treaty or executive order for use and occupation of tribe or tribes of Indians, and under the superintendence of the government which retains title to the land.

Indian Title is a claim by Indian tribes of the right to occupy certain territory to the exclusion of any others because of immemorial occupancy. *Northwestern Bands of Shoshone Indians v. United States*, 324 U.S. 335 (1945)

Provoke means to excite or stimulate.

Recent Decisions

HCN Trial Court Cases:

Millie Smith v. Kevin M. Smith, CV97-51 (HCN Tr. Ct., May 5, 1997) The Court granted the petitioner's Motion to Register and Enforce a Foreign Child Support Order.

Eliza M. Green v. Montgomery J. Green, CV97-54 (HCN Tr. Ct., May 5, 1997) The Court granted the petitioner's Motion to Register and Enforce a Foreign Child Support Order.

Michelle R. Decora v. John D. Steindorf, CV97-42 (HCN Tr. Ct., May 5, 1997) The Court granted the petitioner's Motion to Register and Enforce a Foreign Child Support Order.

Jacquelyn D. Wells v. Kurtis Brockhaus, Sr., CV96-26 (HCN Tr. Ct., May 5, 1997) The Court granted the petitioner's Motion to Modify and renew the existing Child Support Order.

Levi Aaron Lincoln, Sr., v. Louise Marlene Lincoln, CV97-32 (HCN Tr. Ct., May 7, 1997) The Court

state where there is no individual or party present or competent to inherit it.

Indemnity means reimbursement.

granted the petitioner's Motion to Register and Enforce a Foreign Child Support Order.

Karena Day v. Kevin Day, CV96-57 (HCN Tr. Ct., May 7, 1997) The Court granted the petitioner's Motion to Modify a Foreign Child Support Order.

Joelene Smith v. Tammy Lang, and Ho-Chunk Nation, CV96-94 (HCN Tr. Ct., May 7, 1997) The plaintiff was an employee of the HCN Head Start program and filed this employment grievance against the Head Start program and its's director for an alleged wrongful termination of employment. The parties reached an out-of-court settlement, except for the issue of what constitutes a comparable position. The Court held that a determination of a comparable position rests squarely on the facts. For example, whether the job had similar responsibilities, qualifications, title, and the same or comparable pay, as well as similar terms and conditions of employment.

Catherine Shegonee v. Daniel Youngthunder, Sr., CV97-28 (HCN Tr. Ct., May 7, 1997) The Court granted the petitioner's Motion to Register and Enforce a Foreign Child Support Order.

Roberta Greendeer v. HCN Election Board, CV97-65 (HCN Tr. Ct., May 8, 1997) The plaintiff brought an election challenge, asserting that the Election Board had violated the Election Ordinance governing the operations and running of the elections. The plaintiff's complaint did not survive the defendant's *Motion to Dismiss*. The plaintiff failed to timely file the *Complaint*.

State of Wisconsin and Katherine Elaine Snow v. Edward Troy Decorah, CV96-82 (HCN Tr. Ct., May 12, 1997) The Court, on its own *Motion*, granted a modification to existing Child Support Order.

Katherine Elaine Snow v. Edward Troy Decorah CV96-65 (HCN Tr. Ct., May 12, 1997) The Court, own it's own *Motion*, granted a modification to the existing Child Support Order.

State of Wisconsin and Eunice G Wamego v. Edward Troy Decorah, CV86-83 (HCN Tr. Ct., May 12, 1997) The Court on it's own *Motion*, granted a modification to the existing Child Support Order.

Nettie Kingsley v. Ho-Chunk Nation Election Board, CV97-64 (HCN Tr. Ct., May 16, 1997) The plaintiff filed a complaint seeking to challenge the results of the *Eileen Snowball v. Martin A. Falcon*, CV96-55 (HCN Tr. Ct., May 21, 1997) The Court granted the petitioner's Motion to Register and Enforce a Foreign Child Support Order.

State of Wisconsin on behalf of Shelley E. Thundercloud v. William J. Greendeer, CV97-67 (HCN Tr. Ct., May 21, 1997) The Court granted the petitioner's Motion to Register and Enforce a Foreign Child Support Order.

April 12, 1997 Election primary. The plaintiff's challenge was dismissed for failure to prosecute.

Casey Whitegull v. Harriet M. Whitegull, CV97-61 (HCN Tr. Ct., May 21, 1997) The Court granted the petitioner's Motion to Register and Enforce a Foreign Child Support Order.

enrollment on behalf of the minor children in her care.

State of Wisconsin v. Roberta L. Crowe, CV97-76, the plaintiff has moved the Court to Register & Enforce a Foreign Child Support Order.

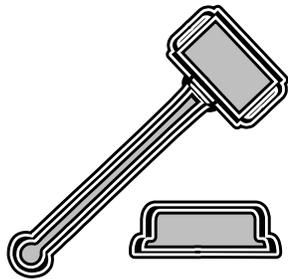
Debra Chase-Skenandore v. Ho-Chunk Nation, CV97-77, the plaintiff filed this suit challenging the layoff and subsequent termination of her employment in violation of the HCN PERSONNEL POLICIES AND PROCEDURES.

Patricia J. Brown v. Phillip J. Long, Jr., CV97-78, the plaintiff has moved the Court to Register and Enforce a Foreign Child Support Order.

May Filings

Trial Court Cases:

Debra J. Knutson v. HCN Treasury Dept., CV97-70, plaintiff is asserting that the Department of Treasury wrongfully terminated her employment.



Eliza Green v. Douglas Littlejohn, CV97-71, the plaintiff has moved the Court to Register and Enforce a Foreign Child Support Order.

Steve Funmaker v. JoAnn Jones, et. al., CV97-72, the plaintiff has filed a civil suit seeking damages and the return of tribal funds allegedly taken from the Nation in 1993. The plaintiff has named 61 defendants in the civil suit.

Agnes Blackhawk v. Barry Blackhawk, CV97-73, the plaintiff seeks to enforce a Nebraska Winnebago Tribal Court order for child support that was awarded to the plaintiff.

Cynthia Tack v. Matthew Thundercloud, CV97-74, the plaintiff moved the Court to Register & Enforce a Foreign Child Support Order.

Madeline Miskew v. Adam Hall, CV97-75, the plaintiff is seeking to challenge the eligibility requirements for

HCN Supreme Court

The HCN Supreme Court will hold its next monthly meeting on Saturday, June 28, 1997 at 9:30 a.m. at the Tribal Court Building in Black River Falls. The Supreme Court meeting is open to the public.

*CONGRATULATIONS and THANK YOU to all who participated in the Wisconsin Indian Tribal Judge's Association's Mock Trials for Lay Advocates on May 13, 1997. It was an honor to participate in the event. All of you will be a welcome addition to the Wisconsin tribal courts. Good luck to each and every one of you from HCN Supreme Court.

* Renewal of HCN Bar Membership is required by July 1, 1997.

Important Notice

To all Guardian ad Litem and court-appointed counsel, please submit all written reports and account statements to the Clerk of Court by June 5, 1997 for Fiscal Year 1997, which ends on June 30, 1997. All bills must be submitted for payment by end of the Fiscal Year 1997.

Confidentiality. Do not discuss client matters outside the office. Instruct office staff to keep client information confidential. Do not send a client file to another lawyer without the client's consent. The confidentiality rule, **SCR 20:1.6**, not only protects a confidence or secret but also protects all information relating to representation. The rare circumstance in which you are required to reveal otherwise confidential information is to prevent the client from committing a criminal or fraudulent act likely to result in death, substantial bodily harm or in a substantial injury to another's financial interest or property. You may reveal information to the extent you believe reasonably necessary to rectify the consequences of a client's criminal or fraudulent act in the furtherance of which your services had been used. You may also reveal information to the extent you reasonably believe necessary to establish a claim or defense on your behalf in a controversy between you and a client.

On August 31, 1996, the HCN Supreme Court adopted by reference the Wisconsin *Rules of Professional Conduct for Attorneys*, cited as Supreme Court Rules (SCR). For more information on the rules governing the professional and ethical conduct of attorneys and lay advocates please contact the Wisconsin State Bar.

Conferences:

- The Minnesota Institute of Legal Education will host a State-Tribal Relations conference on Tuesday, June 24, 1997 at the Bloomington Marriot Hotel. For more information contact MILE at (612) 339-6453.
- The 1997 State Bar of Wisconsin Annual Convention will be held in Milwaukee, June 26 & 27, 1997.
- In July 1997, the National Indian Justice Center will conduct training in Judicial Techniques for Tribal Court Judges in San Francisco, CA. Contact NIJC at (707) 762-8113.
- United Nations Working Group on Indigenous Populations, July 28 - August 1, 1997, UN Headquarters, Geneva, Switzerland, Contact Julian Berger, UN Center for Human Rights (41 22) 917-1234, ext. 3413.

Advocacy Pointers



HCN Court Fees:

Filing Fee	\$35
Service of Summons in person	\$12
Service of Summons by Mail	\$3
Subpoena	\$1
Service by Courts	\$0.30/per mile
Copying	\$0.05/per copy
Faxing	\$0.25
Tapes of Hearings	\$5 each tape
Certified Copies	\$0.50 per page
Registration of Foreign Orders	\$10
Appellate filing fees	\$35
Admission to Practice	\$50

Comic Relief



“Now doctor, isn't it true that when a person dies in his sleep, he doesn't know about it until the next morning?”

Q: “Is your appearance here this morning pursuant to a deposition notice which I sent to your attorney?”

A: “No, this is how I dress when I go to work.”

Q: “All your responses must be oral, OK? What school did you go to?”

A: “Oral.”

Q: “Are you qualified to give a urine sample?”

A: “I have been since early childhood.”

Q: “Do you recall the time that you examined the body?”

A: “The autopsy started around 8:30 p.m.”

Q: “and Mr. Dennington was dead at the time?”

A: “No, he was sitting on the table wondering why I was

doing an autopsy.”

ILR Published Cases:

The following cases were published in the Indian Law Reporter Volume 24:

Coalition for a Fair Government II v. Lowe, et al., No. SU96-02, **24 Indian L. Rep. 6021** (HCN S. Ct., May 28, 1996); *Fronk v. Ho-Chunk Tours*, No. CV96-11, **24 Indian L. Rep. 6022** (HCN Tr. Ct., June 19, 1996); *Ho-Chunk Nation Legislature v. Lowe, Jr.*, No. CV95-28, **24 Indian L. Rep. 6024** (HCN S. Ct., January 28, 1996); *Johnson v. Ho-Chunk Nation Education Dept.*, No. CV-96-18, **24 Indian L. Rep. 6024** (HCN Tr. Ct., June 5, 1996); *Riddle v. Ho-Chunk Nation Rainbow Casino*, No. SU 95-03, **24 Indian L. Rep. 6031** (HCN S. Ct., Nov. 1, 1995); *White v. Ho-Chunk Nation Enrollment Office*, No. TC 96-08, **24 Indian L. Rep. 6031** (HCN Tr. Ct., May 29, 1996).

Legal Citation Form

Below are example citation forms by legal reference and citation description.

Ho-Chunk Nation Constitution

Constitution, Article Number, Section, and Subsection.

HCN CONSTITUTION, ART. XI, Sec. 7

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

Ho-Chunk Nation Ordinances

Ordinance Name, Chapter number, Section/Part/Clause, page.

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

CLAIMS AGAINST PER CAPITA, §6.01(b).

HCN Supreme Court Case Law

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

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

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

Jane Doe v. Bob Smith, CV99-01 (HCN Tr. Ct., November, 1, 1999)

In the Interest of Minor Child X, JV95-047 (HCN Tr. Ct., May 23, 1994).

Rules of Civil Procedure

HCN R. Civ. P. 19(B)

Rules of Appellate Procedure

HCN R. App. P. 5

HO-CHUNK NATION COURT BULLETIN

What's up in Court
Vol. 2 No. 7
July 1, 1997

Elections and Continuity.

Election Disputes:

Now is the time for election disputes to be resolved. The HCN Constitution provides for quick and prompt hearing and resolution of all election disputes. Election disputes are permitted on any election under the HCN Constitution. Each election dispute must be filed within ten days of the certification of the Election by the HCN Election Board.

Once an election dispute is filed, the Trial Court has only twenty days to resolve the issue. This makes for very expedited procedures in order to give the challenger an opportunity to make their case and present evidence in a very short time span. This is required in order to shorten any possible disruption in the order transition from one office holder to the office holder-elect. Swearing in occurs exactly four weeks from the election unless the challenger has shown a strong likelihood of success, the balance of harms tips sharply in their favor and all other prongs of the Preliminary Injunction test are met.

In a recent set of cases the Trial Court ruled that filing an election challenge on the eleventh day was absolutely barred unless the plaintiff can show that the

Election Board affirmatively misled them into filing too late and they reasonably relied on that assurance. See *Roberta Funmaker v. HCN Election Board*, CV 97-** (HCN Tr. Ct. May *, 1997) and *Nettie Kingsley v. HCN Election Bd*, CV 97-** (HCN Tr. Ct. May *, 1997) (Both cases alleged failure to timely open the polls in Area IV Wisconsin Rapids till 10:30am altered the result of the election).

The Court did receive a challenge to the Area II recall election, which was timely filed. *James Greendeer v. HCN Election Bd, Wade & Kathy Blackdeer, Tara Blackdeer Walter et. Al.* CV 97-87. It is in the process of scheduling and being heard. In addition, a challenge has been filed in the June 27, 1997 Election to fill the Legislative seat for Area II. That challenge was filed June 30, 1997.

Generally, the burden of proof in an Election challenge is higher than a preponderance of the evidence standard. The challenger must prove by clear and convincing evidence that some error occurred or that the conduct of the election or other factor made the election unfair or somehow tainted sufficient to alter the outcome if the election were held without the error.

The Court takes its responsibility to resolve all election disputes quickly and fairly very seriously. Any witness or party needs to be aware that time limitations necessarily impact hearings, discovery and trial in such cases.

