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Ho-Chunk Nation Court
System Fee Schedule

Legal Citation Form

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Recent tribal sovereignty decision of the United States Supreme Court.

On May 19, 2003, the Supreme Court of the United States issued a decision in the case of *Inyo County, California et al. v Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony et al.* See No. 02-281 (May 19, 2003). This most recent decision by the Supreme Court continues the discourse on tribal sovereignty. Observers gave the decision a lukewarm reaction with some analysts urging caution and others forecasting doom. See Brian L. Pierson, *Court Punts in Inyo County Case While Sending Ominous Signal*, von Briesen & Roper, S.C., June 2003; see also Joseph William Singer, *Singer: The Supreme Court's attack on tribal sovereignty*, INDIAN COUNTRY TODAY, June 17, 2003.

The case involved the issue of sovereignty in the context of the following scenario. The Inyo County District Attorney's Office was investigating welfare fraud and became suspicious of three Paiute Palace Casino employees. *Inyo County*, No. 02-281 at 1. The district attorney's office requested the employment records of these individuals, only to have the tribe insist that its privacy policy did not permit the release of such information without the authorization of its employees. *Id.* The District Attorney obtained a search warrant for these employees and asked for records on others. *Id.*

In order to enjoin further action by the district attorney, the tribe filed suit in federal court. *Id.* The tribe sought a reassertion of sovereign immunity and the establishment of the principle that

federal law precluded state law and prohibited the seizure of tribal records. *Id.* The tribe also sought economic damages. The District Court ruled against the tribe on the grounds that sovereignty did not insulate the tribe from all state search and seizure actions. *Id.* at 2. The Ninth Circuit overturned the decision citing an interference with the right of self-government. *Id.* The Ninth Circuit insisted that tribes seeking to secure protection under the Fourth Amendment against unlawful searches and seizures could not be considered legal persons as well as sovereigns. However, under an alternative theory of law, they upheld a claim under § 1983 due to the tribe's assertion of Fourth Amendment protection. This decision was reversed and remanded by the United States Supreme Court. *Id.*

Justice Ginsburg wrote the majority opinion in the case. Essentially, Justice Ginsburg indicated that the tribe could not be considered a "person" who may sue under § 1983, but remanded the case to the lower courts regarding the question of whether the tribe could sue in federal court under other federal law. *Id.* at 4. After recounting the facts of the incident in detail, Justice Ginsburg came to the crux of the tribe's argument. Justice Ginsburg quoted the tribe's Complaint for its principal assertion: "[i]n this regard, the Tribe alleged that by acting beyond the scope of their jurisdiction and 'without authorization of law' in executing the warrant, the defendants violated the Tribe's and Corporation's Fourth and Fourteenth

Amendment rights, and the Tribe's right to self-government." *Id.* at 4. In addition, Justice Ginsburg noted that the District Court's decision to dismiss the Complaint centered around the idea that, "uniform application of California's criminal law [required that] state officials should be able to execute search warrants against the tribe and tribal property." *Id.* at 6. (citing *App. To Pet. for Cert.* at 62a). Conversely, the Court of Appeals argued that while the State had a countervailing "interest in investigating potential welfare fraud," it should do so through "far less intrusive means." *Id.* at 7 (citing *Williams v. Lee*, 358 U.S. 217 (1959)). In addition, the Court of Appeals insisted that a § 1983 claim could survive under the theory that the tribe sought protection under the Fourth Amendment. *Id.* Thus, the Court had to determine whether or not the tribe had an actionable claim under § 1983.

Federal law allows citizens and persons within the jurisdiction to seek legal remedies regarding persons who deprive them of federally protected rights while acting under color of law. The Court noted that in *Will v. Michigan Dept. of State Police*, states were not considered persons under the provision. *Id.* at 8 (citing *Will*, 491 U.S. 58, 67 (1989)). In determining whether a sovereign could be considered a legal person for § 1983 claims, the Court insisted that a plain meaning interpretation is insufficient and proper analysis requires a study of the "legislative environment" surrounding the context of the word and its use. *Id.* at 10 (citing *Georgia v. Evans*, 316 U.S. 159, 161 (1942)). In the instant case, the Court argued that § 1983 was designed to protect private rights from government infringement and not to protect sovereign interests and withholding evidence. Finally, Justice Ginsburg stated that neither side presented alternative avenues, or federal law, under which the tribe could proceed with a § 1983 claim. *Id.* at 11. For this reason, the Court vacated and remanded for further hearings on alternative avenues concerning federal law. *Id.* at 11. Justice Stevens concurred with the Court's opinion, writing his own separate piece to indicate that he felt tribes could be considered legal persons for the use of § 1983. *Id.* at 13 (Stevens, J., concurring).

Some analysts regard this decision of the Supreme Court as merely another exhibition of the Court's desire to increase state power while decreasing tribal authority over non-members. Singer at 1. News Correspondent Mr. Joseph Singer asserts that federal power is limited to those express, implied and necessary powers that have been established previously. Any other powers are reserved to the states. *Id.* Singer asserts that the Court has

increased the gap here and intends to continue such tactics. *Id.* His argument is that the Court sees the relationship between the tribes and states in the same way. *Id.* at 2. Tribes have limited powers that have been succinctly established in the law, and all other areas of law or gaps in tribal provisions are reserved to the states. *Id.* Essentially, Singer suggests that this framework bears the earmarks of potential destruction of the protective relationship enjoyed by the federal government and tribes. *Id.*

According to Attorney Brian L. Pierson, the Court's ruling can be seen either as the quick resolution of an undesired case or as a threat to overall sovereignty. Pierson at 1. The central concern stems from the Court's failure to consider the tribe's

other claim of declaratory judgment pursuant to federal common law. *Id.* The Court's decision to remand on this matter is cause for concern given that the Court's failure to articulate an alternative federal law appears weak. In theory, if the tribe cannot make its claim under § 1983, and the Court could find no alternative theory of federal law under which to make such a case, the tribe may find itself without a federal judicial remedy. *Id.* Mr. Pierson theorizes that perhaps the Court merely rendered its decision under an avoidance theory. *Id.* However, if the Court indeed rendered such a decision with full deliberation, the affects on the Indian Law community could be harsh. *Id.*

It still remains unclear as to when the Circuit Court will entertain further hearings on remand. Furthermore, it remains unclear as to what the outcome of such hearings shall be, given that neither side in the instant case had previously presented the Supreme Court with extensive alternatives in federal common law. Personally, I remain hopeful for the outcome of the case on remand, given the Circuit Court's previous analysis. One thing is certain, attorneys working in P.L. 280 states will closely watch the outcome of the instant case and consider its ramifications for tribal sovereignty and casino privacy.

Recent Decisions and **Recent Filings** both begin with the date where the previous Court Bulletin left off.

Recent Decisions

Decisions are separated between Trial Court and Supreme Court decisions and categorized by subject matter and date (from oldest to most recent). The following are summaries prepared by the Staff Attorney for the reader's benefit. They should in no way be used as substitution for citations to the actual court opinion.

Within the Trial Court, cases are categorized and docketed as one of the following: Child Support (CS or if filed prior to 1998, CV), Civil Garnishment (CG), Civil (CV), Criminal (CR), Custody (CU), Domestic Violence (DV), or Juvenile (JV). Within this index, case citations will appear in one of these categories and, in the event it may be helpful to the reader as a research tool, the cases may also be summarized in a separate topic area. In some instances a decision may touch upon other topics that may not warrant a summary in this index, but the editor will use the indicator "other topic(s) covered," as a research aid for the reader.



Trial Court

Child Support

JUNE 17, 2003

Deanne M. Quade (Schwartz) v. Ronald W. Quade, CS 03-23 Order (Default Judgment for Child Support Deduction from Wages) (HCN Tr. Ct., June 17, 2003). (Matha, T).

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified

time frame. The Court granted the petitioner's request for recognition and enforcement.

State of Wisconsin v. Charles Dennis Hindsley, CS 03-20 *Order (Default Judgment for Child Support Deduction from Wages)* (HCN Tr. Ct., June 17, 2003). (Matha, T).

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

State of Wisconsin v. Charles Dennis Hindsley, Beltrami County by Assignment of: Theresa L. Hindsley, Tanya L. Hindsley and Darren D. Dafoe v. Charles Dennis Hindsley, CS 03-20, 02-49 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., June 17, 2003). (Matha, T).

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

JUNE 18, 2003

State of Wisconsin v. Jeffrey A. Harrison, CS 03-18 *Order (Enforcing Child Support)* (HCN Tr. Ct., June 18, 2003). (Matha, T).

The Court had to determine whether to enforce a foreign judgment. The respondent filed a timely response, but failed to persuade the Court of any legal reasoning that could permit the Court to disregard or modify the judgment. The Court granted the petitioner's request.

Kelly Lee Skenandore v. Kevin A. Decorah, 02-54 *Order (Ceasing Withholding)* (HCN Tr. Ct., June 18, 2003). (Bossman, W).

The Court had information regarding the minor child's graduation from school. As the child had turned eighteen (18) and graduated from school, he became emancipated for purposes of child support. The Court discontinued withholding for child support.

State of Wisconsin/Sauk Co. and Gale J. Darnell v. Lawrence Edward LaMere, CS 01-40 *Order*

(Ceasing Withholding) (HCN Tr. Ct., June 18, 2003). ((Matha, T).

The Court had information regarding the minor child's graduation from school. As the child had turned eighteen (18) and graduated from school, he became emancipated for purposes of child support. The Court discontinued withholding for child support.

JUNE 23, 2003

Beltrami County by Assignment of: Tanya L. Hindsley and Darren D. Dafoe v. Nadine Phyllis Hindsley, CS 03-16 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., June 23, 2003). (Matha, T).

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

State of Wisconsin v. Charles Dennis Hindsley, Beltrami County by Assignment of: Theresa L. Hindsley, Tanya L. Hindsley and Darren D. Dafoe v. Charles Dennis Hindsley, CS 03-20, 02-49 *Erratum Order* (HCN Tr. Ct., June 23, 2003). (Matha, T).

The Court issued this *Erratum Order* to correct a clerical error.

JUNE 24, 2003

State of Wisconsin/Jackson Co. v. Daniel V. WhiteEagle, Karla L. Wilcox v. Daniel V. WhiteEagle, State of Wisconsin/Jackson Co. v. Daniel V. WhiteEagle, CS 98-66, 99-09, 01-07 *Order (Arrearage Withholding)* (HCN Tr. Ct., June 24, 2003). (Matha, T).

The petitioner requested updated arrears and greater payments of child support. The respondent failed to respond within the specified time frame. The Court could not raise the child support obligation due to the respondent's status as a serial payor. However, the Court did recognize the new arrearage.

Melissa K. Johnson v. David A. WhiteEagle, State of Wisconsin/Suzette Greengrass v. David A. WhiteEagle, State of Wisconsin/Nancy Smith v. David A. WhiteEagle, CS 03-22, CS 98-26, -27

Order (Default Judgment—Enforcing Child Support) (HCN Tr. Ct., June 24, 2003). (Matha, T). The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the petitioner's request for recognition and enforcement.

JUNE 25, 2003

Rena Lynn LeMieux v. Kenneth Allen LeMieux, CS 01-02 Notice (*Child Turning 18 – Requiring Proof of Enrollment*) (HCN Tr. Ct., June 25, 2003). (Matha, T).

The Court requires proof of high school enrollment for any minor turning eighteen (18) whose parents are parties to a child support obligation in the Court. Failure to provide such proof could result in a cessation of support for that child.

Michelle M. McDermott v. Chester A. Mallory, CS 01-16 Notice (*Child Turning 18 – Requiring Proof of Enrollment*) (HCN Tr. Ct., June 25, 2003). (Matha, T).

