

Ho-Chunk Nation Court Bulletin

What's up in Court
Vol. 3 No. 1
January 1, 1998

Authority and Standards.

From the Editor

It is common knowledge that there are two sides to every story. This adage holds true in the Ho-Chunk Nation Court System as the judiciary seeks to “do the right thing” in the absence of clear restrictions on its authority. Armed with only a few guiding principles, the administration of justice proves difficult, especially in the court of public opinion.

A fundamental division in the law, which draws from the U.S. Constitution itself, centers on the nature of the inherent authority of a governmental branch. The federal system is founded on principles of enumerated powers which clearly

state what a governing body shall accomplish.

As enumerated powers mean those powers which are expressly set out in writing, exactly what that body can or may accomplish beyond such a list, however, remains a very different question.

The Ho-Chunk Nation Trial Court is vested with certain powers under the Constitution which remain broad and seemingly unlimited. Article VII, Section 6, which establishes the powers of the Trial Court, states:

(a) The Trial Court shall have the power to make findings of fact and conclusions of law. The Trial Court shall have the power to issue all remedies in law and in equity including injunctive and declaratory relief and all writs including attachment and mandamus.

(b) The Trial Court shall have the power to declare the laws of the Ho-Chunk Nation void if such laws are not in agreement with this Constitution.

This seemingly broad authority may be limited in a number of ways. The Legislature can pass restrictive statutes. The Supreme Court can overrule lower court decisions. Or the Trial Court itself may exercise self-restraint as it has in a number of instances.

A good example of legislative limitation rests with Ordinance 3/26/96-A which expressly waives sovereign

immunity in employment cases for maximum monetary awards of \$2,000. This enactment, however, does not necessarily limit the equitable relief the courts may grant, in that numerous other



remedies have been recognized in various cases. See, e.g., *Francis Rave v. HCN Gaming Comm'n*, CV 96-33 (HCN Tr. Ct., Oct. 9, 1997).

Exactly which side of the fence you might fall on depends on a number of factors. For example, if you are relatively suspicious of government bodies, then you most likely see the glass as half empty rather than half full. Moreover, your position will be colored in part by your perception of those in

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positions of authority who embody the governmental entity.

One should use caution, however, because whether or not you think another “does the right

Legal Definitions

Burden of Proof: In the law of evidence, the obligation of the moving party to affirmatively establish facts in dispute to a requisite degree (described below) in support of a cause of action.

Burden of Persuasion: The obligation resting on the moving party to convince the trier of fact of his or her case.

Shifting the Burden: Shifting may be proper when the moving party has established a *prima facie* case through the evidence which requires the opposing party to rebut it with contrary, conflicting, or defensive evidence. Shifting is improper when the moving party attempts to place the original burden of

thing” in a given situation is a very different question of whether or not that person enjoys the authority under the law to act in the first place. While the ultimate answer

remains undetermined, a significant aspect of self-governance revolves around the careful consideration and resolution of this fundamental question and others like it.

capacity as Ho-Chunk Nation employee, and Rainbow Casino, SU 97-04 (HCN S.Ct., December 24, 1997). Extending date for decision of appeal for fifteen (15) days.

Recent Case Filings

Trial Court Cases:

State of Wisconsin and Sonya M. Bindley v. Jerome Marshall Cloud, CV 97-163, filed December 2, 1997. Motion to Register and Enforce a Foreign Child Support Order.

Rochelle Decorah v. Vincent T. Cadotte, CV 97-164, filed December 1, 1997. Motion to Register and Enforce a Foreign Child Support Order.

Anne E. W. Johnson v. Timothy G. WhiteEagle, CV 97-165, filed December 3, 1997. Motion to Register and Enforce a Foreign Child Support Order.

Jean Lamb v. Randy Snowball, CV 97-166, filed December 8, 1997. Employment dispute.

Jacqueline Nichols v. Randy Snowball, CV 97-167, filed December 8, 1997. Employment dispute.

Rachel M. Winneshiek v. James E. Beverly, CV 97-168, filed December 12, 1997. Motion to Register and Enforce a Foreign Child Support Order.

Andrea Storm v. Pearl Lightstorming and Gordon Decorah, CV 97-169, filed December 11, 1997. Conversion claim.

State of Wisconsin on behalf of Lana Greengrass v. Arlen

Clear and Convincing Evidence: Evidence in a civil case which establishes a reasonable certainty of the truth of an ultimate fact in dispute. More evidence than a preponderance, but less than beyond a reasonable doubt.

Evidence Beyond a Reasonable Doubt: Usually limited to criminal cases, evidence which is so fully satisfying to create certainty that the facts establish guilt.

Recent Decisions

Trial Court Cases:

Tammy Cook v. Richard Cloud, CV 97-139 (HCN Tr. Ct., Dec. 2, 1997). Erratum to judgement enforcing existing child support obligation through per capita distribution.

Vicki J. Houghton v. John C. Houghton, Jr., CV 96-58 (HCN Tr. Ct., Dec. 10, 1997). Modifying existing child support obligation through per capita distribution.

Supreme Court Cases:

Bernice Cloud, in her



production and persuasion on the opposing party.

Preponderance of the Evidence: Evidence in a civil case which is of greater weight or more convincing than the evidence offered in opposition to it, so that the fact to be proved is more probable than not to be true.

Benjamin Wamego, CV 97-170, filed December 15, 1997. Motion to Register and Enforce a Foreign Child Support Order.

State of Wisconsin on behalf of Erin L. Emerson v. Reuben A. Rave, Jr., CV 97-171, filed December 15, 1997. Motion to Register and Enforce a Foreign Child Support Order.

Estate of Robert M. Berglin and Lyle R. Berglin and M. Kristine

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, 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

Berglin v. HCN and HCN Casino, CV 97-172, filed December 29, 1997. Dispute over life insurance benefits.

HCN Supreme Court

The Supreme Court will meet on Saturday, January 17, 1997 at 1:30 p.m. to hear oral argument,

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 (703) 934-3392.

Federal Courts

Kempel v. Prairie Island Indian Community, Nos. 95-2812, 96-3573, (8th Cir., Sept. 10, 1997). The Eighth Circuit court held that appellant timely filed in state court and was not later required to exhaust tribal remedies when the tribal court was established after his

consider amendments to the Civil Rules of Procedure, and continue discussion on Judicial Rules of Conduct. For more information,



please contact Supreme Court Clerk Willa Red Cloud at the Court Building, (715) 284-2722.

complaint was filed in state court.

Yavapai-Prescott Indian Tribe v. Scott, et al., No. 96-16416, (9th Cir., June 30, 1997). The Ninth Circuit court held that the incidence of state business transaction tax on room rentals and food and beverage sales falls on the lessee of a hotel owned by a tribe and thus is not federally preempted.

Confederated Tribes and Bands of the Yakima Indian Nation v. Lowry, et al., No. CY-95-3077-AAM. The district court held that the Indian Gaming Regulatory Act does not prohibit the operation of a state lottery on an Indian reservation.

Missouri ex rel. Nixon v. Coeur d'Alene Tribe, et al., No. 97-0914-CV-W-6. The district court denied the State of Missouri's motion to dismiss for lack of jurisdiction in an action against the Coeur d'Alene Tribe challenging the tribe's operation of an Internet

lottery under the authority of the Indian Gaming Regulatory Act.

State Courts

Washington v. Price, No. 34477-3-I, (Wash. Ct. App., Aug. 25, 1997). The Washington State Court of Appeals held that a non-Indian spouse of a Yakama tribal member cannot exercise treaty fishing rights of his spouse unless he is assisting a treaty Indian fisherman who is present at the site.

Swinomish Indian Community v. Island County, No. 39421-5-I (Wash. Ct. App., Aug. 25, 1997). The Washington State Court of Appeals held that while a county did not violate the Indian Graves and Records Act by failing to provide notice to the Swinomish Indian Community of a sewer repair permit, the county is required to 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

establish procedures for protecting grave sites and remanded the case to the trial court.

ILR Published Cases

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

In the interest of Gary Alan Funmaker, Sr. v. Ho-Chunk Nation, No. CV 96-39, 24 Indian L. Rep. 6211 (Ho-Chunk Nat. Tr. Ct., Oct. 18, 1996).

Sherri Red Cloud v. Maynard Rave, Sr., No. CV 96-37, 24 Indian L. Rep. 6214 (Ho-Chunk Nat. Tr. Ct., Oct. 15, 1996).

Important Notice

Please note that the fee schedule, amended by the Trial Court in *Administrative Order* 97-10 on November 26, 1997, has been suspended as a result of a Supreme Court Administrative Order issued on December 30, 1997. Although the changes were to be effective as of January 1, 1998, a notice of public hearings on the matter of costs and fees will be scheduled in the near future. In the interim, the above listed fee schedule reflects a proposed listing only and the old rates will remain in effect. Please contact Willa Red Cloud, the Supreme Court Clerk of Court, for more information at (715) 284-2722.

Legal Citation Form

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

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

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., Aug. 14,

1995).

Smith v. Casino, SU94-11 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

Child Support News

The Trial Court issued Administrative Order 98-1 on January 2, 1997 which created a new prefix for all child support

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

enforcement actions. Rather than the normal civil or CV case classification, child support enforcement cases will now be classified as "CS." Moreover, all such cases will be filed alphabetically based on the initials of the alleged obligor party, usually named as the defendant/respondent, not under the name of the plaintiff/petitioner as in all other CV cases.

The Trial Court hosted a cooperative meeting on Friday, December 5, 1997 from 1:00 -3:00 p.m. with surrounding child support agency representatives from surrounding counties. Among those that attended were: Clark, Jackson, Milwaukee, Portage, Sauk, and Wood. Other key HCN 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.

Important Court

agencies were in attendance. Members of the Forest County Potawatomi Court System also attended. This successful meeting helped to build understanding and proved mutually beneficial.

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 16, 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.

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

Franklin v. Murphy, 745 F.2d 1221 (9th Cir. 1984). Assorted complaints regarding civil rights violations filed by a prisoner included: a television announcer calling an 18-wheel truck a 14-wheeler, the prison overwatering

the lawn, the prison using aluminum pans for baking desserts, and a federal regulation requiring seatbelts for cars but not horses.

Pinneke v. Preisser, 623 F.2d 546 (8th Cir. 1980). Plaintiff *successfully* sued the state for refusing to pay for his sex change operation.

Beal v. Lindsay, 468 F.2d 287 (2d. Cir. 1972). New York City residents sued the city for not maintaining the park which they in fact vandalized.

Bass v. Aetna Ins. Co., 370 So.2d 511 (La. 1979). The “Act of God” defense was not available to a defendant sued for inflicting personal injuries upon another during a church service when the zealous worshiper ran into the aisle to pray.

Grier v. United States, (4th Cir. 1995). Plaintiff sued former President Ronald Reagan for stealing his invention of the multiplication tables and implementing them in the public school system. Requested damages? \$900 billion.



Ho-Chunk Nation Court Bulletin

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Vol. 3 No. 2
February 1, 1998

The Demands of Due Process.

From the Editor

Perhaps the most fundamental right which the HCN Trial Court serves to protect is that of due process. While the law recognizes that due process means different things in different circumstances, at a minimum it ensures notice and an opportunity to be heard. But what does it mean in common practice and why is it important?

Primarily, due process guarantees that a case will be as fair as possible under the law. All too often people feel that courts do not listen to both sides of a story or they think that a court will not believe anything they say, so why bother? Such misunderstandings strike at the very purpose of a judicial system. After all, courts represent a peaceable and organized forum

where parties who feel they have been wronged may bring complaints and receive a decision from a disinterested, objective judge based upon available, relevant facts.

Part of the Trial Court's charge is to operate in an impartial manner so that no one could validly claim that a given decision was somehow biased or improperly reached. In any event, effective ways exist to address those problems should they occur. Part of the duty of the litigants is to offer

all available, relevant facts so that the Trial Court may make an informed and well-considered decision. By not responding to court requests or not offering all relevant facts, the search for truth is frustrated.

The judiciary has rules so that no party may gain an advantage over any other. For example, copies of all documents submitted to the Court must be shared to the opposing side. The purpose of this requirement is not to waste time or money but to guarantee that all parties involved in a lawsuit are equally aware of what is going on at any given moment.

Aside from notice, due process requires an opportunity to respond. All named defendants in

The law defines notice as the knowledge of the existence of a fact or state of affairs received by

civil actions in the Nation's Trial Court are given 20 days to file an *Answer* in which they may admit or deny any part of a *Complaint* filed against them. In emergency situations, a *Motion for Expedited Consideration* may be granted which will shorten deadlines but maintain the right to a hearing or an appearance by telephone.

Furthermore, litigants may or may not feel that they need an attorney to represent their interests in a case. All parties, however,

have equal access to lists of local attorneys who are licensed to appear before the HCN Court System. The Nation also has trained and certified a number of members who may represent parties as Lay Advocates. Wisconsin Judicare represents a third alternative for those seeking legal advice and representation. While one might feel that the procedures of the Nation's Court System are too technical and beyond understanding, it is important to recognize that the rules exist for a reason and often that reason is to protect everybody's interest in a fair and impartial judicial system.

Legal Definitions

whatever means. Notice serves as an integral part of the guarantees of due process afforded in the Nation's

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Court System. See, *HCN R. of Civ. Pro.* 5. The law recognizes, however, many different forms of notice which possess different characteristics and which apply under different circumstances.

Actual Notice: Express actual notice includes all knowledge of a degree above that which requires inference or which imposes a further duty of inquiry. Implied actual notice imputes knowledge to a party because he or she is shown to be conscious of having the means of acquiring given facts or realizing a state of affairs. Actual notice amounts to such notice given to a party directly and personally or such which infers that a party could have received the information under reasonable inquiry or awareness.

Constructive Notice: Notice of information or knowledge imputed by law (namely, without express actual notice) because a party could have discovered the fact by proper diligence and the party's situation cast upon him or her the duty of inquiry, whether because of evasion or unreasonable ignorance. See, *HCN R. of Civ. Pro.* 5(F). Also referred to in some situations as implied actual notice or inquiry notice.

Personal Notice: A form of express actual notice in which knowledge or information is given directly to the affected party by an Officer of the Court or other designated person. See, *HCN R. of Civ. Pro.* 5(C)(1).

Notice by Publication: A form of constructive or implied actual notice in which knowledge or information is issued to the general public, as in a newspaper, so that all to whom it may concern have access to the information and are deemed to have knowledge of it. See, *HCN R. of Civ. Pro.* 5(C)(5) and

5(G).

Recent Decisions

Trial Court Cases:

Marilyn E. Conto v. Harry D. Blackhawk, CV 97-144 (HCN Tr. Ct., Dec. 31, 1997). Enforcing foreign child support order against per capita distribution.

State of Wisconsin on behalf of Erin L. Emerson v.



Rueben A. Rave, Jr., CV 97-171 (HCN Tr. Ct., Jan. 6, 1998). Enforcing foreign child support order against per capita distribution.

Richard Dakota v. Angela B. Wanatee, CV 97-126 (HCN Tr. Ct., Jan. 6, 1998). Enforcing foreign child support order against per capita distribution.

State of Wisconsin v. Waldo Stacy, CV 96-71 (HCN Tr. Ct., Jan. 6, 1998). Modifying the enforcement of foreign child support order against per capita distribution.

Anthony Salerno v. Estelle R. Whitewing, CV 97-103 (HCN Tr. Ct., Jan. 6, 1998). Enforcing foreign child support order against per capita distribution.

Jacquelyn D. Wells v. Wesley D. Brockhaus, CV 96-25 (HCN Tr. Ct., Jan. 6, 1998).

Modifying and renewing enforcement of foreign child support order against per capita distribution.

Karen Goulee v. Jones Decorah, CV 97-100 (HCN Tr. Ct., Jan. 7, 1998). Enforcing foreign child support order against per capita distribution.

Melissa McGill v. Jones Decorah, CV 96-66 (HCN Tr. Ct., Jan. 7, 1998). Modifying enforcement of foreign child support order against per capita distribution.

Barbara J. Decorah v. Jones Decorah, CV 97-19 (HCN Tr. Ct., Jan. 7, 1998). Modifying enforcement of foreign child support order against per capita distribution.

State of Wisconsin on behalf of Sonya M. Bindley v. Jerome M. Cloud, CV 97-163 (HCN Tr. Ct., Jan. 9, 1998). Enforcing foreign child support order against per capita distribution.

Amy Hennings v. Jerome M. Cloud, CV 97-118 (HCN Tr. Ct., Jan. 9, 1998). Enforcing foreign child support order against per capita distribution.

Sara WhiteEagle v. Timothy King, CV 97-24 (HCN Tr. Ct., Jan. 9, 1998). Modifying enforcement of foreign child support order against per capita distribution.

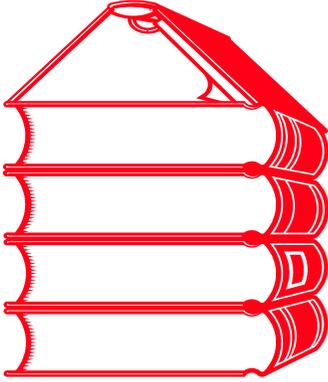
Kimberly J. Webb v. Timothy King, CV 97-135 (HCN Tr. Ct., Jan. 9, 1998). Enforcing foreign child support order against per capita distribution.

State of Wisconsin on behalf of Eileen Snowball v. Joseph Keenan, CV 97-155 (HCN Tr. Ct., Jan. 9, 1998). Enforcing foreign child support order against per capita distribution.

Barbara Funmaker v. John L. Whitewater, CV 97-148 (HCN

Tr. Ct., Jan. 9, 1998). Enforcing *State of Wisconsin on behalf of Lana L. Greengrass v. Arlen Benjamin Wamego*, CV 97-170 (HCN Tr. Ct., Jan. 9, 1998).

Enforcing foreign child support



order against per capita distribution.

Janelle St. Cyr v. Brent St. Cyr, CV 97-136 (HCN Tr. Ct., Jan. 12, 1998). Enforcing foreign child support order against per capita distribution.

Lisa Rave v. Brent St. Cyr, CV 97-97 (HCN Tr. Ct., Jan. 12, 1998). Modifying enforcement of foreign child support order against per capita distribution.

State of Wisconsin ex. rel. v. Wayne Robert Blackdeer, CV 97-47 (HCN Tr. Ct., Jan. 12, 1998). Modifying enforcement of foreign child support order against per capita distribution.

Shari Jo Link v. Nelson Anderson Funmaker, CV 96-75

foreign child support order against (HCN Tr. Ct., Jan. 12, 1998). Erratum to Order enforcing foreign child support order against per capita distribution.

Naomi Rich v. Wayne Whitman, CV 97-156 (HCN Tr. Ct., Jan. 12, 1998). Enforcing foreign child support order against per capita distribution.

Melissa McGill v. Paul Smith, CV 96-62 (HCN Tr. Ct., Jan. 12, 1998). Renewing enforcement of foreign child support order against per capita distribution.

State of Wisconsin, Sawyer County v. Johnny Ray Smith, Sr., CV 97-128 (HCN Tr. Ct., Jan. 13, 1998). Enforcing foreign child support order against per capita distribution.

State of Wisconsin, ex. rel. Vivian Sue Wolf v. Isaac Wayne Greyhair, CV 97-11 (HCN Tr. Ct., Jan. 13, 1998). Modifying enforcement of foreign child support order against per capita distribution.

Lisa Harrison v. Rex Whitegull, CV 96-50 (HCN Tr. Ct., Jan. 13, 1998). Modifying enforcement of foreign child support order against per capita distribution.

Judy Diamond v. Roger Allen, CV 97-90 (HCN Tr. Ct., Jan. 13, 1998). Denying renewal of enforcement of foreign child support order against per capita distribution.

State of Wisconsin, Eau Claire Co., on behalf of Cynthia Loofboro v. William J. Greendeer, CV 97-96 (HCN Tr. Ct., Jan. 13, 1998). Erratum to Order enforcing foreign child support order against per capita distribution.

Amanda Fanning v. Derek Fanning, CV 97-81 (HCN Tr. Ct., Jan. 13, 1998). Erratum to Order

per capita distribution.

enforcing foreign child support order against per capita distribution.

Charlene Smolenski v. Jeffrey Link, CV 97-34 (HCN Tr. Ct., Jan. 13, 1998). Erratum to Order enforcing foreign child support order against per capita distribution.

State of Wisconsin, Jackson Co., on behalf of Annie Winneshiek v. Gregory Harrison, CV 97-158 (HCN Tr. Ct., Jan. 13, 1998). Enforcing foreign child support order against per capita distribution.

State of Wisconsin, Jackson Co., on behalf of Evangeline Two Crow v. Gregory Harrison, CV 97-153 (HCN Tr. Ct., Jan. 13, 1998). Enforcing foreign child support order against per capita distribution.

David Orozco v. Jovita Orozco, CV 96-68 (HCN Tr. Ct., Jan. 14, 1998). Renewing enforcement of foreign child support order against per capita distribution.

Lisa Harrison v. Rex Whitegull, CV 96-50 (HCN Tr. Ct., Jan. 14, 1998). Erratum to Order modifying enforcement of foreign child support order against per capita distribution.

State of Wisconsin, Jackson Co. v. Kim Whitegull, CV 97-162 (HCN Tr. Ct., Jan. 14, 1998). Enforcing foreign child support order against per capita distribution.

Jill Pettibone v. Brent Funmaker, CV 97-138 (HCN Tr. Ct., Jan. 14, 1998). Denying enforcement of foreign child support order against per capita distribution.

State of Wisconsin, on behalf of Eileen J. Link v. Mahlon Funmaker, CV 97-151 (HCN Tr. Ct., Jan. 14, 1998). Enforcing

foreign child support order against per capita distribution.

State of Wisconsin, on behalf of Brenda L. Fisher v. Mahlon Funmaker, CV 97-150 (HCN Tr. Ct., Jan. 14, 1998). Enforcing foreign child support order against per capita distribution.

Tr. Ct., Jan. 14, 1998). Order accepting financial accounting reports in case involving disbursement of adult incompetent's per capita trust funds for health and welfare.

State of Wisconsin v. Frederick Greendeer, CV 97-44 (HCN Tr. Ct., Jan. 15, 1998). Modifying enforcement of foreign child support order against per capita distribution.

Roberta Greendeer v. Frederick Greendeer, CV 97-02 (HCN Tr. Ct., Jan. 15, 1998). Modifying enforcement of foreign child support order against per capita distribution.

Anne E. Johnson F/K/A Anne W.E. Johnson v. Timothy G. WhiteEagle, CV 97-165 (HCN Tr. Ct., Jan. 15, 1998). Enforcing foreign child support order against per capita distribution.

Sheila Doucette v. Scott Hindes, CV 97-132 (HCN Tr. Ct., Jan. 16, 1998). Modifying enforcement of foreign child support order against per capita distribution.