State of Wisconsin:

The take over and shut down of the Mole Lake Casino owned and operated by the Sokogan Chippewa Community has apparently been resolved. The NIGC and the State Gaming Commission have conducted an audit and the Casino's operations are again in line with Compact requirements.

In the News:

The federal government could owe Indian tribes millions of dollars in compensation under a federal court ruling that invalidates the government's method for

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determining the tribes' cost of administering Bureau of Indian Affairs programs. The 10th Circuit Court of Appeals ruled in *Ramah Navajo Chapter v. Lujan*, 112 F.3d 455 (10 Cir 1997) that the Department of Interior's Office of the Inspector General miscalculated the amount of contract support owed to the Ramah Navajo Chapter and possibly every other tribe that operates Bureau of Indian Affairs programs under contracts authorized by the Indian Self-Determination Act Amendments of 1988. Such contracts are call 638 contracts for Public Law 93-638.

• • • In the second phase of ongoing litigation brought by the Mille Lacs Band of Chippewa Indians in which the tribe and other tribal intervenors seek a declaratory judgement defining the nature and scope of hunting, fishing and gathering rights under the 1837 Treaty with the United States. The district court in Minnesota granted Summary Judgement in favor of the Bands on all regulatory issues with the exception of the definition of private lands; and refused to make a determination of the allocation of resources, but finds that because the 1837 Treaty was intended to preserve a way of life, the moderate standard of living doctrine cannot be applied to reduce the Bands' share of resources before they have had a chance to harvest such resources. *Mille Lacs Band of Chippewa Indians, et al. v. Minnesota, et al.*, No. 3-94-1226, 24 Indian L. Rep. 3059 (D. Minn., Jan. 29, 1997).

In later developments, the private intervenors appealed the ruling to the Eighth Circuit which issued a stay pending appeal of all walleye harvesting in Lake Mille Lacs. A decision on the appeal is expected by the end of the summer.

The U.S. Supreme Court has issued two other decisions impacting Indian County at the close of their term. One involves the Coeur d'Alene Tribes claim for title to the lake bed of Lake Coeur d'Alene.

Another case involved the determination that the Religious Freedom Restoration Act popularly known as RFRA was unconstitutional. *City of Boerne v. Flores*, 65 U.S. L. W. 4612 (June 25, 1997) Due to the fact that these cases were released so close to the publication of this bulletin a full and proper cite will be given next month. The effect, if any, of the RIFRA decision on the American Indian Religious Freedom Amendments Act (dealing specifically with the Native American Church) is not known.

Legal Definitions:

Common law Defamation: See *N.Y. Times v. Sullivan*, 376 U.S. 254 (1964); See also *Gertz v. Robert Welch Inc.* 418 U.S. 323 (1974).

Recent Decisions

Order in J. Greendeer v. HCN Election Bd. et al., CV 97-84, Court determined that 20-day time limit for Election Disputes could not be waived. Trial was set for July 3, & 5, 1997.

The Court apologizes for the lack of a complete summary of decisions of the Trial Court in June. Due to the loss of our staff attorney, sufficient time was not available to find and summarize the many decisions issued in the last month.

June Filings

In re the Interest of Annette Funmaker, CV97-79.

Columbia Co. - State of Wisconsin on behalf of Laurie Dorwin v. Glen Decorah, CV97-80, Child Support.

Columbia Co. - State of Wisconsin on behalf of Amanda Fanning v. Derek Fanning, CV97-81, Child Support

Rosemarie Powless, Registration of Foreign Order, CV97-82, Child Support

Stuart Taylor, Registration of Foreign Order CV97-83, Child Support

James Greendeer v. HCN Election Bd., Wade & Kathy Blackdeer, Tara Blackdeer Walter & other John Does, CV97-84. Election Challenge and Claim of Defamation.

Stephanie Riley v. Leland Whitegull, CV 97-85 Employment. Harrassment Claim for TRO & Injunction.

State of Wisconsin & v. Henry Whitethunder, CV97-87, Registration of Foreign Order, Child Support.

State of Wisconsin v. Stanley G. WhiteEagle, CV 97-87, Child Support.

Barbara Long v. Garrett Banuelos Sr., CV 97-88. Child Support

In the Matter of Guardianship of Dante Ortiz, CV 97-89. Guardianship request.

Judy Diamond v. Roger Allen, CV 97-90. CS.

Vicki Houghton v. HCN Election Bd. CV 97-93. Election Dispute of June 27, 1997 Area II Election.

Sara WhiteEagle v. Bernard Crow, CV 97-92. Child Support.

Michelle Lewis v. Roger Littlegeorge, CV 97-91, CS.

HCN Supreme Court

The HCN Supreme Court recently issued two opinions. In *Chloris A. Lowe Jr. v. Ho-Chunk Nation, HCN Legislature and HCN General Council*, 97 SU-01 (June 13, 1997) the Court held that the Trial Court did not commit error in dismissing former President Lowe’s challenge to his removal from office on sovereign immunity grounds. Distinguishing this case from *Coalition for Fair Government II et al. v. Lowe and Whiterabbit et al.* CV 96-22, the HCN Sup. Ct. pointed out that there is an express prohibition of suits against the Nation absent a waiver of sovereign immunity and that the plaintiff did not sue anyone for acting beyond their scope of authority as alleged in *Coalition*.

In *Sliwicki v. Rainbow Casino; Ho-Chunk Nation*, SU 96-15 (HCN S. Ct. June 20, 1997) the HCN Supreme Court affirmed the Trial Court on the issue that the Compliant was timely filed, but reversed and remanded on the issue of exhaustion of administrative remedies.

The Court remanded the case back to the Trial Court to permit the Executive Branch to consider whether the Personnel Committee listed in the Personnel Policies and Procedures was available to consider the case. The Supreme Court held that exhaustion of administrative remedies must occur even when to do so is futile. The Court declined to follow Federal precedent which allows an exception to the exhaustion of remedies doctrine in narrow circumstances such as a clear showing that administrative remedies would be futile and the result preordained.

Advocacy Pointers

It is always helpful to the legal process to turn in Court reports, by GALs or Permanency Plans by ICW on time and well before the hearing required on each case. It is also important for all counsel representing

parents to make sure they have this report with sufficient time to be prepared to present their case.

Counsel wishing to have a motion heard on an expedited basis are reminded that HCN R. Civ. P. 19 requires that they file a “Motion for Expedited Consideration” Explaining the reason to fast track the consideration of their underlying motion.

Conferences:

* In July 1997, the National Indian Justice Center will conduct training in Judicial Techniques for Tribal Court Judges in San Francisco, CA. Contact NIJC at (707) 762-8113.



* United Nations Working Group on Indigenous Populations, July 28 - August 1, 1997, UN Headquarters, Geneva, Switzerland, Contact Julian Berger, UN Center for Human Rights (41 22) 917-1234, ext. 3413.

HCN Court Fees:

Filing Fee	\$35
Service of Summons in person	\$12
Service of Summons by Mail	\$3
Subpoena	\$1
Service by Courts	\$0.30/per mile
Copying	\$0.05/per copy
Faxing	\$0.25
Tapes of Hearings	\$5/tape
Certified Copies	\$0.50 per page
Registration of Foreign Orders	\$10
Appellate filing fees	\$35
Admission to Practice	\$50

ILR Published Cases:

The following cases were published in the Indian Law Reporter Volume 24:

Day v. HCN Personnel Dep’t, 24 ILR 6075 (HCN Tr. Ct. Aug. 21, 1996)

M. Blackdeer v. HCN Enrollment Dep’t, 24 ILR 6074 (HCN Tr. Ct. Aug. 22, 1996)

Legal Citation Form

Below are example citation forms by legal reference.



HCN Trial Court Case Law

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

Jane Doe v. Bob Smith, CV99-01 (HCN Tr. Ct., November, 1, 1999)

In the Interest of Minor Child X, JV95-047 (HCN Tr. Ct., May 23, 1994).

Ho-Chunk Nation Constitution

Constitution, Article Number, Section, and Subsection.

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

Ho-Chunk Nation Ordinances

Ordinance Name, Chapter number, Section/Part/Clause, page.

Rules of Civil Procedure

HCN R. Civ. P. 19(B)

Rules of Appellate Procedure

HCN R. App. P. 5

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

CLAIMS AGAINST PER CAPITA, §6.01(b).

HCN Supreme Court Case Law

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

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

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

Comments on Fees

No comments other than a request for waiver of fees by Lay Advocates was received by the Court in publishing its Notice and Comment period for intent to raise fees. It is likely the Court will at a minimum raise the copy fee charged from \$.05 per page to \$.10 per page. This would align the Court with the fees charged by the HCN Legislature for public records.

HO-CHUNK NATION COURT BULLETIN

What's up in Court
Vol. 2 No. 8
August 1, 1997

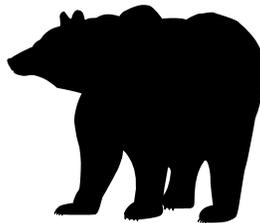
Transition and Change.

In Memoriam: Bert Funmaker:

The Court staff, Traditional Court members and Judges were shocked and saddened to hear that Bert Funmaker passed away suddenly in Hayward, WI after attending the Honor the Earth Powwow and related Golf tournament. He died on July 21. His funeral in keeping with Ho-Chunk custom and tradition was four days later on July 24.

Bert was influential in a quiet way. He was on so many committees that it was hard to remember all of them. He served on the HCN Housing Authority Board of Directors for many years, the General Council Planning

Committee, and as an elder advisor to many Departments. He served as an advisor on the Constitutional reform committee, as a member of the WWBC's Judicial subcommittee which drafted and recommended the passage of the *HCN Judiciary Act of 1995*. He also helped initiate a Council of Elders that gradually evolved into the HCN Traditional Court where he also served as the representative of the Bear Clan.



Bert Funmaker worked hard to establish the Judicial Branch of the HCN. He assisted in interviewing and hiring the first attorneys that worked for the tribe as part of the WWBC Legal Department. Later, with the establishment of the Courts he also interviewed all the candidates for judicial appointments. He taught Ho-Chunk language classes along with his wife Myrtle and always seemed willing to help.

Bert Funmaker was a traditional Ho-Chunk who had lived in the outside world and understood how it worked. His common sense, good humor and understanding of his clan and Ho-Chunk customs and traditions made him someone people respected and honored. He

respected others and taught them to remember that the basis of Ho-Chunk relationships are based on the mutuality of respect. Too often in the adversarial world of the court room we forget this fundamental tenant of life. Respect others and they will respect you.

It was therefore no surprise that so many attended his funeral and were part of the long funeral cortège that proceeded from his home near Tunnel City to the Decorah cemetery in Black River Falls. They respected him as he had them.

Bert Funmaker set an example that we should all take note. He gave unstintingly of his time both to the Court and to many committees and groups. We shall miss him.

New Staff:

The newsletter, which is published monthly by the HCN Court System will get a new editor for the September issue. The Court is pleased to announce the hiring of Ray Torgerson, a June graduate of the University of Texas Law School in Austin, Texas as its new Law Clerk/Staff Attorney/Law Librarian.

Mr. Torgerson received his B.A. in English from Texas A&M University and grew up in the Corpus Christi area. He is married and will be moving up after completing the Texas Bar

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Edited by <i>Chief Judge Butterfield</i>	

Exam in late July. The court expects great things from Ray. Formerly was the editor of the Texas Forum on Civil Liberties and Civil Rights at the University of Texas.

GAL training:

The HCN Trial Court once again finds itself with a short list of trained Guardian Ad Litem or GALs. In the fall the Court will once again sponsor training for any person interested in becoming a Court appointed GAL. The training will be two to three days and will be furnished at no charge to Ho-Chunk Nation or Winnebago Tribe of Nebraska members. Some slots will be available to members of other tribes sponsored by their Tribe or Tribal Court for reasonable tuition. In the past this charge was \$250-300 and helps offset the Court's cost of bringing in high quality training staff.

The training will be held in late September to October in Black River Falls. The Court will be seeking permission of tribal member employees to get approved time off from the Executive Branch to attend such training. Current GALs should consider attending as a refresher. Lay Advocate trainees should also consider attending in order to be eligible for GAL appointments. Unfortunately, the Court cannot afford mileage or accommodations, though coffee, rolls and juice will likely be furnished. Call the Clerk of Court Marcella Cloud if you are interested and wish to sign up.

especially in this Newsletter as he

Recent Decisions

HCN Trial Court Cases:

James Greendeer v. HCN Election Bd., Wade and Kathy Blackdeer, Tara Blackdeer Walter and one or more John Does, CV 97-84 (HCN Tr. Ct. July 7, 1997). The Court upheld the Recall election of James Greendeer held in conjunction with the General Election. Though the Court found some basis for Mr. Greendeer's claim of defamation, the false claims were intermixed with ones based on opinion and partially true claims. The Court did not find "clear and convincing" evidence of defamation sufficient to overturn the recall election. The Court held Mr. Greendeer to be a public figure within the Ho-Chunk Nation pursuant to *N.Y. Times v. Sullivan* which requires that the plaintiff prove the defendant acted with actual malice or reckless disregard of the truth as to the alleged defamatory statements. Defendants Kathy Blackdeer and Tara Blackdeer Walter were dropped from the suit.

The second Count (defamation) of the lawsuit directed against Wade Blackdeer and one or more John Does remains for later resolution.

Vicki J. Houghton v. HCN Election Bd., CV 97-93 (HCN Tr. Ct. July 21, 1997). The Trial Court upheld the June 27, 1997 Area II Special Legislative Election against a challenge based on improper notice. The Court found given the facts, that only two people were proved to have been unable to vote due to

improper notice. The Plaintiff needed to show at least eleven people would have voted against the leading candidate, Wade Blackdeer, to change the outcome of the election. In its opinion the Court noted that the Election Board could have provided much better notice even though it met the bare minimum posting requirements at both polling sites in District II.