The Court requires proof of high school enrollment for any minor turning eighteen (18) whose parents are parties to a child support obligation in the Court. Failure to provide such proof could result in a cessation of support for that child.

Woodrow G. White v. Gail J. Rave, CS 02-56 Notice (*Child Turning 18 – Requiring Proof of Enrollment*) (HCN Tr. Ct., June 25, 2003). (Matha, T).

The Court requires proof of high school enrollment for any minor turning eighteen (18) whose parents are parties to a child support obligation in the Court. Failure to provide such proof could result in a cessation of support for that child.

Melanie Stacy v. Harrison J. Funmaker, Tameria Funmaker v. Harrison J. Funmaker, CV 96-48, -61 Order (*Renewing Withholding*) (HCN Tr. Ct., June 25, 2003). (Matha, T).

The petitioner requested a reinstatement of per capita withholding for child support and arrears. The respondent failed to respond in the specified time frame. The Court granted the request.

State of Wisconsin v. Harrison J. Funmaker, CV 96-48 Order (*Default Judgment for Child Support Deduction from Wages*) (HCN Tr. Ct., June 25, 2003). (Matha, T).

The Court had to determine whether to enforce a foreign judgment against the respondent's wages. The respondent failed to respond within the specified time frame. The Court granted the request.

Roxanne Johnson v. Loren James Rave, CV 97-25 Notice (*Child Turning 18 – Requiring Proof of Enrollment*) (HCN Tr. Ct., June 25, 2003). (Matha, T).

The Court requires proof of high school enrollment for any minor turning eighteen (18) whose parents are parties to a child support obligation in the Court. Failure to provide such proof could result in a cessation of support for that child.

State of Wisconsin on behalf of Cynthia Loofboro v. William J. Greendeer, CV 97-96 Notice (*Child Turning 18 – Requiring Proof of Enrollment*) (HCN Tr. Ct., June 25, 2003). (Bossman, W).

The Court requires proof of high school enrollment for any minor turning eighteen (18) whose parents are parties to a child support obligation in the Court. Failure to provide such proof could result in a cessation of support for that child.



Civil Garnishment

JUNE 19, 2003

State Collection Service v. Charles L. Stands, CG 03-29 Order (*Conditional Denial of Petition*) (HCN Tr. Ct., June 19, 2003). (Matha, T).

The petitioner requested that the Court garnish the wages of the respondent and enforce a foreign judgment. The respondent argued that the judgment was already satisfied. Neither party appeared for a *Fact-Finding Hearing*. The petitioner must present

a recent foreign judgment affirming the debt obligation. Without evidence rebutting the respondent's claim, the Court denied the request.

State Collection Service v. Rick Hernandez, a/k/a Vincent Richard Hernandez, CG 03-11 Order (Conditional Denial of Petition) (HCN Tr. Ct., June 19, 2003). (Matha, T).

The petitioner requested that the Court garnish the wages of the respondent and enforce a foreign judgment. The respondent argued that the judgment was already satisfied. The petitioner did not appear for a *Fact-Finding Hearing*. The petitioner must present a recent foreign judgment affirming the debt obligation. Without evidence rebutting the respondent's claim, the Court denied the request.



Children's Trust Fund (CTF)

JUNE 16, 2003

In the Interest of Minor Child: T.F., DOB 03/18/93, by Toni Funmaker v. HCN Office of Tribal Enrollment, CV 03-04 Order (Requesting Accounting) (HCN Tr. Ct., June 16, 2003). (Matha, T).

On February 20, 2003, the Court released funds from the CTF account of the minor child for orthodontics. The *Order* directed the petitioner to provide the Court with an accounting of the expenditures by a certain time frame. The required accounting is late, so the Court reminds the petitioner of her duty.

In the Interest of Minor Child: J.L.F., DOB 04/16/93, by Jill A. Pettibone v. HCN Office of Tribal Enrollment, CV 02-65 Order (Accepting Accounting) (HCN Tr. Ct., June 16, 2003). (Matha, T).

On July 25, 2002, the Court released funds from the CTF account of the minor child for orthodontics. On April 9, 2003, the Court reminded the petitioner of her duty of accounting for the expenditures. On

June 2, 2003, the petitioner submitted the required accounting. The Court accepted the accounting and closes the case.

In the Interest of Minor Child: V.B., DOB 03/04/92, by April Daniels v. HCN Office of Tribal Enrollment, CV 02-113 Order (Accepting Accounting) (HCN Tr. Ct., June 16, 2003). (Matha, T).

On December 11, 2002, the Court released funds from the CTF account of the minor child for orthodontics. On April 9, 2003, the Court reminded the petitioner of her duty of accounting for the expenditures. On May 14, 2003, the petitioner submitted the required accounting. The Court accepted the accounting and closes the case.

JUNE 19, 2003

In the Interest of Minor Child: K.J.F.B., DOB 06/06/89, by Shawn Blackdeer v. HCN Office of Tribal Enrollment, CV 03-44 Order (Petition Granted) (HCN Tr. Ct., June 19, 2003). (Bossman, W).

The petitioner requested funds from the CTF account of the minor child for orthodontics. The HCN Office of Tribal Enrollment did not object to this request. The Court granted the request.

In the Interest of Minor Child: D.E.M., DOB 11/21/90, by Ayako Thundercloud v. HCN Office of Tribal Enrollment, CV 03-43 Order (Petition Granted) (HCN Tr. Ct., June 19, 2003). (Bossman, W).

The petitioner requested funds from the CTF account of the minor child for orthodontics. The HCN Office of Tribal Enrollment did not object to this request. The Court granted the request.

In the Interest of Minor Child: R.C.D., DOB 12/30/86, by Sabrina Decorah v. HCN Office of Tribal Enrollment, CV 03-45 Order (Petition Granted) (HCN Tr. Ct., June 19, 2003). (Bossman, W).

The petitioner requested funds from the CTF account of the minor child for orthodontics. The HCN Office of Tribal Enrollment did not object to this request. The Court granted the request.

JUNE 23, 2003

In re the Children of Joni Munnell: D.J.M, DOB 12/26/87, A.S.W., DOB 01/24/89, J.S.W., DOB 01/24/89, D.W.W., DOB 07/06/92, S.G.W., DOB 06/26/93, CV 96-64 Order (Acceptance of Accounting) (HCN Tr. Ct., June 23, 2003). (Matha, T).

The guardian of the estate filed an accounting report in accordance with directions from the Court. The Court received no information that might indicate errors with the accounting. The Court accept the accounting.

In the Interest of Minor Child: W.E.T., DOB 06/30/88, by Bonnie Tech v. HCN Office of Tribal Enrollment, CV 02-114 Order (Demanding Accounting) (HCN Tr. Ct., June 23, 2003). (Matha, T).

On December 11, 2002, the Court released funds from the CTF account of the minor child for orthodontics. The *Order* required the petitioner to provide an accounting within a specified time frame. On April 23, 2003, the Court reminded the petitioner of her duty. On June 23, 2003, the Court again reminded the petitioner of her duty to account for expenditures and warned of possible action regarding the CONTEMPT ORDINANCE.

Incompetent's Trust Fund Cases

NOTHING TO REPORT AT THIS TIME.



CIVIL CASES (ALL CATEGORIES)

JUNE 11, 2003

Vincent R. Hernandez v. Ho-Chunk Casino, CV 03-34 Scheduling Order (HCN Tr. Ct., June 11, 2003). (Bossman, W).

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

Ho-Chunk Nation v. Jess Steindorf, CV 03-33 Order (Granting Motion for Extension of Time to File Answer) (HCN Tr. Ct., June 11, 2003). (Bossman, W).

The respondent requested more time to file an *Answer*. The respondent asserted that she had not received a copy of the *Complaint*. The Court granted her request.

JUNE 17, 2003

Greg Littlejohn v. HCN Election Board Chairperson, Mary Ellen Dumas and HCN Election Board Members: Eugene Topping, Jr.; Darlene Funmaker; Georgianne Funmaker; Brandee Alderman; Bonnie Stroessner; Wilma Thompson; Tari Pettibone; Mary Taylor; Elliot Funmaker, Sr.; and Tara Blackdeer, CV 03-42 Order (Granting Election Challenge) (HCN Tr. Ct., June 17, 2003). (Bossman, W).

The plaintiff filed a *Complaint* regarding the District 5, Seat 2 election that occurred on May 20, 2003. The incumbent won fifty-one percent (51%) of the vote, and the HCN Election Board certified her as the winner. Essentially, the plaintiff contended that the election was a primary for the general election, thus requiring a runoff with the top two candidates. The defense contended that the election was a special election requiring only fifty percent (50%) plus one vote for a final win. The Court granted the plaintiff's request for a runoff between the candidates. The Court ruled in this manner under the theory that the election's origin was the end of a legislative term, thereby indicating that it was a general election and not a special one.

JUNE 18, 2003

F. William Johnson v. Ho-Chunk Nation, CV 01-15 Order (Granting Defendant's Motion to Dismiss) (HCN Tr. Ct., June 18, 2003). (Matha, T).

The plaintiff disputed his termination according to the terms of an Executive Employment Agreement. The plaintiff asserted that the Executive Agreement caused his case to fall under a separate Statute of Limitations, thereby allowing him more time to file his *Complaint*. First, the Court had to decide whether the Executive Agreement superceded the Ho-Chunk Nation Statute of Limitations. If not, the Court had to determine which provision under the Statute of Limitations should govern the action. The Court asserted that all laws of the Nation in

pari materia. Thus, without express language suggesting superiority, the Executive Agreement could not supercede the Ho-Chunk Nation Statute of Limitations. As to which provision should be used, the plaintiff sought to use a provision held exclusively for indemnity and contribution. These concepts reference areas of Tort law that do not appear in the instant case. While the plaintiff asserted various other provisions and arguments for the Statute of Limitations, the Court was not persuaded and deemed ninety (90) days to be the appropriate measure. For this reason, the plaintiff's action was untimely, and the Court granted dismissal.

JUNE 19, 2003

Wade Blackdeer v. HCN Election Board, CV 03-46 Order (HCN Tr. Ct., June 19, 2003). (Bossman, W).

The parties involved dispute the previous election. The Court ordered the parties to appear for a *Hearing*.

Thomas Yellow Thunder v. HCN Election Board, CV 03-47 Order (HCN Tr. Ct., June 19, 2003). (Bossman, W).

The parties involved dispute the previous election. The Court ordered the parties to appear for a *Hearing*.

JUNE 26, 2003

Ho-Chunk North, Wittenberg, Wisconsin, Division of Ho-Chunk Nation Department of Business and Ho-Chunk Nation v. Wayne's Transport, Inc.; Wayne's Trucking, Inc.; Wayne L. Hirt and Lisa Hirt et al., CV 02-14 Order (Denial of Motion for Expedited Consideration) (HCN Tr. Ct., June 26, 2003). (Matha, T).

The Court denied the *Motion for Expedited Consideration* citing a failure to comply with the two elements of the rule.

Wade Blackdeer v. HCN Election Board, CV 03-46 Order Denying Election Challenge (HCN Tr. Ct., June 26, 2003). (Bossman, W).

The Court dismissed the *Complaint* challenging the election. The *Complaint* was not timely filed.

Thomas Yellow Thunder v. HCN Election Board, CV 03-47 Order Dismissing Election Challenge (HCN Tr. Ct., June 26, 2003). (Bossman, W).

The Court dismissed the *Complaint* challenging the election. The plaintiff did not appear at the scheduled *Hearing*.

Juvenile

JUNE 18, 2003

In the Interest of the Minor Child: M.I.S., JV 00-34 Motion to Withdraw as Guardian ad Litem (HCN Tr. Ct., June 18, 2003). (Bossman, W).

The GAL requested to withdraw from the case. The Court granted the request.