Rochelle Decorah v. Vincent Cadotte, CV 97-164 (HCN Tr. Ct., Jan. 16, 1998). Enforcing foreign child support order against per capita distribution.

Mary Jo Buttolph v. Charles H. Davis, CV 97-123 (HCN Tr. Ct., Jan. 16, 1998). Supplementing Order enforcing foreign child support order against per capita distribution.

State of Wisconsin, on behalf of Janet Funmaker v. Mahlon Funmaker, CV 97-149

Roxanne Johnson v. Loren James Rave, CV 97-25 (HCN Tr.



Ct., Jan. 16, 1998). Enforcing foreign child support order against per capita distribution.

State of Wisconsin, on behalf of Karla Greengrass v. Richard Dale Snake, CV 97-108 (HCN Tr. Ct., Jan. 16, 1998). Enforcing foreign child support order against per capita distribution.

State of Wisconsin, on behalf of Juanita Climer v. Richard Dale Snake, CV 97-107 (HCN Tr. Ct., Jan. 16, 1998). Modifying enforcement of foreign child support order against per capita distribution.

Joan Whitewater v. Millie Decorah, as Finance Director, & Sandy Martin, as Personnel Director, CV 96-88 (HCN Tr. Ct., Jan. 20, 1998). The Court found in favor of the plaintiff, holding that upon her layoff from the Dept. of

(HCN Tr. Ct., Jan. 14, 1998). Enforcing foreign child support order against per capita distribution.

In re: Roberta Goodbear by Shirley Sahr, Guardian v. HCN Enrollment Dept., CV 96-49 (HCN

Treasury due to a departmental reorganization, the

plaintiff had the right under the Policy and Procedures Manual to displace a less senior employee within the same department even if she never held the exact position before. As the plaintiff enjoyed a property interest in her job with the Nation, she was entitled to a higher wage rate in her current position.

State of Wisconsin v. Cynthia Hopinka, CV 97-36 (HCN Tr. Ct., Jan. 22, 1998). Erratum to



Order enforcing foreign child support order against per capita distribution.

HCN Home Ownership Program v. Arnold Darnell, CV 98-03 (HCN Tr. Ct., Jan. 26, 1998).

Order recognizing voluntary consent to withhold per capita distribution until debt owed to Nation is satisfied.

HCN Home Ownership Program v. Robert Mobley, CV

98-07 (HCN Tr. Ct., Jan. 26, 1998). Order recognizing voluntary consent to withhold per capita distribution until debt owed to Nation is satisfied.

David Modica v. Robert A. Mudd, Executive Director of Business and HCN Dept. of Business, CV 97-106 (HCN Tr. Ct., Jan. 27, 1998). The Court held that the plaintiff continued to suffer from harm to his reputation as a result of defamatory statements and issued a judgment awarding \$2,000. The Court discounted the arguments of defendant who asserted a conditional privilege to communicate the admittedly false information.

State of Wisconsin, Jackson Co., on behalf of Annie Winneshiek
State of Wisconsin v. Barbara Gromoff, CV 97-38 (HCN Tr. Ct., Jan. 29, 1998). Judgment enforcing current child support against voluntary consent, but denying back child support pending a proper notice and hearing.

Supreme Court Cases:

Carol J. Smith v. Rainbow Bingo and Bernice Cloud, as an employee of the Ho-Chunk Nation,

v. Gregory Harrison, CV 97-158 (HCN Tr. Ct., Jan. 28, 1998). Modifying enforcement of foreign child support order against per capita distribution.

HCN Home Ownership Program v. Georgette Garvin, CV 98-05 (HCN Tr. Ct., Jan. 29, 1998). Order recognizing partial settlement agreement and granting pre-judgment attachment and impoundment of per capita distribution until further proceedings can be arranged.

HCN Home Ownership Program v. Roland M. & Mary L. Taylor, CV 98-08 (HCN Tr. Ct., Jan. 29, 1998). Order granting pre-judgment attachment and impoundment of per capita distribution until further proceedings can be arranged. At the outset, the Supreme Court determined that the Appellant's argument presented a legal argument which did not prove frivolous under HCN Rule of Appellate Procedure 18. The Supreme Court went on to hold that Resolution 3/26/96-A limited the Trial Court to granting only two remedies in employment cases: (1) an award of up to \$2,000 and (2) an order to the Personnel Department to reassign the employee. The Supreme Court upheld the Trial Court's award of the full \$2,000 because the amount lies within the discretion of the Trial Court and the Legislature placed no standards on how to calculate such awards. However, the Supreme Court reversed the Trial Court, holding that the equitable remedy of removing a negative written reprimand from the Appellee's personnel file went beyond the scope of Resolution 3/26/96-A.

proceedings can be arranged.

Vicki J. Houghton v. John C. Houghton, CV 96-58 (HCN Tr. Ct., Jan. 29, 1998). Order modifying enforcement of foreign child support order against per capita distribution.

Recent Case Filings

Trial Court Cases:

Robert Mann v. Attorney General of the HCN, Gary Brownell, CV 98-01, filed January 8, 1998. Employment dispute.

Steve Camden v. Game Financial Corp. & Lisa G. Maulson, CV 98-02, filed January 9, 1998. Defamation claim.

HCN Home Ownership Program v. Arnold Darnell, CV 98-03, filed January 16, 1998. Suit on debt owed to the Nation pursued against per capita distribution.

HCN Home Ownership Program v. Janet Funmaker, CV 98-04, filed January 16, 1998. Suit on debt owed to the Nation pursued against per capita distribution.

HCN Home Ownership Program v. Georgette Garvin, CV 98-05, filed January 16, 1998. Suit on debt owed to the Nation pursued against per capita distribution.

HCN Home Ownership Program v. Dennis & Cynthia Hopinka, CV 98-06, filed January

16, 1998. Suit on debt owed to the Nation pursued against per capita distribution.

HCN Home Ownership Program v. Robert Mobley, CV 98-07, filed January 16, 1998. Suit on debt owed to the Nation pursued against per capita distribution.

HCN Home Ownership Program v. Roland & Mary Taylor, CV 98-08, filed January 16, 1998. Suit on debt owed to the Nation pursued against per capita distribution.

HCN Home Ownership Program v. Kevin Vasquez, CV 98-09, filed January 16, 1998. Suit on debt owed to the Nation pursued against per capita distribution.

State of Wisconsin & Roberta J. Combs v. Donald Yellowcloud, CS 98-01, filed January 19, 1998.

Karen Breit v. James A. White, CS 98-02, filed January 19, 1998.

State of Wisconsin & Karla Greengrass v. Roger Dean Snake, CS 98-03, filed January 28, 1998.

❖ The Twelfth Annual "Coming Together of the People's Conference: On Sovereignty's Frontlines" sponsored by the Indian Law Students Association of the UW Madison Law School will be held on Friday, February 20, 1998 and Saturday, February 21, 1998 at the UW Memorial Union. Judge Greendeer-Lee will moderate the Tribal Judges Forum on Jurisdiction at the conference. A number of other topics of local interest and concern will also be addressed. For more information, contact the Trial Court at (715) 284-2722.

❖ The 23rd Annual Federal Bar Association Indian Law Conference will be held on April 2-3, 1998 at the Marriott in Albuquerque, New Mexico. This

State of Iowa, County Dept. of Soc. Services & Ruth Decorah v. Preston Leslie Thompson, CS 98-04, filed January 26, 1998.

HCN Supreme Court

The Supreme Court will convene a Public Hearing on Monday, February 16, 1998 at 1:00 p.m. at the Tribal Court Building regarding the proposed fee increase for Trial Court services found in *Administrative Order 97-10*. This hearing is to allow all concerned tribal members and all those who utilize the court system to address the proposed increases which are listed later in this Court Bulletin.

For more information, please contact Supreme Court Clerk Willa RedCloud at the Court Building, (715) 284-2722.

Conferences

❖ The National Association of gathering is one of the premier Indian law conferences in the country which will present a wide variety of topics. For more information, contact the Federal Bar Association at (202) 638-0252 or the Trial Court at (715) 284-2722.

❖ The 16th Annual "Protecting Our Children" National American Indian Conference on Child Abuse and Neglect sponsored by the Nat'l Indian Child Welfare Assn. will be held in Portland, Oregon on April 20-22, 1998. For more information, contact 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

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.

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 (703) 934-3392.

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

Important Notice

Please note that the fee schedule, amended by the Trial Court in *Administrative Order 97-10* on November 26, 1997, has been suspended as a result of a Supreme Court Administrative Order issued on December 30, 1997. Although the changes were to be effective as of January 1, 1998, a notice of public hearings on the matter of

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

Child Support News

The Trial Court issued Administrative Order 98-1 on January 2, 1997 which created a new prefix for all child support enforcement actions. Rather than the normal civil or CV case classification, child support enforcement cases will now be classified as "CS." Moreover, all such cases will be filed

costs and fees has been scheduled for Monday, February 16, 1998 at 1:00 p.m. at the Tribal Court Building. In the interim, the above listed fee schedule reflects a proposed listing only and the old rates will remain in effect. Please contact Willa RedCloud, the Supreme Court Clerk of Court, for more information at (715) 284-2722.

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 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.

alphabetically based on the initials of the alleged obligor party, usually named as the defendant/respondent, not under the name of the plaintiff/petitioner as in all other CV cases.

Lay Advocate News

The Wisconsin Tribal Judges Assn. certified 16 individuals for successfully completing the requirements of the Lay Advocacy program. Among the 16 individuals, the Judiciary

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., Aug. 14, 1995).

Smith v. Casino, SU94-11 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)

recognizes those HCN members for a job well done. Those tribal members are: Dennis Funmaker, Roger Littlegeorge, Stuart Taylor, and Rosalie Thomas. Congratulations and good luck in your new capacity as Lay Advocates!

The Trial Court continues to work with Wisconsin Judicare to establish a Lay Advocate office at the Court building. Details will be reported as they develop.

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

Buren v. U.S. Postal Service, 883 F.2d 429 (5th Cir. 1989). A postal employee in Texas was fired for beating up three dogs and throwing mail in the face of their owner. After reinstatement, he became involved in a dispute which ended when the employee caught his supervisor in a bear hug and held a pen to the supervisor's throat. When all was said and done, the postal employee had filed 217 EEOC complaints charging discrimination and unfair treatment.

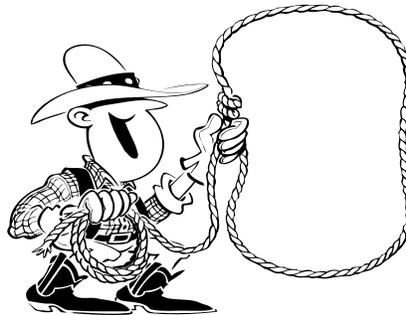
Vella v. McCammon, 671 F.Supp. 1128 (S.D. Tex. 1987). The judge found it frivolous to argue that the court lacked jurisdiction because the court's flag had fringe on it.

Haney v. Purcell, (Tex. App. 1990). Home buyer sued the seller after allegedly finding at least one grave on the land. After losing at trial, the buyer complained on appeal that the jury was told his lawyer sent a settlement demand for \$1 million and a copy of the movie "Poltergeist" to the defendant's lawyers.

Beasley v. Kroehler Mfg. Co., 406 F.2d 926 (N.D. Tex. 1976). Plaintiff filed a civil rights suit when she alleged her employer discriminated against her by hanging artificial snakes in an upholstering plant to scare away birds.

Texas Pig Stands, Inc. V. Hard Rock Cafe Int'l., Inc., 951 F.2d 684 (5th Cir. 1992). Which Texas restaurant gets to use the term "pig sandwich" to describe BBQ pork on a bun? The judge went on

to write an opinion with the following headings: "This Little Piggy Went to Market," "Attorney Fees--Did the Court Go Hog Wild," and concluded with "D-D-Dt-D-D-Dt That's All Folks!"



Ho-Chunk Nation Court Bulletin

What's up in Court
Vol. 3 No. 3
March 1, 1998

Self-Determination?

From the Editor

When somebody claims that an Indian Nation is sovereign, what does that mean? Under the U.S. Constitution, the Commerce Clause of Art. I, § 8, cl. 3 refers to states, foreign governments, and tribes. From the very creation of the constitutive documents of the United States of America, tribes enjoy a different status. Although the reference appears to treat the three sovereign classifications as equal, without any mention of priority or importance, history demonstrates that tribal sovereignty rarely is accorded similar respect and deference.

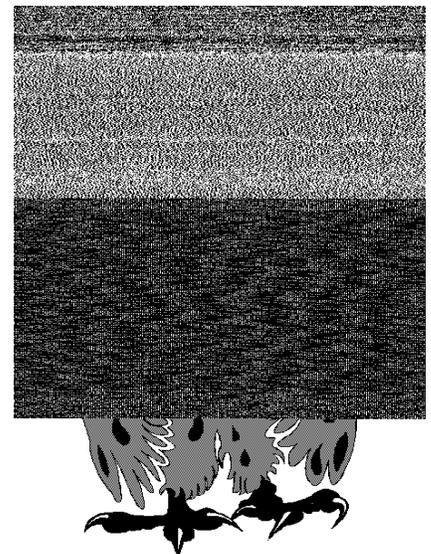
From the outset, the relationship between the various

Furthermore, the U.S. Supreme Court in *United States v. Mazurie*, 419 U.S. 544 (1975) correctly noted that tribes represent more than simple voluntary social organizations such as the Shriners or Elk's Lodge; they are in fact vested with authority over both their members and their territory. This

tribes and the federal government has been based on a political understanding. Although tribes remain an ethnic minority when compared to the majority of American society, this classification does not apply when sovereignty becomes an issue. In a case often cited for supporting this proposition, the U.S. Supreme Court in *Morton v. Mancari*, 417 U.S. 535, 552 (1974) wrote:

"Literally every piece of legislation dealing with Indian tribes and reservations, and certainly all legislation dealing with the BIA, single out for special treatment a constituency of tribal Indians living on or near reservations. If these laws, derived from historical relationships and explicitly designed to help only Indians, were deemed invidious racial discrimination, an included authority over non-Indians who were in some way involved or connected with business transactions in Indian Country or over non-Indians whose conduct directly effected the "political integrity, the economic security, or the health or welfare of the tribe." *Montana v. United States*, 450 U.S. 544, 566 (1981). The interpretation of what that means, however, has become increasingly unfavorable to native interests. Under current law, it is not clear what *would* trigger Indian jurisdiction over non-Indians short of a threat of imminent physical danger. Now, a recent U.S. Supreme Court decision pushes tribes into an even worse position.

entire Title of the United States Code [25 U.S.C.] would be effectively erased and the solemn commitment of the Government toward the Indians would be jeopardized."



In *Alaska v. Native Village of Venetie Tribal Government, et al.*, No. 96-1577, 1998 LEXIS 1449, (Feb. 25, 1998) (see more detailed case summary on page 3), the U.S. Supreme Court refused to recognize native Alaskan village lands as within the definition of Indian Country. So, not only has the Supreme Court limited the circumstances in which tribes may exercise jurisdiction over non-Indians (who unquestionably would fall under state jurisdiction with the same facts), but now the Court reduces the area in which jurisdiction can be asserted in the first place. With the exception of

From the Editor:.....	1
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the New Mexico Pueblos, there might not be any other application of 18 U.S.C. § 1151(b) such that Indian Country now only represents reservations and allotments.

Ultimately, if native tribes indeed possess sovereignty and represent more than another minority group--or worse a voluntary social organization--then this inherent authority should prove meaningful. Otherwise, the whole experience is just lip service.

With this recent jurisprudence flowing from the Supreme Court, it seems as though there is no meaningful difference between Self-Determination and Termination. There have been better times under the law.

Legal Definitions

Contract: A contract is an agreement between two parties creating an obligation to do or not do something in exchange for something else for which the law provides a remedy. The three basic factors are: offer, acceptance, and consideration.

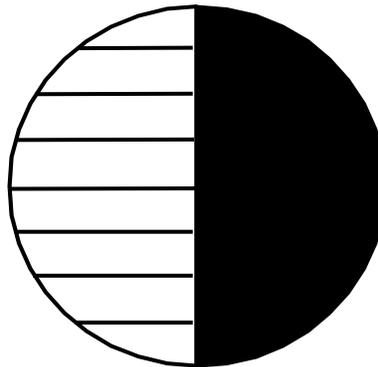
Implied Contract: Distinct from an express contract, an implied contract may be inferred from the conduct of parties and arises where one does something expecting to be compensated and the other, knowing the other's intent to be paid, takes the benefit of the act or service.

Joint and Several Contract: A joint and several contract is one entered into by two or more parties who promise to do something and become jointly bound to fulfill the promise or one made to two or more parties who are jointly entitled to the performance of the act or service. A contract is several when a person has the legal right to fully

enforce the entire agreement against one of the joint promisors, who may then pursue others for contribution.

Conditional Contract: A contract whose existence and validity depends upon the occurrence of an expressly stated term, condition, or event. The duty to perform and the right to enforce therefore remain contingent.

Requirements Contract: Also called an Output Contract, it refers to agreements in which one party agrees to sell his or her entire production and the other party



agrees to buy it. While it is binding, the span of the agreement may be indefinite.

Unconscionable Contract: An unenforceable contract in which no reasonable individual would enter into unless deluded or under duress. An unconscionable contract usually provides terms which are excessively one-sided and overreaching.

Recent Decisions

Trial Court Cases:

State of Wisconsin on behalf of Annie Winneshiek v. Gregory Harrison, CV 97-158 (HCN Tr. Ct., Jan. 29, 1998). Enforcing foreign child support order against per capita distribution.

Michelle R. Decora v. John D. Steindorf, CV 97-42 (HCN Tr. Ct., Feb. 11, 1998). Renewing enforcement of foreign child support order against per capita distribution. *Rachel Winneshiek v. Gregory Harrison*, CV 97-168 (HCN Tr. Ct., Feb. 17, 1998). Enforcing foreign child support order against per capita distribution.

HCN Home Ownership Program v. Roland M. Taylor & Mary L. Taylor, CV 98-08 (HCN Tr. Ct., Feb. 23, 1998). Granting attachment against per capita distribution until debt owed to Nation as a result of delinquent mortgage payments is satisfied.

HCN Home Ownership Program v. Janet Funmaker, CV 98-04 (HCN Tr. Ct., Feb. 23, 1998).

Granting attachment against per capita distribution until debt owed to Nation as a result of delinquent mortgage payments is satisfied.

HCN Home Ownership Program v. Georgette Garvin, CV 98-05 (HCN Tr. Ct., Feb. 23, 1998).

Granting attachment against per capita distribution as a Default Judgment until debt owed to Nation as a result of delinquent mortgage payments is satisfied.

State of Wisconsin and Debra A. Streeter v. Marcel R. Decorah, CV 96-89 (HCN Tr. Ct., Feb. 27, 1998). Modifying enforcement of foreign child support order against per capita distribution.

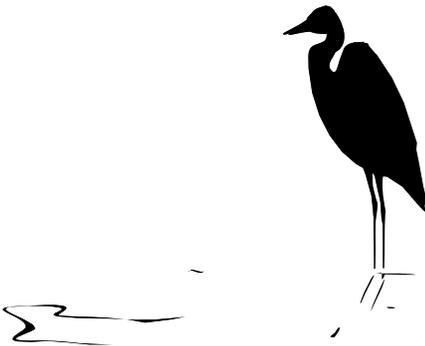
Karen Breit v. James A. White, CS 98-02 (HCN Tr. Ct., Feb. 27, 1998). Enforcing foreign child support order against per capita distribution.

Supreme Court Cases:

Joelene Smith v. HCN & Tammy Lang, as Head Start

Director, SU 97-06 (HCN S.Ct.,
*In Re the Matter of Rick
McArthur*, SU 97-07 (HCN S.Ct.,
Feb. 16, 1998). Notice of
Extension for Decision.

In Re the Matter of Rick



McArthur, SU 97-07 (HCN S.Ct.,
Feb. 26, 1998). The Supreme
Court reversed the decision of the
Trial Court which found appellant
in Contempt of Court.

Recent Case Filings

Trial Court Cases:

*Bonnie Hansen v. HCN
Enrollment Dept.*, CV 98-10, filed
January 6, 1998. Petition for
Release of Per Capita Distribution.

*William A. Goodbear v.
HCN Housing Authority*, CV 98-11,
filed February 24, 1998.
Employment dispute involving
breach of contract.

*William A. Goodbear v.
Andrea Storm*, CV 98-12, filed
February 24, 1998. Action to
recover private debt.

*Heather Lemieux v. Murton
Greengrass*, CS 98-05, filed
January 26, 1998.

*Patricia A. Houghton v.
Gabriel D. Funmaker*, CS 98-06,
filed January 29, 1998.

*Candice Deree Solesby v.
Kevin Bruce Funmaker*, CS 98-07,
filed February 3, 1998.

Feb. 16, 1998). Notice of
*Kerry Thompson v. Paul
Sallaway*, CS 98-08, filed February
9, 1998.

*State of Wisconsin on
behalf of Janet Funmaker v. Max P.
Funmaker, Sr.*, CS 98-09, filed
February 23, 1998.

*Denise J. Kearnes v. Victor
E. Kearnes, Sr.*, CS 98-11, filed
February 25, 1998.

*April Bourdon v. Max
Funmaker, Jr.*, CS 98-12, filed
February 24, 1998.

Supreme Court Cases:

*Debra Knudson v. HCN
Treasury Dept.*, SU 98-01, filed
February 13, 1998.

*Millie Decorah, as Finance
Director of the Ho-Chunk Nation, &
Sandy Martin, as Personnel
Director, v. Joan Whitewater*, SU
98-02, filed February 16, 1998.

ILR Published Cases

The following case was
published in the Indian Law
Reporter Volume 24:

*Ho-Chunk Nation Election
Board v. Mudd*, No. SU 97-05, 24
Indian L. Rep. 6249 (HCN Sup. Ct.,
Oct. 28, 1997).

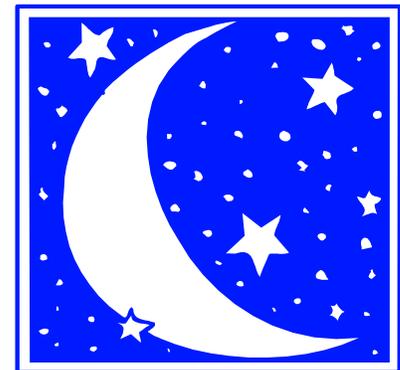
U.S. Supreme Court

*Alaska v. Native Village of
Venetie Tribal Government, et al.*,
No. 96-1577, 1998 LEXIS 1449,
(Feb. 25, 1998). Justice Clarence
Thomas, writing for a unanimous
U.S. Supreme Court, held that the
1.8 million acres surrounding two
Alaskan native villages could not be
considered "Indian Country" under

Extension for Decision.