Carol Smith v. Bernice Cloud and Rainbow Bingo, CV 96-53 (HCN Tr. Ct. July 24, 1997). The Court found that the plaintiff had not been discriminated because of membership in a protected class but did find she had been singled out and been treated less favorably than others for the same infraction enough to constitute "unfair treatment." This finding was based on the individual facts of the case. Plaintiff was awarded damages and negative references were to be expunged from her personnel file.

State of Wisconsin v. Betsy Falcon, CV 97-45, Order Suspending Support) (HCN Tr. Ct. June 9, 1997).

Sara Whiteeagle v. Timothy King, CV 97-24, Order (Enforcing Child Support). Respondent failed to demonstrate financial hardship or modification of underlying Wood Co. Ct. Order.

State of Wisconsin, Rosann Mann v. Tyrone L. Decorah, CV 97-66, Default Judgement (Enforcing Child Support).

Cynthia Tack v. Matthew L.

Thundercloud, CV 97-74, Default Judgement (Enforcing Child Support). (HCN Tr. Ct. June 17, 1997).

State of Wisconsin, v. Roberta L. Crowe, CV 97-76, Default Judgement (Enforcing Child Support). (HCN Tr. Ct. June 17, 1997)

Rosemarie C. Funmaker v. Dennis Funmaker, CV 97-63 (HCN Tr. Ct. July 8, 1997) Child Support Enforced.

Patricia Brown v. Phillip J. Long Jr., CV 97-78 (HCN Tr. Ct. July 15, 1997) Child Support Enforced.

Amanda Fanning v. Derek Fanning, CV 97-81 (HCN Tr. Ct. July 15, 1997) Child Support Enforced.

State of Wisconsin v. Stuart A. Taylor, CV 97-83 (HCN Tr. Ct. July 15, 1997) Child Support Enforced.

State of Wisconsin v. Henry Whitethunder, CV 97-86 (HCN Tr. Ct. July 15, 1997) Child Support Enforced.

State of Wisconsin v. Stanley G. Whiteeagle, CV 97-87 (HCN Tr. Ct. July 15, 1997) Child Support Enforced.

Michelle Lewis v. Roger B. Littlegeorge, CV 97-91 (HCN Tr. Ct. July 18, 1997) Child Support Enforced.

July Filings

Trial Court Cases:

Nicole Cook v. Harry J. Cholka,

Agnes M. Blackhawk v. Barry L. Blackhawk, CV 97-73, Default Judgement (Enforcing Child Support Order from Winnebago Tribe of Nebraska) (HCN Tr. Ct. June 18, 1997).

State of Wisconsin for Kathryn Isham Gordon v. Robert W. CV 97-95, Filed July 2, 1997. Motion to Register Foreign Order (Child Support)

State of Wisconsin ex Rel Cynthia Loofboro v. William Greendeer, Filed July 7, 1997. Motion to Register and Enforce Foreign Order (Child Support).

Lisa Rave v. Brent St. Cyr, CV 97-97 filed July 7, 1997.

Mike Cullen v. Audry Lewis, CV 97-98 filed July 9, 1997. Employment Dispute

Bonnie Smith v. Bradley Smith, CV 97-99, filed July 10, 1997. Motion to Register Foreign Order (Child Support).

Karen Goulee v. Jones Decorah, CV 97-100, filed July 16, 1997. Motion to Register Foreign Order (Child Support).

In re: Susan A. Redfern by William Turner, CV 97-101, filed July 21, 1997. Petition for Release of Incompetent Adult's Per Capita.

In re: Sheri Anne Smith, CV 97-102, filed July 17, 1997. Petition for release of minor's per capita.

Anthony Salerno v. Estelle R. Whitewing, CV 97-103, filed July 24, 1997. Motion to Register

Blackdeer, CV 97-41 (HCN Tr. Ct. July 7, 1997) Child Support enforced.

State of Wisconsin for Shelly J. Woller v. Robert W. Blackdeer, CV 97-40 (HCN Tr. Ct. July 11, 1997) Child Support enforced.

Foreign Order (Child Support).

HCN SUPREME COURT

In re: K.E.F., SU 97-03 Appeal filed June 19, 1997. Appealing order denying *Motion to Intervene* by Oneida Tribe without prejudice.

Due to recusal of Associate Justice Rita Cleveland, the HCN Legislature appointed Rebecca Wiese as pro tem Judge for this case. Ms. Wiese is a tribal member and lawyer from Madison, WI.

The HCN granted the appeal in *K.E.F.* on June 30, 1997.

HCN Supreme Court

The HCN Supreme Court will hold its next monthly meeting on Saturday, August 9, 1997 at 10 a.m. at the Tribal Court Building in Black River Falls. The Supreme Court meeting is open to the public.

Its scheduled agenda includes the consideration of rules to govern Judicial Ethics. These are rules of behavior required of Judges within the HCN Court System.

Appellate Rules

The HCN Supreme Court completed and revised the Appellate Rules in an Order dated May 25, 1997. Copies of these rules are available to all practitioners, attorneys, lay advocates and members of the public for a nominal copying charge.

Perhaps of greatest interest is that the period for taking an appeal from a final

Of course that is not all. The HCN Trial Court and Wisconsin Tribal Judges Association are already planning Continuing Legal Education seminars as follow up. As the law is a ever changing field, it is incumbent on all those practicing to keep abreast of new developments whether it be case law or legislation. Please contact the Staff Attorney for any topics you would like to see the CLE cover.

HCN Bar

Bar membership fees are \$50 per year and run from July 1, to the following June 30th. All Lay Advocates and Attorneys handling more than one case per year (*pro hac vice*) must become members of the HCN Bar Association. Comments regarding rules, fees or membership information should be sent to the HCN Supreme Court c/o Court Staff Attorney Ray Torgerson.

Important Notice

HCN Law Day will once again be sponsored by the Court System. Last year the Law Day consisted of CLE presentations that lasted all day culminating in a

judgement has been lengthened from ten (10) days to thirty (30) days. HCN R. App. P. 7(b)(1) & 10(a). Appeals from interlocutory orders must be filed within ten (10) days. HCN R. App. P. 7.5.

Lay Advocates

Lay Advocate training completed its fifth and last official session at Carter, WI, Tues., Wed and Thursday, July 22-24, 1997. However, this does not mean that 5K race.

Tentatively Law Day has been set for August 29, 1997. Legal presentations will probably only last from 1 p.m. to 4:30 p.m. or half day session. The "Legal Run Around" or 5 K race/walk will likely be held in conjunction with the Powwow on Saturday morning. Call the Court for more details.

Advocacy Pointers

Arrive on time to all hearings and trials. Make sure to arrive a little early for any hearing in which you plan to submit documentary evidence. This will give you time to premark exhibits in accordance with the numbering system of the Court, which is numbers for plaintiffs and letters for defendants. The Court may soon require that all numbered exhibits also list the case number at the bottom to insure that all exhibits are properly filed. It is extremely helpful to prepare an exhibit index for the Court. Forms may be obtained from the Clerk of Court.

Have your copies or your exhibits ready to hand to the opposing party. It is highly disruptive to the conduct of a

the trainees are ready to be licensed. In addition to all training assignments being handed in, all trainees must now complete a practicum where they second chair at least two cases with a mentor, who are practicing attorneys or lay advocates. It looks like at least seven trainees of the original ten are likely ready to complete what has been a long year this fall.

hearing or trial to have long pauses and breaks. Always remember to show the exhibit to the opposing party prior to moving it into evidence. Keeping the exhibit index is quite handy in keeping track of whether you have moved all of the exhibits you intended into evidence.

Conferences:

* HCN Law Day August 29, 1997 Black River Falls at HCN Court house, Hwy 54 East.

HCN Court Fees:

Filing Fee	\$35
Service of Summons in person	\$12
Service of Summons by Mail	\$3
Subpoena	\$1
Service by Courts	\$0.30/ mile
Copying	\$0.05/per copy
Faxing	\$0.25
Tapes of Hearings	\$5/tape
Certified Copies	\$0.50/page
Registration of Foreign Orders	\$10
Appellate filing fees	\$35
Admission to Practice	\$50

Deadlines:

Per Capita distribution is presently given out different County courts that issued the original child support orders. Therefore, it is imperative that any party seeking to Register and Enforce a Foreign Child Support order not only has to file the order 15 days before the cutoff but over a month prior to the cut off date even in a default case.

The Treasury Department has the dubious honor of issuing a check to all adult tribal members. It takes time to sort through all the checks and issue separate checks to all of the 3,000 plus adult Tribal members quarterly. This is a lot of work.

Both sides are given full due process of notice and the opportunity to be heard prior to the Court issuing any enforcement orders. This means that the parent against whom child support is sought has a minimum of twenty (20) days to respond to the Petition. If they do respond, the Court must hold a hearing. An order must then consider all the facts brought out at the hearing prior to issuance. All of this takes time.

This is one reason there is a fifteen-day advance notice requirement on honoring child support, ICW and other per capita intercept orders.

Legal Citation Form

Below are example citation forms by legal reference and citation description.

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

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

Ho-Chunk Nation Ordinances
Ordinance Name, Chapter number, Section/Part/Clause, page.

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

CLAIMS AGAINST PER CAPITA, §6.01(b).

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

Johnson v. Dep't Inc., SU89-04 (HCN S. Ct., Aug. 14, 1995).

Smith v. Casino, SU 94-11 *Order* (HCN S. Ct., Dec. 1, 1993).

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

Jane Doe v. Bob Smith, CV99-01 (HCN Tr. Ct., Nov., 1, 1999)

In the Interest of Minor Child X, JV95-047 (HCN Tr. Ct., May 23, 1994).

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

Rules of Appellate Procedure
HCN R. App. P. 5

ILR Published Cases:

The following cases were

published in the Indian Law Reporter
Littlegeorge v. Lowe, No. CV 96-31, **24 Indian L. Rep. 6097** (HCN Tr. Ct., Aug. 23, 1996);
Littlegeorge v. Lowe, No. CV 96-31, **24 Indian L. Rep. 6100** (HCN Tr. Ct., Sept. 20, 1996)

Funmaker et. al v. Doornbos, et al., CV 96-02 & 03, **24 Indian L. Rep. 6095** (HCN Tr. Ct., Aug. 22, 1996);

Little Known Fact

Did you know that July 4th is not just the Fourth of July, or Independence Day but also Indian Rights Day? It's true. It's even recognized by Wisconsin State Law. See § 895.23 Wis. Stats. Now, what did you do to celebrate or advance Indian Rights on July 4th?

The act also specifies that when the 4th falls on a Sunday, appropriate celebrations may be held on either the 3rd or 5th.

A Reminder to Recycle:

The HCN has a recycling Ordinance which requires that all Glass, Aluminum Cans, Newsprint, and #1 & #2 Plastics be recycled. The requirement of recycling includes this Newsletter. Too often we speak of taking care of the Earth but forget to practice what we preach.

Please Recycle.



The Court reminds Counsel that it is your responsibility to inform the Court of the opposing parties address. If you receive a call that service of the summons by certified mail was attempted unsuccessfully, you need to request either personal service with a good location or, should that fail or not be an option, file an affidavit of diligent inquiry and request service by publication. See *HCN R. Civ. P. 5(G)*.

It is particularly important to properly effect service in Child Support enforcement cases.

Ho-Chunk Nation Court Bulletin

What's up in Court
Vol. 2 No. 9
September 1, 1997

Education and Access.

From the Editor:

Welcome to the September edition of the Ho-Chunk Nation Court Bulletin! I am Ray Torgerson, the new staff attorney and law clerk for the HCN Trial Court, as well as the editor of this newsletter. I have enjoyed the short amount of time spent here and look forward to the challenges and experiences my position offers. I also wish to extend my thanks to the elders of the Traditional Court and the judges and staff at the Trial Court who have made me feel welcome.

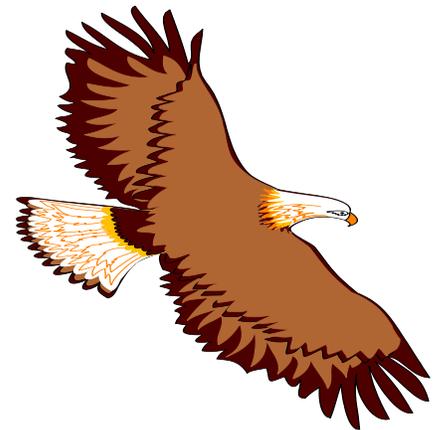
My past experience with other tribal judicial systems involved providing the research and documentation necessary to establish the authority and determine the reach and limits of a given tribe to create a tribal court and establish its jurisdiction. The Ho-Chunk Nation

should be proud of the degree to which its present court system has developed. I remain impressed at the dedication, courage, and integrity evidenced by all of those who have contributed to this critical aspect of tribal sovereignty.

As is appropriate, the HCN Court System represents different things to different people. It serves as a fundamental component of an effective tribal government in a modern world. It operates as a check and balance on other institutions in the larger process of tribal representation and governance. It is an honorable forum to air grievances and resolve disputes in a peaceable manner. And perhaps most importantly, the Ho-Chunk Nation courts reflect our common struggle for the delicate pursuit of justice and the truth.

While of course I cannot serve as an individual's attorney on specific matters, I am here to serve the Nation through its judiciary and remain available to explain and provide access to the "system." In the year ahead, I hope that I can help you discover what the HCN Court System means to you.

held from 1:00 to 4:30 p.m. covered four topics: Child Support and Interception of Per Capita Disbursements, Court Jurisdiction, Due Diligence of the Officers of the Court, and Purposes of the



Traditional Court. Presenters included representatives from the HCN Supreme Court, Trial Court, Traditional Court, Department of Justice, Indian Child Welfare, and Wisconsin Judicare.

Although open to all with an interest, the Law Day is designed to address the needs and concerns of those attorneys, GALs, and lay advocates practicing before the courts and to provide education on topics of high importance and relevance. The Law Day activities concluded on Saturday morning with the Legal Run Around, a 5K fun run and walk through the local area. The HCN Court System wishes to thank all those who attended and those who aided in planning the program and supplying the refreshments. We look forward to next year as this program grows bigger and better!