JUNE 20, 2003

In the Interest of Minor Child: S.E.C., DOB 02/25/96, JV 03-11 Order (Dispositional Requirements) (HCN Tr. Ct., June 20, 2003). (Matha, T).

The Court crafted a set of dispositional requirements for the parents of the minor child.

JUNE 23, 2003

In the Interest of Minor Children: J.R.P., DOB 02/27/92, *L.M.P.*, DOB 05/12/90, *L.K.K.*, DOB 12/12/87, JV 03-01-03 Order (Formal Trial) (HCN Tr. Ct., June 23, 2003). (Matha, T).

The Court conducted a *Formal Hearing* on the aforementioned matter.



Supreme Court

JUNE 25, 2003

Harry J. Cholka v. Ho-Chunk Casino, SU 03-04 Order (Denying Appeal) (HCN S. Ct., June 25, 2003).

The defendant filed an *Interlocutory Appeal* on May 23, 2003. The trial court scheduled a trial for June 4, 2003. The defendant asserted that the plaintiff had filed an untimely grievance, and the trial court

erred in not finding so. Because the defendant did not ask for a *Stay*, the trial proceeded and made the *Interlocutory Appeal* moot.

JUNE 27, 2003

Joseph E. Decorah v. Ho-Chunk Nation and Ho-Chunk Casino, SU 03-05 *Order Denying Appeal* (HCN S. Ct., June 27, 2003).

The instant case began as an employee grievance regarding a demotion for sexual harassment. The lower court ruled in favor of the defendants. The plaintiff appealed to the Supreme Court, but the appeal was denied on the grounds of failure to state a legal issue within the appeal.

Recent Filings

Trial Court

Civil Garnishment

JUNE 11, 2003

Ford Motor Credit Corp v. Christie L. Ratzel, CG 03-39. (Bossman, W).

Drs. Delebo, Overman, Hegna & Reich v. Charles Marsden, CG 03-40. (Bossman, W).

JUNE 12, 2003

Creditor Recovery Service v. Terry Sherman, CG 03-41. (Bossman, W).

JUNE 19, 2003

Gerald M. Voelker v. Eugene Topping, Jr., CG 03-42. (Bossman, W).

JUNE 20, 2003

Capital One v. Chandra M. Decorah, CG 03-43. (Matha, T).

Kohn Law Firm v. Christine Brown, CG 03-44. (Matha, T).

Stafford Rosenbaum v. Joy Rave, CG 03-45. (Matha, T).

Westview Ct. v. George Dahlgreen, CG 03-46. (Matha, T).

JUNE 24, 2003

State Collection v. Angline L. Decorah, CG 03-47. (Bossman, W).

State Collection v. Matthew Cooley, CG 03-48. (Bossman, W).

Child Support

JUNE 11, 2003

Christel J. Swan v. Timothy B. Ward, CS 03-28. (Bossman, W).

Kentwan Lee Dixon v. Johna Fisher, CS 03-29. (Bossman, W).

JUNE 19, 2003

State of Wisconsin v. Thunderhawk Decorah, CS 03-30. (Matha, T).

State of Wisconsin v. Faye L. Greengrass, CS 03-31. (Matha, T).

JUNE 20, 2003

State of Nevada v. Alfred L. Griffin, CS 03-32. (Matha, T).

JUNE 24, 2003

Lynn Coomes v. Phillip Coomes, CS 03-33. (Bossman, W).

Civil Cases

JUNE 11, 2003

In the Interest of Minor Child: D.E.M., DOB 11/21/90, by Ayako Thundercloud v. HCN Office of Tribal Enrollment, CV 03-43. (Bossman, W).

In the Interest of Minor Child: K.J.F.B., DOB 06/06/89, by Shawn Blackdeer v. HCN Office of Tribal Enrollment, CV 03-44. (Bossman, W).

In the Interest of Minor Child: R.C.D., DOB 12/30/86, by Sabrina Decorah v. HCN Office of Tribal Enrollment, CV 03-45. (Bossman, W).

JUNE 13, 2003

Wade Blackdeer v. HCN Election Board, CV 03-46. (Bossman, W).

Thomas Yellow Thunder v. HCN Election Board, CV 03-47. (Bossman, W).

Juvenile Cases

NOTHING TO REPORT AT THIS TIME.

SUPREME COURT

JUNE 18, 2003

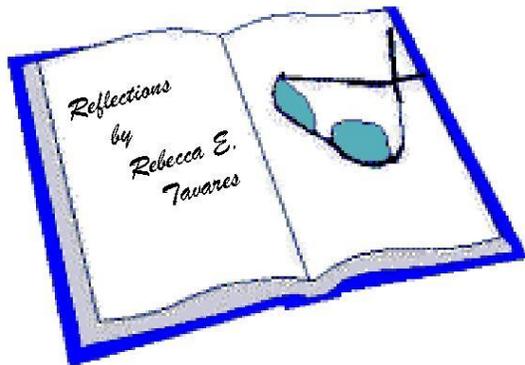
Ho-Chunk Nation v. Bank of America, N.A., SU 03-06.

JUNE 19, 2003

Greg Littlejohn v. HCN Election Board et al., SU 03-07.



A FOND FAREWELL



replaced by Rose Weckenmann who begins her term on June 30, 2003.

On a personal note, I have been packing my things and looking back on my time here at the Court. I have promised to return for the Grand Opening of the new Court Building, however, I know that walking those halls will feel wholly different to me. My memories will remain with the Court that I knew.

While it is never easy to say goodbye, there are a few things that I will miss and memories that I will carry with me. I shall always remember Willa's laughter and my morning talks with Rosie and Bryan. I will no longer sing with Jeanne or sit at her desk talking about anything that came to our minds. I cannot forget watching Marcella and Selina tease Judge Matha as he retreats into his office. Nor, will I forget pouring over cases with Judge Matha and Judge Bossman, dissecting phrases and offering volumes of analysis. While the days were numbered, they were filled with laughter. I have learned so much from each and every person, that I feel that words are not enough to express my thanks. So while this is goodbye, no one here will be far from my mind, and I will always be in touch. Megwitch.



A year has gone by, and another Staff Attorney prepares to leave the Ho-Chunk Nation Trial Court. Rebecca Tavares, Staff Attorney from July 2002 – June 2003, will end her term with the Court on Friday, June 27, 2003. She will be



**HO-CHUNK NATION COURT SYSTEM
JUDICIARY AND STAFF**

Supreme Court—Mary Jo B. Hunter, Chief Justice
Mark D. Butterfield, Associate Justice
Jo Deen B. Lowe, Associate Justice

Traditional Court –Wallace Blackdeer

Donald Blackhawk
Dennis Funmaker
Orville Greendeer
Douglas Greengrass
Owen Mike
Gavin Pettibone
Douglas Red Eagle
Preston Thompson, Jr.
Eugene Thundercloud
Morgan White Eagle
Clayton Winneshiek

Trial Court – William H. Bossman, Chief Judge
Todd R. Matha, Associate Judge

Clerk of Court, Supreme Court – Bryan Dietzler
Clerk of Court, Trial Court – Marcella Cloud
Assistant Clerk of Court, Trial Court – Selina Joshua
Bailiff/Process Server – Willa RedCloud
Administrative Assistant – Jeanne Colwell
Staff Attorney – Rebecca Tavares

Office of Public Advocacy – Dennis Funmaker, Administrator

* The Ho-Chunk Nation Judiciary and its officers are active participants in the following organizations:

WISCONSIN TRIBAL JUDGES ASSOCIATION
(Eleven federally recognized tribes within the State of Wisconsin)

NATIVE AMERICAN INDIAN COURT JUDGES ASSOCIATION
(Region 5—Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, South Dakota, North Dakota, and Wisconsin)

HCN Court System Fee Schedule

- Filing Fees \$50.00*
- *With the exception of petitions to register child support orders – this fee remains at \$20.00 as previously ordered by the Supreme Court.

Note: Filing Fee now includes *Summons* fee.

- Filing Fees for *Petitions to Register and Enforce Foreign Judgment/ Order*. \$20.00
- Copying \$0.10/per page
Faxing \$0.25/per page (sending and receiving)
Tapes of Hearings \$10.00/per tape
CD of Hearing. \$12.50/per tape
Deposition Videotape \$10.00/per tape
Certified Copies \$0.50/per page
Equipment Rental \$5.00/per hour
Appellate filing fees \$35.00
Admission to Practice \$50.00
Pro Hac Vice Appearance \$35.00

Legal Citation Form

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

Ho-Chunk Nation Constitution

Constitution, Article Number, Section, and Subsection.
HCN CONST., Art. II, Sec. (or §) 1(a).
HCN Const., Art. XI, Sec. (or §) 7.

HCN Ordinances

Ordinance Name, Chapter number, Section/Part/Clause, page.
PERSONNEL POLICIES AND PROCEDURE MANUAL, Ch. 12,
Part B, p. 82.
CLAIMS AGAINST PER CAPITA, Sec. (or §) 6.01(b).

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, CV 99-01 (HCN Tr. Ct., Nov. 1, 1999).

Rules of Civil Procedure

HCN R. Civ. P. 19(B).





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Ho-Chunk Nation Court
System Fee Schedule

Legal Citation Forms

Ho-Chunk Nation Judiciary
W9598 Hwy 54 East
P.O. Box 70
Black River Falls, WI 54615
(715) 284-2722 Ph.
(800) 434-4070 Ph. (Toll-free)
(715) 284-3136 Fax
<http://www.ho-chunknation.com/government/courts.htm>

Hours of Operation: Monday through Friday
(except holidays) 8 A.M. – 4:30 P.M.

HO-CHUNK NATION COURT BULLETIN

SWEARING-IN CEREMONY:

HCN Supreme Court Justice,
President, and Legislators sworn in



ASSOCIATE SUPREME COURT JUSTICE MARK BUTTERFIELD TAKES THE “OATH OF OFFICE”

PHOTO TAKEN BY MARCUS LEWIS, INTERN REPORTER, HOC AK WORAK

Swearing-In Ceremony (Con't.)

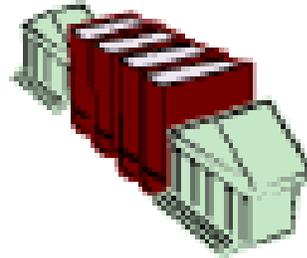
On July 2, 2003, Election Board Chairperson Mary Ellen Dumas administered the oath of office to the newly elected Ho-Chunk Nation President George Lewis. Also, taking the oath of office were Associate Supreme Court Chief Justice Mark Butterfield and Legislators Myrna Thompson (Area IV), Wade Blackdeer (Area II), and Dallas WhiteWing (Area III). Melissa Smith represented Clarence Pettibone who was sworn in over the telephone earlier in the day.



ELECTION BOARD CHAIRPERSON MARY ELLEN DUMAS ADMINISTERS THE OATH OF OFFICE TO PRESIDENT GEORGE LEWIS.

The HO-CHUNK NATION CONSTITUTION provides in Article VII, Section 10, that Supreme Court Justices shall be elected. With his oath, Associate Justice Butterfield begins his first full four-year term with the Ho-Chunk Nation Supreme Court. He had previously served an abbreviated term after a special election held to fill a vacancy.

In his comments made during the ceremony, Justice Butterfield remarked that the court system is an important part of the strength of the Ho-Chunk nation because it provides for an assurance of fairness. He urged the Judiciary to move forward with unity and a sense of purpose. During his remarks, Justice Butterfield joked with the audience that he was the model of campaign finance reform as he had only spent money on a filing fee.



Newly elected President George Lewis remarked that he is honored to serve as President of the Ho-Chunk Nation. Under Article VI, Section 5 of the HO-CHUNK NATION CONSTITUTION, the President serves a four-year term of office. Legislators likewise serve four-year terms under the CONSTITUTION.