18 U.S.C. § 1151(b) as a
"dependent Indian community"
similar to Pueblos of the Southwest.

The Alaska Native Claims
Settlement Act (ANCSA) of 1971
revoked all reservations in Alaska
except one, which extinguished all
native land claims from that point
forward and authorized the transfer
to state-chartered private business
corporations formed by Alaska
natives. The two factors required
under § 1151(b) include: 1) the
federal government must "set-aside"
the land for the use of Indians, and
2) the land must be under the
superintendence of the federal
government. In this case, the Court
held that the factors were not met as
ANCSA removed all traces of
federal control or supervision of the
area and the land theoretically could
be sold, leased or otherwise
disposed of so that the area was not



limited to the use of Indians.

Federal Courts

*Roselius v. McDaniel, et
al.*, No. 95-6887-CIV-ROETTGER
(S.D. Fla., Aug. 8, 1997). The
district court dismissed a Title VII
action against the Seminole Tribe of
Florida as the federal law does not
authorize actions against Indian
tribes and the Tribe asserted its
sovereign immunity.

United States v. Thunder Hawk, No. 96-3481 (8th Cir., Oct. 14, 1997). The Eighth Circuit affirmed the district court decision, holding that injuries to an Indian child as a result of her father's operation of a motor vehicle while intoxicated does not fall within the exception to federal jurisdiction over a crime committed by an Indian against the person or property of another Indian under the Indian Country Crimes Act.

Montana v. Gilham, No. 96-35766 (9th Cir., Oct. 22, 1997). The Ninth Circuit holds that a tort action arising out of an accident on

subject to New Mexico's property tax.

In the interest of G.R.F., No. 1997 SD 112 (S.D. Sup. Ct., Sept. 3, 1997). The South Dakota Supreme Court affirmed the trial court's determination of domicile and held that jurisdiction rested exclusively in the Oglala Sioux Tribal Court in a child welfare proceeding. The Court also upheld the trial court's decision that jurisdiction attached on the date the abuse and neglect case was initiated in the tribal court.

staff attorney will present a session on "Enforcement of Child Support in the Ho-Chunk Nation Trial Court."

❖ The American Indian Law and Policy Symposium & Banquet, sponsored by the American Indian Law Review, the University of Oklahoma College of Law, and the Assn. of American Indian Law Review Editors, will celebrate its 25th Anniversary on Saturday, March 21, 1998 at the OCCE Main Forum Building in Norman, OK. A number of speakers will discuss federal Indian law, its future, and the history and impact of the

a reservation brought in Blackfeet Indian Nation tribal courts against the State of Montana is barred by Montana's sovereign immunity to suit.

State Courts

Idaho ex rel. Industrial Comm'n v. Indian Country Ent., Inc., et al., No. 23043 (Idaho Sup. Ct., July 8, 1997). The Idaho Supreme Court held that, pursuant to 40 U.S.C. 290, Idaho state courts have jurisdiction to enforce Idaho's worker's compensation laws against a member of the Coeur d'Alene Tribe who operates a business on the Tribe's reservation.

Welch, et al. v. Sandoval Co. Valuation Protests Bd., et al., (N.M. Ct. App., July 31, 1997). The New Mexico Ct. of Appeals held that a non-Indian's leasehold interest in property owned and leased by the Cochiti Pueblo is

Conferences

❖ The Disability Legislation Focus Group will hold a conference entitled "Helping Our People" on Monday, March 16 and Tuesday, March 17, 1998 at the LCO Hotel and Convention Center. The conference will offer discussion on various aspects of disabilities and the law and strategies for addressing disability issues in Wisconsin Indian Country. For more information, please call Jessie J. Smith, North Country Independent Living, P.O. Box 1245, Superior, WI 54880, (715) 392-9118, fax (715) 392-4636.

❖ The Wisconsin Child Support Enforcement Association will hold a Spring Training Conference at the Mead Inn in Wisconsin Rapids on Thursday, March 19, 1998 and Friday, March 20, 1998. On Thursday, from 4:00 p.m. to 5:15 p.m., the Trial Court

American Indian Law Review.

❖ The 23rd Annual Federal Bar Association Indian Law Conference will be held on April 2-3, 1998 at the Marriott in Albuquerque, New Mexico. This gathering is one of the premier Indian law conferences in the country which will present a wide variety of topics. For more information, contact the Federal Bar Association at (202) 638-0252 or the Trial Court at (715) 284-2722.

❖ The 16th Annual "Protecting Our Children" National American Indian Conference on Child Abuse and Neglect sponsored by the Nat'l Indian Child Welfare Assn. will be held in Portland, Oregon on April 20-22, 1998. For more information, contact the Trial Court, (715) 284-2722.

HCN Court Fees

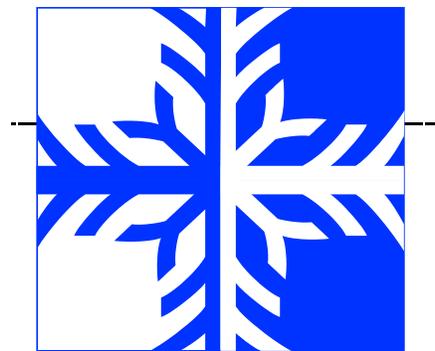
Filing Fee \$35
 Service of Summons in person \$15
 (or cost if out of state)
 Service of Summons by Mail \$4
 (or cost, whichever is greater)
 Subpoena \$1
 Service by Courts \$0.30/per
 mile
 Copying \$0.10/per

Please note that the fee schedule, amended by the Trial Court in *Administrative Order* 97-10 on November 26, 1997, has been suspended as a result of a Supreme Court Administrative Order issued on December 30, 1997. A public hearing on the matter of costs and fees was held on Monday, February 16, 1998 at 1:30 p.m. at the Tribal Court Building. As no decision has been issued, in the interim the above listed fee schedule reflects a proposed listing only and the old rates will remain in effect.

Please contact Willa RedCloud, the Supreme Court Clerk of Court, for more information at (715) 284-2722.

page
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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., Aug. 14, 1995).

Smith v. Casino, SU94-11 *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)

hour
 Registration of Foreign Orders \$15
 Appellate filing fees \$35
 Admission to Practice \$50

Important Notice

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

Lay Advocate News

The HCN Judiciary will hold a ceremony honoring the Lay Advocates on Wednesday, March 4, 1998 at 2:00 p.m. in the atrium of the Executive Building. The honorees include Faye Begay, Dennis Funmaker, Roger Littlegeorge, Eileen Snowball, Stuart Taylor, and Rosalie Thomas. The public is encouraged to attend.

Any tribal members interested in forming a new class of Lay Advocates should contact Ray Torgerson at the Trial Court, (715) 284-2722.

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 CONST., ART. XI, Sec. (or §) 7.

HCN CONST., ART. II, Sec. (or §) 1(a).

Ho-Chunk Nation Ordinances
 Ordinance Name, Chapter number,

Legal Humor

Nik-O-Lok Co. v. Carey, 52 A.D.2d 375 (1976). Plaintiff challenged a statute prohibiting "pay toilets," arguing that the term was ambiguous. The Court wrote:

“In our view, it is permissible to conclude that one commonly understands a ‘pay toilet’ to mean an immediate charge for the singular use of a closet for the discharge of human waste.”

Green v. Camper, 477 F.Supp. 758 (W.D. Mo. 1979). Referring to the plaintiff who filed over 1,000 cases over 10 years, the Court noted: “Petitioner is a notorious litigant who has left a trail of cases from the sandy shores of the Atlantic to the snow-capped mountains of the Great Rockies, from the chilly climate of Minnesota to the warm, blistering heat of Texas.”

State of Louisiana v. Chaisson, 457 So.2d 1257 (La. App. 1984). “Frogs may be taken with the aid of a jacklight or any other visible light and by means of mechanical devices known as frog catchers. A person is also permitted to take frogs with devices that puncture the skin such as gigs and spears. No person shall carry or have in his possession any shotgun, rifle, or firearm while taking or hunting frogs during the nighttime.” The Court eventually held that the prohibition against firearm possession while frogging was unconstitutional.

Wernke v. Halas, 600 N.E.2d 117 (Ind. Ct. App. 1992). When the plaintiff unsuccessfully tried to have a toilet seat removed from his neighbor’s tree, the Court wrote: “It may be the ugliest bird house in Indiana, or it may merely be a toilet seat on a post. The distinction is irrelevant, however. . . .”

Ho-Chunk Nation Court Bulletin

What's up in Court
Vol. 3 No. 4
April 1, 1998

Attack on Sovereignty.

From the Editor

Well, he's at it again. Sen. Slade Gorton (R-WA) has proposed legislation in S. 1691 that waives tribal sovereign immunity to permit suits on contract and tort to be brought in federal and state court. The bill, entitled the Indian Equal Justice Act, is intended to provide for "neutral" forums where his fears of the unfairness of an all-Indian system may be avoided.

The HCN Trial Court has responded in kind. A report detailing the number, types, and results of cases filed in 1996 and 1997 has been submitted to the Congressional Record in opposition to S. 1691. The records reflect fairness and accessibility in the Nation's Trial Court regardless of whether a party is an Indian or non-Indian. The Court also hopes to offer testimony at upcoming hearings before the Senate Committee on Indian Affairs.

This topic touches on several fundamental contradictions in Indian Country. First and foremost, the implication behind the proposed bill is that tribal courts are

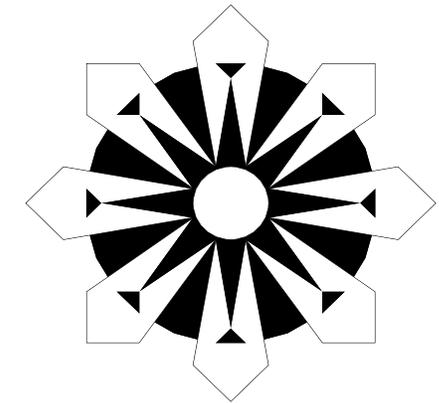
incompetent at best or corrupt at worst. In fact, tribal courts are horribly underfunded due in part to the failure of Congress to allocate money to the Indian Justice Act passed years ago. Furthermore, support for S. 1691 relies upon sad anecdotes from out of the ordinary cases.

Second, the approach of S. 1691 treats native governments more like corporations or organizations that one should be able to sue with minimal hardship. In doing this, the fundamental premise of Indian law--sovereignty--is undermined. It is a grave mistake to view tribes as voluntary social organizations which just happen to retain distinctive racial and/or cultural characteristics.

Finally, the fear and ignorance behind S. 1691 reflects the discontent of those who are *not* comfortable with the results of Self-Determination. The policy seemed fine on paper and for twenty years provided the backdrop for tribes to get where they are today. But Indians became too successful at gaming and began to assert judicial and regulatory jurisdiction over non-Indians.

Of course, everyone in Indian Country understands that tribes still are not in any real position to challenge established power structures. But here come a few in Congress to "nip it in the bud" before non-Indians face more competition. So much for free enterprise.

Jurisdiction: The power of the court to decide a matter in controversy which presupposes the



The profoundly tragic aspect of this proposed legislation is that it threatens to take away the significant advances tribes have achieved in the last two decades. The majority of these attacks arise on the state and local level because that is where direct competition occurs. It is high time that the federal government intervene to protect its responsibilities to the various tribes, primarily by reining in the misguided, suspicious intentions of their own colleagues. More importantly, to avoid buying into further paternalism, the tribes working together and individually must remain vigilant and persistent in this march toward Self-Determination.

Legal Definitions

existence of a duly constituted court with control over the subject matter and the parties before it.

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Subject Matter Jurisdiction:

The authority of a court to hear and determine cases within a general class or category. The parties may not voluntarily consent to the jurisdiction of a court that lacks subject matter jurisdiction. One cannot waive what ultimately proves to be a fundamental defect that works as a bar to further proceedings.

Personal Jurisdiction: The authority of a court over a person as a party to a case. Usually a geographic component, courts exercise jurisdiction over citizens, residents, and those within the borders of its reach (i.e. county,

state, reservation). In rem Jurisdiction: The authority of a court over the property of a person as a party to a case which permits the court to seize and hold the property until a legal disposition may be achieved.

Recent Decisions

Trial Court Cases:

Debra Chase-Skenandore v. Ho-Chunk Nation and HCN Dept. of Justice, CV 97-77 (HCN Tr. Ct., March 2, 1998). Order partially recognizing stipulations toward a settlement agreement in an employment dispute.

In the Interest of Sherri Anne Smith by Eunice Wamego v. Ho-Chunk Nation, CV 97-102 (HCN Tr. Ct., March 2, 1998). Order dismissing petition for release of minor's trust funds without prejudice.

In the Interest of Chauncy Wilson by Mary Wilson v. HCN Enrollment Dept., CV 97-59 (HCN Tr. Ct., March 3, 1998). Order dismissing petition for release of minor's trust funds for want of prosecution.

In the Interest of Mercedes Blackcoon by Dale Hazard v. HCN Enrollment Dept., CV 96-78 (HCN Tr. Ct., March 9, 1998). Order granting special needs request for release of adult incompetent's trust funds.

State of Wisconsin, Ex Rel., Vivian Sue Wolfe v. Isaac Wayne Greyhair, CV 97-11 (HCN Tr. Ct., March 25, 1998). Order denying

request to decrease percentage amount of child support enforcement against respondent's per capita distribution.

Tammy L. Temple v. HC Casino Table Games Dept., CV 97-58 (HCN Tr. Ct., March 26, 1998). Denying plaintiff's *Motion to Compel* to alleviate alleged harassment and retaliation as a result of the plaintiff's prior successful court case.

In the Interest of Casey J. Tripp by Bonnie Hanson v. HCN Enrollment Dept., CV 98-10 (HCN Tr. Ct., March 27, 1998). Order granting special needs request for disbursement of minor's per capita trust funds.

Supreme Court Cases:

In the Matter of Fees and Costs in Civil Cases (HCN S.Ct., March 16, 1998). Approval of fee increase stated in Administrative Order 97-10 with the exception of

\$1.00 for subpoenas.

Joelene Smith v. HCN & Tammy Lang, as Head Start Director, SU 97-06 (HCN S.Ct., March 16, 1998). Reversing and remanding matter to Trial Court for resolution of issue of "comparable placement" in employment dispute.

Millie Decorah and Sandy Martin v. Joan Whitewater, SU 98-02 (HCN S.Ct., March 16, 1998). Order Granting Enlargement of Time to File Appellee's Brief.

Recent Case Filings

Trial Court Cases:

In re: Sherri Anne Smith CV 98-13, filed January 28, 1998. Petition for Release of Per Capita Distribution.

In the Interest of Berdine Littlejohn, CV 98-14, filed March 5, 1998. Petition for Release of Per Capita Distribution.

Lance Meronek v. Rainbow Casino & Ho-Chunk Nation, CV 98-15, filed March 2, 1998. Employment dispute.

In re: William & Taryn Greendeer, CV 98-16, filed March 11, 1998. Formalization of Marriage Ceremony.

Thomas Ireland v. Dr. Rebecca Ramirez, CV 98-17, filed March 12, 1998. Employment dispute.

In re: Kathy Brandenburg by Susan Harter, CV 98-18, filed March 16, 1998. Petition for Release of Per Capita Distribution.

HCN Home Ownership Program v. Faith M. Morris, CV 98-19, filed March 27, 1998. Suit on debt owed against the Nation pursued against per capita distribution.

Johnny Whitecloud v. Patricia Whitecloud, CS 98-13, filed March 5, 1998.

State of Wisconsin v. Bruce Blackdeer, CS 98-14, filed March 9, 1998.

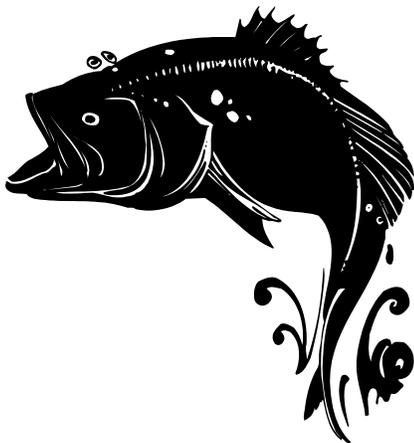
State of Wisconsin & Carole St. Cyr v. Joyce M. St. Cyr, CS 98-15, filed March 24, 1998.

Jodi A. (Cornelius) Rodriguez v. Steven F. Sallaway, CS 98-16, filed March 26, 1998.

Hope Smith v. Kenneth Smith, CS 98-17, filed March 26, 1998.

Federal Courts

Krepel v. Prairie Island Community, et al., Nos. 95-2812 & 96-3573 (8th Cir., Oct. 29, 1997).



The Eighth Circuit denied a rehearing en banc and a petition for rehearing following its earlier holding that the appellant timely filed in state court and should not be required later to exhaust tribal court remedies because the tribal court was established after he filed in

state court.

Menominee Indian Tribe of Wisconsin v. United States, Congr. Ref. No. 93-649X (Fed. Cl., Oct. 30, 1997). Ruling on claims arising out of the relationship between the Menominee and the U.S. and referred to the court by Congress, the U.S. Court of Federal Claims held that any relief given to the plaintiff on the basic or forest mismanagement claims would constitute a gratuity, but with regard to the mill mismanagement claim, ~~the plaintiff's motion for summary judgment~~ was denied without prejudice so that it may be reasserted in conjunction with other cross motions on all remaining counts.

State Courts

Arizona v. Zaman, No. CV-96-0328-PR (Ariz. Sup. Ct., Oct. 9, 1997). The Arizona Supreme Court held that Arizona courts have jurisdiction over an action brought by the state on behalf of a Navajo tribal member against a non-Indian father to determine paternity, custody, and child support involving a child eligible for enrollment.

Redbird v. Oklahoma Tax Comm'n, No. 87,085 (Okla. Sup. Ct., Oct. 14, 1997). The Oklahoma Supreme Court held that the taxpayers' claim for refund of state income taxes paid based upon their status as tribal members residing on Indian trust land for income earned on such land is barred by Oklahoma's statute of limitations.

In Re: J.T.M., No. 02A01-9608-CH-00206 (Tenn. Ct. App., Nov. 19, 1997). The Tennessee Court of Appeals applied the "existing Indian family" doctrine to find that the provisions

of the Indian Child Welfare Act are

inapplicable to an adoption in which the Tohono O'odham Nation sought to intervene.

Conferences

❖ The 23rd Annual Federal Bar Association Indian Law Conference will be held on April 2-3, 1998 at the Marriott in Albuquerque, New Mexico. This gathering is one of the premier Indian law conferences in the country which will present a wide variety of topics. For more information, contact the Federal Bar Association at (202) 638-0252 or the Trial Court at (715) 284-2722.

❖ The 16th Annual "Protecting Our Children" National American Indian Conference on Child Abuse and Neglect sponsored by the Nat'l Indian Child Welfare Assn. will be held in Portland, Oregon on April 20-22, 1998. For more information, contact the Trial Court, (715) 284-2722.

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)

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
month, day, year).

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 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., Aug. 14, 1995).

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

HCN Trial Court Case Law

Case Name, Case No. (HCN Tr. Ct.,



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

Important Notice

Effective March 16, 1998 by Order of the HCN Supreme Court.

Important Court News

Any tribal members interested in forming a new class of Lay Advocates should contact Ray Torgerson at the Trial Court, (715) 284-2722.

Legal Humor

Moody v. Miller, 862 F.2d 1178 (5th Cir. 1989). Prisoner was complaining that prison officials were squeezing the toothpaste out of his tube.

In re Kirk, 101 NJL 450 (Sup. Ct. 1925). In a defamation case, "bootlegger" was deemed to be actionable, while "souphead" was not.

Reilly v. 180 Club, Inc., 82 S.2d 210 (1951). "While the safe use of a [bar] stool probably depends particularly upon the capacity of the occupant to respond with alacrity to the deviations of equilibrium, yet our attentions has not been invited to any authority holding that stools in a barroom an *per se* dangerous instrumentalities."

In re United States Brass Corp., No. 96-2952 (7th Cir. 1997).

In a case where several consolidated bankruptcies of affiliated corporations had been sued for the "Qest System," Judge Richard Posner noted it was "a plumbing system that turned out to be defective (which goes to prove

that if you can't spell, you're liable to make other mistakes as well)."

Regina v. Ojibway, 8 C.L.Q. 137 (Canada 137). A man was charged with violating the Small Birds Act when he shot a horse with a broken leg. While the law defined a bird as a "two-legged animal with feathers," the horse had a down pillow for a saddle. When the accused man's lawyer pointed out that the animal was found with iron horseshoes on, the Court replied, "I must inform counsel, however, that how an animal dresses is of no concern to this court." The judge found the horse was a bird.

Ho-Chunk Nation Court Bulletin

What's up in Court
Vol. 3 No. 5
May 1, 1998

What's Jurisdiction Got to Do With It?

From the Editor

On a daily basis, the Trial Court receives phone calls or visits from tribal members wanting to know if they can bring a given action to the Trial Court. The answer is usually: 'Yes, the Trial Court has the authority over such an action, *but* it does not exercise jurisdiction at the moment.' This article attempts to explain what might seem like avoiding the question.

The proper exercise of jurisdiction for any court rests on the presence of two elements: personal jurisdiction and subject matter jurisdiction. Article I, Section 2 of the HCN CONSTITUTION asserts personal jurisdiction over "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."

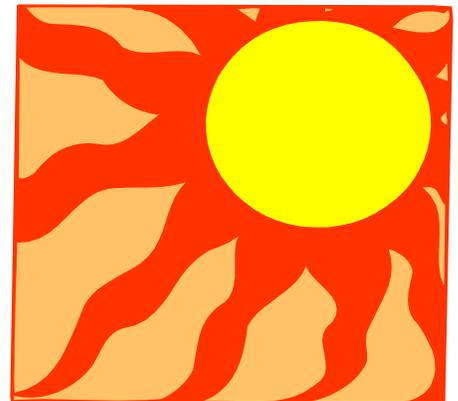
Although all tribes generally enjoy personal jurisdiction

over their own members, the real question involves authority over non-Indians. The famous (or infamous) U.S. Supreme Court decision of *Montana v. United States*, 450 U.S. 544, 565-66 (1981) set forth two circumstances where tribes could assert personal jurisdiction over non-Indians: 1) when non-Indians "enter consensual relationships with the tribe and its members through commercial dealings, contracts, leases, or other arrangements" and 2) when "the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe."

The second, less developed area of jurisdiction asks whether a court can exert authority over the given subject matter of a case. This authority typically flows from statutes and laws established by a legislative body. Article VII, Section 5 of the CONSTITUTION states 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.*" The necessary predicate, therefore, is the presence of a valid tribal law to apply in the first place.