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Second Annual HCN Law Day

On Friday, August 29 and Saturday, August 30, 1997, the Ho-Chunk Nation Court System sponsored the Second Annual HCN Law Day at the Trial Court building. The Friday afternoon discussions

Traditional Court

The Traditional Court Elders have extended an invitation to all supervisors and managers employed by the Ho-Chunk Nation to discuss the traditions and customs of the Ho-Chunk regarding the death of tribal members and its relationship to funeral leave for employees. There is a concern that all Ho-Chunk and non-Ho-Chunk understand and respect the obligations which occur under these circumstances. The Traditional Court meets every Monday morning at 10:00 a.m. at the back of the HCN Trial Court building located on Hwy 54. Please call the Trial Court at (715) 284-2722 for more information and to obtain an application to appear.

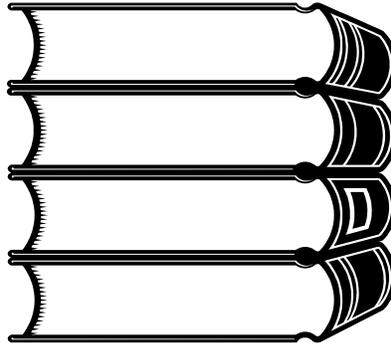
Lay Advocate Wrap-Up

The HCN Trial Court and staff is pleased to announce that the current round of Lay Advocacy Training is coming to a close. At the July meeting of the Wisconsin Tribal Judges Association, it was determined that the Lay Advocates should finish all pending assignments and co-chair at least two cases presented before a tribal court by Friday, September 26, 1997. All of these dedicated and determined participants should be congratulated as they will soon begin representing clients before the HCN Court System.

The Lay Advocate program was designed to train and equip individuals in the community to appear on behalf of clients seeking relief in the various tribal courts, particularly those who cannot afford legal representation. In this attempt to "level the playing field," the general public should recognize that the Lay

Without Prejudice--A

Advocates represent a resource and a service to be used. A home office based in the Black River Falls area for the HCN Lay Advocates is in the works. In the meantime if you have a legal question or wish to bring a claim, contact the Trial Court for a



list of available Lay Advocates.

Central Doctrines in Indian Law

The Preemption Doctrine:

Pursuant to Article IV of the U.S. Constitution, the preemption doctrine holds that certain matters are of such a national, as opposed to local, character that federal law should take precedence over state law. States are thus precluded from acting inconsistent with the federal law. The doctrine usually arises in areas concerning federal and state competition over administrative and regulatory authority such as natural resource development and taxation. *See, e.g., White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). The doctrine has been applied successfully against tribal authority only in few instances. *See, Rice v. Rehner*, 463 U.S. 713 (1983).

The Exhaustion Doctrine:

The exhaustion doctrine derives from declaration that no rights or privileges

the case of *National Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 U.S. 845 (1985) in which the U.S. Supreme Court ruled that relief available through a tribal court must be pursued fully in order to uphold the integrity of tribal courts and to prevent federal courts from undermining their authority. The doctrine also stands for the proposition that tribal courts retain the opportunity to determine in the first instance whether or not they possess jurisdiction over a given claim.

The Deferral Doctrine:

Often considered the companion of the exhaustion doctrine, deferral calls for a federal court to postpone its proceedings until the matter can be appropriately addressed in a tribal court. The doctrine arose in the U.S. Supreme Court decision of *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9 (1987) in which the Court refused to permit a federal court to hear an intervening declaratory judgment action when the case was already before a tribal court, as the review would represent a "significant intrusion" into the sovereignty of the tribe.

Legal Definitions:

Motion to Dismiss: A motion requesting that a *Complaint* be dismissed because it is in some way legally insufficient. It is issued by the Court either With or Without Prejudice and may be based on a number of different grounds.

With Prejudice--A final adjudication and disposition on the merits of a claim barring the right to bring another action on the same claim or dispute. *See, CV-96-19.*

of the party are to be considered lost

or waived that preserves the right of a party to revisit the claim in a subsequent suit. *See*, PRC-95-02, PRC 95-03.

For Want of Prosecution--A dismissal based on the neglect of a party bringing suit to pursue the action in a timely fashion. HCN R. of Civ. P. 56(B) and (C) provide for six (6) months to pass before a claim may be dismissed on these grounds. *See*, CV- 95-30, CV-96-34, and CV-97-64.

For Failure to State a Claim--A dismissal based on the grounds that the *Complaint* does not state a claim which exists or for which relief may be provided. *See*, CV-96-45.

For Failure to Appear--A dismissal based on the failure of the complaining party to appear in court



to argue their case. *See*, CV-96-18.

Recent Decisions:

Jeremy Rockman v. Jo Ann Jones, CV-96-47 (HCN Tr. Ct. August 8, 1997). The Trial Court issued a Writ of Execution for the satisfaction of a civil judgment against Plaintiff. Liability arose from Plaintiff's failure to pay for Defendant's court costs and attorney's fees when Plaintiff failed to dismiss the action in a timely fashion. The Trial Court ordered the Plaintiff's wages garnished after attempts to satisfy the judgment

through other avenues failed. The Trial Court held that Resolution 8.20.88-B limiting garnishments to \$25 per week was inapplicable as it conflicted with the inherent authority of the Court under the HCN Constitution to grant relief.

In the Interest of Carson Funmaker, CV-97-17 (HCN Tr. Ct. August 19, 1997). The Trial Court dismissed the *Judgment* against the party as the full amount of child support arrearages owed to Jackson County was satisfied.

Recent Case Filings:

Trial Court Cases:

Stephanie Riley v. HCN Security Dep't and Lee Whitegull, CV-97-104, filed July 24, 1997. Employment Dispute.

Jocelyn Lopez, CV-97-105, filed July 24, 1997. Voluntary Consent for Release of Per Capita Distribution.

David A. Modica v. Robert Mudd, Exec. Dir. of Business Dep't., CV-97-106, filed July 29, 1997. Employment Dispute and Defamation Claim.

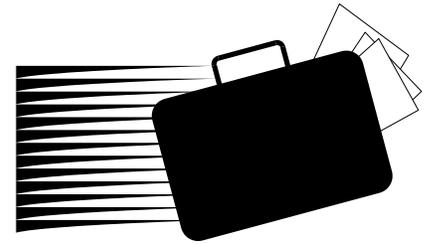
State of Wisconsin in re: Julie Climer v. Richard Dale Snake, CV-97-107, filed July 28, 1997. Motion to Register and Enforce Foreign Child Support Order.

State of Wisconsin in re: Michael Greengrass v. Richard Dale Snake, CV-97-108, filed July 28, 1997. Motion to Register and Enforce Foreign Child Support Order.

State of Wisconsin in re: Karena Day v. Howard Pettibone, CV-97-109, filed July 28, 1997. Motion to Register and Enforce Foreign Child Support Order.

State of Wisconsin in re: Inez

Littlegeorge v. Howard Pettibone,



CV-97-110, filed July 28, 1997. Motion to Register and Enforce Foreign Child Support Order.

State of Wisconsin in re: Wayne Falcon v. Cynthia Radtke, CV-97-111, filed July 28, 1997. Motion to Register and Enforce Foreign Child Support Order.

State of Wisconsin in re: Gwyn Greengrass v. Christopher John Littlewolf a.k.a. Greyhair, CV-97-112, filed July 28, 1997. Motion to Register and Enforce Foreign Child Support Order.

State of Wisconsin in re: Shelley Thundercloud v. Kevin Vasquez, CV-97-113, filed July 28, 1997. Motion to Register and Enforce Foreign Child Support Order.

Elethe Nichols v. Hilton Vasquez, CV-97-114, filed August 8, 1997. Motion to Register and Enforce Foreign Child Support Order.

State of Wisconsin in re: Laurie Greengrass-Zimmerman v. Robert Cleveland, CV-97-115, filed August 11, 1997. Motion to Register and Enforce Foreign Child Support Order.

State of Wisconsin in re: Debra Lee Hall v. Robert Cleveland, CV-97-116, filed August 11, 1997. Motion to Register and Enforce Foreign Child Support Order.

In the Interest of Oliver Rockman, CV-97-117, filed August 15, 1997. Petition to Establish Guardianship and Release Per Capita Disbursements.

Amy Hennings v. Jerome Cloud, CV-97-118, filed August 19, 1997. Motion to Register and Enforce Foreign Child Support Order.

Supreme Court cases:

Carol Smith v. Bernice Cloud and Rainbow Bingo, SU-97-04. Appeal filed August 22, 1997.

HCN Supreme Court

The HCN Supreme Court cancelled its scheduled meeting for Saturday, August 9, 1997 to be held at the Trial Court Building in Black River Falls. The make-up session will be held on September 26-27, 1997 at the Holiday Inn Holidome in Lawrence, Kansas in conjunction with the 1997 Tribal Law & Governance Conference at which Chief Justice Mary Jo Brooks Hunter will appear for discussion on the topics affecting tribal judicial systems.

Conferences

The following conferences will occur within the next two months. If you are interested and would like more information, please contact the Trial Court at (715) 284-2722.

❖ A one-day Continuing Legal Education conference sponsored by the Young Lawyer's Division and Indian Law Section of the Wisconsin State Bar Association will be held on Friday, September 12, 1997 at the Lake of the Torches Conference Center at Lac du Flambeau. The theme is *Courts, Kids, and Contracts: A Primer for Practicing Indian Law in Wisconsin*. Chief Judge Butterfield and Associate Judge Greendeer-Lee will serve as panelists in the session "Tribal Court--Tips for Successful

Practice in Tribal Court Matters."

❖ A one-day conference sponsored by the Wisconsin Tribal Judges' Association and presented by Wisconsin Judicare will be held on Thursday, October 2, 1997 at St. Croix. The conference will discuss Appellate Procedure and Advocacy and is designed as Continuing Legal Education (CLE) for the past and present class of lay advocates, tribal judges, and those attorneys who practice before tribal courts.

❖ The National Indian Justice Center will present topics on Protecting Indian Families as well as Tribal Court Advocacy at their October 1997 conference to be held in Reno, NV. Please contact NIJC at (707) 762-8113 for more information.

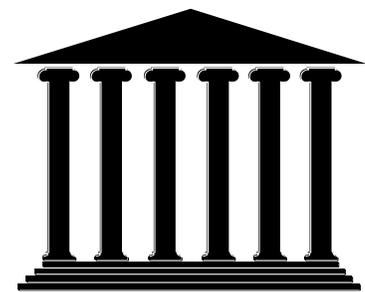
❖ The Great Lakes Inter-Tribal Council Inc. will host a conference entitled "Creating and Maintaining Partnerships" on Tuesday, September 30 and Wednesday, October 1, 1997 at the Lake of the Torches Resort. Topics will address law enforcement and youth crime prevention in a cooperative arrangement between tribes and counties.

Federal Courts

Kerr-McGee v. Farley, CA 10, No. 95-2121, 6/25/97. The Tenth Circuit U.S. Court of Appeals held that tort suits stemming from nuclear exposure may be brought to tribal courts. The court reasoned that, although the Price-Anderson Act granted original jurisdiction over such claims to federal district courts, it could not be argued that the grant effectively preempted tribal jurisdiction. In the process, the court upheld the general rule which requires a party to exhaust tribal judicial remedies before moving an action into federal court.

HCN Court Fees:

Filing Fee	\$35
Service of Summons in person	\$12
Service of Summons by Mail	\$3
Subpoena	\$1
Service by Courts	\$0.30/per mile
Copying	\$0.05/per copy
Faxing	\$0.25
Tapes of Hearings	\$5 each tape
Certified Copies	\$0.50 per page
Registration of Foreign Orders	\$10
Appellate filing fees	\$35



Admission to Practice \$50

Legal Citation Form

Below are example citation forms by legal reference and citation description.

Ho-Chunk Nation Constitution

Constitution, Article Number, Section, and Subsection.

HCN CONSTITUTION, ART. XI, Sec. 7

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

Ho-Chunk Nation Ordinances

Ordinance Name, Chapter number, Section/Part/Clause, page.

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

CLAIMS AGAINST PER CAPITA,

§6.01(b).

HCN Supreme Court Case Law

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

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

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

Jane Doe v. Bob Smith, CV99-01 (HCN Tr. Ct., November, 1, 1999)

In the Interest of Minor Child X, JV95-047 (HCN Tr. Ct., May 23, 1994).

Rules of Civil Procedure

HCN R. Civ. P. 19(B)

Rules of Appellate Procedure

HCN R. App. P. 5

Important Court Notes

The HCN Court System would like to reiterate that the HCN Supreme Court recently amended the Appellate Rules on May 25, 1997. Perhaps most significantly, Rule 7 of the HCN Rules of Appellate Procedure extends the Notice of Appeal to 30 days from the previous 10 days. Copies of these rules are available to all attorneys, lay advocates, and members of the public for a nominal copying charge.

The HCN Trial Court is in the process of compiling a case law index of all HCN Court decisions according to Subject Matter, Plaintiff and Defendant Name, and Date of Decision. These indices will greatly

simplify searches in the future for all involved, increasing the efficiency and thoroughness of research.

The Trial Court would like to remind all parties, attorneys, lay advocates, and GALs that it remains imperative to adhere to set dates. Whether for a status hearing or a trial, all parties, their representatives, and witnesses need to be at the Court on time. Should something arise, contact the opposing party to make alternative arrangements and then notify the Trial Court. The Court cannot be responsible for contacting parties in the event of a last minute cancellation. Please be mindful of the obligations you hold and respectful of the limited time schedules of others.

Ho-Chunk Nation Court Bulletin

What's up in Court
Vol. 2 No. 10
October 1, 1997

The Exercise of Sovereignty

From the Editor:

The unenviable position of American Indian tribes between state and federal government has always been precarious as the respective sovereigns struggle over the distribution of power. Early in the history of the United States Supreme Court, Chief Justice John Marshall seized the opportunity to establish a strong vision of Indian sovereignty in *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832), when he wrote: “[T]he settled doctrine of the law of nations is, that a weaker power does not surrender its independence--its right to self government, by associating with a stronger, and taking its protection.” This right to native self-government, however, remained subordinate to the federal government which established a unique relationship with Indian tribes

and characterized them as “domestic dependent nations . . . in a state of pupilage.”