A number of local dignitaries were also present at the swearing-in ceremony including: U.S. Representative Ron Kind, La Crosse; Mayor Chuck Ludeking, Tomah, and Fire Chief Kevin Decorah, Tomah.

Meet the Trial Court's Summer Intern: A.J. Cloud

Each summer, the Ho-Chunk Nation Trial Court chooses a summer intern to assist the Court's staff. This summer's recruitment, A.J. Cloud, a college student from Black River Falls, has been a welcome addition.

A.J. is the daughter of Shelley Thundercloud. Her grandparents are Lawrence and the late Edith Thundercloud. A.J. has three sisters: Nikki, Lydia, and India, and four brothers: Wesley, Winston, Tama, and Sheldon. While growing up, A.J. had many responsibilities at home, and she believes that those responsibilities have made her a more disciplined person.

In her free time, A.J. enjoys playing golf and league volleyball. A.J.'s Uncle Tracy taught her to play golf five years ago, and she has been addicted to the game ever since. She has played volleyball since middle school.

During her high school years, A.J. was involved in many extracurricular activities. She was an active participant in her high school's Model Congress and served as editor of her school's newspaper *The Paw Print*. In 2001, A.J. received the Wisconsin Indian Education Association's Student of the Year Award. Also, that same year, the faculty of Black River Falls High School named her Student of the Year of her class.

A.J. is a second-year student at the University of Wisconsin-La Crosse. At La Crosse, she majors in political science. After graduation, she plans to attend law school in New York, North Carolina, or Michigan.

During her time at the Court, A.J. has been in charge of a major project concerning the Court's civil cases. In addition, she has worked on reorganization of the Court's library.

A.J. has enjoyed spending her summer at the Trial Court. She believes it has been a great opportunity to learn about Ho-Chunk Nation law and the judicial process.

A.J.'s last day at the Trial Court is August 8, 2003. Then, she will be busy moving back to school. A.J. would like to thank the Ho-Chunk Nation Trial Court staff for the kindness and hospitality shown to her throughout the summer.



A.J. (RIGHT) READS TO A CHILD AS PART OF A VOLUNTEER PROGRAM IN WHICH SHE PARTICIPATED.

WISCONSIN SUPREME COURT HOLDS TRIBAL COURT JUDGMENT ENTITLED TO FULL FAITH AND CREDIT

By Rose Weckenmann

The Supreme Court of Wisconsin issued a long-awaited ruling on July 17, 2003 in *Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians*, concerning whether state courts must give full faith and credit to tribal court decisions when the state court has issued an adverse ruling. 2003 WI 118. In a 5-2 decision, the Court held that a Wisconsin circuit court should give full faith and credit to a tribal court's judgment despite concurrent proceedings in the circuit court.

This litigation first began in 1997 when Jerry Teague initiated an employment action in the Ashland County Circuit Court against the Bad River Band of Lake Superior Tribe of Chippewa Indians. While this state action was pending, the Band initiated an action in tribal court seeking a declaratory judgment that the employment contracts in question were invalid. Although Teague accepted service of the tribal court proceeding and participated in the discovery process, he failed to appear at the tribal court hearing. The tribal court ruled in a default judgment for the Band that the employment contracts were invalid.

After the tribal court judgment was rendered, Teague obtained a favorable judgment from the circuit court. He then initiated a garnishment action against the tribe. When the tribe sought relief from the garnishment action under Wisconsin's full faith and credit statute, the request was denied. The court held that under the "prior action pending" rule, which prohibits a second state court from hearing a case already pending in another Wisconsin state court, full faith and credit could not be given to the tribal court judgment.

The Wisconsin Court of Appeals reversed the circuit court's opinion. The Wisconsin Supreme Court then held that while the "prior action pending" rule did not apply because the tribe was a separate sovereign, the Court would not apply full faith and credit because the statute was silent on these specific circumstances. *Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians*, 2000 WI 79, 236 Wis. 2d 384, 612 N.W.2d 709. The case was remanded to the circuit court judge with instructions that he was to hold a conference with the tribal court judge to determine which court should maintain jurisdiction of the litigation under the principles of comity. *Id.* The meeting between the two judges failed to result in an agreement. The court of appeals certified the case to the Wisconsin Supreme Court to resolve the full faith and credit issue that had previously been left unresolved. On November 7, 2002, the Wisconsin Supreme Court heard oral arguments on this issue.

In an opinion written by Justice Crooks, the state Supreme Court held that under Wis. Stat. § 806.245, the circuit court was required to give full faith and credit to the Bad River tribal court judgment declaring the employment agreements void. *Teague*, 2003 WI 118, ¶ 2. The Court cited the Restatement (Second) of Conflicts § 86, which states that when separate sovereigns both have jurisdiction over the same matter, the other court should give full faith and credit to a judgment issued first. *Id.* at ¶ 24. The Court also noted that under the plain language of the Wisconsin statute, tribal court judgments must be provided with the same full faith and credit as are the judgments of any other governmental entity, provided all statutory conditions are met. *Id.* at ¶ 25. The Court then went on to conclude that the tribal court judgment in question had met all statutory requirements. *Id.* ¶ 50.

Chief Justice Shirley S. Abrahamson wrote a concurring opinion in which she supported the result by applying the principle of comity as opposed to full faith and credit. *Id.* at ¶ 52. The concurrence disagreed that full faith and credit must

be applied under Wis. Stat. § 806.245 because the statute is silent on the situation where judgments are in conflict. *Id* at ¶ 58. However, the opinion noted that in balancing factors under the principle of comity, the tribal court judgment was entitled to enforcement. *Id* at ¶ 71.

The two dissenting judges wrote separate opinions. The dissent by Justice Wilcox held that under proper application of the principle of comity, the circuit court's opinion should be upheld. *Id* at ¶ 87. Justice David Prosser's dissent looked to the legislative history behind Wis. Stat. § 806.245 to bolster an argument that full faith and credit should not be applied in this case and that judgments from Wisconsin tribal courts should be treated the same as judgments of Wisconsin circuit courts. *Id* at ¶ 95. This would have made the "prior action pending" rule applicable here. *Id* at ¶ 131.

The Wisconsin Supreme Court's opinion represents a recognition that tribal court judgments are not only valid in Wisconsin courts, but further, they must be treated with the same deference afforded to the courts of any other sovereign.

Federal Court Decisions

Second Circuit Court of Appeals

Oneida Indian Nation of New York v. City of Sherrill, New York, Nos. 01-7795, 01-7797, 2003 WL 21691993 (2nd Cir. July 21, 2003).

The Oneida Nation had brought a suit against the city of Sherrill, New York and Madison County, New York. The Nation alleged that certain subject properties were within its reservation and thus, not subject to property and sales taxes. The Second Circuit Appeals Court held that the land in question is part of the Oneidas' aboriginal land claim that was recognized by the 1794 Treaty of Canandaigua. Therefore, sales of the land without federal consent could not be held valid. In addition, the principle of

federal preemption mandates that congressional approval is required for taxation of any such Indian reservation.

Ninth Circuit Court of Appeals

Malabed v. North Slope Borough, No. 99-35684 2003 WL 21524776 (9th Cir. July 8, 2003).

Non-Indian plaintiffs were denied employment with the North Slope Borough because of an ordinance enacted by the Borough Assembly that granted an employment preference to Native Americans. The plaintiffs asserted that such an ordinance violated the Equal Protection Clauses of the Alaska Constitution and the United States Constitution. The Ninth Circuit Court of Appeals did not reach the federal constitutional claim because it held the ordinance unconstitutional under the Alaska Constitution. The Ninth Circuit determined that the state law was not pre-empted by § 703(i) of the Civil Rights Act of 1964.



Federal Circuit Court of Appeals

Thompson v. Cherokee Nation of Oklahoma, No. 02-1286, 2003 WL 21511710 (Fed. Cir. July 3, 2003).

The Cherokee Nation of Oklahoma brought a claim under the Contract Disputes Act, alleging that the Secretary of HHS had not paid the full indirect costs that the Nation was entitled to under its Indian Self-Determination Act contracts. The Federal Circuit Court held that the Secretary was obligated to pay the Cherokee Nation full support costs under the contracts and that the Secretary's failure to do so was a breach of contract.

Recent Decisions

Decisions are separated between Trial Court and Supreme Court decisions and categorized by subject matter and date (from oldest to most recent). The following are summaries prepared by the Staff Attorney for the reader's benefit. They should in no way be used as substitution for citations to the actual court opinion.

Within the Trial Court, cases are categorized and docketed as one of the following: Child Support (CS or if filed prior to 1998, CV), Civil Garnishment (CG), Civil (CV), Criminal (CR), Custody (CU), Domestic Violence (DV), or Juvenile (JV). Within this index, case citations will appear in one of these categories and, in the event it may be helpful to the reader as a research tool, the cases may also be summarized in a separate topic area. In some instances a decision may touch upon other topics that may not warrant a summary in this index, but the editor will use the indicator "other topic(s) covered," as a research aid for the reader.

Recent Decisions and **Recent Filings** both begin with the date where the previous Court Bulletin left off.

Trial Court

Child Support

JULY 7, 2003

Roxanne Johnson v. Loren James Rave, CV 97-25 Order (*Retention of the Status Quo*) (HCN Tr. Ct., July 7, 2003). (Matha, T).

One of two minor children reached the age of majority. The Court discontinued withholding for child support for such individual. However, the quarterly withholding shall not decrease since the foreign court intended the withholding amount to remain constant until both children reach the age of majority.

State of Wisconsin, Jackson County in re: Roberta J. Yellowcloud v. Donald L. Yellowcloud, Jr., CS 98-01 Order (*Modifying and Enforcing Child Support*). (HCN Tr. Ct., July 7, 2003). (Matha, T).

The Court had to determine whether to modify an existing child support order. The respondent failed to offer a response within the specified time frame. The Court granted the petitioner's request for modification.

JULY 9, 2003

Michelle M. McDermott v. Chester A. Mallory, CS 01-16 Order (*Ceasing Withholding*) (HCN Tr. Ct., July 9, 2003). (Matha, T).

The Court had reminded the parties of their need to file proof of high school enrollment with the Court or face a cessation of child support withholding for the minor child. No such proof was filed. The Court discontinued withholding for child support.

State of Wisconsin/Jackson County v. Ida Decorah Ermenc, CS 02-62 Order (*Updating Arrearage Withholding*) (HCN Tr. Ct., July 9, 2003). (Matha, T).

The Court had requested documentation verifying an earlier arrearage request. The petitioner failed to respond to the Court's order. The Court amended the current order's arrearage amount.

JULY 10, 2003

Juneau County/Keith Miller v. Chasity A. Miller, CS 99-26 Order (*Renewing Child Support Withholding*) (HCN Tr. Ct., July 10, 2003). (Matha, T).

The Court had suspended withholding for child support. The petitioner filed certified copies of a stipulation and order for support. The Court granted the uncontested stipulation and order.

State of Wisconsin/Sawyer County v. Roberta L. Crowe, CV 97-76 Order (*Modifying and Enforcing Child Support*). (HCN Tr. Ct., July 10, 2003). (Matha, T).

The Court had to determine whether to modify an existing child support order. The petitioner requested a decrease in current child support due to the emancipation of one of the minor children. The petitioner also requested a decrease in arrearage withholding. The respondent failed to offer a response within the specified time frame. The Court granted the petitioner's request for modification.

JULY 11, 2003

Christel J. Swan v. Timothy B. Ward, CS 03-28 *Order (Default Judgment)*. (HCN Tr. Ct., July 11, 2003). (Bossman, W).

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

Kentwan Lee Dixon v. Johna Lee Fisher, CS 03-29 *Order (Default Judgment)*. (HCN Tr. Ct., July 11, 2003). (Bossman, W).