There is an important distinction, however, between the inherent authority over a given

subject matter and the jurisdiction to do anything about it. At present, there are several pieces of legislation still in draft form which would authorize the Trial Court to move forward into new areas,



including: probate (the administration of wills and estates), domestic relations (divorce, custody and property division), and juvenile justice. Without valid tribal law in any of these areas, as a general rule the Trial Court cannot hear such a case.

So, in the long run, it is in the Nation's best interests to continue passing laws, particularly in those areas which remain less developed. This editorial has stated before that the power of Self-Determination does not rest on paper; rather, it lives in practice. Unlike the state and federal governments, in the limited context of tribal sovereignty, I think we can agree that more government is actually better.

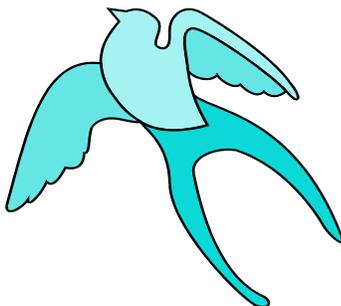
Motion in limine: A pretrial motion where a party requests the

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Legal Definitions

Court to prohibit the opposing party from speaking about, evoking witness testimony, or offering evidence on certain matters deemed so prejudicial that an explanatory instruction would not cure the effect on a jury. Such motions do not bar the material altogether as the issue may be raised again at trial where the opposing party may demonstrate the information is not prejudicial or the interest in supplying the information to the jury outweighs any prejudice which may result.

Motion to Strike: On a motion from any party, the Court may order the removal of any redundant, immaterial, inflammatory, or scandalous material from pleadings or documents filed in a case. The removal is usually accomplished through the process of redaction where the material is either excerpted or sealed. See, FRCP



12(f).

Motion to Suppress: Typically limited to criminal cases, a motion to suppress is designed to prevent the admission of illegally obtained evidence in violation of the Fourth Amendment (search & seizure), the Fifth Amendment (privilege against self-incrimination), or the Sixth Amendment (right to assistance of counsel and confrontation).

Recent Decisions

Trial Court Cases:

HCN Legislature v. Chloris A. Lowe, Jr., President of the HCN, CV 95-28 (HCN Tr. Ct., March 23, 1998). Order dismissing case for want of prosecution.

Heather Lemieux v. Murton Greengrass, CS 98-05 (HCN Tr. Ct., March 31, 1997). Enforcement of foreign child support order against per capita distribution.

Charles M., Percy & William Miner, III v. Geraldine Swan, CV 96-28 (HCN Tr. Ct., April 2, 1998). Order sealing the hearing transcript from an intrafamily dispute in order to protect the testimony of Ho-Chunk Elders, but leaving all other case records open to the public.

Rita Cleveland v. John Steindorf & HCN, CV 96-20 (HCN Tr. Ct., April 7, 1998). Amended Order identifying correct parties to action.

Lucy K. Snake v. Roger Dean Snake, CV 97-01 (HCN Tr. Ct., April 7, 1998). Modified Order enforcing foreign child support order against per capita distribution.

Neil T. McAndrew v. Lisa Miner McAndrew, CV 97-14 (HCN Tr. Ct., April 7, 1998). Order enforcing foreign child support order against per capita distribution and denying *Motion to Stay Enforcement*.

Karen Goulee v. Jones Decorah, CV 97-100 (HCN Tr. Ct., April 7, 1998). Modified Order enforcing foreign child support order against per capita distribution.

Jocelyn Lopez, CV 97-105 (HCN Tr. Ct., April 7, 1998). Modified Order enforcing foreign



child support order against per capita distribution.

State of Wisconsin--Jackson County on behalf of Karla Greengrass v. Roger Dean Snake, CS 98-03 (HCN Tr. Ct., April 7, 1998). Order enforcing foreign child support order against per capita distribution.

Candice D. Solesby v. Kevin B. Funmaker, CS 98-07 (HCN Tr. Ct., April 7, 1998). Order enforcing foreign child support order against per capita distribution.

Denise J. Kearnes v. Victor E. Kearnes, CS 98-11 (HCN Tr. Ct., April 7, 1998). Order enforcing foreign child support order against per capita distribution.

State of Wisconsin v. Bruce Blackdeer, CS 98-14 (HCN Tr. Ct., April 7, 1998). Order enforcing foreign child support order against per capita distribution.

State of Wisconsin v. Joseph White, CV 97-16 (HCN Tr. Ct., April 9, 1998). Modified Order enforcing foreign child support order against per capita distribution.

Jill Pettibone v. Brent Funmaker, CV 97-138 (HCN Tr. Ct., April 9, 1998). Order enforcing foreign child support order in part against per capita distribution.

Patricia A. Houghton v. Gabriel D. Funmaker, CS 98-06 (HCN Tr. Ct., April 9, 1998). Order

enforcing foreign child support
Jacqueline R. Nichols v. Randy Snowball, CV 97-167 (HCN Tr. Ct., April 15, 1998). Order granting dismissal of *Complaint* on employment dispute based on: 1) the absence of an applicable waiver of sovereign immunity at the time of the events in question and 2) the untimeliness of the claim pursuant to the doctrine of laches. The Court rejected, however, the affirmative defense of failure to name an indispensable party, holding that a liberal construction of the Civil Rules was justified especially in light of the high number of pro se litigants appearing in the Trial Court.

Dawn Littlejohn v. Michelle DeCora, CV 97-154 (HCN Tr. Ct., April 15, 1998). Order dismissing an employment dispute *Complaint* without prejudice.

Kerry Thompson v. Paul Sallaway, CS 98-08 (HCN Tr. Ct., April 15, 1998). Order enforcing foreign child support order against per capita distribution.

Bonita Roy v. Paul Sallaway, CV 96-51 (HCN Tr. Ct., April 15, 1998). Order suspending enforcement of foreign child support order against per capita distribution.

State of Wisconsin--Jackson County on behalf of Janet Funmaker v. Max Funmaker, Sr., CS 98-09 (HCN Tr. Ct., April 15, 1998). Order enforcing foreign child support order against per capita distribution.

Joyce Funmaker v. Max Funmaker, Sr., CV 97-122 (HCN Tr. Ct., April 15, 1998). Modified Order enforcing of foreign child support order against per capita distribution and consolidating CS 98-10 with CV 97-122.

State of Wisconsin ex. rel.

order against per capita distribution.
State of Iowa County [sic] behalf of Ruth Decorah v. Preston L. Thompson, CS 98-04 (HCN Tr. Ct., April 15, 1998). Order enforcing foreign child support order against per capita distribution.

State of Wisconsin--Jackson County on behalf of Roberta J. Yellowcloud v. Donald Yellowcloud, Jr., CS 98-01 (HCN Tr. Ct., April 15, 1998). Order enforcing foreign child support order against per capita distribution.

Jodi A. (Cornelius)



Rodriguez v. Steven F. Sallaway, CS 98-16 (HCN Tr. Ct., April 15, 1998). Order enforcing foreign child support order against per capita distribution.

Judy Diamond v. Roger L. Allen, CV 97-90 (HCN Tr. Ct., April 17, 1998). Order renewing enforcement of foreign child support order against per capita distribution.

**HONOR THE VETERANS
MEMORIAL DAY
MAY 25, 1998**

HCN Home Ownership Program v. Scott Hindes, CV 97-159 (HCN Tr. Ct., April 21, 1998). Order dismissing suit

without prejudice in claim for recovery of debt owed to the Nation.

Robert J. Mann v. Ho-Chunk Nation Attorney General, Gary Brownell (Acting), CV 98-01 (HCN Tr. Ct., April 21, 1998). Order recognizing voluntary dismissal of suit due to stipulation.

William L. Goodbear v. Andrea G. Storm, CV 98-12 (HCN Tr. Ct., April 21, 1998). Order dismissing *Complaint* so long as agreement to pay private debt out of May 1, 1998 per capita distribution occurs.

In the Interest of Kathy Brandenburg by Susan Harter, LaCrosse Co. Human Services Dept., CV 98-18 (HCN Tr. Ct., April 23, 1998). Order declaring adult tribal member incompetent and appointing protective payee for purposes of per capita distribution.

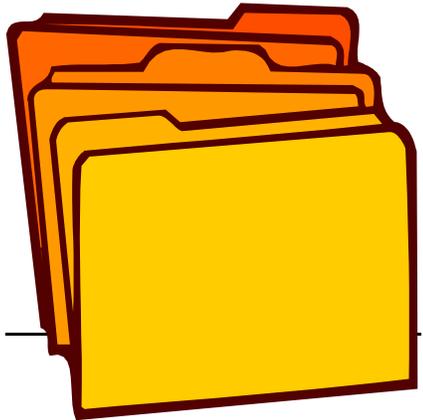
Jean Lamb v. Randy Snowball, CV 97-166 (HCN Tr. Ct., April 24, 1998). Order granting dismissal of *Complaint* on employment dispute based on: 1) the absence of an applicable waiver of sovereign immunity at the time of the events in question and 2) the untimeliness of the claim pursuant to the doctrine of laches.

In re: Berdine Littlejohn v. HCN Enrollment Dept., CV 98-14 (HCN Tr. Ct., April 24, 1998). Order granting release of adult incompetent trust funds for special needs.

HCN Home Ownership Program v. Sandra L. Martin, CV 98-28 (HCN Tr. Ct., April 24, 1998). Order recognizing voluntary dismissal of suit alleging debt owed to the Nation due to stipulation.

HCN Home Ownership Program v. Jerome M. Cloud, CV

98-29 (HCN Tr. Ct., April 28, 1998). Order impounding per capita distribution pending resolution of suit alleging debt owed



HCN Home Ownership Program v. Christopher C. Rivera, CV 98-23 (HCN Tr. Ct., April 28, 1998). Order impounding per capita distribution pending resolution of suit alleging debt owed to the Nation.

HCN Home Ownership Program v. Faith Morris, CV 98-19 (HCN Tr. Ct., April 30, 1998). Order impounding per capita distribution pending resolution of suit alleging debt owed to the Nation.

HCN Home Ownership Program v. Zachary D. Thundercloud, CV 98-25 (HCN Tr. Ct., April 30, 1998). Order denying the impoundment of per capita distribution pending resolution of suit alleging debt owed to the Nation.

HCN Home Ownership Program v. Robert L. Funmaker, Jr., CV 98-27 (HCN Tr. Ct., April 30, 1998). Order recognizing voluntary dismissal of suit alleging debt owed to the Nation due to stipulation.

Supreme Court Cases:

to the Nation.

HCN Home Ownership Program v. Janet Muir, CV 98-24 (HCN Tr. Ct., April 28, 1998). Order impounding per capita distribution pending resolution of suit alleging debt owed to the Nation.

Millie Decorah and Sandy Martin v. Joan Whitewater, SU 98-02 (HCN S.Ct., April 6, 1998). Order recognizing discretionary recusal of Associate Justice Cleveland.

Recent Case Filings

Trial Court Cases:

HCN Home Ownership Program (HOP) v. Scott Hindes, CV 98-20, filed March 31, 1998. Suit on debt owed to the Nation pursued against per capita distribution.

Wanda L. Decorah v. Carl Decorah, CS 98-19, filed March 31, 1998.

Julia Goodbear v. Ted L. Brown, CS 98-20, filed April 2, 1998.

Christine Mullen v. Michael Mullen II, CS 98-21, filed April 2, 1998.

Susan J. Jensen v. Chloris A. Lowe, Jr., CS 98-22, filed April 6, 1998.

Mercedes Winters v. HCN Enrollment, CV 98-21, filed April 6, 1998. Enrollment dispute.

In the Interest of Clint and Stephanie Lungstrom by Lorrie Lungstrom, CV 98-22, filed April 14, 1998. Petition for Release of Minors' Per Capita Trust Funds.

Peggy Sue Deere v. David W. Deere, CS 98-23, filed April 14, 1998.

State of Wisconsin on behalf of Suzette Greengrass v.

David A. WhiteEagle, CS 98-26, filed April 14, 1998.

State of Wisconsin on behalf of Nancy Smith v. David A. WhiteEagle, CS 98-27, filed April 14, 1998.

State of Wisconsin on behalf of Nellie McKee v. Bryan Powless, CS 98-28, filed April 14, 1998.

State of Wisconsin v. Alfreda Sky, CS 98-29, filed April 14, 1998.

HCN Home Ownership Program (HOP) v. Christopher C. Rivera, CV 98-23, filed April 15, 1998. Suit on debt owed to the Nation pursued against per capita distribution.

HCN Home Ownership Program (HOP) v. Janet Muir, CV 98-24, filed April 15, 1998. Suit on debt owed to the Nation pursued against per capita distribution.

HCN Home Ownership Program (HOP) v. Zachary Thundercloud, CV 98-25, filed April 15, 1998. Suit on debt owed to the Nation pursued against per capita distribution.

HCN Home Ownership Program (HOP) v. Roberta Greendeer, CV 98-26, filed April 15, 1998. Suit on debt owed to the Nation pursued against per capita distribution.

HCN Home Ownership Program (HOP) v. Robert L. Funmaker, Jr., CV 98-27, filed April 15, 1998. Suit on debt owed to the Nation pursued against per capita distribution.

HCN Home Ownership Program (HOP) v. Sandra L. Martin, CV 98-28, filed April 15, 1998. Suit on debt owed to the Nation pursued against per capita distribution.

HCN Home Ownership Program (HOP) v. Jerome M. Wallace Johnson v. HCN Gaming Comm'n, CV 98-31, filed April 27, 1998. Employment dispute.

Pamela Rusch v. Tamara Garvin, CS 98-30, filed April 28, 1998.

Barb Coyhis v. Mary Webster & Rainbow Casino, CV 98-32, filed April 29, 1998.

Barry Blackhawk v. Loa Porter, Asst. Dir. of Social Services & Georgia Lonetree, Exec. Dir. of Social Services, CV 98-33, filed April 30, 1998.

HCN Supreme Court

The Ho-Chunk Nation Supreme Court will convene on Saturday, May 9, 1998 at 4:30 p.m. at the Tribal Court building. The Supreme Court will address Bar admissions, Court Procedures, and the Rules of Judicial Ethics. Case deliberation on a pending matter will continue.

For more information, please contact the Supreme Court Clerk of Court, Willa RedCloud, at (715) 284-2722.

U.S. Supreme Court

South Dakota v. Yankton Sioux Tribe, et al., No. 96-1581, 25 Indian L. Rep. 1005 (U.S. Sup. Ct., Jan. 26, 1998). The U.S. Supreme Court held that an 1894 act of Congress ratifying an 1892 agreement between the Yankton

Cloud, CV 98-29, filed April 15, 1998. Suit on debt owed to the Nation pursued against per capita distribution.

Karen M. Red Hawk v. HCN & Ho-Chunk Housing Authority, CV 98-30, filed April 15, 1998. Employment dispute.

Sioux and the United States effectively diminished the reservation so that unallotted tracts within the original exterior boundaries of the reservation no longer constitute Indian Country. Therefore the State of South Dakota enjoys primary jurisdiction over a solid waste disposal facility located on unallotted, non-Indian fee land situated within the original boundaries of the reservation established in 1858 in a Treaty.



Federal Courts

United States v. Houser, No. 96-30083, 25 Indian L. Rep. (9th Cir., Dec. 9, 1997). The Ninth Circuit affirmed the jury conviction of a second degree murder of an Indian woman by a non-Indian defendant, rejecting the defendant's contention that Congress lacks the constitutional authority to proscribe crimes by non-Indians under the Indian Commerce Clause.

Mescalero Apache Tribe v. New Mexico, et al., No. 96-2156, 25 Indian L. Rep. 2020 (10th Cir., Dec.

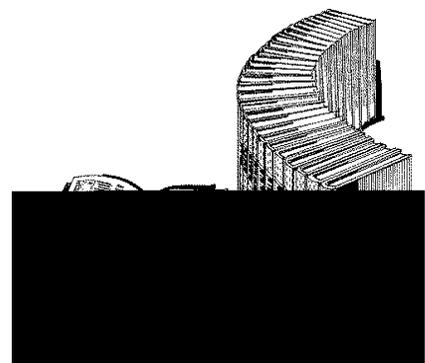
Anthony R. Friday v. Andrea L. Friday, CS 98-24, filed April 21, 1998.

Kristine H. Blackcoon v. Michael K. Blackcoon, CS 98-25, filed April 21, 1998.

10, 1997). The Tenth Circuit affirmed the district court's order holding the tribal-state compact entered into under the Indian Gaming Regulatory Act invalid.

State Courts

In the Interest of A.E., J.E., S.E., and X.E., Minor Children, Northern Arapaho Tribe, and R.E., Mother, No. 329/97-829, 25 Indian L. Rep. 5027 (Iowa Sup. Ct., Dec. 24, 1997). The Iowa Supreme Court affirmed the juvenile court's order denying a motion to transfer temporary placement proceedings involving four Indian children to the Shoshone and Arapaho Tribal Children's Court pursuant to the



Indian Child Welfare Act (ICWA) based on the biological father's refusal to consent to the transfer and further found that the court had good cause to depart from ICWA's placement preferences.

Minnesota v. Stone, et al., No. C9-96-1291, 25 Indian L. Rep. 5034 (Minn. Sup. Ct., Dec. 11, 1997). The Minnesota Supreme

Court affirmed in consolidated actions the court of appeals' holding that the State of Minnesota lacks jurisdiction pursuant to PL-280 over traffic and driving-related offenses committed by White Earth Band of Chippewa Indians within the White Earth Reservation.

ILR

Cases

The following cases were published in the Indian Law Reporter, Volume 25:

Cloud, et al. v. Smith, No. SU 97-04, 25 Indian L. Rep. 6030 (Ho-Chunk Nation Sup. Ct., Jan. 8, 1998).

(sending & receiving)

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Equipment Rental	\$5.00/per
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Registration of Foreign Orders	\$15
Appellate filing fees	\$35
Admission to Practice	\$50

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Constitution, Article Number, Section, and Subsection.

HCN CONST., ART. XI, Sec. (or §) 7.

HCN CONST., ART. II, Sec. (or §)

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The Indian Law Section of the Wisconsin State Bar Association will host presentations regarding ethics affecting tribal attorneys and practitioners at the State Bar's Annual Convention in Lake Geneva on Thursday, June 25, 1998 from 1:30 p.m. to 5:00 p.m. For more



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., Aug. 14, 1995).

information, please contact the Trial Court at (715) 284-2722.

HCN Court Fees

Filing Fee	\$35
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(or cost if out of state)	
Service of Summons by Mail	\$4
(or cost, whichever is greater)	
Service by Courts	\$0.30/per
mile	
Copying	\$0.10/per
page	
Faxing	\$0.25/per page
<i>Smith v. Casino</i> , SU94-11 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

Important Court News

The Nation's Court System will be closed for Memorial Day on Monday, May 25, 1998. All

deadlines set on this date will automatically fall on the next business day, Tuesday, May 26, 1998 pursuant to HCN R. of Civ. P. 17.

— Any tribal members interested in forming a new class of Lay Advocates should contact Ray Torgerson at the Trial Court, (715) 284-2722.

Legal Humor

Actual employment cases reported by Gerald D. Skoning in *The National Law Journal*, April 14, 1997, p. A 22:

— A temporary worker in a publishing company who walked ten feet from his workbench to offer a co-worker a piece of gum was approached by his supervisor who instructed the employee to place his leg against the table leg where the supervisor tightly wrapped a chain around both, padlocking him. The supervisor then laughed that the company should get some work out of the employee. Released after one hour, the employee worked the rest of the day, resigned and is now suing for false imprisonment, outrageous conduct, and extreme abusive work environment.

— A former Playboy magazine centerfold hired as an office manager was told not to tell other employees about her prior work experience. A retrospective edition, however, included the employee. The company became concerned about possible sexual harassment directed towards her and decided to fire her. Her lawyer points out that such a decision is not the "prompt remedial action" the EEOC had in mind, which is

investigating the incident.

— Two waitresses in a Pittsburgh restaurant are claiming sexual harassment where they allege the mutilation of a Barbie doll which was skewered and dropped into a deep fat fryer by employees was part of a satanic ritual that, according to an expert on cult activity, was intended to gain power over the women it represented. The women seek reinstatement, back pay, and \$25,000-plus in damages.

Ho-Chunk Nation Court Bulletin

What's up in Court
Vol. 3 No. 6
June 1, 1998

Dodging Bullets.

From the Editor

Still warm from the printer, the U.S. Supreme Court finally has issued the decision tribes, attorneys, and legal scholars have awaited with apprehension. On May 26, 1998, the Court decided *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, No. 96-1037, 1998 LEXIS 3406, departing from other recent decisions to find in favor of tribal sovereignty.

In 1990, the Kiowa Tribe's Industrial Development Commission agreed to purchase stock from a non-Indian corporation and signed a promissory note for \$285,000 plus interest. Although the note did not specify governing law, language explicitly reserved the tribe's sovereign rights. When the tribe subsequently defaulted on the note, the corporation sued in state court.

The state trial court denied the tribe's motion to dismiss for lack of jurisdiction due to sovereign immunity and found in favor of the corporation. The trial court relied

upon the controversial decision of *Hoover v. Oklahoma*, 909 P.2d 59 (Okla. 1995), *cert. denied*, 517 U.S. 1188 (1996), which held that tribal immunity for off-reservation commercial activity, like the decision not to exercise jurisdiction over a sister state, remains a matter of comity--not a blanket prohibition.

In this case, although the facts were in question, it appeared that the note was executed off of tribal land. When the Oklahoma Court of Appeals affirmed and the Oklahoma Supreme Court declined to review the decision, the tribe appealed to the U.S. Supreme Court, which granted certiorari.

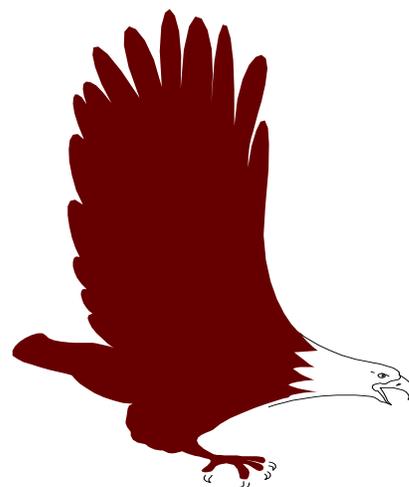
The fear, of course, was the potential restriction of tribal sovereign immunity to on-reservation activities, thus chilling the business activities of tribes who wished to expand economic programs with non-Indian entities. Such a finding also appeared to define sovereignty in terms of geography, rather than as an inherent status which runs with governments, officials, and enterprises regardless of location.

Although the Supreme Court decided 6-3 that sovereign immunity was not waived in this case, the majority opinion hardly amounts to a ringing endorsement of the doctrine.