The *Worcester* decision, however, did offer a loud dissent from Justice John McLean who

involuntarily from the tribal group. And we must make it clear that Indians can become independent of Federal control without being cut off from Federal concern and Federal support.”

Most notably absent from the above discussion is any involvement of state government or recognition of state interests. In Marshall’s day, the federal government acted as a buffer in order to protect the tribes from the states. After all, the tribes owe no allegiance to the states and should expect nothing from them. The persistent myth of the threatening American Indian not only belies reality, but thrives in the ignorance of non-Indian America. In light of Supreme Court cases like *Seminole* and *A-1 Contractors*, legislation like that proposed by Senator Slade Gordon, and shifts in policy toward an invigorated state-based federalism, we appear to have returned full circle.

Until the 1950's with the adoption of Public Law 280, states were expressly prohibited from exerting authority over tribes. Now they encroach on all fronts: economic, political, legal, and cultural.

Upon close consideration of these issues, one need not fall necessarily in favor of federal paternalism. Rather, we must allow

avored states’ rights and challenged the exclusion of states in the exercise of authority over the various tribes. Perhaps most importantly, he questioned the duration of the so-called “education” of Western civilization to be imposed upon tribes and wondered if “graduation” would ever occur, finally placing the Indian burden out of national sight and mind. After 165 years, that burden still lingers.

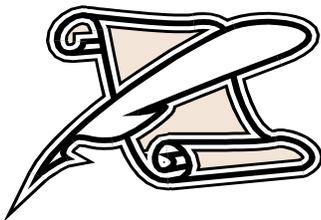
In the modern era, President Richard Nixon enunciated the federal policy of Self-Determination when in 1970 he argued, “We must assure the Indian that he can assume control of his own life without being separated



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Indian sovereignty to work in a legitimate and faithful manner. Over time, no amount of cultivation, neglect, coddling, or outright abuse by the federal government has proven effective. One of the most valuable aspects of the Ho-Chunk Nation and its government rests in the opportunity to exercise its inherent sovereignty in the absence of state interference and federal mismanagement. With the funding from gaming and other successful business enterprises as well as the reorganization of tribal government and administration, perhaps the Ho-



Chunk Nation--on its own terms--has become more sophisticated and skilled than most would expect. Instead of the federal government doing for the tribes, the tribes can do for themselves.

interest in contesting the claim. A number of aspects concerning justiciability are outlined below.

Standing: A party enjoys standing when he or she has a sufficient stake in an otherwise justiciable claim to obtain a judicial resolution. The party must demonstrate a tangible injury to him or herself protected by an existing statute or rule which the courts are capable of redressing. Policy concerns often require that the party file more than a generalized grievance, that the legal interests at stake do not belong to third parties, or that the party falls within the "zone of interest" for which the law in question was designed to protect.

Ripeness: Article III of the U.S. Constitution requires that a case must offer a present, actual controversy between real parties in order to be ripe for adjudication. Ripe claims cannot involve questions of a hypothetical or speculative nature; these so-called Advisory Opinions must be pursued through an Attorney General, rather than the judiciary.

Mootness: A claim becomes moot when the determination of issues or questions involved cannot have any practical effect on the existing controversy. Even though an



individual claim might appear settled or obviated, the case becomes justiciable if it involves a recurring or repeatable issue between the parties.

Political Question: Courts will not consider or decide upon issues where a determination or resolution depends upon other, more

appropriate branches of government. Political questions are not simply



those issues relegated to politics and the political process like voting, fundraising, or apportionment; rather, they reflect the self-imposed limitations of the judiciary not to reach beyond its understood role and authority.

Recent Decisions:

Trial Court Cases:

State of Wisconsin on behalf of Gwyn Greengrass v. Christopher Littlewolf, CV 97-112 (HCN Tr. Ct. August 29, 1997). Enforcing child support obligation through per capita distribution.

State of Wisconsin on behalf of Shelley Thundercloud v. Kevin Vasquez, CV 97-113 (HCN Tr. Ct.



August 29, 1997). Enforcing child support obligation through per capita distribution.

Nicole L. Cook v. Harry Cholka, CV 97-95 (HCN Tr. Ct.

Legal Definitions:

Justiciability: A justiciable matter is one that is appropriate for court consideration or review which involves a case or controversy where a present and fixed claim of right is asserted against one who holds an

September 4, 1997). Enforcing child support obligation through per capita distribution.

Lisa Rave v. Brent St. Cyr, CV 97-97 (HCN Tr. Ct. September 4, 1997). Enforcing child support obligation through per capita distribution.

Bonnie Prescott Smith v. Bradley W. Smith, CV 97-99 (HCN Tr. Ct. September 15, 1997). Modifying child support obligation through per capita distribution.

Sherri Red Cloud v. Marlin J. Red Cloud, CV 97-36 (HCN Tr. Ct. September 15, 1997). Enforcing child support obligation through per capita distribution.

In re Roberta Goodbear by Shirley Sahr, Guardian, CV 96-49 (HCN Tr. Ct. September 16, 1997). Order granting request for release of per capita trust funds.

John D. Steindorf v. Georgia Lonetree, Exec. Dir. of Social Services, CV 97-121. Voluntary Dismissal.

Supreme Court Cases:

Carol J. Smith v. Rainbow Bingo and Bernice Cloud, SU-97-04 (HCN S.C.. September 8, 1997). Order staying Trial Court judgment, waiving appeal bond for defendant, and accepting the case for appeal.

Carol J. Smith v. Rainbow Bingo and Bernice Cloud, SU-97-04 (HCN S.C.. September 8, 1997). Amended Order.

Recent Case Filings:

Trial Court Cases:

Hocak Fed. Cred. Un. v. Stewart Miller, CV 97-119, filed August 25, 1997. Action on

Tr. Ct. September 8, 1997). Enforcing child support obligation through per capita distribution.

Veronica Wilbur v. Bernard L. Crow, CV 97-54 (HCN Tr. Ct. September 4, 1997). Modifying child support obligation through per capita distribution.

Sara WhiteEagle v. Bernard L. Crow, CV 97-92 (HCN Tr. Ct. September 15, 1997). Promissory Note to recover debt owed.



Hocak Fed. Cred. Un. v. Archie WhiteEagle, CV 97-120, filed August 25, 1997. Action on Promissory Note to recover debt owed.

John D. Steindorf v. Georgia Lonetree, Exec. Dir. of Social Services, CV 97-121, filed August 15, 1997. Employment dispute alleging wrongful termination.

Joyce Funmaker v. Max P. Funmaker, CV 97-122, filed August 21, 1997. Motion to Register and Enforce a Foreign Child Support Order.

Mary Jo Buttolph v. Charles H. Davis, CV 97-123, filed August 29, 1997. Motion to Register and Enforce a Foreign Child Support Order.

Barbara J. Wilson v. Robin E. McKee, CV 97-124, filed September 10, 1997. Motion to Register and Enforce a Foreign Child

September 9, 1997). Enforcing child support obligation through per capita distribution.

In re Annette Funmaker by Doris Wateski and Doreen Jungen, CV 97-79 (HCN Tr. Ct. September 11, 1997). Granting in part a request for release of trust funds for special need.

Support Order.

Verdie Kivimaki v. Virgil Clausen, CV 97-125, filed September 12, 1997. Motion to Register and Enforce a Foreign Child Support Order.

Richard Dakota, Jr. v. Angela Wanatee, CV 97-126, filed September 15, 1997. Motion to Register and Enforce a Foreign Child Support Order.

Gary Lonetree, Sr. v. HCN Casino, Dept. of Slots, and Director John Holst, CV-97-127, filed September 16, 1997. Employment dispute.

State of Wisconsin, Sawyer County v. Johnny R. Smith, Sr., CV-97-128, filed September 17, 1997. Motion to Register and Enforce a Foreign Child Support Order.

Robert A. Mudd v. HCN Election Board, CV-97-129, filed September 18, 1997. Challenge to election results.

Ethel Jeanette Dakota v. Travis Randall Decorah, CV 97-130, filed September 19, 1997. Motion to Register and Enforce a Foreign Child Support Order.

In the Interest of Stuart Taylor, Jr., CV 97-131, filed September 19, 1997. Petition to release trust funds.

Sheila Doucette v. Scott Hinds, CV 97-132, filed September 17, 1997. Motion to Register and Enforce a Foreign Child Support Order.

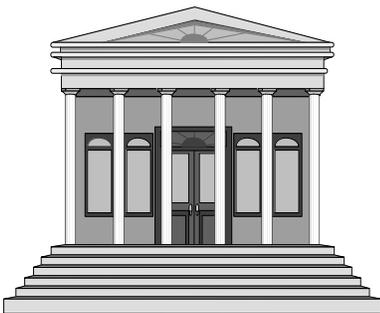
Diane Lonetree v. Elliott

Garvin, Dallas White Wing, Robert Mudd, Gerald Cleveland, Kevin Greengrass, Clarence Pettibone, and Robert Funmaker, Jr., CV 97-133, filed September 19, 1997. Constitutional Challenge Surrounding an Employment Dispute.

Michelle Naas v. Sanford Decorah, CV 97-134, filed September 18, 1997. Motion to Register and Enforce a Foreign Child

❖ The University of Wisconsin Law School will host several live CLE workshops addressing Ethics in the coming month. The locations include: Stevens Point, October 17; Madison, October 24, Green Bay, October 31; and Milwaukee, November 5. For more information, contact Ethics Workshop, CLEW, 975 Bascom Mall, Room 2348, Madison, Wisconsin, 53706-1399 or call (800) 355-5573.

❖ The State Bar of Wisconsin in conjunction with the Wisconsin Coalition Against Domestic Violence and the federally-funded Wisconsin Legal Service Programs will host a free CLE conference on Domestic Violence at four locations, including: Wausau, October 14; Ashland,



October 15; Eau Claire, October 16; and Oconomowoc, November 11.

❖ The Third Annual Native American Homeownership and Legal Summit has been postponed until further notice. The Summit, which is intended to share information among tribes, tribal housing entities and

Support Order.

Conferences

❖ The Wisconsin Tribal Judges Association, Inc. and Wisconsin, Judicare, Inc. will present a CLE seminar on Tribal Appellate Systems and Appellate Advocacy on Thursday, October 2, 1997 at St. Croix Hotel & Casino in Turtle Lake, authorities, attorneys, and financial institutions, will most likely be rescheduled for Winter or Spring of 1998. For more information, contact U.S. Dept. of Housing and Urban Development, Office of Native American Programs, Washington, D.C., 20410-500, or call (703) 934-3392.

ILR Published Cases

The following cases were published in the Indian Law Reporter Volume 24:

C&B Investments v. Ho-Chunk Dept. of Health, et. al., 24 Indian L. Rep. 6114 (Ho-Chunk Tr. Ct., Nov. 21, 1996).

Porter v. Lowe, Jr., 24 Indian L. Rep. 6119 (Ho-Chunk Tr. Ct., Oct. 2, 1996).

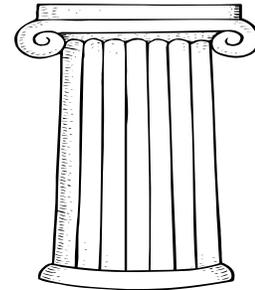
Reimer v. HCN Gaming Commission, 24 Indian L. Rep. 6126 (Ho-Chunk Tr. Ct., Sept. 16, 1996).

U.S. Supreme Court

The United States Supreme Court has granted certiorari to two critical cases involving fundamental interests of American Indians.

The first case, *Alaska v. Native Village of Venetie Tribal Government*, 65 U.S.L.W. 3833 and 3838 (June 24, 1997), involves the question of whether or not an Alaskan native village constitutes a “dependent Indian community” under

Wisconsin. The seminar is free and intended for tribal judges as well as attorneys and lay advocates who practice before tribal courts.



the meaning of 18 U.S.C. § 1151(b) which defines Indian Country.

The second case, *Kiowa Tribe of Oklahoma v. Manufacturing Technologies Inc.*, 65 U.S.L.W. 3849 and 3860 (June 24, 1997), involves whether or not a state court has jurisdiction over a suit filed against a tribe to collect on a delinquent promissory note as a result of “inherent jurisdiction” which arises because the transaction in issue occurred outside tribal lands.

Federal Courts

In the decision of *Craddick v. Duckworth* issued by the Seventh Circuit on May 5, 1997, the Court affirmed the federal district court holding that a prison regulation violated the Religious Freedom Restoration Act because the prohibition against wearing a medicine bag underneath a prisoner’s clothing was not sufficiently justified based on a compelling state interest, nor was the prohibition the least restrictive means of enhancing prison security. The Court remanded for a determination of whether or not a modified regulation would violate the Act as well.

regulations restricting the length of inmate's hair and the possession of certain sacred items.

The status of the Religious Freedom Restoration Act and the more particular American Indian Religious Freedom Restoration Act is not clear, however, in light of the United States Supreme Court decision of *Boerne, Texas v. Flores*, 65 U.S.L.W. 4612 (June 25, 1997) which held RFRA unconstitutional.

The Fifth Circuit, in *Diaz, et al. v. Collins* issued on May 22, 1997, affirmed the federal district court's dismissal of an American Indian religious practitioner's civil rights suit challenging prison

The Washington Supreme Court held in *Washington v. Squally, Sr., et al.*, June 5, 1997 that when the Nisqually Tribe ceded civil and criminal jurisdiction to the state of Washington in 1957, the state acquired jurisdiction over the entire Nisqually Reservation, including land acquired by the tribe after 1957.

HCN Court Fees:

Filing Fee	\$35
Service of Summons in person	\$12
Service of Summons by Mail	\$3
Subpoena	\$1
Service by Courts	\$0.30/per mile
Copying	\$0.05/per copy
Faxing	\$0.25
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Registration of Foreign Orders	\$10
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Admission to Practice	\$50

Legal Citation Form

Below are example citation forms by legal reference and citation description.