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

State of Wisconsin v. Damon Funmaker, CS 03-13 *Default Judgment (Enforcing Child Support)*. (HCN Tr. Ct., July 11, 2003). (Bossman, W).

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

JULY 14, 2003

State of Nevada v. Alfred L. Griffin, CS 03-32 *Order (Default Judgment)*. (HCN Tr. Ct., July 14, 2003). (Matha, T).

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

JULY 15, 2003

Nicole Ward v. Daryl Decora, CV 97-06 *Order (Amending Child Support Enforcement)* (HCN Tr. Ct., July 15, 2003). (Bossman, W).

The Court had to determine whether to modify an existing child support order. The respondent failed to offer a response within the specified time frame. The Court granted the petitioner's request for modification.

State of Wisconsin v. Maynard A. Rave, Jr., CV 98-63 *Order (Amending Child Support Enforcement)* (HCN Tr. Ct., July 15, 2003). (Bossman, W).

The Court had to determine whether to modify an existing child support order. The respondent failed to offer a response within the specified time frame. The Court granted the petitioner's request for modification.

State of Wisconsin, Ex. Rel., and Robert J. Jack, CS 03-10 *Default Judgment (Enforcing Child Support)*. (HCN Tr. Ct., July 15, 2003). (Bossman, W).

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

State of Wisconsin/Jackson Co. v. William B. Collins, CS 03-21 *Default Judgment (Enforcing Child Support)*. (HCN Tr. Ct., July 15, 2003). (Bossman, W).

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

JULY 16, 2003

Heather Hartwig v. Steve Lincoln, CS 99-21 *Order (Denying Objection)* (HCN Tr. Ct., July 16, 2003). (Bossman, W).

The Court had informed the parties that all child support arrears had been paid and if no objection were received, the case would be closed. Petitioner filed an objection to the closure of the case with a KIDS account statement. However, the statement shows that said amount is for interest on child support. Therefore, the Court denied the objection and ordered the case closed.

In the interest of: B.J.C., Erica J. Hawpetoss and State of Wisconsin v. Brandan J. Cloud, Sr., CS 01-21 *Order (Suspending Child Support Withholding)* (HCN Tr. Ct., July 16, 2003). (Matha, T).

The Court had to determine whether to grant full faith and credit to a foreign judgment. The petitioner requested and received cessation of

current child support. The Court granted the petitioner's request for recognition and enforcement.

State of Wisconsin v. Stuart A. Taylor, Jr., CS 00-23 Order (Modifying Child Support Enforcement) (HCN Tr. Ct., July 16, 2003). (Bossman, W).

The Court had to determine whether to modify an existing child support order. The respondent failed to offer a response within the specified time frame. The Court granted the petitioner's request for modification.

State of Wisconsin, and Crystal L. Monteen-Martin v. Ronald David Martin, CS 00-35 Order (Updating Arrearage Amount) (HCN Tr. Ct., July 16, 2003). (Bossman, W).

The petitioner requested updated arrears. The respondent failed to respond within the specified time frame. The Court granted the petitioner's request to amend the arrearage amount.

State of Wisconsin/Sauk County, and Wendy Littlegeorge v. Stuart Lonetree, CS 00-24 Order (Updating Arrearage Amount) (HCN Tr. Ct., July 16, 2003). (Bossman, W).

The petitioner requested updated arrears. The respondent failed to respond within the specified time frame. The Court granted the petitioner's request to amend the arrearage amount.

State of Wisconsin, and Susan C. Walczak v. Ferguson Funmaker, CS 99-07 Order (Updating Arrearage Amount) (HCN Tr. Ct., July 16, 2003). (Bossman, W).

The petitioner requested updated arrears. The respondent failed to respond within the specified time frame. The Court granted the petitioner's request to amend the arrearage amount.

JULY 17, 2003

Rena Lynn LeMieux v. Kenneth Allen LeMieux, CS 01-02 Order (Impounding Per Capita) (HCN Tr. Ct., July 17, 2003). (Matha, T).

The Court had reminded the parties of their need to file proof of high school enrollment with the Court or face a cessation of child support withholding for the minor child. The petitioner filed proof of the

child's college enrollment and a certified copy of a State of Oregon divorce decree. The Court requires a recent judgment noting that the Wasco County Circuit Court exercises continuing, exclusive jurisdiction. In addition, the Court ordered the Treasury Department to impound a percentage of respondent's per capita distribution.

State of Wisconsin v. Jose E. Ortiz, CS 03-25 Judgment (Enforcing Child Support). (HCN Tr. Ct., July 17, 2003). (Bossman, W).

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

JULY 18, 2003

Michelle L. Lewis v. Dennis C. Lewis, CS 01-36 Order (Default Judgment) (HCN Tr. Ct., July 18, 2003). (Bossman, W).

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

JULY 21, 2003

Debra B. Jepson v. Paul D. Arentz, CS 03-47 Order (Default Judgment for Child Support Deduction from Wages) (HCN Tr. Ct., July 21, 2003). (Matha, T).

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

JULY 22, 2003

Lynn Marie Coomes v. Phillip Anthony Coomes, CS 03-33 Default Judgment (Enforcing Child Support) (HCN Tr. Ct., July 22, 2003). (Bossman, W).

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

State of Wisconsin and Debra K. Crowe v. Forest C. Blackdeer, CS 02-41 *Order (Closing Case)* (HCN Tr. Ct., July 22, 2003). (Matha, T).

On December 5, 2002, the Court entered an order in the instant case. The Court became aware of the respondent's death and closed the case.

JULY 24, 2003

State of Wisconsin/Sauk County, and Sauk County Department of Health and Human Services v. Margaret A. Oliver, CS 02-61 *Order (Suspending Child Support Withholding)* (HCN Tr. Ct., July 24, 2003). (Matha, T).

The petitioners filed a motion to modify, requesting that the Court cease child support withholding. The petitioners informed the Court that the respondent's parental rights had been terminated. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for modification.

State of Wisconsin v. Stanley Whiteeagle, CV 97-87 *Order (Modifying and Enforcing Child Support)* (HCN Tr. Ct., July 24, 2003).

The Court had to determine whether to modify an existing child support order. The respondent failed to offer a response within the specified time frame. The Court granted the petitioner's request for modification.

JULY 25, 2003

Kathryn L. Newsom v. Dennis G. Lewis, CS 01-03 *Order (Recognition of Foreign Order)* (HCN Tr. Ct., July 25, 2003). (Bossman, W).

The Court had to determine whether to grant full faith and credit to a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted the petitioner's request for recognition and enforcement.

Kathryn L. Newsom v. Dennis G. Lewis, CS 01-03 *Order (Suspending Child Support Withholding From Per Capita Distributions)* (HCN Tr. Ct., July 25, 2003). (Bossman, W).

The Court had to determine whether to suspend the current child support withholding from the respondent's per capita distributions. The

respondent alleged that there was an amended child support order. The Court granted the request.

JULY 29, 2003

Mary Jones Dietzler v. Bryan Christopher Dietzler, CS 03-48 *Order (Default Judgment)* (HCN Tr. Ct., July 29, 2003) (Bossman, W).

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

Civil Garnishment

JULY 7, 2003

Check Advance v. Jesse Linhart, CG 03-33 *Order (Default Judgment)*. (HCN Tr. Ct., July 7, 2003). (Bossman, W).

The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

Credit Recovery Services LLC, Agent for Water Works & Lighting Commission v. Terry Sherman, CG 03-41 *Order (Default Judgment)*. (HCN Tr. Ct., July 7, 2003). (Bossman, W).

The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

JULY 8, 2003

Drs. Delebo, Overman, Hegna & Reich v. Charles Marsden, CG 03-40 *Order (Default Judgment)*. (HCN Tr. Ct., July 8, 2003). (Bossman, W).

The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

JULY 10, 2003

Gerald M. Voelker v. Eugene Topping, Jr., CG 03-42 *Order (Default Judgment)*. (HCN Tr. Ct., July 10, 2003). (Matha, T).

The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

JULY 11, 2003

Capital One v. Chandra M. Decora, CG 03-43 *Order (Default Judgment)* (HCN Tr. Ct., July 11, 2003). (Matha, T).

The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

Discover Bank v. Christine Brown, CG 03-44 *Order (Default Judgment)* (HCN Tr. Ct., July 11, 2003). (Matha, T).

The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

Stafford Rosenbaum, LLP v. Joy L. Rave, CG 03-45 *Order (Default Judgment)* (HCN Tr. Ct., July 11, 2003). (Matha, T).

The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

WestView Court v. George Dahlgren, CG 03-46 *Order (Default Judgment)* (HCN Tr. Ct., July 11, 2003). (Matha, T).

The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

JULY 23, 2003

State Collection Service v. Matthew S. Cooley, CG 03-48 *Order (Default Judgment)* (HCN Tr. Ct., July 23, 2003). (Bossman, W).

The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the

respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

JULY 29, 2003

Check Advance v. Betty Gerke (Krause), CG 03-53 *Order (Default Judgment)* (HCN Tr. Ct., July 29, 2003). (Bossman, W).

The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

JULY 30, 2003

Franciscan Skemp Healthcare v. Susette K. LaMere, CG 03-54 *Order (Default Judgment)* (HCN Tr. Ct., July 30, 2003). (Bossman, W).

The petitioner requested that the Court enforce a foreign judgment and garnish the wages of the respondent. The respondent failed to respond within the specified time frame. The Court granted a default judgment.

Children's Trust Fund (CTF)

JULY 2, 2003

In the Interest of Minor Children: T.M.K., DOB 08/22/85, T.M.K., DOB 05/09/87, T.M.K., DOB 06/06/90, and T.M.W., DOB 04/09/93, by Sara J. White Eagle v. HCN Office of Tribal Enrollment, CV 03-18 *Order (Denial of Petition)* (HCN Tr. Ct., July 2, 2003). (Matha, T).

The petitioner requested funds from the CTF accounts of the minor children for costs associated with household furnishings, a driveway, and a sun porch. The Court held that the release of monies would not result in a direct and tangible health, education or welfare benefit for the children.

JULY 3, 2003

In the Interest of the Minor Child: D.E.M., DOB 12/12/90, by Ayako Thundercloud v. HCN Office of Tribal Enrollment, CV 03-43 *Order (Accepting Accounting)* (HCN Tr. Ct., July 3, 2003). (Bossman, W).

On June 19, 2003, the Court released funds from the CTF account of the minor child for orthodontics. On July 2, 2003, the petitioner submitted the

required accounting. The Court accepted the accounting and closes the case.

JULY 9, 2003

In the Interest of Minor Child: T.F., DOB 03/18/93, by Toni Funmaker v. HCN Office of Tribal Enrollment, CV 03-04 Order (Accepting Accounting) (HCN Tr. Ct., July 9, 2003). (Matha, T).

On February 20, 2003, the Court released funds from the CTF account of the minor child for orthodontics. On June 16, 2003, the Court reminded the petitioner of her duty of accounting for the expenditures. On July 8, 2003, the petitioner submitted the required accounting. The Court accepted the accounting and closes the case.

In the Interest of William Blackdeer, DOB 01/18/84, v. HCN Office of Tribal Enrollment, CV 03-38 Order (Dismissal without Prejudice) (HCN Tr. Ct., July 9, 2003). (Bossman, W).

The petitioner requested funds from his CTF account. However, the petitioner failed to appear at the fact-finding hearing. The Court dismissed the case.

JULY 10, 2003

In the Interest of Minor Children: L.G.B., DOB 03/30/89, C.A.B., DOB 08/26/90, by Tari Lynn Pettibone v. HCN Office of Tribal Enrollment, CV 01-136 Order (Requesting Accounting) (HCN Tr. Ct., July 10, 2003). (Matha, T).

On April 28, 2003, the Court released funds from the CTF account of the minor child for orthodontics. The *Order* required the petitioner to provide an accounting within a specified time frame. The Court reminded the petitioner of her duty to account for expenditures.