The majority opinion expressed doubt concerning the historical rationale for tribal

The three Justices who dissented, however, implicitly argued that the *Hoover* decision

sovereign immunity, claiming that the initial decision on the subject, *Turner v. United States*, 248 U.S. 354 (1919), dealt more with the inability to recover damages because the Creek tribal government in that case had been dissolved,



rather than an inability to recover due to the immunity of a sovereign from suit.

Although a multitude of Supreme Court cases reiterated the seemingly fundamental doctrine which was soon recognized by Congress, the Court remained concerned that such a position proved anachronistic and unwise.

The Court ultimately deferred, however, to Congress which represents the primary source of authority to waive a tribe's sovereign immunity to suit other than the tribe itself.

makes good sense. Under *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, the Supreme Court

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held that Indians who go beyond reservation boundaries will be held subject to nondiscriminatory laws equally applicable to all state citizens. Absent a clear creation of immunity by Congress, the dissent reasoned the Kiowa Tribe should remain subject to state jurisdiction in that the doctrine of sovereign immunity was created by the courts in the first place. The true default is thus no immunity. Furthermore, the dissent argued that tribes enjoy a far better position in avoiding suit than states or even the federal government, noting that a number of sovereigns provide limited waivers of immunity.

This, of course, ignores the fact that waivers of federal and state sovereign immunity only have emerged in the past three decades and many tribes--including the Ho-Chunk Nation-- already have passed limited waivers.

Fortunately, the deference exhibited toward Congress came at a good time. In case you had not heard, Senator Slade Gorton pulled his dreaded S. 1691 during the mark-up of the proposed "Indian Equal Justice Act" before the Senate Committee on Indian Affairs. The proposed bill sought to waive tribal sovereign immunity in an unprecedented manner so that more claims could be brought in federal and even state court. Everyone is watching, however, for Senator Gorton to repackage his concerns in smaller proposals as budget riders.

Despite the unfortunate recent results of *South Dakota v. Yankton Sioux Tribe* and *Alaska v. Native Village of Venetie Tribal Government*, as well as the troubling suspicions about native

governments expressed in S. 1691, tribes apparently have dodged a few bullets--at least for the time being.

In the brief breathing space created perhaps it is the time for tribes to become more active in addressing the concerns raised by Senator Gorton both on the federal and tribal level.

Legal Definitions

Full Faith and Credit: The doctrine found in Art. IV, Sec. 1 of the U.S. Constitution which requires a state to recognize the laws and judicial decisions of all other states. Federal case law has consistently held that native tribes are not entitled to Full Faith and Credit in this constitutional sense.



Comity: The grant of a privilege out of deference and good will toward another sovereign where no legal obligation exists to do otherwise. Flowing from international law, comity reflects the attempt of a government to balance duty and convenience with the rights of its own citizens and persons under the protection of its laws. Practically speaking, the doctrine means that one government will recognize the laws and judicial decisions of another government out of courtesy and respect.

Recent Decisions

Trial Court Cases:

Vincent T. Cadotte v. Tris Yellowcloud, Director of Compliance, CV 97-145 (HCN Tr. Ct., April 24, 1998). The Court found that the plaintiff was wrongly terminated and awarded reinstatement and full damages pursuant to Resolution 3/26/96-A. The plaintiff was terminated for leaving the drug testing area when he never appeared to work on the day of a scheduled drug test even though Rainbow Casino and Compliance failed to provide adequate notice regarding the reason for his appearance.

Andrea G. Storm v. Kirk A. Matcha, CV 97-146 HCN Tr. Ct., May 5, 1998). Order dismissing case for want of prosecution.

State of Wisconsin, Wood Co. v. Patrick Funmaker, CV 97-55 (HCN Tr. Ct., May 6, 1998). Enforcement of foreign child support order against per capita distribution. *In the Matter of the Estate of Sheri Anne Smith*, CV 98-13 (HCN Tr. Ct., May 14, 1998).

Order granting *Default Judgment* to all right, title, and interest in the deceased minor's trust fund account to the mother.

Jill Pettibone v. Brent Funmaker, CV 97-138 (HCN Tr. Ct., May 14, 1998). Order enforcing foreign child support order in part against per capita distribution.

Julia Goodbear v. Ted L. Brown, CS 98-20 (HCN Tr. Ct., May 15, 1998). Order enforcing foreign child support order against per capita distribution.

Joelene Smith v. Tammy Lang, as Director of Headstart, & the Ho-Chunk Nation, CV 96-94



(HCN Tr. Ct., May 15, 1998). Order limiting relief originally awarded to plaintiff in accordance with Resolution 3/26/96-A and the intervening *Carol Smith* decision issued by the HCN Supreme Court.

HCN Home Ownership Program v. Scott Hindes, CV 98-20 (HCN Tr. Ct., May 18, 1998). Order granting *Default Judgment* against respondent's per capita distribution to satisfy debt owed to the Nation.

Thomas Ireland v. Dr. Rebecca Ramirez, CV 98-17 HCN Tr. Ct., May 18, 1998). Order dismissing case without prejudice.

State of Wisconsin & Carole L. St. Cyr v. Joyce M. St. Cyr, CS 98-15 (HCN Tr. Ct., May 21, 1998). Enforcement of foreign child support order against per capita distribution.

Susan J. Jensen v. Chloris A. Lowe, Jr., CS 98-22 (HCN Tr. Ct., May 21, 1998). Enforcement of foreign child support order against per capita distribution.

State of Wisconsin, Sauk Co., on behalf of Wanda L. Decorah v. Carl Decorah, CS 98-19

(HCN Tr. Ct., May 21, 1998). Dismissing without prejudice petition to enforce a foreign child support order against per capita distribution.

Kristine H. Blackcoon v. Michael K. Blackcoon, CS 98-25 (HCN Tr. Ct., May 22, 1998). Enforcement of foreign child support order against per capita distribution.

Hocak Fed. Cred. Un. v. Archie WhiteEagle, CV 97-120, (HCN Tr. Ct., May 26, 1998). Order dismissing case for want of prosecution.

State of Wisconsin, on behalf of Rosemarie Powless v. Kevin Vasquez, CS 98-33 (HCN Tr. Ct., May 28, 1998). Enforcement of foreign child support order against per capita distribution.

Lorrie Lungstrom on behalf of Clint and Stephanie Lungstrom v. HCN Enrollment Office, CV 98-22 (HCN Tr. Ct., May 28, 1998). Order granting in part distribution of children's per capita trust funds account.

Anthony Friday v. Andrea Friday, CS 98-24 (HCN Tr. Ct., May 29, 1998). Enforcement of foreign child support order against per capita distribution.

Supreme Court Cases:

Debra Knudson v. HCN Treasury Dept., SU 98-01 (HCN S.Ct., May 11, 1998). The Court ordered the recusal of Associate Justice Cleveland to avoid the appearance of impropriety upon the *Motions* of both parties where Justice Cleveland was originally called in this employment dispute as a witness.

Associate Justice Cleveland dissented, noting that previous case

law had established that a discretionary recusal pursuant to HCN R.App.P. 4 was exercised by the Justice who chooses to remove himself or herself at his or her own discretion. Moreover, although named as a witness in her supervisory capacity who lacked direct knowledge of the specific events in question which occurred over two years ago, she was not actually called as a witness in previous proceedings.

Recent Case Filings

Trial Court Cases:

Jessica Bearskin v. Roger D. Thundercloud, CS 98-31, filed May 1, 1998.

State of Wisconsin v. Frederick Greendeer, CS 98-32, filed May 4, 1998.

State of Wisconsin on behalf of Rosemarie Powless v. Kevin Vasquez, CS 98-33, filed May 4, 1998.

State of Wisconsin on behalf of Victoria Blackcoon v. John S. Cloud, CS 98-34, filed May 4, 1998.

State of Wisconsin on behalf of Steven Good v. Melinda Blackcoon, CS 98-35, filed May 4, 1998.

State of Wisconsin on behalf of Simone Greyhair-Cloud v. Gene J. Cloud, CS 98-36, filed May 5, 1998.

State of Wisconsin on behalf of Simone Greyhair-Cloud v. Gene J. Cloud, CS 98-37, filed May 5, 1998.

State of Wisconsin on behalf of Rosalie Decorah v. Gene Cloud, CS 98-38, filed May 5, 1998.

Hocak Fed. Cred. Un. v. Gene & Diana DeMarrias, CV *Hocak Fed. Cred. Un. v. Caroline Wiese*, CV 98-35, filed May 6, 1998. Action on Promissory Note to recover debt owed.

Hocak Fed. Cred. Un. v. Joanne Frick, CV 98-36, filed May 6, 1998. Action on Promissory Note to recover debt owed.

Hocak Fed. Cred. Un. v. Lana Lincoln, CV 98-37, filed May 6, 1998. Action on Promissory Note to recover debt owed.

In the Interest of C.A.D., CV 98-38, filed May 13, 1998. Petition for release of per capita trust fund monies.

In the Interest of V.S. & S.S. by Lori Luxon v. Ho-Chunk Nation, CV 98-39, filed May 13, 1998. Petition for release of per capita trust fund monies.

State of Wisconsin on



behalf of Victoria Blackcoon v. Bryan Powless, CS 98-39, filed May 20, 1998.

State of Wisconsin v. Marlene A. Hopinkah, CS 98-40, filed May 28, 1998.

98-34, filed May 6, 1998. Action on Promissory Note to recover debt convened on Sunday, May 24, 1998 from approximately 3:00 p.m. to 7:00 p.m. at the Tribal Court Building in Black River Falls, WI to consider Rules of Judicial Ethics and other matters.

For more information, please contact the Supreme Court Clerk of Court, Willa RedCloud, at (715) 284-2722.

Federal Courts

Giedosh, et al. v. Little Wound Sch. Bd., Inc., No. CIV. 96-5115, 25 Indian L. Rep. 3055 (D.S.D., Dec. 18, 1997). The district court held that the definition of "Indian tribe" under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act includes a school board established and controlled by tribal members. As both acts exempt Indian tribes from their application, the court lacked subject matter jurisdiction and dismissed.

Wright v. Riveland, No. C95-5381FDB, 25 Indian L. Rep. 3059 (W.D. Wash., Oct. 22, 1997). The district court approved and adopted the magistrate judge's recommendation and granted the plaintiff's *Motion for Summary Judgment*. The decision voided a Washington State statute that authorized the Department of Corrections to deduct 35% from all funds sent to inmates from outside sources to the extent that the statute conflicted with entitlements provided under federal law, including: Veteran's Administration benefits, Social Security benefits, civil rights action proceeds, and certain tribal funds.

owed.



State Courts

Minnesota v. Reese, No. CX-97-984, unpublished, 25 Indian L. Rep. 5055 (Minn. Ct. App., March 3, 1998). The Minnesota Court of Appeals held that the State of Minnesota, pursuant to PL 280, has jurisdiction to apply a disorderly conduct statute to the conduct of a Leech Lake Band tribal member occurring on tribal lands.

Anderson v. Engelke, et al., No. 97-417, 25 Indian L. Rep. 5055 (Mont. Sup. Ct., Feb. 10, 1998).



The Montana Supreme Court held that the Fort Peck Tribal Court retains exclusive jurisdiction to enforce its judgments against a tribal member's on-reservation assets located within the exterior boundaries of the reservation, while the state courts lack jurisdiction to enforce tribal court orders on the reservation against a tribal member

under the Uniform Foreign Money-Judgments Recognition Act or prior case law. State courts, however, could enforce a tribal court's order against a tribal member's assets located off-reservation.

Munson, et al. v. State Superintendent of Public Instruction, et al., No.

In the Interest of Zachary Mitchell v. Ho-Chunk Nation Enrollment, CV 97-60, 25 Indian L. Rep. 6069 (HCN Tr. Ct., Nov. 7, 1997).

Mudd v. Ho-Chunk Nation

97-145097-1450, unpublished, 25 Indian L. Rep. 5059 (Wis. Ct. App., Feb. 17, 1998). The Wisconsin Court of Appeals affirmed the order of the Dept. of Public Instruction that the Mosinee School District had not violated the pupil nondiscrimination provisions of Wisconsin law in its use of an Indian logo as the school logo.

in Spokane, WA. For more information, call (860) 572-6319.

The Indian Law Section of the Wisconsin State Bar Association will host presentations regarding

Election Board, CV 97-140, 25 Indian L. Rep. 6070 (HCN Tr. Ct., Oct. 27, 1997).

Conferences

The National American Indian Court Judges Association will hold the 1998 National Tribal Judicial Conference at the Ridpath Hotel in Spokane, WA on June 14-17, 1998. For more information, contact NAICJA Treasurer, Justice Joe Johnson, at (918) 689-2533.

The National Congress of American Indians will hold its mid-year meeting in Green Bay, WI on June 14-17, 1998. Call the Trial Court, (715) 284-2722, for more information.

A special session on sexual violence will be presented by the National Judicial Education Project of the State Justice Institute and NAICJA on June 17-19, 1998 following the NAICJA conference

ethics affecting tribal attorneys and practitioners at the State Bar's Annual Convention in Lake Geneva on Thursday, June 25, 1998 from 1:30 p.m. to 5:00 p.m. For more information, please contact the Trial Court at (715) 284-2722.

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1995).

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

HCN Trial Court Case Law

Case Name, Case No. (HCN Tr. Ct.,
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Jane Doe v. Bob Smith, CV99-01
(HCN Tr. Ct., Nov. 1, 1999)

“It is hard to say whether
the doctors of law or of divinity
have made the greater advances in
the lucrative business of mystery.”

--Samuel Goldwyn

“Lawyers: persons who
write a 10,000 word document and
call it a brief.”

--Franz Kafka

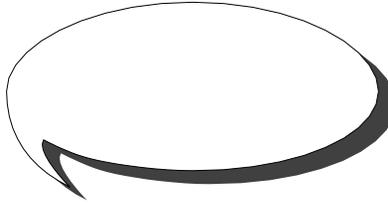
“The minute you read
something you don’t understand,
you can be almost sure it was drawn
up by a lawyer.”

--Will Rogers

“There is no better way to
exercise the imagination than the
study of the law. No artist ever
interpreted nature as freely as a
lawyer interprets the truth.”

--Jean Giradoux

“Lawyers have been known
to wrest from reluctant juries
triumphant verdicts of acquittal for
their clients, even when those
clients, as often happens, were
clearly and unmistakably innocent.”



1994).

Rules of Civil Procedure

HCN R. Civ. P. 19(B)

Rules of Appellate Procedure

HCN R. App. P. 5

Important Court News

Any tribal members
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284-2722.

Legal Humor

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

“When there are too many
policemen, there can be no liberty;
When there are too many soldiers,
there can be no peace; When there
are too many lawyers, there can be
no justice.”

--Lin Yutang

“I used to be a lawyer, but
now I am a reformed character.”

--Woodrow Wilson

Ho-Chunk Nation Court Bulletin

Vol. 3, No. 7

July 1998

U.S. Supreme Court Disappointing but Predictable

From the Editor:

On June 8, the United States Supreme Court issued its opinion in *Cass County Minnesota v. Leech Lake Band of Chippewa Indians*. This opinion, while disappointing to Indian interests, surprises few Indian law observers. However, despite the dissatisfying nature of the opinion, it provides important, and in a sense heartening, lessons for tribes and the HCN in particular.

Cass County tangled with two ideas: taxes and the tragic history that all tribes share. A tribe was promised land and the federal government took it away and sold it to westward-bound settlers. The background of the case starts in 1889 when Congress implemented the allotment policy against the tribes in Minnesota by way of the Nelson Act.

Before the Nelson Act, neither the tribe nor any member could sell reservation land without prior government approval. In legal

terms the land was not “freely alienable.” As is commonly known, the state can not tax “reservation” lands. After the Nelson Act, the land was either made immediately alienable and sold to settlers, or the land was given to individual tribal members and a 25-year clock was started. At the end of the 25 years, the tribal member could sell their individual allotment. In either case, the Nelson Act eventually destroyed the “reserved” status of the land, making it a commodity, bought and sold freely.

The story resumes in more recent times. Like the Ho-Chunk, the Leech Lake Band of Chippewa Indians, as a government, have been buying back land within the former boundaries of their reservation which had been sold as a result of allotment. *Cass County*, where the land was located, collected taxes on the land before the tribe bought back the land. After the tribe repurchased the land, *Cass County* argued they should be able to continue to collect taxes on the land, though the land was in tribal hands. The tribe took the county to court, stating that once the tribe bought the land back, the land regained its tax-exempt status.

The bad news is that the tribe lost, nine votes to zero. The Supreme Court said that once the land lost its “reserved” status, it became taxable and could not regain its tax exempt status without the say so of Congress. Not what

the result tribes wanted, but not really surprising either, especially considering the current make-up of the Court. It is not a good time to try to press Indian rights and justice to the U.S. Supreme Court.

The good news is that the Court’s decision shows that it pays a lot of attention to clearly-written laws passed by Congress and tribes have made a lot of progress in

doing good lobbying at the federal, state and local levels.

In coming to its conclusion, the Court emphasized that Congress already had provided a way for tribes to make land tax free. Under the Indian Reorganization Act, tribes can buy land and put it into trust. While it is another hoop to jump through, it does leave tribes with the ability to get land back and avoid state taxes. Avoiding state taxes leaves value in the land which tribes can collect and use in various ways. Tribes reap the value by developing the land themselves or by selling the land and imposing their own taxes. Either way, tribes make money.

Potential New Job

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Duties for GALs

Guardian ad Litema may soon be asked to help Compliance Department employees carry out a new agreement between Compliance, Child and Family Services, the Department of Justice and the Trial Court.

The new agreement is designed to make sure children in foster care live in safe, drug-free and violence-free environments. Under the agreement Compliance will administer drug tests to people granted physical custody of children under the supervision of the HCN. The HCN Court may from time to time ask GALs to accompany the testers when they visit the homes of people taking care of the children. The GALs are not expected to be present when the sample is collected, but the GALs can help explain why the testing is being done and thereby ease any apprehension the person being tested may feel.

Important Court News

The Ho-Chunk Nation Court System welcomes Michael D. Oeser as the new Staff Attorney/Law Clerk. Mr. Oeser takes over from former Staff Attorney Ray Torgerson. Mr. Torgerson left June 28 to take a position with a private law firm near Houston, Texas. Mr. Oeser attended the University of Wisconsin Law School and is an enrolled member of the Cherokee Nation of Oklahoma.

Any persons serving as guardian ad litema or court appointed counsel who wish to submit bills to the Court for work completed during FY 97/98 must

do so before July 10, 1998.

The HCN Traditional Court is looking for a male tribal member willing to serve as the court's secretary. Job duties include keeping notes of oral proceedings of the traditional court, accepting petitions to the court and some other file keeping duties. The position requires fluency in Ho-Chunk as the proceedings are conducted primarily in Ho-Chunk. To apply, call the HCN Courts at 284-2722.

Any tribal members interested in enrolling in a new class of Lay Advocates should contact Michael D. Oeser at the Trial Court, (715) 284-2722.

Legal Definitions

Dismiss with Prejudice: A judge's order to dismiss with prejudice not only ends the present action but bars the party from ever refileing the action.

Dismiss without Prejudice: A judge's order to dismiss without prejudice leaves the plaintiff the option of refileing the case after correcting any problems the judge initially found.

Standing to sue: This legal term means that a party has enough at stake in a matter before the court to warrant the court deciding the matter. Generally a party has standing if the party has a legally protectable interest at stake. One of the basic assumptions in an adversarial justice system is that truth will be distilled in the process of two sides striving against each other. Standing is important to ensure that each side is striving to

present the best case possible.

Recent Decisions

Trial Court Cases:

William L. Goodbear v. Andrea G. Storm, CV 98-12, (HCN Tr. Ct., June 1, 1998). Order dismissing complaint because the parties settled on the claim.

HCN Home Ownership Program v. Jerome M. Cloud, CV 98-29, (HCN Tr. Ct., June 4, 1998). Court ordered that part of defendant's Per Capita disbursements be paid over to the HCN Home Ownership Program to satisfy mortgage debt.

Peggy Deere v. David Deere, CS 98-23, (HCN Tr. Ct., June 8, 1998). Judgement enforcing child support payment from Per Capita.

HCN Home Ownership Program v. Zachary D. Thundercloud, CV 98-25, (HCN Tr. Ct., June 9, 1998). The Court ordered that the defendant's Per Capita payments be paid to the program to satisfy mortgage debt.

HCN Home Ownership Program v. Janet Muir, CV 98-25, (HCN Tr. Ct., June 9, 1998). The Court entered an order that recognized that the parties settled on the method of payment to the program to satisfy a mortgage debt.

In re: Renee D. Blackdeer by Marian Blackdeer v. HCN Enrollment Dept., CV 96-27, (HCN Tr. Ct., June 15, 1998). Order releasing Per Capita payment to

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mother of Renee Blackdeer for health, education and welfare of an adult incompetent.

William L. Goodbear v. Ho-Chunk Housing Authority, CV 98-11, (HCN Tr. Ct., June 15, 1998). Order denying motion to dismiss because defendant's arguments for dismissal amounted

In the Interest of Harold Jones Funmaker, by Carol Naquayouma v. Ho-Chunk Nation, CV 96-41, (HCN Tr. Ct., June 19, 1998). Order granting stay of judgement to preserve estate of decedent.

Mercedes K. Winters v. HCN Enrollment Dept., CV 98-21, (HCN Tr. Ct., June 24, 1998). The Court ordered that the action be dismissed with prejudice because, under HCN Court rules, if the defendant files an answer to the complaint before the plaintiff moves to dismiss, the action cannot be refiled later.

Hope Smith v. Kenneth D. Smith, CV 98-17, (HCN Tr. Ct., June 25, 1998). Judgement enforcing child support.

Johnny Whitecloud v. Patricia A. Whitecloud, CV 98-13, (HCN Tr. Ct., June 25, 1998). Judgement enforcing child support payment from Per Capita.

State of Wisconsin on behalf of Nellie McKee v. Bryan Powless, CS 98-28, (HCN Tr. Ct., June 29, 1998). Judgement enforcing child support.

State of Wisconsin on behalf of Virginia Blackcoon v. Bryan Powless, CS 98-39, (HCN Tr. Ct., June 29, 1998). Judgement enforcing child support.

Supreme Court Cases:

Millie Decorah and Sandy Martin, as officials and employees of the Ho-Chunk Nation, Appellants, v. Joan Whitewater,

to premature legal conclusions.

In the Interest of Harold J.

Appellee, SU 98-02. Justice Rita Cleveland informed the Court that she would be exercising her discretion to recuse herself. Based on her decision the Court ordered that she be recused and requested that the legislature to appoint a Justice Pro Tempore.

Recent Case Filings

Trial Court Cases:

Dawn Littlegeorge v. Bruce Decorah, Majestic Pines Security Director, CV 98-40, filed June 12, 1998. Employment dispute.