Ho-Chunk Nation Constitution

Constitution, Article Number, Section, and Subsection.

HCN CONSTITUTION, ART. XI, Sec.

7

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

Ho-Chunk Nation Ordinances

Ordinance Name, Chapter number, Section/Part/Clause, page.

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

CLAIMS AGAINST PER CAPITA, §6.01(b).

HCN Supreme Court Case Law

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

~~*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

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

Jane Doe v. Bob Smith, CV99-01 (HCN Tr. Ct., November, 1, 1999)

In the Interest of Minor Child X, JV95-047 (HCN Tr. Ct., May 23, 1994).

Rules of Civil Procedure

State Courts

The Mississippi Supreme Court held in *Harrison v. Boyd Mississippi, Inc.*, on May 22, 1997 that the tribal courts of the Mississippi Band of Choctaw Indians lack jurisdiction over a tort action brought by a non-Indian casino employee against a non-Indian management company operating a casino on lands located within the tribe's reservation.

HCN R. Civ. P. 19(B)

Rules of Appellate Procedure

HCN R. App. P. 5

Important Court Notes

Legal Humor

Actual excerpts from:

Insurance Forms

- I thought the window was down, but I found out it was up when I put my head through it.
- A pedestrian hit me and went under my car.
- I had been driving for 40 years when I fell asleep at the wheel and had an accident.

Witness Testimony

Q: Are you married?

A: No. I'm divorced.

Q: And what did your husband do before you divorced him?

A: A lot of things I didn't know about.

Q: What is your name?

A: Mary Ann O'Donnell.

Q: And what is your marital status?

A: Fair.

Q: Doctor, as a result of your examination of the plaintiff, is the young lady pregnant?

A: The young lady is pregnant, but not as a result of my examination.

Q: Please state the nature of your relationship to the minor child.

A: I'm his mother.

Q: And you have been all of his life?

Q: Do you have any children or anything of that kind?



Ho-Chunk Nation Court Bulletin

What's up in Court
Vol. 2 No. 11
November 1, 1997

Duties and Expectations.

From the Editor

On a daily basis, we all assume obligations and exercise rights. The problem remains whether or not we satisfy the expectations of others in the process. The nature of the Ho-Chunk Nation Trial Court, and indeed the entire HCN Court System, is no different.

In a recent decision from the Ninth Circuit Court of Appeals, *Wilson v. Marchington*, No. 96-35145 (9th Cir. Sept. 23, 1997), the court pointed to an area which represents a sore spot in federal Indian law: the competency of tribal courts. The decision notes that tribal court decisions may only expect a certain level of recognition from state or federal courts in the form of

comity rather than Full Faith and Credit, assuming that certain jurisdictional and procedural hurdles are met.

While on one level such limited recognition places a practical burden on the enforcement and application of tribal court judgments outside of Indian Country, on a deeper level the decision reflects a

attention in the future from those who participate in the exercise of tribal governance. Practitioners need to present cases to tribal courts in as serious a fashion as state or federal court, providing solid research and argumentation and following rules of evidence and professional responsibility. Tribal governments must consider striking cooperative



lingering mistrust of tribal courts and suspicion regarding their legitimacy.

On the one hand, tribal courts are recognized as a proper aspect of tribal sovereignty demanding respect and deference. *See, Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845 (1985) and *Iowa Mut. Ins. Co. v. La Plante*, 480 U.S. 9 (1987). On the other, recent decisions appear to undermine the exercise of judicial and regulatory power by challenging the jurisdictional reach of tribes over nonmembers. *See, Strate v. A-1 Contractors*, 65 LW 4298 (1997) and *South Dakota v. Bourland*, 113 S.Ct. 2309 (1993).

As long as the Ho-Chunk Nation operates under a western system of governance which brings with it certain obligations, these recent trends will require more conference has been scheduled for Friday, November 7 and Saturday,

agreements with local authorities to enforce and respect each others decisions. Administrative bodies must adhere to their own policies and conduct themselves in a reasonable manner. Tribal courts must continue to perform in as professional an environment as possible, mindful that the federal courts wait in the wings to overturn a decision for violations of due process.

We all have a duty to uphold the sovereignty of the Ho-Chunk Nation. In light of the current legal and political climate, we must strive to cast ourselves in the best light possible to avoid serving as somebody's target in the future.

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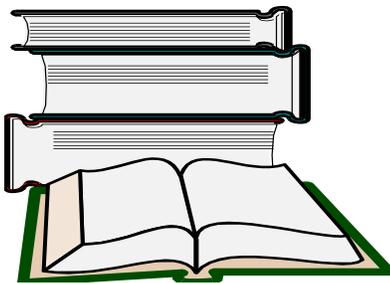
GAL Training

A *Guardian ad litem* training
November 8, 1997 in Black River
Falls, WI at the Trial Court Building

from 8:45 a.m. to 5:00 p.m. on both days. The training, which offers only 30 slots, is intended for all existing GALs and others interested in becoming GALs, and will cover the obligations and duties of GALs, the preparation of reports, and the payment of fees. Instruction will be provided by the Hon. Elbridge Coochise, past president of the Native American Tribal Court Judges Association and Chief Judge of the Northwest Regional Tribal Supreme Court, Bruce Friedman of the National Indian Justice Center and past Executive Director of California Indian Legal Services, and Peggy Lautenschlager, U.S. Attorney for Western District of Wisconsin. Registration is free for all Ho-Chunk and HCN-sponsored participants and \$100 for all others. While lodging and mileage will not be covered, refreshments will be provided. For more information, contact Marcella Cloud at (715) 284-2722.

Lay Advocate Reminder

The deadline to submit all completed assignments for the current class of Lay Advocate candidates falls on Saturday, November 15, 1997. This deadline includes the Court Practicum in which advocates must assist in the preparation and



presentation of two cases before the Trial Court. Any Lay Advocates who

have questions regarding this deadline or other matter should contact the Trial Court immediately.

Court Appreciation

The HCN Court System would like to express thanks and appreciation to President Jacob Lone Tree and Executive Compliance Officer Rosetta Hunt for authorizing educational leave for those Lay Advocates employed by the Nation who will require time to complete their training.

New Court Staff

The HCN Court System is pleased to announce the hiring of Willa Red Cloud as the Supreme Court Clerk. Willa, who has two children and lives in Dells Dam, has worked in a variety of areas, including tribal programs for foster children, youth and the elderly. Willa has experience in the AODA field and worked as a temporary Clerk for the Trial Court this past spring. We all welcome the dedication, enthusiasm, and cheer of Willa to the Court building.

Legal Definitions

Contribution: The right of one who has discharged in full a common liability or debt to recover of another also liable as reimbursement of the percentage portion which he or she ought to pay or bear. The sharing of a loss or payment among several who are liable, each to his or her proportionate share.

Conversion: An unauthorized assumption and exercise of the right of ownership over goods or personal property belonging to another which alters the condition of the goods or excludes the rights of the owner. A lesser degree of conversion at

common law which does not permanently or effectively deprive the owner of the personal property is known as Trespass to Chattels.

Indemnification: A contractual or equitable right under which the entire loss is shifted from a



tortfeasor who is only technically or passively at fault to another who is primarily or actively responsible. An undertaking whereby one agrees to reimburse another upon the occurrence of an anticipated loss.

Recent Decisions

Trial Court Cases:

Katherine Elaine Snow v. Edward Troy Decorah, CV 96-65 (HCN Tr. Ct., September 29, 1997). Modifying existing child support obligation through per capita distribution.

State of Wisconsin on behalf of Eunice G. Wamego v. Edward Troy Decorah, CV 96-83, (HCN Tr. Ct., September 29, 1997). Modifying existing child support obligation through per capita distribution.

State of Wisconsin on behalf of Elethe Nichols v. Hilton Vasquez, CV 97-114, (HCN Tr. Ct., October 3, 1997). Erratum to Order.

Robert A. Mudd v. HCN Election Board, CV 97-129 (HCN

Tr. Ct., October 3, 1997). Enjoining the swearing-in of a Legislator recently elected in a Special Election



judgment in favor of petitioner following remand to the Gaming Comm'n in which the Comm'n unsuccessfully argued it enjoyed absolute discretion as to the kind or amount of relief offered to the

petitioner. The Court held that the Gaming Comm'n was bound to a standard of reasonableness and that it violated this standard by conducting the remand in an arbitrary and capricious manner.

In the Interest of Susan Redfearn by William Turner v. HCN Enrollment Dept., CV 97-101 (HCN Tr. Ct., October 10, 1997). Granting the petition for the release of adult tribal member trust funds.

Michelle Haas v. Sanford Decorah, CV 97-134 (HCN Tr. Ct., October 13, 1997). Enforcing child support obligation through per capita distribution.

State of Wisconsin on behalf of Shelley E. Thundercloud v. William J. Greendeer, CV 97-67, (HCN Tr. Ct., October 13, 1997). Modifying existing child support obligation through per capita distribution.

State of Wisconsin on behalf of Cynthia Loofboro v. William J. Greendeer, CV 97-96, (HCN Tr. Ct.,

and holding that all Ho-Chunk Nation elections must satisfy the majority vote provision of the Constitution by securing more than 50% of votes actually cast.

Francis P. Rave, Sr. v. HCN Gaming Comm'n, CV 96-33 (HCN October 13, 1997). Enforcing child support obligation through per capita distribution.

Mary Jo Buttolph v. Charles H. Davis, CV 97-123 (HCN Tr. Ct., October 13, 1997). Enforcing child support obligation through per capita distribution.

Sheila Doucette v. Scott Hindes, CV 97-132 (HCN Tr. Ct., October 13, 1997). Enforcing child support obligation through per capita distribution.

Jocelyn Lopez, CV 97-105 (HCN Tr. Ct., October 13, 1997). Granting recognition of voluntary consent for release of per capita distribution.

State of Wisconsin v. Morgan Decorah, CV 97-68, (HCN Tr. Ct., October 19, 1997). Enforcing child support obligation through per capita distribution.

Marcella Snowball v. Alfred Snowball, Jr., CV 97-27, (HCN Tr. Ct., October 14, 1997). Suspending the enforcement of child support obligation through per capita distribution upon request of petitioner.

Joyce Funmaker v. Max Funmaker, Sr., CV 97-122, (HCN Tr. Ct., October 15, 1997). Enforcing child support obligation through per capita distribution.

Shawano County, Wisconsin on behalf of Jamie Funmaker v. Edward W. Cloud, CV 97-94, (HCN Tr. Ct., October 15, 1997). Modifying existing child support obligation through per capita distribution.

Jacquelyn D. Wells v. Kurtis

Tr. Ct., October 9, 1997). Modifying

Brockhaus, Sr., CV 96-26, (HCN Tr. Ct., October 15, 1997). Renewing enforcement of child support obligation through per capita distribution.

Verdie Kivimaki v. Virgil Clausen, CV 97-125, (HCN Tr. Ct., October 15, 1997). Enforcing child support obligation through per capita distribution.

Jeanette Dakota v. Travis Decorah, CV 97-130, (HCN Tr. Ct., October 15, 1997). Enforcing child support obligation through per capita distribution.

Jacquelyn D. Wells v. Wesley D. Brockhaus, CV 96-25, (HCN Tr. Ct., October 15, 1997). Renewing enforcement of child support obligation through per capita distribution.

State of Wisconsin v. Wallace P. Greendeer, CV 97-57, (HCN Tr. Ct., June 24, 1997, reissued October 15, 1997). Enforcing child support obligation through per capita distribution.

Larry Domenget v. Dolores Greendeer, CV 97-56, (HCN Tr. Ct., October 15, 1997). Staying request for enforcement of child support obligation through per capita distribution.

State of Wisconsin on behalf of Juanita Climer v. Richard Snake, CV 97-107, (HCN Tr. Ct., October 15, 1997). Enforcing child support obligation through per capita distribution.

Supreme Court Cases:

HCN Election Board v. Robert A. Mudd, SU 97-05, (HCN

S.Ct., Oct. 28, 1997. Affirming the decision of Trial Court, CV 97-129, which refused to distinguish between Special and General Elections in regard to the meaning of 'majority vote.'

Kimberly J. Webb v. Timothy P. King, CV 97-135, filed September 22, 1997. Motion to Register and Enforce a Foreign Child Support Order.

Janelle St. Cyr v. Brent St. Cyr, CV 97-136, filed September 24, 1997. Motion to Register and Enforce a Foreign Child Support Order.

Joseph and Joy Buck v. Kim L. White Wing, CV 97-137, filed September 30, 1997. Motion to Register and Enforce a Foreign Child Support Order.

Jill Pettibone v. Brent Funmaker, CV 97-138, filed October 3, 1997. Motion to Register and Enforce a Foreign Child Support Order.

State of Wisconsin, Outagamie County on behalf of Tammy Cook v. Richard Cloud, CV 97-139, filed September 18, 1997. Motion to Register and Enforce a Foreign Child Support Order.

Robert A. Mudd v. HCN Election Board, CV 97-140, filed October 6, 1997. Challenge to election results based on the majority vote requirement. Petitioner later amended complaint to invalidate entire Special Election.

Leigh Stephan, et al. v. HCN, CV 97-141, filed October 8, 1997. Employment dispute.

Hocak Fed. Cred. Un. v. Debra Crowe and Forest Blackdeer, CV 97-142, filed October 10, 1997. Action on Promissory Note to recover debt owed.

Daniel Sine v. Jacob Lonetree as President of the HCN, CV 97-143, filed October 10, 1997.

Recent Case Filings

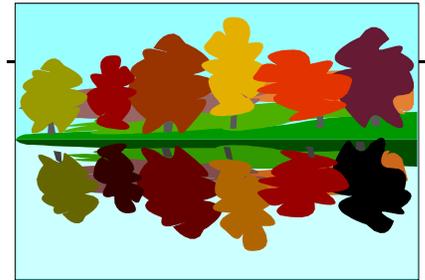
Trial Court Cases:

Employment dispute.