In the Interest of the Minor Child: Z.G.D., DOB 04/20/86, by Sheila M. Pagel v. HCN Office of Tribal Enrollment, CV 02-101 Order (Demanding Accounting) (HCN Tr. Ct., July 10, 2003). (Matha, T).

On January 7, 2003, the Court released funds from the CTF account of the minor child for orthodontics. The *Order* required the petitioner to provide an accounting within a specified time frame. On April 16, 2003, the Court reminded the

petitioner of her duty. On July 10, 2003, the Court again reminded the petitioner of her duty to account for expenditures and warned of possible action regarding the CONTEMPT ORDINANCE.

JULY 22, 2003

In the Interest of Adam Greendeer, DOB 06/23/85, by Cynthia Loofboro v. HCN Office of Tribal Enrollment CV 03-49 Order (Requiring Submission of Documents) (HCN Tr. Ct., July 22, 2003). (Bossman, W).

The petitioner requested funds from the child's CTF account. The respondent raised issues that indicate a lack of documentation. The Court required that the petitioner provide the appropriate documentation.

In the Interest of Minor Children: R.R., DOB 05/09/87, D.P., DOB 08/09/96, J.P., DOB 04/03/98, by Julia Rockman v. HCN Office of Tribal Enrollment CV 03-50 Order (Requiring Submission of Documents) (HCN Tr. Ct., July 22, 2003). (Bossman, W).

The petitioner requested funds from the children's CTF accounts. The respondent raised issues that indicate a lack of documentation. The Court required that the petitioner provide the appropriate documentation.

In the Interest of Minor Child: M.E.K., DOB 01/15/90, by Ethel C. Funmaker v. HCN Office of Tribal Enrollment, CV 03-51 Order (Petition Granted) (HCN Tr. Ct., July 22, 2003). (Bossman, W).

The petitioner requested funds from the CTF accounts of the minor children for costs associated with orthodontic procedures. The Court granted the request.

Incompetent's Trust Fund Cases

NOTHING TO REPORT AT THIS TIME.

CIVIL CASES

JULY 3, 2003

HCN Department of Housing, Property Management Division v. Douglas and Alison RedEagle, CV 03-13 Order (Satisfaction of

Judgment and Intent to Close) (HCN Tr. Ct., July 3, 2003). (Bossman, W).

On April 16, 2003, the Court issued a judgment in favor of the plaintiff. On July 1, 2003, the plaintiff acknowledged full payment and satisfaction of the judgment. The Court recognized that this debt has been paid in full and informed the parties of its intent to close.

Ho-Chunk Nation Department of Housing, Property Management Division v. Summer Martin and Dustin Jackson, CV 03-23 *Order (Granting Extension)* (HCN Tr. Ct., July 3, 2003). (Matha, T). The defendants requested more time to properly file an *Answer*. The defendants indicated that their attorney had not represented them properly. The Court granted the extension in light of the difficulties experienced with outside legal counsel.

JULY 7, 2003

Tammy J. Ross v. Ho-Chunk Nation, CV 03-20 *Order (Motion Hearing)* (HCN Tr. Ct., July 7, 2003). (Bossman, W).

The Court scheduled a hearing to grant the defendant an opportunity to argue its *Motion to Dismiss* and to provide respondent an opportunity to respond.

Faye Begay v. Jean Day, Executive Director of HCN Education Dept., Greg Garvin, HCN Executive Administrations Officer, and Ho-Chunk Nation, CV 03-09 (*Stipulated Motion to Amend Scheduling Order*) (HCN Tr. Ct., July 7, 2003). (Bossman, W).

The Court amended the Scheduling Order in accordance with the agreement by the parties.

JULY 8, 2003

Kevin Croak v. Joy Rave, CV 03-41 *Scheduling Order* (HCN Tr. Ct., July 8, 2003). (Matha, T).

The Court issued a scheduling order, setting out the various deadlines and setting the pretrial conference and trial dates.

JULY 9, 2003

Majestic Pines Hotel, Division of the Ho-Chunk Nation v. Thunderhawk L. Decorah, CV 03-22 *Order (Satisfaction of Judgment)* (HCN Tr. Ct., July 9, 2003). (Matha, T).

On April 7, 2003, the Court issued a judgment in favor of the plaintiff. On July 1, 2003, the plaintiff acknowledged full payment and satisfaction of the judgment. The Court recognized that this debt has been paid in full and informed the parties of its intent to close.

JULY 15, 2003

Ho-Chunk North, Wittenberg, Wisconsin, Division of the Ho-Chunk Nation Department of Business, and Ho-Chunk Nation v. Wayne's Transport, Inc.; Wayne's Trucking, Inc.; Wayne L. Hirt and Lisa Hirt et al., CV 02-14 *Order (Modification of Settlement Agreement)* (HCN Tr. Ct., July 15, 2003). (Matha, T).

The Court modified a settlement agreement in accordance with an agreement by the parties. The underlying settlement agreement continues in full force and effect with the modification.

Janette Smoke v. Steve Garvin, in the capacity of Table Games Manager, Majestic Pines Casino and Ho-Chunk Nation, CV 01-97 *Order (Granting Extension)* (HCN Tr. Ct., July 15, 2003). (Matha, T).

The defendants filed a *Motion to Extend Time for Seeking PBOD Approval of the Ranking System or to Discontinue the Ranking System and Any Resulting Scheduling*. The plaintiff failed to respond within the specified time frame. The Court granted the motion because it considered the request reasonable under the prior decision of the Court.

JULY 18, 2003

Thomas Yellow Thunder v. HCN Election Board, CV 03-47 *Order (Denying Motion for Costs, Attorney's Fees and Sanctions)* (HCN Tr. Ct., July 18, 2003). (Bossman, W).

On June 13, 2003, the plaintiff filed an election challenge. The Court scheduled a hearing for June 25, 2003. However, the plaintiff failed to appear. On June 26, 2003, the Court dismissed the action. On June 30, 2003, the defendant filed a motion requesting costs, attorneys' fees and sanctions. The plaintiff based its request on three theories: the plaintiff's failure to appear at the hearing, the plaintiff's failure to respond to requests for discovery, and the plaintiff's filing of an election challenge that was "frivolous and/or wholly without

merit” under the HO-CHUNK NATION ELECTION ORDINANCE. The Court held that sanctioning the plaintiff for non-appearance would be harsh and excessive under the circumstances of this case. In addition, the Court held because the discovery response was not due until the day of the hearing, the defendant was not prejudiced by the failure of the plaintiff to submit to a discovery response. Finally, the Court held that the defendant had failed to provide evidence that the election challenge in question was “frivolous” or “without merit.” Therefore, the Court denied the defendant’s motion.

Ho-Chunk Housing Authority v. Martha Martinez, CV 02-04 Order (Dismissal) (HCN Tr. Ct., July 18, 2003). (Matha, T).

On January 11, 2002, the plaintiff filed a *Complaint* requesting a judgment for past due rent and reasonable costs. The defendant failed to respond within the specified time frame. The plaintiff then filed a motion for a default judgment. The Court denied the motion of the plaintiff and dismissed the case. The Court held that the plaintiff was barred from bringing this action under the principle of *res judicata*. In addition, the Court precluded the plaintiff from bringing the action under the *Ho-Chunk Nation Rules of Civil Procedure*.

[See also [Res Judicata](#) within this index.]

Tammy J. Ross v. Ho-Chunk Nation, CV 03-20 Order (Granting Motion to Dismiss) (HCN Tr. Ct., July 18, 2003). (Bossman, W).

The plaintiff brought an action against the Ho-Chunk Nation for monetary damages to her motor vehicle because of actions of the defendant’s employees. The defendant filed a motion to dismiss on the ground of lack of jurisdiction because of the defendant’s sovereign immunity from suit. The Court granted the motion to dismiss.

[See also [Sovereign Immunity](#) within this index.]

JULY 23, 2003

Faye Begay v. Jean Ann Day, HCN Department of Education, Greg Garvin, HCN Executive Administration Officer and the Ho-Chunk Nation, CV 03-09 Order (Denying Defendants’ Motion for

Summary Judgment) (HCN Tr. Ct., July 23, 2003). (Bossman, W).

The plaintiff alleged that the defendants wrongfully discharged her from employment. The defendants filed a motion requesting summary judgment. The Court concluded that there was a genuine issue of material fact and denied the motion.

JUNE 27, 2003

Hope B. Smith v. Ho-Chunk Nation, CV 02-42 Order (Final Judgment) (HCN Tr. Ct., July 31, 2003). (Matha, T).

The plaintiff alleged that the defendant had wrongfully discharged her from employment for reasons associated with improper usage of a tribal credit card. The Court employed the arbitrary and capricious standard of review in accordance with standing HCN Supreme Court precedent. The Court held that the disciplinary action against plaintiff represented a clear error of judgment.

Juvenile

JUNE 27, 2003

In the Interest of the Minor Child: V.A.B., JV 02-12 Motion to Withdraw as Guardian ad Litem (HCN Tr. Ct., June 27, 2003). (Matha, T).

The GAL requested to withdraw from the case. The Court granted the request.

In the Interest of the Minor Children: D.A.F. and K.V.F., JV 03-16, -17 Motion to Withdraw as Guardian ad Litem (HCN Tr. Ct., June 27, 2003). (Matha, T).

The GAL requested to withdraw from the case. The Court granted the request.

In the Interest of the Minor Child: L.J.R., JV 01-05 Motion to Withdraw as Guardian ad Litem (HCN Tr. Ct., June 27, 2003). (Matha, T).

The GAL requested to withdraw from the case. The Court granted the request.

In the Interest of the Minor Children: T.H.S., S.H.S., and B.A.S., JV 99-05, -06, -07 Motion to Withdraw as Guardian ad Litem (HCN Tr. Ct., June 27, 2003). (Matha, T).

The GAL requested to withdraw from the case. The Court granted the request.

JULY 1, 2003

In the Interest of the Minor Children: A.C.S., DOB 04/04/89, P.M.S., DOB 01/14/91, and P.A.S., DOB 01/14/91 JV 98-05, -06, -07 Order (Appointing Temporary Legal Guardian) (HCN Tr. Ct., July 1, 2003). (Bossman, W).

The Court appointed the petitioner as temporary legal guardian for the minor children. The Court based its determination on the recommendations of CFS and the GAL and the preference of placement in a Ho-Chunk traditional family household.

JULY 10, 2003

In the Interest of Minor Child: J.G.W., DOB 06/09/99, JV 03-19 Order (Granting Motion to Intervene) (HCN Tr. Ct., July 10, 2003). (Matha, T).

The petitioner requested to be allowed to intervene. The court found the petitioner has a direct and legitimate interest in the case and granted the motion.

JULY 15, 2003

In the Interest of Minor Child: S.L.S., DOB 01/03/86, JV 00-19 Order (Discontinuing Child Support) (HCN Tr. Ct., July 15, 2003). (Matha, T).

On January 15, 2001, the Court entered a nominal child support order in this case. However, the permanent guardians do not wish to receive the standing nominal amount of support. The Court discontinued the current child support withholding.

JULY 18, 2003

In the Interest of the Minor Child: D.S.S., DOB 07/12/99, JV 03-15 Order (Appointing Temporary Interim Legal Guardian) (HCN Tr. Ct., July 18, 2003). (Bossman, W).

On April 1, 2003, the petitioner filed a *Petition for Permanent Guardianship* for the minor child. On July 18, 2003, the petitioner requested postponement in order to seek legal counsel. The Court granted the postponement request and appointed the petitioner as the interim legal guardian.

JULY 21, 2003

In the Interest of Minor Children: D.L.H., DOB 08/15/97, A.M.H., DOB 12/25/95, D.M.H., DOB 02/16/92, D.L.H., DOB 03/25/89, JV 03-20, -21, -22, -23 Order (Appointment of Guardian Ad Litem)

(HCN Tr. Ct., July 21, 2003). (Matha, T).