Bernice Barnes v. Clifford Wilson, CS 98-41, filed June 4, 1998. Action to enforce child support.

In the Interest of: Shamus Layman, by Paul Layman v. HCN Enrollment Dept., CV 98-41, filed June 22, 1998. Petition for Per Capita disbursement.

Mary Revels v. Claire Revels, Jr., CS 98-42, filed June 5, 1998. Action to enforce child support.

Donna Nicholson v. HCN Business Dept., Ho Chunk Casino, CV 98-42, filed June 22, 1998. Employment dispute.

Mary Martinson v. Mark S. Houghton, CS 98-43, filed June 5, 1998. Action to enforce child support.

Berna Bigthunder v. Conrad Funmaker, CS 98-44, filed June 5, 1998. Action to enforce

Funmaker, by Carol Naquayouma v. Ho-Chunk Nation, CV 96-41, (HCN Tr. Ct., June 17, 1998). Order Permitting disbursement of Per Capita money on behalf of Harold J. Funmaker for his health and welfare.

child support.

Molli A. Huling v. Dallas White, CS 98-45, filed June 9, 1998. Action to enforce child support.

Teresa LaBarge v. Willis Crowder, CS 98-46, filed June 9, 1998. Action to enforce child support.

Barbara A. Wilsman v. Leslie Decorah, Jr., CS 98-47, filed June 15, 1998. Action to enforce child support.

Amanda Santa Clara v. Raleigh Decorah, CS 98-48, filed June 16, 1998. Action to enforce child support.

State of Minnesota, on behalf of Anna Webb A. Nathaniel Long, CS 98-49, filed June 19, 1998. Action to enforce child support.

James Pieters v. Jean Blackhawk, CS 98-50, filed June 22, 1998. Action to enforce child support.

Sabrina Powers Magwood v. Wesley George Powers, CS 98-51, filed June 25, 1998. Action to enforce child support.

Supreme Court Cases:

Joelene Smith v. Ho-Chunk Nation and Tammy Lang, as Head Start Director, SU 98-03, filed June 1, 1998. Grounds for appeal: appellants contend that trial court decided the facts wrong and that the final judgement was written unclearly.

Joelene Smith, v. Tammy Lang & Ho-Chunk Nation, SU

98-04, filed June 15, 1998. Grounds for appeal: appellants contend that trial court decided the facts wrong.

HCN Supreme Court

The Supreme Court convened on Saturday, June 27, 1998 to consider pending cases and continue deliberation regarding the new HCN Code of Judicial Ethics.

The HCN Supreme Court plans to convene on Aug. 1, 1998 at the HCN Courthouse to consider *Joelene Smith, Appellant, v. Ho-Chunk Nation and Tammy Lang, as Head Start Director, Appellee*, SU 98-03, filed June 1, 1998 and *Joelene Smith, Appellant, v. Tammy Lang & Ho-Chunk Nation, Appellee*, SU 98-04, filed June 15, 1998. The hearing will be open to the public.

For more information, please contact the Supreme Court Clerk of Court, Willa RedCloud, at (715) 284-2722.

Federal Courts

U.S. Supreme Court Cases:

Cass County, Minnesota v. Leech Lake Band of Chippewa Indians, No. 97-174, (U.S. Sup. Ct., June 8, 1998). When Congress makes Indian reservation land freely alienable it manifests an unmistakably clear intent to render the land subject to state and local taxation. The repurchase of the land by the tribe does not make the land exempt from local taxation. While state and local governments cannot tax Indian lands absent the cession of jurisdiction or express approval from a federal statute, the exclusive means of reassuming tax-exempt status for reclaimed

Indian lands is provided through the Indian Reorganization Act.

U.S. Court of Appeals

Cases: *Grand Traverse Band of Ottawa and Chippewa Indians v. Director, Michigan Department of Natural Resources* (6th Cir. Ct. App., April 15, 1998). The treaties of 1836 and 1855 between the federal government and the Indian tribe gave the tribe the right of access to traditional fishing grounds. That right included an implied easement of access over the land surrounding the grounds. Thus, tribal members had the right of transient mooring of commercial fishing vessels at municipal marinas.

Since the treaties protected the traditional fishing privileges for both commercial and subsistence reasons, the fishing rights extended to commercial fishing activities. The Courts are bound to construe treaties, not only liberally in favor of the tribes, but also in a manner that preserves all rights necessary to effectuate the purpose of the treaty rights. The treaties bind municipalities and supersede local law.

U.S. District Court Cases:

Native American Arts, Inc. v. Chico Arts Inc. (U.S. District Ct., N.D. Ill., June 4, 1998). Native American Arts, Inc. (N.A.A.) sued Chico Arts for marketing crafts as Indian-made without approval from any Indian tribe, subject to the Indian Arts and Crafts Act of 1990

(IACA). The N.A.A. is made up of members of the Ho-Chunk Nation, as well as members from other federally recognized tribes. The Court ruled the N.A.A. had no standing to sue under the IACA, as only tribes and the Attorney were given the power to sue under the Act.

Conferences and Legal Education

Lay Advocate Continuing Legal Education, 9:30 a.m. to 2:30 p.m., Friday, July 10, 1998, Menominee Casino and Hotel, Blackhawk Room, Keshena, WI - The Wisconsin Tribal Judges Association will sponsor a continuing legal education opportunity for lay advocates. Topics will include child support, domestic abuse, and family law. The presenters will be the Hon. Mark Butterfield, Chief Judge, Ho-Chunk Nation Trial Court; the Hon. Kimberly Vele, Assoc. Judge, Stockbridge-Munsee Tribal Court; and Sheila Corbine, Ho-Chunk Nation Department of Justice Attorney.

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)

Service by Courts \$0.30/per
mile

Copying \$0.10/per

page

Faxing

\$0.25/per page

(sending & receiving)

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June 1,

Tapes of Hearings \$10 each \$50
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

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 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., Aug. 14,
1995).

Smith v. Casino, SU94-11 *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

Ho-Chunk Nation Court Bulletin

Vol. 3, No. 8

August 1998

Advocates Must Keep Clients Informed, Answer Questions

From the Editor:

When a licensed attorney or lay advocate agrees to represent someone they are basically making a promise. The promise they make to their clients is basically this: "I agree to put my legal skills and judgement at your disposal to seek your goals so that you can have informed access to the legal process; While to a large extent you decide the goals of my work, I have a responsibility to inform you of the options available and the probable outcomes of each course of action."

Obviously the client must know what is going on before the client can decide what he or she wants to do.

Attorneys and lay advocates who practice in Ho-Chunk Courts must follow rules on this subject established by the Ho-Chunk Supreme Court or be subject to discipline and possibly malpractice

claims. The rules on "Diligence" and "Communication" read: "A lawyer shall act with reasonable diligence and promptness in representing the client. . . . A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.



. . . A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

The language of these rules has been borrowed from the Wisconsin Supreme Court's Rules of Professional Responsibility until a set of rules drafted specifically for the Ho-Chunk Courts can be written. In explaining the rules as applied in state court, the Wisconsin Supreme Court has stated that, "Perhaps no professional shortcoming is more widely resented than procrastination." The Wisconsin Supreme Court goes on to explain that, "delay can cause a client needless anxiety and

undermine confidence in the lawyer's trustworthiness."

Beyond psychological stress, a lack of diligence and communication can directly harm a client's legal rights. The legal system sets lots of deadlines for when a person can do various things. If the attorney or client miss a deadline, the client may never be able to get what he/she wants.

On the other hand, the Wisconsin Supreme Court points out that lawyers can't be expected to explain every little detail of trial and the law. In some instances, like during a trial, it would take too much time. The lawyer need only explain in enough detail to allow the client to participate intelligently in legal decisions.

Because the attorney or lay advocate "holds the key" to the client's ability to exercise legal rights, because time is a factor, because the attorney is a trained professional and because the consequences can be so serious, the attorney, *and lay advocate*, have an ethical obligation to keep their clients informed on a constant basis.

For most attorneys and lay advocates, this can be accomplished with two simple rules. First, always mail a copy of every Court document or letter involved in the case to the client, including documents filed or sent by the other parties. Second, be diligent in answering any questions the client may have about the documents you mail or the case in general. The

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attorney or lay advocate should be the client's first place to turn to ask questions about the case or the court

Court News

In the future the Clerk of Courts requests that all attorneys and lay advocates two-hole punch all documents filed. This will ease the burden on the court clerks and should lead to better service.

The Ho-Chunk Nation Court System is planning to hold the Third Annual HCN Law Day 1998 on September 4, 1998 from 1p.m. to 4 p.m. Presentations will be made regarding developments in the Nation's law and Court system. The event is free and open to the public.

CLE credits are pending. Watch for flyers.

The Legal Run-Around 5K Fun Run will be held on the morning of September 5, 1998. The course will start at the Tribal Courthouse. Prizes TBA.

Any tribal members interested in enrolling in a new class of Lay Advocates should contact Michael D. Oeser at the Trial Court, (715) 284-2722.

Legal Definitions

Rules of Professional Conduct for Attorneys: Rules that govern attorney conduct in handling legal matters for a client. These rules have also been described as responsibilities attorneys owe to clients and, put another way, rights the client has with regard to the attorney. For a complete list of these rules with explanations, see Wisconsin Supreme Court Rules Chapter 20.

system in general. If the lawyer or lay advocate doesn't know the answer, they should find out, for

Garnishment: A legal action available to a person who is owed a debt where another person owes the debtor a debt. For instance, if person A owes person B an amount of money and person C owes person A \$500 for a car he bought, person B can get the \$500 paid directly to him if B is owed that much.

Recent Decisions

Trial Court Cases:



State of Wisconsin and Collette Guy v. John Cloud, CV 97-08, (HCN Tr. Ct., July 1, 1998). Order enforcing payment of child support against per capita.

State of Wisconsin and Victoria Blackcoon v. John Cloud, CS 98-34, (HCN Tr. Ct., July 1, 1998). Order enforcing payment of child support against per capita.

State of Wisconsin--Jackson Co. on behalf of Janet Funmaker, CS 98-09, (HCN Tr. Ct., July 1, 1998). Order modifying enforcement of child support obligation against per capita.

Joyce Funmaker v. Max Funmaker Sr., CV 97-122, (HCN

Tr. Ct., July 1, 1998). Order modifying enforcement child support obligation against per capita.

Mary Revels v. Claire Revels, CS 98-42, (HCN Tr. Ct., July 2, 1998). Order enforcing payment of child support against per capita.

April Bourdon v. Max Funmaker Jr., CS 98-12, (HCN Tr. Ct., July 2, 1998). Order enforcing payment of child support against per capita.

HoC_k Fed. Credit Union v. Stewart Miller, debtor, Ho-Chunk Nation/Treasury, garnishee, CV 97-119, (HCN Tr. Ct., July 13, 1998). Order garnishing earnings to pay debt owed to HoC_k Federal Credit Union.

Jessica W. Bearskin v. Roger Dean Thundercloud, CS 98-31, (HCN Tr. Ct., July 14, 1998). Order enforcing payment of child support against per capita.

State of Wisconsin-Jackson County v. Alfreda O. Sky, CS 98-29, (HCN Tr. Ct., July 14, 1998). Order enforcing payment of back child support against per capita.

Andrea Storm v. Pearl Lightstorming and Gordon Decorah, CV 97-169, (HCN Tr. Ct., July 14, 1998). Order dismissing case for failure to pursue action because neither party has taken any action for six months.

Amanda Santa Clara v. Raleigh Decorah, CS 98-48, (HCN Tr. Ct., July 14, 1998). Order enforcing payment of child support against per capita.

State of Wisconsin on behalf of Rosalie Decorah v. Gene

J. Decorah, CS 98-38, (HCN Tr. Ct., July 14, 1998). Order enforcing payment of child support
State of Wisconsin v. Nelson A. Funmaker, CV 96-75, (HCN Tr. Ct., July 14, 1998). Order amending enforcement of child support against per capita.

Mary Martinson v. Mark S. Houghton, CS 98-43, (HCN Tr. Ct., July 14, 1998). Order enforcing payment of child support against per capita.

Hope Smith v. Kenneth Smith, CS 98-17, (HCN Tr. Ct., July 14, 1998). Order amending enforcement of child support against per capita.

State of Wisconsin on behalf of Simone Greyhair v. Gene J. Cloud, CS 98-36, (HCN Tr. Ct., July 14, 1998). Order enforcing child support obligation against per capita.

State of Wisconsin on behalf of Simone Cloud v. Gene J. Cloud, CS 98-37, (HCN Tr. Ct., July 14, 1998). Order enforcing child support obligation against per capita.

State of Wisconsin v. Marlene A. Hopinkah, CS 98-40, (HCN Tr. Ct., July 14, 1998). Order enforcing child support obligation against per capita.

Bernice G. Barnes v. Clifford W. Wilson, CS 98-41, (HCN Tr. Ct., July 14, 1998). Order enforcing child support obligation against per capita.

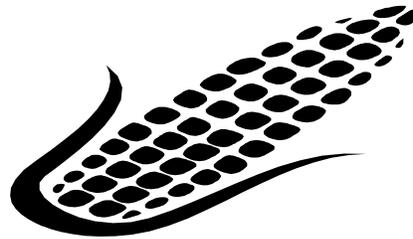
In the Interest of Zachary Mitchell by Celena Mitchell v. Ho-Chunk Nation Enrollment, CS 98-60, (HCN Tr. Ct., July 14, 1998). Order denying release of money from minor's per capita trust fund.

State of Wisconsin v. Dallas White, CV 96-70, (HCN Tr. Ct., July 15, 1998). Order reinstating

against per capita.

Berna BigThunder v. Conrad Funmaker, CS 98-44, enforcement of child support obligation against per capita.

Ho-Chunk Nation Home Ownership Program v. Faith M. Morris, CV 98-19, (HCN Tr. Ct.,



July 15, 1998). Judgment ordering that the defendant's per capita payments be paid to the Program to satisfy a mortgage debt.

In re Renee Blackdeer by Marian Blackdeer v. HCN Enrollment Dept., CV 96-27, (HCN Tr. Ct., July 15, 1998). Order granting the release of per capita funds to benefit the health and welfare of an adult incompetent.

Molli Huling v. Dallas G. White, CS 98-45, (HCN Tr. Ct., July 15, 1998). Order enforcing payment of child support against per capita.

State of Wisconsin and Steven Good v. Melinda Blackcoon, CS 98-35, (HCN Tr. Ct., July 15, 1998). Interim order enforcing payment of back child support against per capita until a hearing can be held to determine the exact amount of arrears.

Barbara Wilsman v. Leslie Decorah, CS 98-47, (HCN Tr. Ct., July 16, 1998). Order dismissing without prejudice a case asking for enforcement of child and spousal support obligations. Court dismissed case because all current child support obligations are being met from other funds, there is no back child support, and the Court

(HCN Tr. Ct., July 14, 1998). Order enforcing payment of back child support against per capita. cannot enforce spousal support against per capita.

HCN Home Ownership Program v. Christopher C. Rivera, CV 98-23, (HCN Tr. Ct., July 16, 1998). Order impounding August 1998 per capita payment until dispute over mortgage debt is resolved.

In the Interest of Shamus D. Layman by Paul Layman v. HCN Enrollment Dept., CV 98-41, (HCN Tr. Ct., July 16, 1998). Order releasing funds from minor's trust account to retain criminal defense counsel when public defender did not provide adequate representation by failing to appear on behalf of the minor.

Supreme Court Cases:

No decisions issued.

Recent Case Filings

Trial Court Cases:

Carol Johnson v. HCN Business Dept., CV 98-43, filed July 7, 1998. Appeal of employee grievance process.

Maurine K. Price v. HCN Dept. Of Insurance and Personnel, CV 98-44, filed July 10, 1998. Appeal of employee grievance process.

HoCak Federal Credit Union v. Charlene Tebo, CV 98-45, filed July 16, 1998. Action to collect debt in default.

HCN v. Tammy Lang, CV 98-46, filed July 7, 1998. Action for misappropriation of tribal funds.

Michael Raymond Hale v. Melody A. Hale, CS 98-52, filed June 29, 1998. Action to enforce

child support against pre capita.

Deena M. Basina v. William P. Smith, CS 98-53, filed July 10, 1998. Action to enforce child support against pre capita.

Theresa L. Escalante v. Daniel D. Rockman, CS 98-54, filed

HCN Supreme Court News

On August 1, 1998 at the HCN Courthouse, oral arguments will be held in three cases.

At 10 a.m.

— *Joelene Smith v. Ho-Chunk Nation and Tammy Lang, as Head Start Director*, SU 98-03, filed June 1, 1998 (Grounds for appeal: appellant contends that trial court decided the facts wrong and that the final judgement was written unclearly) Arguments at 10 a.m.

— *Joelene Smith, v. Tammy Lang & Ho-Chunk Nation*, SU 98-04, filed June 15, 1998 (Grounds for appeal: appellant contends that trial court decided the facts wrong). Arguments at 10 a.m.

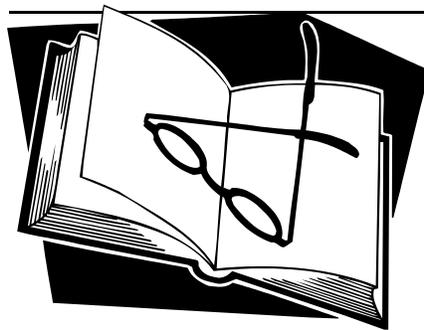
— *Millie Decorah and Sandy Martin v. Joan Whitewater*, SU 98-02, filed Feb. 25, 1998 (Grounds for appeal: Defendant appeals Trial Court's awarding money

July 14, 1998. Action to enforce child support against per capita.

Stella Medicine-Top v. Marvin Decorah, CS 98-55, filed July 15, 1998. Action to enforce child support against per capita.

damages to plaintiff in case against tribal officials or employees contrary to HCN Constitution Art. XII, Sec. 2; Defendant also appeals Trial Court's finding regarding the appropriate comparable wage for determining damages.) Arguments at 1:30 p.m.

The monthly Supreme Court Meeting will be held at 9:30 a.m. on August 2, 1998 at the Ho-Chunk Nation Courthouse. The Justices will consider inquiries from



the Trial Court and the proposed HCN Rules of Judicial Ethics.

Federal Courts

Confederated Tribes of the Colville Reservation Tribal Credit v. White, No. 96-36294, 25 Indian L. Rep. 2083 (9th Cir., Mar. 23, 1998). The Ninth Circuit held that having participated in the appellee's bankruptcy case under Chapter 11, Colville Tribes Credit, an agency of the Confederated Tribes of the

Supreme Court Cases:

None filed.

Colville Reservation, also waived the Tribe's sovereign immunity for the adjudication of its claim under the appellee's Chapter 7 liquidation case.

County of Lewis, et al. v. Allen, et al., No. 94-35979, 25 Indian L. Rep. 2085 (9th Cir., April 23, 1998). The Ninth Circuit held that the Nez Perce Tribal Court does not have jurisdiction over an action for false arrest, assault and battery, false imprisonment, and malicious prosecution against a county sheriff, a county deputy sheriff and Lewis County.

ILR Cases

The following cases were published in the Indian Law Reporter, Volume 25:

In re Rick McArthur, SU 97-07, 25 Indian L. Rep. 6133 (HCN S. Ct., Feb. 27, 1998).

Smith v. Ho-Chunk Nation, et al., SU 97-06, 25 Indian L. Rep. 6135 (HCN S. Ct., Mar. 16, 1998).

Funmaker v. Jones, et al., CV 97-72, 25 Indian L. Rep. 6099 (HCN Tr. Ct., Nov. 26, 1997).

Conferences and Legal Education

— The Ho-Chunk Nation Court System is planning to hold the Third Annual HCN Law Day 1998 on September 4, 1998 from 1p.m. to

4 p.m. Presentations will be made regarding developments in the Nation's law and Court system. The event is free and open to the public.

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Faxing

\$0.25/per page

(sending & receiving)

Tapes of Hearings \$10 each
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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

Ho-Chunk Nation Court Bulletin

Vol. 3, No. 9

September 1998

Where To Turn When No Law On Point Exists

All too often practitioners appear before the HCN Courts and forget the basic rules regarding precedent. On occasion attorneys will run through an entire oral presentation without citing a single Ho-Chunk Nation case or resolution, basing the entire argument on state statutes and case law. Worse yet, sometimes attorneys do not even give reasons why such authority should be followed. Of course, sometimes practitioners appearing before the HCN Courts face the problem that no HCN case law or statutes on point exist. HCN Dept. Of Justice Attorney Michael P. Murphy made an excellent presentation on this problem earlier this month, giving practitioners tips on where to turn. Portions of this article are drawn from his presentation.

Obviously, the first place practitioners should look for the appropriate law is the Ho-Chunk Nation's own case law and Legislative resolutions. However, the HCN Courts are relatively young as is

the HCN Legislature, so neither entity has had time to create a fully developed body of law. This means that often no applicable case law or statute will exist, leaving practitioners in the position of wondering where else to turn.

This should not be an unfamiliar problem. All legal systems have gone through a similar period of development and most practitioners will at some point run into the "no law exists" problem. There are some obvious "don'ts". Don't argue from non-binding authority without telling the court why it should establish its own precedent following such authority. Don't argue from a non-binding state or federal statute; even if the Court finds it persuasive, judicially "adopting" the statute presents separation of powers issues.

With that said there are some relatively easy to follow "dos". If the argument is based on an HCN Legislative resolution or the HCN Constitution, look for cases based on similar statutory or Constitutional language. If a state statute exists that otherwise would apply, practitioners might also look to see if some common law doctrines were used to accomplish the same goals before the statute existed. In any event, common law doctrines can always be used, as long as the advocate gives the Court reasons why the Ho-Chunk Nation should adopt a particular approach

to a common law rule. Remember, common law rules are always based on the values, traditions and customs of the society to be governed. Most practitioners lack knowledge regarding Ho-Chunk values, customs and traditions, and therefore, some additional research may be in order before precedent-setting common law theories are argued.

In his presentation, Mr.

Murphy pointed out that much of the Ho-Chunk Nation's case law regarding due process, sovereign immunity and administrative law looks to federal case law for guidance. As more HCN precedent is established, practitioners should cite to this new precedent. However, the HCN Court's frequent referral to federal law gives practitioners a clue as to the weight given federal courts on these subjects.

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Third Annual HCN Law Day and Fun Run

The HCN Court System

hosted the Third Annual HCN Law Day and 5K Fun Run on September 4 and 5. Law Day is an open house event giving tribal members a chance to learn more about the HCN Courts. The event also seeks to teach local attorneys about tribal court practice and provides them with an opportunity to earn free CLE credits without driving an hour or more away.