Marilyn E. Conto v. Harry D. Blackhawk, CV 97-144, filed October 14, 1997. Motion to Register and Enforce a Foreign Child Support Order.

Supreme Court Cases:

HCN Election Board v. Robert A. Mudd, SU 97-05, October 13, 1997. Seeking clarification of distinction between Special and General Elections in regard to the meaning of 'majority vote.'



HCN Supreme Court

The Ho-Chunk Nation Supreme Court convened on Sunday, October 19, 1997 at 10:30 a.m. at the Trial Court Building to discuss a variety of matters.

The Supreme Court will gather again on Saturday, November 22, 1997 at 10:30 a.m. at the Trial Court Building to hear oral arguments and consider tentative Rules of Judicial Ethics for adoption.

The Ho-Chunk Nation was well represented at the 1997 Tribal Law & Governance Conference in Lawrence, Kansas on September 26 and 27, 1997. The entire Supreme Court was present, as were Lay Advocate candidates Dennis Funmaker and Elaine Snowball. Chief Justice Hunter spoke about the Judiciary Branch as it exists from the new Constitution and Judiciary Act. She also discussed the HCN Court System model in relation to Professor Frank Pommersheim's presentation on "What Must Be Done to Achieve the Vision of the 21st Century Tribal Judiciary." Furthermore, a written decision of the mock rehearing of *Lone Wolf v. Hitchcock* that was heard by the American Indian Nations Supreme Court, which included Chief Justice Hunter, will be forthcoming.

Conferences

❖ The 9th Annual Conference on Environment and Development in Indian Country sponsored by the ABA Section of Natural Resources, Energy, and Environmental Law will

be held on November 20-21, 1997 at the Hilton Hotel in Albuquerque, New Mexico. Topics will include regulatory programs, litigation and legislation update, and the various roles of tribal, state, and federal governments. Please call (312) 988-5724 for more information or to register.

❖ The State Bar of Wisconsin in conjunction with the Wisconsin

Election Decision Summary

In *Robert A. Mudd v. HCN Election Board*, CV97-140, the Court found in accordance with prior case law that the September 27, 1997 Special Election was invalid. The Special Election violated the HCN CONST., ART. V, § 7 whereby members of the Legislature must be elected by a *majority* of the eligible voters from their respective districts. In the Sept. 27, 1997 Special Election, Diane Lone Tree received 19.02% of the total votes and Stewart J. Miller received 16.58% of the total votes.

Furthermore, the Court found substantial evidence that inappropriate and unsuitable conduct occurred during the Special Election, which constituted violations of the HCN ELECTION ORD. The Court found the following violations:

- On Sept. 18, 1997, an Election Board member for Area V submitted a letter to the *Hocak Worak* in clear support of a candidate for the Sept. 27, 1997 Special Election in flagrant violation of the ELECTION ORD., §§ 3.02(b)(2), (b)(3), and (b)(4).

- An Election Board member for Area V tampered with the election under ELECTION ORD. § 12.01(a) when she voted twice in the Sept. 27, 1997 Special Election by separate ballots. Furthermore, § 11.09(a)

Coalition Against Domestic Violence and the federally-funded Wisconsin Legal Service Programs will host a free CLE conference on Domestic Violence at Oconomowoc on November 11, 1997.

❖ The Third Annual Native American Homeownership and Legal Summit has been postponed until further notice. The Summit, which is intended to share information among requires that the Election Board reject these two ballots during the tallying of the votes, which the Board did not do.

- The Chicago site was not ready to operate until 8:20 a.m. in violation of § 11.03(a) which requires all polling places to be open from 8:00 a.m. to 7:00 p.m. An Election Board member was not present at the polling place until approximately 8:45 a.m. as mandated in § 3.05(a). The “sealed key” used to shut down the voting machine at the close of the election was unsealed, plugged into the back of the machine, and turned in the shut-down mode after only a few hours into the election. One of the three poll workers obligated to remain at the site for the entirety of the election left the polling place for over an hour. While the polling machine was inoperative, the election ballots were dropped into an unsecured emergency bin by the voters without the supervision of all attending poll workers. The final tallies indicated that one write-in vote was for Diane Lone Tree, a candidate already on the ballot. These actions are violations of ELECTION ORD. § 19.01 which was intended to establish fair election procedures.

- Although § 7.01(b) of the ELECTION ORD. clearly states that “a candidate may not run for more than one legislative seat....,” the Election Board violated this provision by not supplying specific instructions about

tribes, tribal housing entities and authorities, attorneys, and financial institutions, will be rescheduled for Winter or Spring of 1998. For more information, contact U.S. Dept. of Housing and Urban Development, Office of Native American Programs, Washington, D.C., 20410-500, or call (703) 934-3392.

selecting two candidates even though the Sept. 27, 1997 Special Election involved two vacant Area 5 Legislative seats: one for the vacant four-year term legislator seat and the other for the vacant two-year term. Without letting the voters decide, the Election Board simply placed the highest vote getter in the four-year seat, and the second highest in the two-year seat.

The Court found these violations sufficient to have affected the outcome of the election. Therefore, the Court invalidated the Sept. 27, 1997 Special Election and remanded the case back to the Election Board to conduct a fair election.

Federal Courts

Wilson v. Marchington, No. 96-35145 (9th Cir. Sept. 23, 1997). Where a tribal member sought to enforce a Blackfeet Tribal Court judgment in her favor in federal court that stemmed from a traffic accident with a non-Indian on a highway within the boundaries of the Blackfeet reservation in Montana, the U.S. Court of Appeals for the 9th Circuit held that a federal court need not recognize a tribal court judgment on the ground that the tribal court lacked subject matter jurisdiction.

The Court of Appeals rejected the notion of Full Faith and Credit, and concluded that “the recognition and enforcement of tribal

judgments in federal court must inevitably rest on the principles of comity.” The court held that comity could not apply when the tribal court issuing the judgment did not have both personal and subject matter jurisdiction or if the defendant did not enjoy due process of law.

The Court of Appeals relied upon the recent U.S. Supreme Court

Appellate filing fees \$35
 Admission to Practice \$50

Legal Citation Form

Below are example citation forms by legal reference and citation description.

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

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

Ho-Chunk Nation Ordinances
 Ordinance Name, Chapter number, Section/Part/Clause, page.

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

CLAIMS AGAINST PER CAPITA, §6.01(b).

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

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

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

decision of *Strate v. A-1 Contractors*, 65 LW 4298, which held that tribal courts may not hear claims against nonmembers arising out of accidents on state highways, absent an express authorization of jurisdiction by statute or treaty.

HCN Court Fees

Filing Fee \$35

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

Jane Doe v. Bob Smith, CV99-01 (HCN Tr. Ct., November, 1, 1999)

In the Interest of Minor Child X, JV95-047 (HCN Tr. Ct., May 23, 1994).

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

Rules of Appellate Procedure
HCN R. App. P. 5

Important Court Notes

— The Trial Court would like to emphasize that the Staff Attorney and Judicial Clerk is not available to provide independent legal advice or representation to individual members of the Ho-Chunk Nation. He remains happy to assist those who wish to file or respond to claims in the HCN Court System, but is prohibited from discussing the merits of claims or any issues beyond the scope of procedure. He is available after 2:00 p.m., Monday - Friday.

In the near future, the Lay Advocates will open an office to receive phone calls and drop in visits

Service of Summons in person \$12
 Service of Summons by Mail \$3
 Subpoena \$1
 Service by Courts \$0.30/per mile
 Copying \$0.05/per copy
 Faxing \$0.25
 Tapes of Hearings \$5 each tape
 Certified Copies \$0.50 per page
 Registration of Foreign Orders \$10

from potential clients. With the assistance of Wisconsin Judicare, Inc., these individuals may answer legal questions, provide direction, and represent parties in claims brought before the HCN Court System.

Wisconsin Judicare, Inc. (1-800-472-1638) remains available to represent tribal member claims in tribal, state, and federal court.

— The Court reminds the public that the next quarterly per capita distribution is set for February 1, 1998. The statutory deadline for this Court to issue interceptions of an individual member’s per capita payment is fifteen (15) days before this date, or January 15, 1998. Actions must be filed at an appropriate time in advance of this date to ensure that the Court may respond within the statutory limits.

Legal Humor

Excerpts from actual court opinions:
 “We can imagine no reason why, with ordinary care, human toes could not be left out of chewing tobacco, and if toes are found in chewing tobacco, it seems to us that somebody has been very careless.” *Pillars v. R.J. Reynolds Tobacco Co.*, 78 So. 365, 366 (Miss. 1918).

“Plaintiffs also contend that parachute jumping falls within the right to travel protected by the Fourteenth Amendment.” *Skydiving Center v. St. Mary’s County Airport Comm’n*, 823 F.Supp. 1273, 1279 fn 2 (D. Md. 1993).

“This case presents the perhaps unprecedented situation of a court, as litigant, petitioning itself, as court, for relief.” *In re Skupniewitz*, 73 F.3d 702 (7th Cir. 1996).

Cites for actual court cases:

In re Love, 61 Bankruptcy Rep. 558 (S.D. Fla. 1986).

Johnny Carson v. Here’s Johnny Portable Toilets, Inc., 698 F.2d 831 (6th Cir. 1983).

Easter Seal Society for Crippled Children v. Playboy Enterprises, 81 F.2d 323 (5th Cir. 1978).

United States ex rel. Mayo v. Satan and His Staff, 54 F.R.D. 282 (Pa. 1971).



Ho-Chunk Nation Court Bulletin

What's up in Court
Vol. 2 No. 12
December 1, 1997

Progress and Loss.

In Memoriam: Dr. Charles "Chuck" Kingswan

Traditional Court members, Court Staff and Judges were once again saddened by the untimely passing of one of the Traditional Court's founding members, Dr. Charles Kingswan-ttnl la KAia tir K. Better known as the Doctor or simply Chuck, he often added a bright spot to everyone's day with his humor and gentle teasing. He died on November 2, 1997 at the Marshfield hospital of a brain hemorrhage where only weeks before he had undergone successful heart bypass surgery. His funeral in keeping with Aottnk (the

traditional writing method of writing Ho-Chunk) customs was held after the four-day wake in the Dells Dam cemetery close to his home.

Chuck was one of the founding members of the Traditional Court along with Bert Funmaker who predeceased him, Bill Blackdeer,



Orville Greendeer, Don Blackhawk and Eli Youngthunder.

The Doctor brought with him a savvy understanding of outside institutions and processes in part picked up from his medical education and in part from his many delvings and dabbings in various branches of thought from the religious to scientific to political. He received his M.D. degree from Stanford University, one of the finest medical schools in the country at a time when few Indians attained a college, let alone an advanced graduate, education. He received his Bachelor's degree from the University of Minnesota.

As impressive as his formal education was, so too was his traditional education. Chuck was a linguist who strongly believed in teaching Aottnk through the 'da, de,

di, do' method of writing originally adopted by Winnebagos in the 1800's. Chuck taught the language both here in Wisconsin and in Nebraska using computers, video tapes and traditional oral teaching at feasts, hot stone, scalp dances and other times to perpetuate Aottnk culture. Most importantly to many he gave unstintingly of his time to preserve the traditional religion, both in the feast lodge and in the medicine lodge. He not only was the speaker for his own group's war bundle at feasts but also helped the Water Spirit and Blackdeer groups whenever asked. He touched all who knew him in a special way.

Chuck was a veteran, hunter, fisherman, cultural advisor to the Burial Mounds Committee as well as the State Historical Preservation Committee, former Tribal chairman of the WWBC, father of Rita and Courage Kingswan, and brother, te K or ttAoo deKAe to so many that space precludes mentioning everyone. He was predeceased by his wife, Jennifer, whom he married in 1977. Perhaps best remembered is his sense of humor which even when making a serious point was ironic, gentle or subtle.

From the Editor

It can be said that a measure of frustration exists for the members of the modern Ho-Chunk Nation in the structure and operation of its government. Rather than enjoying an exemption from this suspicion, the judicial branch has absorbed its fair

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share of the criticism.

Although these concerns avoid the more fundamental question of whether a western system of governance is appropriate for the Ho-Chunk Nation, the fact remains that



the Nation as a whole voluntarily adopted the present scheme several years ago.

The point, however, is that tribes continue to be held subject to a double standard. While native peoples continue to carry out both an internal and external existence within the confines of the dominant culture, the last thirty years have witnessed an enormous emergence. This emergence in the form of Self-Determination also manifests itself in the form of competition, which the dominant culture is not sure how to handle. Tribes are no longer out of sight and out of mind.

In order to succeed in the

next century, one might argue that modern tribes must protect the traditional while advancing the foreign. For example, even though gaming ensures economic stability, it also involves a morass of law and politics--inherently non-Indian law and politics. Although tribes may now speak for themselves, for better or worse, in different circumstances they must speak in the terms of the dominant society.

In order to garner and retain respect and recognition from state courts, the Trial Court must meet certain standards. Although there are few set requirements aside from being a court of record, in order to be taken seriously and be given due deference the Court must conduct itself accordingly.

Although it incorporates as much of the Ho-Chunk way of life as possible, at its core the Trial Court is based on a non-Indian model. Quite the contrary, it is the Traditional Court which exists to protect and enforce the traditions and customs of the Ho-Chunk people. The two courts occasionally work together to resolve disputes brought by tribal members.

It is this ability to live in both worlds that sets the Ho-Chunk Nation apart. While a wholesale rejection of the foreign aspects of modern life might be appealing to some, in today's world such a rejection amounts to an economic and political limitation which could very well prove counterproductive in the long run.

Legal Definitions

Continuance: The temporary

postponement of court proceedings until a later date on the request of a party who requires more time to prepare, provide evidence, or become available.