The Court appointed a GAL to act on behalf of the children's interests.

JULY 23, 2003

In the Interest of Minor Child: D.A.F., DOB 09/16/88, K.V.F., DOB 01/15/90, JV 03-16, -17 Order (Appointment of Guardian Ad Litem) (HCN Tr. Ct., July 23, 2003). (Matha, T).

The Court appointed a GAL to act on behalf of the children's interests.

In the Interest of the Minor Children: J.H., DOB 01/20/96, J.R., DOB 12/15/92, JV 03-15, 93-CU-03 Order (Allowing Withdrawal of GAL) (HCN Tr. Ct., July 23, 2003). (Bossman, W).

The GAL requested to withdraw from the case. The Court granted the request.

In the Interest of Minor Children: J.R.P., DOB 02/27/92, L.M.P., DOB 5/12/90, L.K.K., DOB 12/12/87, JV 03-01, -02, -03 Order (Dispositional Requirements) (HCN Tr. Ct., July 23, 2003). (Matha, T).

The Court conducted a Dispositional Hearing to assess the extent and scope of the dispositional recommendations proposed by Child and Family Services. The Court enumerated the necessary recommendations in this order.

Res Judicata**JULY 18, 2003**

Ho-Chunk Housing Authority v. Martha Martinez, CV 02-04 Order (Dismissal) (HCN Tr. Ct., July 18, 2003). (Matha, T).

The Court held that the plaintiff was barred from bringing this action under the principle of *res judicata*. Under the principle of *res judicata*, when a final judgment on the merits of a case has been issued, the same cause of action may not be re-litigated absent a showing of fraud or some other invalidating factor. The Court cited numerous instances where it has utilized the principle *res judicata* in its refusal to re-hear the same cause of action. *Res judicata* should be applied in cases in which (1) the plaintiff is asserting a cause of action that has previously been asserted in a cause of action in which a final judgment has been issued

and (2) the parties in the case are identical to or in privity with the parties in the earlier proceeding.

The Court held the cause of action asserted in the instant case was the cause of action that had previously been asserted in *HCN Hous. Auth. v. Martha Martinez*, CV 01-43 (HCN Tr. Ct., May 16, 2001). Both complaints requested past due rent and reasonable costs, and the amount of such costs had previously been determined. In addition, the parties involved in the instant case were the same parties that had been involved in litigation in the earlier action.

[See **CIVIL CASES** within this index for case summary.]

Sovereign Immunity

JULY 18, 2003

Tammy J. Ross v. Ho-Chunk Nation, CV 03-20 *Order (Granting Motion to Dismiss)* (HCN Tr. Ct., July 18, 2003). (Bossman, W).

Article XII, § 1 of the HO-CHUNK NATION CONSTITUTION provides that the Ho-Chunk Nation is immune from suit except to the extent that that sovereign immunity is expressly waived by the Legislature. In addition, Article VII, § 5 of the HO-CHUNK NATION CONSTITUTION provides that while the Trial Court shall have original jurisdiction over cases and controversies arising under the Constitution, laws, customs, and traditions of the Ho-Chunk Nation, this grant of jurisdiction is not to be construed as a waiver of sovereign immunity.

The Court held that as it has not been granted jurisdiction to hear cases against the Ho-Chunk Nation in cases in which the Nation has not waived its sovereign immunity from suit, the Court was without jurisdiction to hear the present case.



Supreme Court

JUNE 27, 2003

Greg Littlejohn v. Ho-Chunk Nation Election Board, Chairperson Mary Ellen Dumas and the Ho-Chunk Nation Election Board Members: Eugene Topping, Jr., Darlene Funmaker, Georgianne Funmaker, Brandee Alderman, Bonnie Strossner, Wilma Thompson, Tari Pettibone, Mary Taylor, Elliot Funmaker, Sr., and Tara Blackdeer, SU 03-07 *Scheduling Order* (HCN S. Ct., June 27, 2003). The appellant filed a *Notice of Appeal and Motion for Expedited Consideration* on June 19, 2003. In addition, the appellant requested a stay to preserve the status quo. The Court accepted the matter for appeal and ordered that the case should be given expedited consideration because the case involved an election challenge. The Court refused to lift the Trial Court's injunction that enjoined the Election Board from swearing in Kathyleen Whiterabbit.

JUNE 30, 2003

Greg Littlejohn v. Ho-Chunk Nation Election Board, Chairperson Mary Ellen Dumas and the Ho-Chunk Nation Election Board Members: Eugene Topping, Jr., Darlene Funmaker, Georgianne Funmaker, Brandee Alderman, Bonnie Strossner, Wilma Thompson, Tari Pettibone, Mary Taylor, Elliot Funmaker, Sr., and Tara Blackdeer, SU 03-07 *OrderSetting Time and Date for Oral Argument* (HCN S. Ct., June 30, 2003).

The Court scheduled *Oral Argument* for July 2, 2003 at 3:00p.m.

JULY 10, 2003

Ho-Chunk Nation v. Bank of America, SU 03-06 *Order Denying Appeal* (HCN S. Ct., July 10, 2003). On June 18, 2003, the appellant filed a *Notice of Appeal*, appealing the Trial Court's May 19, 2003 *Order (Denying Motion to Dismiss)*. The Court denied the appeal because there is not a final order of the trial Court to be appealed under *HCN R. App. 7*. Under this rule, the Court will only accept appeals after the Trial Court has fully considered and disposed of all of the issues based on the facts of a case. In addition, this could not be considered a timely and proper pleading of an appeal by permission under *HCN R. App. 7.5*. The

appeal of the Trial Court's order should have been filed as an appeal from an interlocutory order under *HCN R. App. 7.5*. This would have required that the appeal be filed within ten days of the Trial Court's order. This request for appeal was filed well after the deadline outlined in the rule.

JULY 11, 2003

Greg Littlejohn v. Ho-Chunk Nation Election Board, Chairperson Mary Ellen Dumas and the Ho-Chunk Nation Election Board Members: Eugene Topping, Jr., Darlene Funmaker, Georgianne Funmaker, Brandee Alderman, Bonnie Strossner, Wilma Thompson, Tari Pettibone, Mary Taylor, Elliot Funmaker, Sr., and Tara Blackdeer, SU 03-07 Decision (HCN S. Ct., July 11, 2003).

The Court reversed the Trial Court's decision in this election challenge. The case involved a challenge by the plaintiff of the Election Board's certification of a candidate as the election winner after the primary. In its ruling, the Court wrote that under the revised HCN ELECTION ORDINANCE there is no longer a distinction between general and special elections for purposes of when a runoff election must be held. The Court held that its decision in *Debra Greengrass v. HCN Election Board*, SU 99-03 (HCN S. Ct. June 30, 1999) was not controlling in this case because the HCN ELECTION ORDINANCE has been revised since that opinion. According to the Court, the Election Board was correct in its declaration of Kathyleen Whiterabbit as the winner.

Associate Justice Mark Butterfield wrote a dissenting opinion. Justice Butterfield wrote that the Court's opinion failed to provide a proper reconciliation between the opinions in *Greengrass* and *Matha v. HCN Election Board*, CV 02-34 (HCN Tr. Ct. April 12, 2002). In addition, the Associate Justice held that *Greengrass* would be properly applied to the case at hand because that case provided an interpretation of the HCN CONSTITUTION rather than the election ordinance. In addition, he held that the present version of the election ordinance would still violate the HCN CONSTITUTION, which requires that offices of the Legislature, Executive, and Judiciary be filled at General Elections.

Recent Filings

Trial Court

Child Support

JUNE 27, 2003

State of WI/Jessica Cloud v. Joshua D. Cloud Sr., CS 03-34. (Bossman, W).

Debra B. Jepson v. Paul D. Arentz, CS 03-47. (Matha, T).

JUNE 30, 2003

State of WI v. Leaf O. Funmaker, CS 03-35. (Matha, T).

State of WI v. Garrett C. Decorah, CS 03-36. (Matha, T).

State of WI v. Damon E. Funmaker, CS 03-37. (Bossman, W).

State of WI v. Donald L. Yellowcloud, CS 03-38. (Matha, T).

JULY 1, 2003

State of WI/Brown Co. v. Kerry Funmaker, CS 03-40. (Matha, T).

JULY 4, 2003

State of WI/Vilas Co., Pat White v. Jane M. White, CS 03-41. (Bossman, W).

State of Iowa v. Brian C. Dietzler, CS 03-48. (Bossman, W).

Antoinette Lock v. Larry R. Frostman, CS 03-49. (Bossman, W).

JULY 7, 2003

Cynthia Mobley v. Mitchell RedCloud, CS 03-42. (Bossman, W).

JULY 9, 2003

State of WI v. Janice Harrison, CS 03-43. (Bossman, W).

Chelsae L. Joe v. Paul Joseph Smith, CS 03-44.
(Matha, T).

Patricia Elliot v. Michael P. Zenner, CS 03-45.
(Bossman, W).

JULY 10, 2003

State of WI/Sauk Co. v. Tara Blackcoon, CS 03-46.
(Bossman, W).

JULY 15, 2003

State of WI and Kimberly Otto v. Lenny Cloud, CS 03-50. (Matha, T).

JULY 23, 2003

State of WI v. Daniel Bird, CS 03-51. (Bossman, W).

JULY 29, 2003

Felicia Topping v. Leon Topping, CS 03-52.
(Matha, T).

Civil Garnishment

JUNE 30, 2003

Discover Bank v. Kathleen J. La Mere, CG 03-50
(Matha, T).

JULY 8, 2003

Check Advance v. Betty Gerke (Krause), CG 03-53.
(Bossman, W).

Franciscan Skemp Healthcare v. Susette K. Lamere,
CG 03-54. (Bossman, W).

Gundersen Lutheran Hospital v. Melissa Windsor,
CG 03-55. (Bossman, W).

JULY 14, 2003

*Gunderson Lutheran Hosp. v. Andrew and Vivian
Thundercloud*, CG 03-49. (Matha, T).

*Creditor Recovery Ser. Agent for Doctors' Clinic v.
Kay Weikel*, CG 03-51. (Matha, T).

JULY 15, 2003

M & I Marshall & Isley v. Brady Two-Bears, CG
03-52. (Matha, T).

State Collection Serv. v. Monica Cloud, CG 03-56.
(Matha, T).

JULY 17, 2003

*Tomah Memorial Hospital v. Michael and Roxanne
Peth*, CG 03-57. (Matha, T).

Madison Gas and Electric Co. v. Elizabeth Haller,
CG 03-58. (Matha, T).

*Gundersen Lutheran Clinic v. James and Melissa
Rochester*, CG 03-59.

JULY 23, 2003

Oral Surgery Center v. Susan A. Alderman, CG 03-
60. (Bossman, W).

JULY 25, 2003

*Creditor Recovery Service, Agent for Wood Co.
Telephone Co. v. Inez L. Littlegeorge*, CG 03-61.
(Bossman, W).

JULY 29, 2003

Black River Memorial v. Peggy Perkins, CG 03-62.
(Matha, T).

Civil Cases

JUNE 30, 2003

*In the Interest of Minor Child: A.G., DOB 06/23/88,
by Joyce Greendeer v. HCN Office of Tribal
Enrollment*, CV 03-49. (Bossman, W).

JULY 7, 2003

*In the Interest of Minor Children: R.R., DOB
05/09/87, D.P., DOB 08/09/96, and J.P., DOB
04/03/98, by Julie Rockman v. HCN Office of Tribal
Enrollment*, CV 03-45. (Bossman, W).

JULY 11, 2003

*In the Interest of Minor Child: M.E.K., DOB
01/15/90, by Ethel C. Funmaker v. HCN Office of
Tribal Enrollment*, CV 03-49. (Bossman, W).