Presentations at Law Day included updates of important Trial Court and Supreme Court decisions made over the last year; pointers on where to turn when no HCN law on point exists (see article above); an update on resolutions past by the HCN Legislature over the last year; a discussion on professional responsibilities in the tribal court context and a discussion about the proposed HCN Code of Ethics for Tribal Judges. The Court would like to extend a special thanks to all those who attended. The Court would also like to thank all the attorneys who made presentations: Michael P. Murphy, Sheila Corbine, and Michelle Greendeer. (Judge Mark Butterfield, Staff Attorney Michael D. Oeser, and Supreme Court Chief Justice Mary Jo Brooks-Hunter also made presentations.)

The Ho-Chunk Nation Courts also sponsored the Third Annual Ho-Chunk Nation 5K/3.1Mile Fun Run/Walk on Saturday, September 5, 1998. Approximately, 40 people participated. The fastest time for the 5K/3.1-mile run was 20 minutes and 2 seconds. The top over-all male finishers were Jerome Norton, first place; Daniel BlackOwl, second place; and James Washinawatok, third place. The top over-all female finishers were Michelle Greendeer, first place;

Verna Blackdeer, second place; and Sheila Waube, third place. The top male and female over-all finishers took home sarape Pendleton Blankets. The second and third place over-all finishers took home complementary buffet tickets at Majestic Pines Casino. Winners in other individual categories took home Igloo water coolers, T-shirts, insulated cups and key chain flash lights. The Ho-Chunk Nation Court would like to thank Majestic Pines Casino and the HCN Business Department for donating the prizes for this event. The Court would like to thank the folks at the HCN Health Care Center for creating a sense of friendly competition and increasing participation. The Courts would also like to individually thank the following people for helping make this event a success Dr. Tom Walker, Dr. Ben Boardman, Marcella Cloud, Elena Blackdeer, Willa RedCloud, Tari Pettibone, Lois Peters, and Melanie Stacy. Congratulations to the winners and all the participants for running a good race !!

Court News

NEW COURT STAFF -

The HCN Court System has two new staff members. Lois Peters started August 24 as the new assistant clerk. Ms. Peters is an enrolled member of the Ho-Chunk Nation and lives in Black River Falls. Before starting at the Tribal Court office, Ms. Peters worked as a Placement Specialist for the Ho-Chunk Nation Department of Labor. She replaces Verdi Kivimaki, who left the Tribal Courts in June to work at the HCN Housing Office in Tomah. The

HCN Court System also welcomes Ray Lopez. Mr. Lopez, also an enrolled member of the Ho-Chunk Nation, began August 11 helping do maintenance work on the HCN Court Buildings. Mr. Lopez lives in Merrillan.

NEW COURT BUILDING - Invitations to submit construction bids for the new HCN Courthouse have been made. The bids will be opened on October 1, 1998. Bodrell Smith of Native American Design Collaborative is the architect of the new building. Drawings and blue prints are available for viewing at the current HCN Courthouse.

INDIAN LAW CONFERENCE - The Indian Law Section and the Young Lawyers Division of the Wisconsin State Bar are sponsoring a seminar about practicing law on Indian reservations on September 18, 1998 at the Radisson Hotel in Oneida, WI. Among the speakers will be HCN Department of Justice Attorney William Boulware and Associate Trial Court Judge Joan Greendeer-Lee.

WISCONSIN TRIBAL JUDGES ASSOCIATION - WTJA will hold its annual business meeting on October 8, 1998 in Carter, WI. For more information, call WTJA President Hon. Joan Greendeer-Lee.

LAY ADVOCATE TRAINING - Any tribal members interested in enrolling in a new class of Lay Advocates should contact Michael D. Oeser at the Trial Court, (715) 284-2722.

Legal Definitions

CLE: An acronym standing for Continuing Legal Education. Even after an attorney is graduates from law school and is admitted to practice by a state, the attorney must attend a certain number of continuing legal education presentations. These presentations are meant to ensure that the attorney stays abreast of current developments in the law and maintains a certain level of legal competence. Attorneys who do not fulfill these requirements are subject to professional discipline. The HCN Law Day was a CLE event.

Recent Decisions

Trial Court Cases:

In the interest of V.S. & S.S., Lori Luxon v. Ho-Chunk Nation Enrollment Department, CV 97-39, (HCN Tr. Ct., July 29, 1998). Order dismissing action for release of trust funds without prejudice for failure to appear, failure to provide proof that other tribal resources have been exhausted and failure to provide proof that child support from father is unavailable.

Ho-Chunk Nation Home Ownership Program v. Christopher Rivera, CV 98-23, (HCN Tr. Ct., July 30, 1998). Order dismissing case based on settlement agreement reached between parties..

Michael R. Hale v. Melody A. Hale, CS 98-52, (HCN Tr. Ct., July 31, 1998). Order enforcing payment of child support against per capita.

Dan M. Sine v. Jacob LoneTree, as President of the Ho-Chunk Nation, CV 97-143, (HCN Tr. Ct., August 3, 1998). Order granting motion to dismiss

employment grievance filed by cabinet-level appointee because appointees are unclassified employees and therefore can be dismissed at will.

In the Interest of Lucinda L. Littlesoldier v. Ho-Chunk Nation, CV 97-03, (HCN Tr. Ct., August 4, 1998). Order requiring an accounting of how money trust fund has been spent.

Hoc k Federal Credit Union v. Gene and Diane Demarrias, CV 98-34, (HCN Tr. Ct., August 4, 1998). Judgment finding defendants liable to plaintiff for default on loan.

Deena M. Basina v. William P. Smith, CS 98-53, (HCN Tr. Ct., August 7, 1998). Order enforcing payment of child support against per capita.

In the Interest of Choice A. Decorah, CV 98-38, (HCN Tr. Ct., August 7, 1998). Order scheduling fact finding hearing for August 27, 1998.

David M. Ujke v. Ho-Chunk Nation, CV 98-63, (HCN Tr. Ct., August 17, 1998). Judgement for plaintiff on action for compensation for legal services rendered. Judgement in favor of defendant in action for breach of contract and all other claims.

State of Wisconsin v. Melinda Blackcoon, CV 96-72, (HCN Tr. Ct., August 19, 1998). Order closing case for child support in light of the satisfaction of all obligations.

Sabrina Powers Magwood v. Wesley George Powers, CS 98-51, (HCN Tr. Ct., August 19, 1998). Order enforcing payment of child support against per capita.

Hoc k Federal Credit Union v. Debra Crowe and Forest Blackdeer, CV 97-147, (HCN Tr. Ct., August 26, 1998). Judgment ordering defendants to surrender vehicle for default on a loan secured by the vehicle.

Supreme Court Cases:

Joelene Smith v. Ho-Chunk Nation and Tammy Lang, as Head Start Director, SU 98-03 &98-04 (HCN S. Ct., August 11, 1998). Order rescheduling oral arguments

for 10 a.m. on September 12, 1998 at the Ho-Chunk Nation Tribal Courthouse.

Recent Case Filings

Trial Court Cases:

Teresa Heberlein v. Food & Beverage, M.P.C., CV 98-47, filed August 4, 1998. *Appeal from employee grievance process.*

Daniel YoungThunder, Sr. v. Jonette Pettibone, Ann Winneshiek, Ona Garvin, Rainbow Casino, CV 98-48, filed August 4, 1998. *Appeal from employee grievance process.*

Louella A. Kelty v. Jonette Pettibone and Ann Winneshiek, CV 98-49, filed August 4, 1998. *Appeal from employee grievance process.*

Loa Porter v. Jacob LoneTree, CV 98-50, filed August 19, 1998. Civil complaint filed against Pres. LoneTree to compel compliance with HCN law.

Donna L. Peterson v. HCN Compliance Division, CV 98-51, filed August 19, 1998.

Carol J. Garvin v. George

W. Garvin, CS 98-56, filed August 4, 1998. Action to enforce child support order against per capita.

Emily J. Boswell v. Francis P. Rave, CS 98-57, filed August 18, 1998. Action to enforce child support order against per capita.

William Murphy v. Cheryl Murphy, CS 98-58, filed August 25,

1998. Action to enforce child support order against per capita.

Supreme Court Cases:

None filed.

HCN Supreme Court News

The HCN Supreme Court will hold court on September 12 at the HCN Courthouse to hear oral arguments on SU 98-03 and SU 98-04 collectively titled *Joelene Smith v. Tammy Lang, as Headstart Director, and the Ho-Chunk Nation*. Arguments will begin at 10 a.m. After a lunch break, the Court's session will continue at 1:30 p.m. with oral arguments in *Millie Decorah & Sandy Martin v. Joan Whitewater*, SU 98-02. On September 13, the HCN Supreme Court will meet for its regular open meeting at 9:30 a.m. At the meeting the Court will discuss the HCN Rules of Judicial Ethics and inquiries from the trial court regarding possible approaches to class action suits. The Supreme Court will also deliberate *Jolene Smith v. Tammy Lang, as Headstart Director, and the Ho-Chunk Nation*, SU 98-03 and SU 98-04. Deliberations are closed.

Federal Courts

Sault Ste. Marie Tribe of Chippewa Indians, et al. v. Engler, No. 97-1648, 25 Indian L. Rep. 2105 (6th Cir., June 5, 1998). The Court held that the plaintiff tribes did not lose their exclusive right to operate electronic games of chance until the State of Michigan grants a

casino license and until then, the tribes must continue to comply with the provisions of a consent judgement under which they must make semiannual payments to the Michigan Strategic Fund.

Dillion, Jr. v. Yankton Sioux Tribe Housing Authority, No. 97-3107, 25 Indian L. Rep. 2107 (8th Cir., May 20, 1998). The Eighth Circuit held that because the Yankton Sioux Housing Authority did not explicitly waive tribal sovereign immunity, the court lacks jurisdiction to hear an employment termination action, but notes that the plaintiff may pursue any claims he may have against the Authority in tribal court under the Indian Civil Rights Act and other applicable law.

Muckleshoot Tribe, et al. v. Lummi Indian Tribe, et al., Nos. 96-35341 and 96-35342, 25 Indian L. Rep. 2109 (9th Cir., Apr. 17, 1998). Court affirmed the district court's grant of summary judgement to the Muckleshoot Tribe in its action against the Swinomish Indian Tribal Community. The Court reversed the district court's grant of summary judgement to the Muckleshoot Tribe in its action against the Lummi Tribe and remanded for further proceedings in the equitable allocation of the treaty share of the case-area salmon harvest in which the south Puget Sound tribes seek to enjoin north Puget Sound tribes from intercepting south Puget

Sound Salmon on their return migration through the ocean, the Strait of Juan de Fuca and Puget Sound.

Seldovia Native Association, Inc. v. United States, No. 97-5034, 25 Indian L. Rep. 2112 (Fed Cir., May 14 1998). **The U.S. Court of Appeals for the Federal Circuit affirms the Court of Federal Claims holding that the claims of the Seldovia Native Association, Inc.: (1) under section 12 (b) of the Alaska Native Claims Settlement Act (ANCSA) are time barred; (2) while claims under 12 (a) of ANCSA are not barred by the statute of limitations, the 12 (a) land selections do not have sufficient fixity or convey sufficient rights to support a takings claim and did not comply with the ANCSA requirements; and (3) there are no fiduciary duties on the part of the United States for which a compensable breach of trust claim can be advanced.**

Ho-Chunk Nation Court Bulletin

Vol. 3, No. 10

October 1998

Filing Deadlines: Tension Between Justice, Repose

The law imposes lots of deadlines for various things. Complaints, motions and appeals must all be filed within a certain amount of time or courts will refuse to consider them. Most people understand this concept as the "statute of limitations" but this term technically is limited to the deadlines for filing a case or appeals as a whole and not to individual motions.

Sometimes these deadlines can seem harsh, particularly when the claim or defense of the party affected would otherwise succeed. This may seem to frustrate the ultimate justice of a particular suit, but other policy considerations support these deadlines and in their own way support the goal of justice.

Courts usually cite two policies when using these deadlines to deny some legal action. One is the efficient administration of the legal system. This is sometimes referred to as judicial economy. A second is the concept of repose.

The concept of

judicial economy is the idea that the time and effort of the courts should not be wasted. This means that legitimate cases should be decided in a time-efficient manner and frivolous cases should be dismissed. Deadlines forward this concept in two ways. First, deadlines encourage parties to move cases forward to conclusion at a steady and reasonable pace. Second, deadlines ensure that only cases which are of a certain level of importance get filed and considered. Put more simply the basic idea is "If the case is really that important to you, you will file it in a timely manner." Waiting too long to file a case supports the conclusion that the case is really not that important.

The concept of repose in the legal context basically means that at some point parties should be able to put issues behind them. For instance, assume a hypothetical business breaches a contract that could potentially result in a costly legal battle. The statute of limitations on filing such a suit is five years. During those five years the potential defendant keeps a sum of money in reserve sufficient to fight any potential suit. Further, the company keeps records regarding the breach that might later assist in its defense. The

question arises: Even though the company was wrong with regard to the original breach, should not the company at some point be able to stop worrying about that mistake and move on to more important business? The answer is "yes". After five years have passed the company can put the money it reserved for its defense to more productive uses and stop spending money keeping records for its

defense. Repose allows the potential defendant to move on. This hypothetical could have just as easily involved an personal injury suit or any other kind of claim.

The policy of judicial economy and repose can be related to one another by recognizing that if the potential plaintiff does not care enough about any possible suit to file it, why should the defendant be forced to continue to worry about that suit. In a sense such a situation punishes the defendant without any trial at all.

Usually statutes of limitation are established by legislative bodies by legislative act (statute, ordinance, etc.). However, in the absence of a statute of limitation the common law doctrine of laches will also bar a suit which has lain dormant too long. The advantage of statutes is

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that they usually give bright-line rules (i.e. one year, 30 days, etc.) while the doctrine of laches leaves the determination up to the discretion of the judge.

The Ho-Chunk Nation has

set no statute of limitations for filing suits as a whole but does place several deadlines on the filing of answers, amended complaints, motions, responses to motions and appeals. Consult the *Ho-Chunk*

Nation Rules of Civil Procedure to determine if any such deadlines apply to your case and what those deadlines might be.

Construction To Begin On New Courthouse

The Ho-Chunk Nation will open construction bids for the new Courthouse on Oct. 6, 1998. Construction is set to begin Oct. 12, 1998. Plans call for Court personnel to be moving into the new building in April or May of next year. Bodrell Smith of Native American Design Collaborative is the architect of the new building. Drawings and blue prints are available for viewing at the current HCN Courthouse.

books to make room for new library acquisitions. If you are interested in taking these books, please pick them up by October 9, 1998. Otherwise these books will be recycled.

GAL TRAINING PLANNED - The HCN Courts are planning a GAL Training in the near future. All present GALs are *strongly* encouraged to attend.

LAY ADVOCATE TRAINING - Any tribal members interested in enrolling in a new class of Lay Advocates should contact Michael D. Oeser at the Trial Court, (715) 284-2722.

98-33 (HCN Tr. Ct. Sept. 15, 1998). Order for continuance so that parties can continue settlement negotiations.

State of Wisconsin and Steven Good v. Melinda Blackcoon, CS 98-35 (HCN Tr. Ct. Sept. 18, 1998). Order enforcing child support against per capita.

Teresa Heberlein v. Food & Beverage Dept., Majestic Pines Casino, CV 98-47 (HCN Tr. Ct. Sept. 18, 1998). Scheduling order

Court News HCN

UPDATING BAR LICENSE RECORDS - The HCN Supreme Court is currently in the process of updating its records with regard to attorneys and lay advocates licensed to practice in the HCN Courts. Attorneys and lay advocates who wish to keep their license current are encouraged to check with the Supreme Court Clerk Willa RedCloud to see what they need to do to be in good standing to practice.

FREE FEDERAL REPORTER PAPERBACKS - The HCN Courts are giving away paper back editions of the Federal Reporter Third. The Court has received hard back editions of these cases and needs to eliminate these

Legal Definitions

Motion in Limine: A pretrial motion requesting that the court prohibit opposing counsel from referring to or offering evidence on matters so highly prejudicial to the moving party that instructions to the jury to disregard such evidence cannot prevent the prejudicial effect on the jury.

Recent Decisions

Trial Court Cases:

Hocak Federal Credit Union v. Caroline Wiese, CV 98-35 (HCN Tr. Ct. Sept. 4, 1998). Judgment for plaintiff on debt owed by defendant.

Barry Blackhawk v. Loa Porter and Georgia LoneTree, CV

setting deadlines for pretrial motions and discovery, and setting trial date for Nov. 13, 1998.

Barbara Coyhis v. Mary Webster and Rainbow Casino, CV 98-32 (HCN Tr. Ct. Sept. 21, 1998). Order dismissing case without prejudice.

Teresa LaBarge v. Willis N. Crowder, CS 98-46 (HCN Tr. Ct. Sept. 21, 1998). Order enforcing child support against per capita.

Jodi Rodriguez v. Steven F. Sallaway, CS 98-16 (HCN Tr. Ct. Sept. 21, 1998). Order enforcing child support against per capita.

Theresa L. Escalante v. Daniel Rockman, CS 98-54 (HCN Tr. Ct. Sept. 21, 1998). Order enforcing child support against per capita.

Jacquelyn D. Wells v. Kurtis Brockhaus, Sr., CS 96-26 (HCN Tr. Ct. Sept. 21, 1998). Order enforcing child support against per capita.

Lisa Rave v. Brent St. Cyr, CV 97-97 (HCN Tr. Ct. Sept. 23, 1998). Order denying request to continue enforcement of child support claims against defendant, to modify the existing judgment and to change the caption of the case to reflect a change in the name of the plaintiff.

William Murphy v. Cheryl Murphy, CS 98-58 (HCN Tr. Ct. Sept. 23, 1998). Order enforcing child support against per capita.

State of Wisconsin v. Frederick K. Greendeer, CS 98-32 (HCN Tr. Ct. Sept. 24, 1998). Order enforcing child support against per capita.

State of Wisconsin on behalf of Mary Tribble v. Frederick K. Greendeer, CV 97-44 (HCN Tr. Ct. Sept. 24, 1998). Order enforcing child support against per capita.

Roberta Greendeer v. Frederick K. Greendeer, CV 97-02 (HCN Tr. Ct. Sept. 24, 1998). Order enforcing child support against per capita.

State of Wisconsin on behalf of Cynthia Loofboro v. William J. Greendeer, CV 97-96 (HCN Tr. Ct. Sept. 24, 1998). Order requiring accounting.

State of Wisconsin on behalf of Shelley E. Thundercloud v. William J. Greendeer, CV 97-67 (HCN Tr. Ct. Sept. 24, 1998). Order accepting accounting.

Dawn Littlegeorge v. Bruce Decorah, CV 98-40 (HCN Tr. Ct. Sept. 30, 1998). Order granting voluntary dismissal.

Andrea Storm v. Pearl Lightstorming and Gordon Decorah, CV 97-169 (HCN Tr. Ct. Sept. 30, 1998). Order dismissing

case. *Nicole L. Cook v. Harry J. Cholka*, CV 97-95 (HCN Tr. Ct. Sept. 30, 1998). Order renewing enforcement of child support.

In the Interest of Choice A. Decorah By Adam Hall, HCN Enrollment Department, CV 98-38 (HCN Tr. Ct. Sept. 30, 1998). Order appointing guardian and establishing adult incompetent trust fund.

Supreme Court Cases:

No decisions filed.

Recent Case Filings

Trial Court Cases:

Judy Fahrner v. Bernice Cloud, Darren Brinegar, Rainbow Casino/Bingo Hall, CS 98-52, filed Sept. 3, 1998. Appeal from the employee grievance process.

In the Interest of Autumn WhiteEagle by Anne Johnson v. HCN Enrollment Office, CS 98-53, filed Sept. 8, 1998. Petition for the release of per capita funds from a minor's trust account to purchase a car for transportation to and from work and school.

Nina Garvin v. Ho-Chunk Casino, CS 98-54, filed Sept. 9, 1998. Appeal of the employee grievance process.

Carol Barnes v. Timothy Bourdon, CS 98-59, filed Sept. 3, 1998. Action to enforce child support against per capita.

Lanette Walker v. Kevin Walker, CS 98-60, filed Sept. 25, 1998. Action to enforce child support against per capita.

Supreme Court Cases:

HCN Gaming Commission v. Wallace Johnson, SU 98-05, filed Sept. 4, 1998.

David Ujke v. John Holst

and Ho-Chunk Casino, SU 98-06, filed Sept. 15, 1998.

HCN Supreme Court News

The HCN Supreme Court will be meeting on Oct. 24, 1998 to discuss the draft of the HCN Rules of Judicial Ethics., among other things. No specific agenda has been set. For more information call HCN Supreme Court Clerk Willa RedCloud at the HCN Courthouse, 284-2722.

Ho-Chunk Nation Court Bulletin

Vol. 3, No. 11

November 1998

GAL Training Planned For Dec. 7 & 8

All Current And Future Guardian Ad Litem Strongly Encouraged To Attend

The HCN Court System has arranged a training session for new and experienced Gaurdian Ad Litems (GAL) on Monday and Tuesday, Dec. 7 and 8, at the Majestic Pines Hotel. The program is open to prospective GALs but *all present GALs are strongly encouraged to attend.*

The training is free to all Ho-Chunk members and Ho-Chunk Nation employees. The training will be offered on a first-come-first-served basis with availability limited to the first 30 registrants. Those wishing to attend are strongly encouraged to pre-register by calling the HCN Courthouse at 715-284-2722. However, registration can also be done at the door.

Topics covered will include the roles of parents, physicians, teachers, law enforcement officers, court personnel, social services personnel, mental health counselors and others; tribal, state, and federal

child abuse and GAL statutes, rules of court and jurisdictional conflicts; forensic interviewing; investigation and writing of reports; courtroom strategies and tactics; Motions to protect children; motions to acquire information; and GAL ethics.

The Courts have contracted with the National Indian Justice Center to conduct the training.

Court News NEW

HCN DEPT. OF JUSTICE ATTORNEYS - The Ho-Chunk Nation welcomes Gary Montana and John Swimmer to the HCN Department of Justice.

Mr. Montana, an enrolled member of the XXXXX Nation, yadda yadda.

Mr. Swimmer, an enrolled member of the Cherokee Nation of Oklahoma, graduated from the University of Wisconsin Law School this past May. He also attended the Pre-Law Summer Institute (PLSI) in the Summer of 1995. Mr. Swimmer assumed the position vacated by Attorney Michael Murphy, who left in October to assume a position with University Hospital.

FREE FEDERAL REPORTER PAPERBACKS -

The HCN Courts are giving away paper back editions of the Federal Reporter Third. The Court has received hard back editions of these cases and needs to eliminate these books to make room for new

library acquisitions. If you are interested in taking these books, please pick them up by November 15, 1998. Otherwise these books will be recycled.