Preliminary Injunction: Court Order prohibiting an act from either beginning or continuing until the rights of the parties are determined. The four relevant inquiries include: (1) is there an adequate remedy at law in the form of money damages? (2) does the threatened harm to plaintiff outweigh the threatened harm to defendant(s)? (3) does the plaintiff have a reasonable likelihood of success on the merits? and (4) would the issuance of a stay disserve the public interest? *See, Joyce Warner v. HCN Election Board*, CV 95-03 (HCN Tr. Ct. June 26, 1995) and *Coalition for a Fair Government II v. Chloris A. Lowe, Jr. and Kathyleen Lone Tree-Whiterabbit*, CV 96-22 (HCN Tr. Ct. July 23, 1996).

Stay: A form of injunction issued by Court Order that temporarily suspends the regular order of proceedings in a lawsuit to await the determination of a future action or event. *See, Steven Funmaker v. Jones*, CV 97-72 (HCN Tr. Ct., Nov. 26, 1997).

Temporary Restraining Order (TRO): An emergency remedy reserved for extreme circumstances which only last until the court can consider supporting arguments or evidence. The Order may be issued ex parte (without presence of other parties) if it can be shown 1) that immediate and irreparable injury or damage will occur and 2) notice would not be possible or should not be required.

Recent Decisions

Trial Court Cases:

Barbara Long v. Garret Banuelos, CV 97-88, (HCN Tr. Ct., November 4, 1997). Erratum to Order enforcing an existing child support obligation through per capita distribution.

In the Interest of Zachary Mitchell by Celena Mitchell v. HCN Enrollment Dept., CV 97-60 (HCN Tr. Ct., November 7, 1997). Denying the petition for the release of a minor's trust funds.

Eliza Green v. Douglas Dean Littlejohn, CV 97-71 (HCN Tr. Ct., November 21, 1997). Dismissing claim for child support against per capita distribution and granting costs as the underlying order was invalid.

Tammy Cook v. Richard Cloud, CV 97-139 (HCN Tr. Ct., November 21, 1997). Enforcing child support obligation through per



capita distribution.

Laurie Dorwin v. Glen Decorah, CV 97-80 (HCN Tr. Ct., November 21, 1997). Enforcing child support obligation through per capita distribution.

Steve B. Funmaker v. JoAnn Jones, et al., CV 97-72 (HCN Tr. Ct., November 25, 1997). Granting the defendant's *Motions to Dismiss* as the plaintiff's first cause of action, solicitation to commit a felony, failed to state a claim for which relief may be granted. In the plaintiff's second

In the interest of Myron A. Funmaker by Judith Ann Thundercloud, Guardian v. HCN, CV 96-87 (HCN Tr. Ct., October 31, claim for conversion of tribal property, the Court found that he lacked standing to bring the suit and that the claim was time barred under the doctrine of laches (equitable bar for suits not brought in a timely manner).

Recent Case Filings

Trial Court Cases:

Vincent T. Codotte v. Tris Yellowcloud as Director of Compliance, CV 97-145, filed October 17, 1997. Employment dispute.

Andrea Gale Storm v. Kirk Anthony Matcha, CV 97-146, filed October 22, 1997. Claim for conversion of private property and contribution for satisfaction of joint debt.

Hocak Fed. Cred. Un. v. Raquel Hernandez and James Ritland, CV 97-147, filed October 23, 1997. Action on promissory note to recover debt owed.

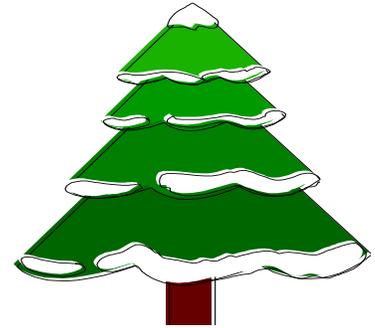
Barb Funmaker v. John Whitewater, CV 97-148, filed October 24, 1997. Motion to Register and Enforce a Foreign Child Support Order.

State of Wisconsin on behalf of Janet Funmaker v. Mahlon Funmaker, CV 97-149, filed October 29, 1997. Motion to Register and Enforce a Foreign Child Support Order.

State of Wisconsin on behalf of Brenda Fisher v. Mahlon Funmaker, CV 97-150, filed October 29, 1997. Motion to Register and Enforce a Foreign Child Support Order.

State of Wisconsin on behalf of Eileen Link-Funmaker v. Mahlon

1997). Granting the petition for the release of adult tribal member trust funds.



Funmaker, CV 97-151, filed October 29, 1997. Motion to Register and Enforce a Foreign Child Support Order.

Dan Williams v. Rainbow Casino, CV 97-152, filed November 3, 1997. Employment dispute.

State of Wisconsin, Wood County v. Gregory Harrison, CV 97-153, filed November 7, 1997. Motion to Register and Enforce a Foreign Child Support Order.



Dawn Littlejohn v. Michelle R. DeCora, CV 97-154, filed November 6, 1997. Employment dispute.

State of Wisconsin on behalf of Eileen Snowball v. Joseph Keenan, CV 97-155, filed November 12, 1997. Motion to Register and Enforce a Foreign Child Support

Order.

Naomi Rich v. Wayne Whitman, CV 97-156, filed November 13, 1997. Motion to Register and Enforce a Foreign Child Support Order.

Audrey L. Marzofka v. Rainbow Casino and Godfrey Parazz, CV 97-157, filed November 13, 1997. Motion to Register and Enforce a Foreign Child Support Order.

State of Wisconsin v. Gayland Rave, Jr., CV 97-161, filed November 25, 1997. Motion to Register and Enforce a Foreign Child Support Order.

State of Wisconsin v. Kim Whitegull, CV 97-162, filed November 25, 1997. Motion to Register and Enforce a Foreign Child Support Order.

HCN Supreme Court

The Ho-Chunk Nation Supreme Court will convene on Saturday, December 27, 1997 at the Court Building. On Saturday, November 22, 1997, the Court heard oral arguments in *Carol J. Smith v. Rainbow Bingo and Bernice Cloud*, SU97-04 in which a decision is forthcoming. For more information, please contact Supreme Court Clerk Willa Red Cloud at the Court Building, (715) 284-2722.

Conferences

❖ The State Bar of Wisconsin Midwinter Convention will be held on January 28-30, 1998 at the Marriott Madison West in Madison, WI. The Indian Law Section will convene on Friday, January 30 from 9:00 a.m. to 12:15 p.m. Topics will include Recent Developments in Congress, Tribal Issues in Federal Courts, and an Overview of the Federal Trust Responsibility. For more information, please contact the State Bar at (800) 728-7788, P.O. Box 7158, Madison, WI 53707-7158

14, 1997. Employment dispute.

State of Wisconsin, Jackson County v. Gregory Harrison, CV 97-158, filed November 17, 1997. Motion to Register and Enforce a Foreign Child Support Order.

HCN Home Ownership Program v. Scott Hindes, CV 97-159, filed November 21, 1997. Action to or the Trial Court at (715) 284-2722.

❖ The National Association of Tribal Court Personnel, formerly known as the National American Court Clerk's Association, will hold a Judicial Education Seminar for Region II at the Oneida Nation Radisson Inn, Green Bay, WI on February 8-10, 1998. The conference agenda will include topics such as Rising Juvenile Violence, Domestic Violence, Family Law, Current Legislation and Case Law Affecting Indian Country, and Enforcing Child Support in Tribal Courts. For more



information, contact James Martin, (920) 497-5800, JoAnn Pennock (906) 353-8124, or the Trial Court (715) 284-2722.

❖ The Third Annual Native American Homeownership and Legal Summit has been postponed until further notice. The Summit, which is intended to share information among tribes, tribal housing entities and authorities, attorneys, and financial institutions, will be rescheduled for Winter or Spring of 1998. For more information, contact U.S. Dept. of Housing and Urban Development, Office of Native American Programs, Washington, D.C., 20410-500, or call

recover contract damages and debts owed.

State of Wisconsin v. Gayland Rave, Jr., CV 97-160, filed November 25, 1997. Motion to Register and Enforce a Foreign Child Support Order.

(703) 934-3392.

Federal Courts

Lincoln, et al. v. Saginaw Chippewa Indian Tribe of Michigan, No. 96-CV-73164 (E.D. Mich., June 20, 1997). In an action challenging the distribution of tribal gaming revenues, the district court concluded that it lacked jurisdiction over what was essentially a membership dispute between the plaintiffs and the Saginaw Chippewa Tribe.

United States v. Corrow, No. 96-2185 (10th Cir., July 11, 1997). The Tenth Circuit affirms the district court's denial of motions for acquittal on counts of violating the Native American Graves Protection and Repatriation Act and the Migratory Bird Treaty Act in the case of a trafficker of "cultural patrimony."

Cherokee Nation v. Babbit, et al., No. 96-5337 (D.C. Cir., July 15, 1997). The D.C. Circuit Court of Appeals held that the district court erred in concluding that the Delaware Tribe can assert sovereign immunity to preclude its joinder as a necessary and indispensable party in an action by the Cherokee Nation challenging a Dept. of Interior final decision extending formal recognition to the Delaware Tribe.

State Courts

Charles v. Charles, No. 536362 (New London Super. Ct., May 7, 1997). The superior court

dismissed a dissolution of marriage action for lack of subject matter jurisdiction on the grounds that the defendant, a member of the Mashantucket Pequot Tribe residing on the tribe's reservation, was not a resident of the state of Connecticut.

Wisconsin v. King, et al., No. 96-2735 (Wis.Ct.App., July 29, 1997). The Wisconsin Court of Appeals affirmed the circuit court's order dismissing state indictments against five members of the Oneida Tribe finding that because the respondents were fishing within the tribe's reservation boundaries, the State lacked jurisdiction to prosecute them, but modified the circuit court's judgment as to two findings of law.

HCN Court Fees

Filing Fee	\$35
Service of Summons in person	\$15
(or cost if out of state)	
Service of Summons by Mail	\$4
(or cost, whichever is greater)	
Subpoena	\$1
Service by Courts	\$0.30/per mile
Copying	\$0.10/per page
Faxing	\$0.25/per page
(sending & receiving)	
Tapes of Hearings	\$10 each tape
Deposition Videotape	\$10 each tape
Certified Copies	\$0.50/per page
Equipment Rental	\$5.00/per hour
Registration of Foreign Orders	\$15
Appellate filing fees	\$35
Admission to Practice	\$50

Please note that the Trial Court amended the fee schedule in *Administrative Order* 97-10, issued on November 26, 1997. The changes shall become effective on January 1, 1998.

Legal Citation Form

Below are example citation

In the Interest of C.C.G., No. 96CA0835 (Colo. Ct. App., July 10, 1997). The Colorado Court of Appeals reversed and remanded to the juvenile court for further proceedings relative to the applicability of the Indian Child forms by legal reference and citation description.

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

HCN CONST., ART. XI, Sec. (or §) 7.

HCN CONST., ART.II, Sec. (or §) 1(a).

Ho-Chunk Nation Ordinances
Ordinance Name, Chapter number, Section/Part/Clause, page.

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

CLAIMS AGAINST PER CAPITA, §6.01(b).

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

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

Jane Doe v. Bob Smith, CV99-01 (HCN Tr. Ct., Nov. 1, 1999)

In the Interest of Minor Child X, JV95-047 (HCN Tr. Ct., May 23, 1994).

Welfare Act, whether the proceeding was voluntary or whether the "existing Indian family" doctrine applied, and for a reconsideration of its judgment terminating parental rights.

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

Rules of Appellate Procedure
HCN R. App. P. 5

Per Capita News

The Trial Court will host a meeting with surrounding county officials and employees on Friday, December 5, 1997 from 1:00 p.m. to 3:00 p.m. to discuss the enforcement of foreign child support orders against per capita distributions.

The Court reminds the public that the next quarterly per capita distribution is set for February 1, 1998. The statutory deadline for this Court to issue interceptions of an individual member's per capita payment is fifteen (15) days before this date, or January 15, 1998. Actions must be filed at an appropriate time in advance of this date to ensure that the Court may respond within the statutory limits.

The Court would like to note that any amendments a petitioner or respondent may wish to make in regard to child support should be taken to the county from which the underlying child support order was issued. This Court will enforce foreign child support orders against per capita distributions up to the maximum amount allowed under Ho-Chunk law, 34% for current support and 26% for arrearage. If the total number of claims exceeds that amount, the Court will convene a hearing to hear from all sides and perform an equitable adjustment.

The Court attempts to ensure that all petitioners with a valid order may enforce against the respondent's per capita payments.

Finally, the Court would like to remind the public that under the Claims Against Per Capita Ordinance, a tribal member's per

capita distribution may only be intercepted by one of three obligations: 1) debt owed to the Nation, 2) child support enforcement, and 3) federal tax liability. Private causes of actions like contracts, debts, or tort claims *cannot* seek a portion of a member's per capita payments.

monitoring devices in her clothing, and sneaked into her house at night to take blood from her arm.

Abdul-Akbar v. Watson, 901 F.2d 239 (3rd Cir. 1990). Plaintiff prisoner complains the photocopying in the prison takes too long.

Important Court Notes

Any tribal members interested in forming a new class of Lay Advocates should contact Ray Torgerson at the Trial Court, (715) 284-2722. Additional information for a new training class will be provided when received.

Legal Humor

Mallon v. Pavoda, 806 F.Supp. 1189, (E.D. Pa. 1992). The plaintiff--who happened to be both God and the President of the United States--filed eleven lawsuits due to the failure of various people, including a rock star and the entire county of England, to "deal with" him.

Bryant v. Cheney, 924 F.2d 525 (4th Cir. 1991). Plaintiff sought to compel the government to produce bodies of extraterrestrials.

Tyler v. Carter, 151 F.R.D. 537 (S.D.N.Y. 1993). Plaintiff--who happened to be a cyborg--sued the President, former President, and others and wanted to enjoin the World Trade Center bombing trial.

Zarcone v. Perry, 572 F.2d 51 (2d. Cir. 1978). Traffic judge sued a coffee vendor for serving bad coffee.

Engle v. United States, 736 F.Supp. 670 (D.Md. 1989). Plaintiff alleged the CIA and FBI drugged and hypnotized her, placed electronic