Legal Definitions

Positive Law/Common

Law: Generally, there are two types of law - positive law and common law. Positive law is law that has been written down and adopted by a governing authority. Examples include tribal, state and federal statutes and administrative rules. Common law is law that has been developed and implemented by judges in the absence of a positive statute or rule. Common law evolves over the years as a result of the considered opinions of judges. Judges develop common law rules from the history, values and traditions of the society to be governed. Examples include negligence, the doctrine of estoppel and the doctrine of laches.

Doctrine of Laches: The doctrine of laches prevents plaintiffs from letting their cases sit too long before filing. The decision as to what constitutes too long is left the judge's discretion. Most governments have superceded the common law doctrine of laches by passing laws called statues of limitation which set specific deadlines for filing suit.

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Recent Decisions

Trial Court Cases:

Levi Aaron Lincoln, Sr. v. Louise Marlene Lincoln, CV 97-32 (HCN Tr. Ct. Oct. 30, 1998). Erratum Order enforcing child support against per capita.

Roxanne Johnson v. Loren James Rave, CV 97-25 (HCN Tr. Ct. Oct. 30, 1998). Order enforcing child support against per capita.

Tris Y. YellowCloud v. Jeffery A. Link, CV 97-07 (HCN Tr. Ct. Oct. 30, 1998). Erratum Order enforcing child support against per capita.

Lucy K. Snake v. Roger Dean Snake, Cv 97-01 (HCN Tr. Ct. Oct. 30, 1998). Erratum Order enforcing child support against per capita.

Cornelius Decorah v. Wade Blackdeer, Clarence Pettibone & Ho-Chunk Legislature, CV 98-55 (HCN Tr. Ct. Oct. 28, 1998). Order dismissing case because the defendants acted within their Constitutional authority.

Karen RedHawk v. Ho-Chunk Nation and Ho-Chunk Nation Housing Authority, CV 98-30 (HCN Tr. Ct. Oct. 26, 1998). Order dismissing case for failure to exhaust administrative remedies.

Wallace Johnson v. Ho-Chunk Nation Gaming Commission, CV 98-31 (HCN Tr.Ct. Oct. 23, 1998). Dismissed for failure to file before the statute of limitations ended.

In re: Roberta Goodbear, Shirley Sahr, Guardian v. HCN Enrollment Dept., CV 96-49 (HCN Tr. Ct. Oct. 23, 1998). Order accepting accounting of expenditure of trust funds.

State of Wisconsin, on behalf of Cynthia Loofboro v. William Greendeer, CV 97-96 (HCN Tr. Ct. Oct. 23, 1998). Order accepting accounting of child support arrearages.

James Pieters v. Jean BlackHawk f/n/a Jean Snow f/n/a Jean Pieters, CS 98-50 (HCN Tr. Ct. Oct. 15, 1998). Order enforcing child support against per capita.

Michelle Lewis n/k/a Michelle Gulbranson v. Roger B. Littlegeorge, CV 97-91 (HCN Tr. Ct. Oct. 15, 1998). Order modifying child support enforcement against per capita.

Carol Jo Garvin v. George Garvin, CS 98-56 (HCN Tr. Ct. Oct. 15, 1998). Order enforcing child support against per capita.

In re: Roberta Goodbear, Shirley Sahr, Guardian v. HCN Enrollment Department, CV 96-49 (HCN Tr. Ct. Oct. 13, 1998). Order granting the release of per capita from adult incompetent trust account.

In the Interest of Oliver Rockman, by Jeremy Rockman v. Ho-Chunk Nation Enrollment Dept., CV 97-117 (HCN Tr. Ct. Oct. 13, 1998). Order granting the release of per capita from adult incompetent trust account.

Stella Medicine-Top v. Marvin Decorah, CS 98-55 (HCN Tr. Ct. Oct. 13, 1998). Order enforcing child support against per capita.

Jacquelyn D. Wells v. Wesley D. Brockhaus, CV 96-25 (HCN Tr. Ct. Oct. 15, 1998). Order dismissing motion for renewal of child support enforcement against per capita as moot.

Patricia J. Brown v. Phillip J. Long Jr., CV 97-78 (HCN Tr. Ct. Oct. 6, 1998). Order modifying enforcement of child support against per capita.

In the Interest of Autumn Whiteagle by Anne E. Johnson v. Ho-Chunk Natio Enrollment Dept., CV 98-53 (HCN Tr. Ct. Oct. 6, 1998). Order dismissing petition for release of per capita trust funds for failure to exhaust other tribal, state, and federal resources.

Loa Porter v. Jacob LoneTree, President of the Ho-Chunk Nation, CV 98-50 (HCN Tr. Ct. Oct. 6, 1998). Order dismissing review of employee grievance for failure to exhaust administrative remedies.

State of Wisconsin and Stuart Taylor Sr.v. Tamara Garvin, CV 96-69 & CV 97-20 (HCN Tr. Ct. Oct. 12, 1998). Order modifying enforcement of child support against per capita.

Leigh Stephen, Et Al. v. Ho-Chunk Nation, CV 97-141 (HCN Tr. Ct. Oct. 26, 1998). Order dismissing complaint failure to comply with HCN R. Civ. P.

Vicki J. Houghton v. John Houghton, CV 96-58 (HCN Tr. Ct. Oct. 27, 1998). Order enforcing payment of child support arrears against per capita.

Supreme Court Cases:

Millie Decorah and Sandy Martin v. Hoan Whitewater, SU 98-02 (HCN S. Ct. Oct. 26, 1998). Decision reversing the Trial Court's award of monetary damages against HCN employees as unconstitutional and reversing the Trial Court's decision as to the appropriate comparable wage.

Ho-Chunk Nation Gaming Commission, SU 98-05 (HCN S. Ct. Oct. 21, 1998). Decision reversing Trial Court judgment and remanding case back to the Trial Court for dismissal pursuant to the doctrine of laches.

Recent Case Filings

Trial Court Cases:

State of Wisconsin, Columbia Co. v. Mari Hence, CS 98-61, filed Sept. 29, 1998. Action to enforce child support against per capita.

Stephanie Oilscheager v. Dion Thompson, CS 98-62, filed Oct. 9, 1998. Action to enforce child support against per capita.

Leslie Rave v. Maynard Rave Jr., CS 98-63, filed Oct. 9, 1998. Action to enforce child support against per capita.

State of Wisconsin, Vilas Co. v. Mary B. Bigjohn, CS 98-64, filed Oct. 19, 1998. Action to enforce child support against per capita.

State of Wisconsin, Jackson Co. v. Clinton F. Thunderchief, CS 98-65, filed Oct. 21, 1998. Action to enforce child support against per capita.

State of Wisconsin, Jackson Co. v. Daniel Whiteeagle, CS 98-66, filed Oct. 21, 1998. Action to enforce child support against per capita.

Tammy M. Cook v. Richard A. Cloud, CS 98-67, filed Oct. 28, 1998. Action to enforce child support against per capita.

Cornelius Decora v. Wade Blackdeer, Clarence Pettibone, and HCN Legislature, CV 98-55, filed Sept. 28, 1998.

HCN Home Ownership Program v. Katherine R. Littlejohn, CV 98-56, filed Oct. 2, 1998.

In the Interest of Hilda Dick, CV 98-57, filed Oct. 5, 1998. Action to release per capita trust funds to heirs of deceased member.

David W. Deere v. Peggy S. Deere, CV 98-58, filed Oct. 9, 1998.

HCN Education Dept. v. Janella H. Hopinkah, CV 98-59, filed Oct. 9, 1998.

Supreme Court Cases:

Gary LoneTree Sr. v. John Holst, as Slot Director and Ho-Chunk Casino Slot Department, SU 98-07, filed Oct. 27, 1998.

ILR Published Cases

Knudson v. Ho-Chunk Nation Treasury Department, SU 98-01, 25 ILR 6203, (Ho-Chunk Nation Sup. Ct., May 11, 1998).

HCN Supreme Court News

The HCN Supreme Court will be meeting on Nov. 24, 1998 to discuss the draft of the HCN Rules of Judicial Ethics, among other things. No specific agenda has been set. For more information call HCN Supreme Court Clerk Willa RedCloud at the HCN Courthouse, 284-2722.

Ho-Chunk Nation Court Bulletin

Vol. 3, No. 10

December 1998

Congratulations to New HCN GALs

The HCN Tribal Courts would like to congratulate the following people for completing the 1998 HCN GAL Training: Victoria Cloud, Velvet Cooper, Charles Gauthier, Pearl Lightstorming, Loa Porter, Michelle Rave, Robin Smelcer, Janette Smoke, Bev Smothers, and Rosalie Thomas. Your future contribution to the welfare of Ho-Chunk children is greatly appreciated. Remember, while you now have been trained, you must still register with the HCN Courts before you will begin receiving appointments to cases.

HCN Trial Court Considering Raising GAL Fee

Trial Court Chief Judge Mark Butterfield is considering raising the fee given to GALs in CHIPs cases. The fee paid to GALs is currently \$200 per child per year. The Judge is considering raising that fee to \$250 per child per year. The Judge is inviting public comment on his plan. Comments either in favor or in opposition to this increase should be sent to the HCN Trial Court by Dec. 31, 1998.

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Legal Humor

The following were taken from transcripts of actual trials. Neither the questions nor the answers were changed.

1. Now, doctor, isn't it true that



when a person dies in his sleep, he doesn't know about it until the next morning?

2. The youngest son, the 20-year-old, how old is he?

3. Were you present when your picture was taken?

4. Were you alone or by yourself?

5. Was it you or your younger brother who was killed in the war?

6. Did he kill you?

7. How far apart were the vehicles at the time of the collision?

8. You were there until the time you left, is that true?

9. Q: She had three children, right?

A: Yes.

Q: How many were boys?

A: None.

Q: Were there any girls?

10. Q: You say the stairs went down to the basement?

A: Yes.

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

19. Q: Are you qualified to give a urine sample?

11. Q: How was your first marriage terminated?

A: By death.

Q: And by whose death was it terminated?

12. Q: Can you describe the individual?

A: He was about medium height and had a beard.

Q: Was this a male or female?

13. Q: Is your appearance here this morning pursuant to a deposition notice that I sent to your attorney?

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

14. Q: Doctor, how many autopsies have you performed on dead people?

A: All my autopsies are performed on dead people.

15. Q: All your responses must be oral, ok? What school did you go to?

A: Oral.

16. 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.

17. Q: Mr. Slatery, you went on a rather elaborate honeymoon, didn't you?

A: I went to Europe, sir.

Q: And you took your new wife?

18. Q: So the date of conception was August 18th?

A: Yes.

Q: And what were you doing at the time?

A: I have been since early childhood

20. Q: You were not shot in the fracas?

A: No, I was shot midway between the fracas and the navel.

Court News

LAY ADVOCATE TRAINING - Any tribal members interested in enrolling in a new class of Lay Advocates should contact Michael D. Oeser at the Trial Court, (715) 284-2722.

WISCONSIN TRIBAL JUDGES ASSOCIATION MEETING - Meeting in Bonler, WI on January 7, 1998. For more information, call Judge Joan Greendeer-Lee, President, at 715-284-2722.

WISCONSIN STATE BAR CONFERENCE - To be held January 28, 1998 in Milwaukee, WI. For more information, call the Wisconsin State Bar at 800-362-8096.

UW-MADISON INDIAN LAW STUDENTS ASSOCIATION 1999 INDIAN LAW CONFERENCE - To be held February 19 & 20, 1999 in the Tripp Commons of the Memorial Union. For more information, call the ILSA at the UW-Madison Law School, 608-262-2240.

Legal Definition

Burden of Proof: The level of proof that a party must provide to a court before that court will enter judgment in that party's favor. In a criminal case, the state must prove its case by proof *beyond a reasonable doubt*. Conversely, a criminal defendant need only prove that a reasonable doubt exists. In a civil case, the plaintiff usually must

Barry Blackhawk v. Loa

prove its case by a *preponderance of the evidence*, meaning that the plaintiff must show that its version of the facts is more likely than not what happened. In some civil cases, such a fraud, the plaintiff must prove its case by clear and convincing evidence, which is a higher standard of proof but not as clearly defined.



Recent Decisions

Trial Court Cases:

In re K. Brandenburg, CV 98-18 (HCN Tr. Ct. Nov. 13 1998). Order appointing guardian of adult trust fund account.

HCN Housing Authority v. Patricia Decorah, CV 98-60 (HCN Tr. Ct. Nov. 23, 1998). Order to evict tenants.

Stephanie Oilschlager v. Dion Thompson, CS 98-62 (HCN Tr. Ct. Dec. 10, 1998). Order enforcing child support against per capita.

Emily June Boswell v. Dranceis Peter Rave Sr., CS 98-57 (HCN Tr. Ct. Nov. 24, 1998). Order enforcing child support against per *Porter and Georgia LoneTree and*

capita.

Vicki Jo Houghton v. John Houghton, CV 96-58 (HCN Tr. Ct. Dec. 2, 1998). Order releasing per capita withheld for child support and ordering no further withholding for arrears.

Leslie A. Rave v. Maynard Rave Jr., CS 98-63 (HCN Tr. Ct. Nov. 24, 1998). Judgment enforcing child support against per capita and wages.

HCN Home Ownership Program v. Katherine Littlejohn, CV 98-56 (HCN Tr. Ct. Nov. 4, 1998). Judgment enforcing debt obligation against per capita.

State of Wisconsin and Dawn Young v. Dion Thompson, CV 96-86 (HCN Tr. Ct. Nov. 2, 1998). Erratum order enforcing child support against per capita.

Naomi Rich v. Wayne Whitman, CV 97-156 (HCN Tr. Ct. Nov. 2, 1998). Erratum order enforcing child support against per capita.

Amanda Fanning v. Derek Fanning, CV 97-81 (HCN Tr. Ct. Nov. 2, 1998). Erratum order enforcing child support against per capita.

State of Wisconsin on behalf of Rosann Mann v. Tyrone L. Decorah, CV 97-66 (HCN Tr. Ct. Nov. 2, 1998). Erratum order enforcing child support.

Michelle Hass v. Sanford Decorah, CV 97-134 (HCN Tr. Ct. Nov. 2, 1998). Erratum order enforcing child support against per capita.

In the Matter of Estate of Hilda Mae Dick, CV 98-57 (HCN Tr. Ct. Nov. 4, 1998). Order releasing trust account to estate of deceased tribal member.

HCN Department of Social

Services, CV 98-33 (HCN Tr. Ct. Nov. 4, 1998). Stipulation and Order for voluntary dismissal.

Candice D. Solesby v. Kevin B. Funmaker, CS 98-07 (HCN Tr. Ct. Nov. 4, 1998). Erratum order enforcing child support against per capita.

Kathleen Waukau by the State of Wisconsin, Shawano County v. Eldon Powless, CV 96-93 (HCN Tr. Ct. Nov. 4, 1998). Erratum order enforcing child support against per capita.

Sherri Red Cloud v. Marlin Red Cloud, CV 96-36 (HCN Tr. Ct. Nov. 4, 1998). Erratum order enforcing child support against per capita.

State of Wisconsin v. Nelson A. Funmaker, CV 96-75 (HCN Tr. Ct. Nov. 3, 1998). Order releasing per capita check.

Hope Smith v. Kenneth Smith, CS 98-17 (HCN Tr. Ct. Nov. 3, 1998). Order modifying enforcement of child support.

Kerry Thompson v. Paul Salloway, CS 98-08 (HCN Tr. Ct. Nov. 3, 1998). Erratum order modifying enforcement of child support.

State of Wisconsin and Carole L. St. Cyr v. Joyce M. St. Cyr, CS 98-15 (HCN Tr. Ct. Nov. 4, 1998). Erratum order modifying enforcement of child support.

Lorrie Lungstrum on behalf of Clint and Stephanie Lungstrum v. HCN Enrollment Office, CV 98-22 (HCN Tr. Ct. Nov. 4, 1998). Order accepting accounting.

Donna Nicholson v. Ho-Chunk Business Department and Ho-Chunk Casino Human Resources Department, CV 98-42 (HCN Tr. Ct. Nov. 5, 1998). Stipulation and order for dismissal.

Berna BigThunder v. Conrad Funmaker, CS 98-44 (HCN

Tr. Ct. Nov. 5, 1998). Order releasing child support check.

Bernice G. Barnes v. Clifford W. Wilson, CS 98-41 (HCN Tr. Ct. Nov. 5, 1998). Order releasing child support check.

State of Wisconsin and Nancy Smith v. David A. Whiteeagle, CS 98-27 (HCN Tr. Ct. Nov. 13, 1998). Order enforcing child support against per capita.

State of Wisconsin and Suzette Greengrass v. David A. WhiteEagle, CS 98-26 (HCN Tr. Ct. Nov. 13, 1998). Order modifying enforcement of child support against



per capita.

In re Berdine Littlejohn, CV 98-14 (HCN Tr. Ct. Nov. 17, 1998). Order releasing funds from adult trust account.

Carol J. Barnes v. Timothy W. Bourdon, CS 98-59 (HCN Tr. Ct. Dec. 8, 1998). Order enforcing child support against per capita.

Tammy M. Cook v. Richard A. Cloud, CS 98-67 (HCN Tr. Ct. Dec. 8, 1998). Order enforcing child support against per capita.

David W. Deere v. Peggy S. Deere, CV 98-58 (HCN Tr. Ct. Dec. 1, 1998). Order dismissing case until the matter pending state court is resolved.

Aurelia L. Hopinkah v.

HCN Election Board, CV 98-61, (HCN Tr. Ct. Nov. 20, 1998). Judgment finding that the HCN Election Board violated the HCN Constitution when it applied the September 1998 Election Ordinance to the November 1998 Special Election holding that the HCN Constitution requires that 120 days must pass before any amendment to the Election Code can be enforced.

Aurelia L. Hopinkah v. HCN Election Board, CV 98-61, (HCN Tr. Ct. Nov. 20, 1998). Order denying plaintiff's motion temporarily enjoin the November 28 Special Election.

Supreme Court Cases:

Ho-Chunk Nation Election Board v. Aurelia L. Hopinkah, SU 98-08 (HCN S. Ct. Nov. 30, 1998). Scheduling order.

Debra Knudson v. Ho-Chunk Nation Treasury Department, SU 98-01 (HCN S. Ct. Dec. 1, 1998). Decision finding that plaintiff was unreasonably terminated, reversing the Trial Court decision, and remanding case back to the Trial Court for final disposition.

David M. Ujke v. Ho-Chunk Nation, SU 98-06 (HCN S. Ct. Dec. 12, 1998). Order for Oral Argument.

Joelene Smith v. Ho-Chunk Nation and Tammy Lang, as head Start Director, SU 98-03 & SU 98-04, (HCN S. Ct. Dec. , 1998). Extension of time for filing of brief.

Gary LoneTree Sr. v. John Holst, as Slot Director, and Ho-Chunk Casino Slot Department, SU 98-07, (HCN S. Ct. Nov. 10, 1998). Order granting extension of time to file brief.

Gary LoneTree Sr. v. John Holst, as Slot Director, and Ho-Chunk Casino Slot Department, SU 98-07, (HCN S. Ct. Oct. 10, 1998). Scheduling order.

Millie Decorah v. Joan Whitewater, SU 98-02 (HCN S. Ct. Oct. 26, 1998). Decision finding that Trial Court's award of damages retroactive to date of injury was unconstitutional and remanding case back to Trial Court.

Aurelia L. Hopinkah v. HCN Election Board, SU 98-08, (HCN S. Ct. Dec. 3, 1998). Order granting stay of Trial Court decision. Trial Court decision found that 120-day rule found in the HCN Constitution applies to amendments to the Election Code and found that the January 1997 Code was the Code to be applied in the November 1998 Special Election.

Recent Filings

Trial Court Cases:

Patricia Houghton v. Dixon Funmaker, CS 98-68, filed Nov. 13, 1998. Action to enforce child support against per capita.

Rose Delgado v. Edward Mendez, CS 98-69, filed Nov. 13, 1998. Action to enforce child support against per capita.

Bobbi Rave v. Travis Rave, CS 98-70, filed Nov. 13, 1998. Action to enforce child support against per capita.

June Miller v. Larry A. Fanning, CS 98-71, filed Nov. 24, 1998. Action to enforce child support against per capita.

Barbara J. Wilson v. Vance E. Fontelle Jr., CS 98-72, filed Nov. 30, 1998. Action to enforce child support against per capita.

Colleen Hansen v. Jerry Park, CS 98-73, filed Dec. 7, 1998. Action to enforce child support against per capita.

HCN Housing Authority v. Patricia Decorah, CV 98-60, filed Nov. 13, 1998. Action to evict tenant.

Aurelia L. Hopinkah v. HCN Election Board, CV 98-61, filed Nov. 16, 1998. Appeal of HCN Election Board decision refusing certification of candidacy.

HCN Housing Authority v. Gloria Visintin, CV 98-62, filed Nov. 23, 1998. Action to evict tenant.

Lorna Mae Hach v. Ho-Chunk Casino and Casey Fitzpatrick, CV 98-64, filed Dec. 8, 1998. Appeal of employee termination.

In the Interest of Rueben A. Hall by Gerald L. Parr, CV 98-64, filed Dec. 8, 1998. Petition for release of funds from trust account

Cheryl K. Smith v. Randall Mann and Jonette Pettibone, CV 98-65, filed Dec. 11, 1998. Appeal of employee grievance.

Supreme Court Cases:

Aurelia L. Hopinkah v. HCN Election Board, SU 98-08, filed Nov. 11, 1998, appeal accepted Nov. 30, 1998. Appeal by Election Board of Trial Court decision that January 1997 Election Code was the Code to be applied in the November 1998 Special Election.

HCN Supreme Court News

The Supreme Court has scheduled a joint meeting with the Trial Court for the morning of

January 22, 1999, to discuss possible modification of the Rules of Civil Procedure. The Supreme Court's regular monthly meeting will be held following the joint meeting. For more information call HCN Supreme Court Clerk Willa RedCloud at the HCN Courthouse, 284-2722.

HCN Court Fees

Filing Fee	\$35
Service of Summons	
• in person	\$15 (or cost if out of state)
• by Mail	\$4 (or cost, whichever is greater)
Service by Courts	\$0.30/per mile
Copying	\$0.10/per page
Faxing	\$0.25/per page
	(sending & receiving)
Tapes of Hearings	\$10 / tape
Deposition Videotape	\$10 / tape
Certified Copies	\$0.50/ page
Equipment Rental	\$5.00/ hour
Registration of Foreign Orders	\$15
Appellate filing fees	\$35
Admission to Practice	\$50

HCN Cite Form

Below are example citation 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).

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

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

Ho-Chunk Nation Ordinances
CLAIMS AGAINST PER CAPITA,
§6.01(b).

PERSONNEL POLICIES AND

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

Johnson v. Department Inc., SU
89-04 (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