JULY 18, 2003

*In the Interest of Minor Child: K.D., DOB 10/01/83
v. HCN Office of Tribal Enrollment*, CV 03-52.
(Bossman, W).

JULY 21, 2003

Patricia A. Ennis v. T. Thundercloud, M. Thompson, E. Garvin, W. Blackdeer, G. Lewis, S. Whiterabbit, D. Whitewing, C. Romano, K. Whiterabbit, C. Pettibone, Cash Systems, CV 03-53. (Bossman, W).

JULY 22, 2003

Wayne S. Hanrahan v. Kathyleen Whiterabbit, CV 03-54. (Bossman, W).

JULY 23, 2003

Anita J. Noquayouma v. Jonette Pettibone, CV 03-55. (Bossman, W).

JULY 24, 2003

Joshua Smith Sr. v. Rainbow Casino, HCN, Adam Estes, Jonette Pettibone, Ida Carrier, CV 03-56.

JULY 29, 2003

Wayne Hanrahan v. Larry Garvin, CV 03-57. (Matha, T).

Juvenile Cases

JUNE 27, 2003

In the Interest of Minor Child: D.L.H., DOB 08/15/97, JV 03-20. (Matha, T).

In the Interest of Minor Child: A.M.H., DOB 12/25/95, JV 03-21. (Matha, T).

In the Interest of Minor Child: D.M.H., DOB 02/16/92, JV 03-22. (Matha, T).

In the Interest of Minor Child: D.L.H., DOB 03/25/89, JV 03-23. (Matha, T).

JULY 18, 2003

In the Interest of Minor Child: P.D.R., DOB 08/24/90, JV 03-24. (Matha, T).



Trial Court's Annual Law Day & 5k Fun Run/Walk

On Friday, August 29, 2003, the Ho-Chunk Nation Trial Court will hold its annual Law Day. The Ho-Chunk Law Day is an open house and discussion that is free and open to the general public. It provides lawyers, lay advocates, and the general public with an opportunity to learn more about the Ho-Chunk Nation Judiciary and recent legal developments. In addition, Law Day is an opportunity to obtain FREE CLE credits that may be applied to both HCN Bar requirements and Wisconsin Bar requirements. This training is important for all HCN Bar members and a proposal has been made to make Law Day mandatory.

The 8th Annual 5K Fun Run/Walk will then be held on Saturday, August 30, 2003. This year Pendleton blankets will be awarded to the 1st place male and female runners. For a \$10 registration fee, each runner will receive a T-shirt. The run will begin at the HCN Courthouse. Registration for the run will begin at 8:00 A.M., and the run will begin at 9:00 A.M.

For more information on Law Day or the Fun Run, you may contact Rose Weckenmann at (800) 434-4070.

Guardian Ad Litem Training Opportunity

Wisconsin Judicare will be providing guardian ad litem training for interested individuals on September 18th and 19th at the Pine Hills golf course located on the Stockbridge-Munsee Reservation. The training is being sponsored by the Forest County Potawatomi and the Stockbridge-Munsee Community. The Ho-Chunk Nation Trial Court will pay expenses for any interested Ho-Chunk Nation member or employee who wishes to attend this valuable training. For more information on this opportunity you may contact Rose Weckenmann at (800) 434-4070.

The
Ho-Chunk Nation
Judiciary
Presents Its Annual
Law Day

And
**5K
Fun
Run/Walk**

Attorneys, Lay Advocates and the
general public are invited to attend.

Everyone Welcome!

For more information contact Rose Weckenmann at
(715) 284-2722.

**Law Day – Friday, August
29th, 2003**

9 am – 12:30pm

Free and open to the public.

Open House & Discussion on current
issues before the Ho-Chunk Nation Court
System.

PLACE: Ho-Chunk Nation Courthouse
Located on Highway 54 approximately 2 miles west
of Majestic Pines Casino and 3 miles east of Black
River Falls, WI.

CLE Credits available for attorneys.
Refreshments will be served.

**5 K Fun Run/Walk –
Saturday, Aug. 30st, 2003**

**PLACE: Meet at the Ho-Chunk Nation
Courthouse**

(\$10 registration fee pays for your entry and
gets you a t-shirt.)

REGISTRATION: 8 a.m. to
8:45 a.m.

WELCOME: 8:45 a.m. to
9 a.m.

RUN STARTS: 9 a.m.

AWARDS PRESENTATION: 10 a.m.

(Winners also announced at the Labor Day
Pow-wow.)

Juice/water/coffee/fruit will be served before
and after the race.

Water will be available at the halfway point
of the race.



**HO-CHUNK NATION COURT SYSTEM
JUDICIARY AND STAFF**

Supreme Court—Mary Jo B. Hunter, Chief Justice
Mark D. Butterfield, Associate Justice
Jo Deen B. Lowe, Associate Justice

Traditional Court –Wallace Blackdeer
Donald Blackhawk
Dennis Funmaker
Orville Greendeer
Douglas Greengrass
Owen Mike
Gavin Pettibone
Douglas Red Eagle
Preston Thompson, Jr.
Eugene Thundercloud
Morgan White Eagle
Clayton Winneshiek

Trial Court – William H. Bossman, Chief Judge
Todd R. Matha, Associate Judge

Clerk of Court, Supreme Court – Bryan Dietzler
Clerk of Court, Trial Court – Marcella Cloud
Assistant Clerk of Court, Trial Court – Selina Joshua
Bailiff/Process Server – Willa RedCloud
Law Clerk – Rose Weckenmann

Office of Public Advocacy – Dennis Funmaker, Administrator

* The Ho-Chunk Nation Judiciary and its officers are active participants in the following organizations:

WISCONSIN TRIBAL JUDGES ASSOCIATION
(Eleven federally recognized tribes within the State of Wisconsin)

NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION
(Region 5—Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, South Dakota, North Dakota, and Wisconsin)

HCN Court System Fee Schedule

- Filing Fees \$50.00*

*With the exception of petitions to register child support orders – this fee remains at \$20.00 as previously ordered by the Supreme Court.

Note: Filing Fee now includes *Summons* fee.

- Filing Fees for *Petitions to Register and Enforce Foreign Judgment/Order* \$20.00



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Ho-Chunk Nation Judiciary
W9598 Hwy 54 East
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Hours of Operation: Monday through Friday
(except holidays) 8 A.M. – 4:30 P.M.

HO-CHUNK NATION COURT BULLETIN

COURT HOSTS 8TH ANNUAL LAW DAY



HCN DOJ ATTORNEY MICHAEL P. MURPHY

On Friday, August 29, 2003, the Ho-Chunk Nation Judiciary presented its 8th Annual Law Day program. The annual presentation provides an opportunity for Ho-Chunk Nation bar members and the general public to participate in discussion on current issues before the Court. This year's program covered a wide range of topics and provided the audience with an opportunity to ask numerous questions of concern to practitioners within the HCN court system.

Associate Trial Court Judge Todd R. Matha kicked-off the event with a presentation on appellate standards of review within the Ho-Chunk Nation Judiciary. Judge Matha's presentation traced the evolution of the law within this jurisdiction while also referencing standards of review used within federal law. Chief Trial Court Judge William Bossman then spoke on judicial statutory construction.



CHIEF TRIAL COURT JUDGE WILLIAM H. BOSSMAN

Ho-Chunk Nation Department of Justice Attorney Michael Murhpy offered a presentation on the recent Wisconsin Supreme Court decision in *Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians*, 665 N.W.2d 899 (2003). Attorney Murhpy discussed the comity standard adopted by the Wisconsin Supreme Court and the future for courts attempting to apply this standard. Members of the audience had a number of questions on how protocols should be worked out between state and tribal courts.

The Ho-Chunk Nation Supreme Court made the final presentations of the program. The three current members of the Supreme Court sat on a panel designed to help advocates appearing before the Supreme Court. Chief Justice Mary Jo B. Hunter discussed the professional standards for members of the HCN bar. Her presentation elicited discussion on what continuing education should be imposed on members of the bar.

Associate Supreme Court Justice Mark Butterfield reviewed the cases heard before the Supreme Court during the past year. In addition, Justice Butterfield provided practitioners appearing before the HCN Supreme Court with practical tips concerning oral arguments. The Associate Justice urged members of the bar to answer questions asked by the justices directly and to avoid simply reading arguments found in the brief.

The Supreme Court panel concluded with a presentation by Associate Justice Jo Deen B. Lowe. Justice Lowe offered an overview of the Supreme Court in which she described the establishment of the Court and the qualifications of Supreme Court justices. In addition, Justice Lowe discussed the appellate proceedings generally and the administration of the Judiciary.



HCN SUPREME COURT: ASSOCIATE JUSTICE MARK D. BUTTERFIELD, CHIEF JUSTICE MARY JO B. HUNTER, AND ASSOCIATE JUSTICE JO DEEN B. LOWE

Law Day 2003 also included a presentation to HCN Bar Member Mark Goodman for his representation of Ho-Chunk tribal members through Judicare. (See related story, page 3). At the end of the program, Chief Trial Court Judge William Bossman treated those in attendance to a tour of the new courthouse which is currently under construction and set for opening in December 2003.

ATTORNEY MARK GOODMAN RECOGNIZED

During Law Day festivities held on August 29, 2003, the Judiciary recognized an attorney who has made a significant contribution through his participation in Wisconsin Judicare. Sparta Attorney Mark Goodman was recognized for the large number of cases involving Ho-Chunk members he has accepted while participating in the Judicare program. Director of the Indian Law Section of Wisconsin Judicare, James Botsford, was on hand to present the award.



ATTORNEY MARK GOODMAN AND DIRECTOR OF THE INDIAN LAW SECTION OF WISCONSIN JUDICARE JAMES BOTSFORD

The Ho-Chunk Nation has contracted with Wisconsin Judicare to provide legal representation to tribal members who fall below established income guidelines. The attorneys who represent clients under this contract receive reimbursement for their services, but at a low hourly rate. James Botsford describes the work as “compensated pro bono.”

Attorney Mark Goodman has taken more of these cases than any other participating attorney. Since he began participating in the program in 1994, he has closed thirty-two cases. This figure is double that of any other attorney. Attorney Goodman has not only represented Ho-Chunk clients in a high number of cases, but additionally, the cases show a diversity in the subject matter that he has been willing to tackle. Attorney Goodman has represented clients in nineteen family law cases, two consumer finance cases, three employment cases, three neglect cases, two Indian law cases, two housing cases, and one licensing case.

James Botsford presented a certificate of appreciation and a Pendleton blanket to Attorney Goodman. In his remarks, Attorney Goodman noted that he was humbled by the award. In addition, he explained that his service to Ho-Chunk clients has been rewarding and that often his nicest clients have been those whom he served through Judicare.

Mark Goodman is a member of the HCN and Wisconsin bars. He obtained his undergraduate and law degrees from the University of Wisconsin in Madison. Attorney Goodman is a third generation Sparta attorney. He also serves as a municipal judge in Sparta.



Any Ho-Chunk tribal member with questions regarding Judicare or seeking to obtain representation through Judicare should contact Dennis Funmaker, Administrator of the Office of Public Advocacy at (715) 284-8514.

ANNUAL FUN RUN A SUCCESS

The HCN Judiciary's 8th Annual Fun Run was held on August 30, 2003. Nearly fifty runners participated in this year's run.



CHIEF TRIAL COURT JUDGE WILLIAM BOSSMAN ANNOUNCES WINNERS.

The overall male winner was Patrick Storm with a time of 20:10. The overall female winner was Susan Leadholm with a time of 23:18. Both runners were awarded Pendeltons. This year's first place team was Myra Blackdeer, Keisha Vasquez, and Alexis Cloud with a total running time of 1 hour, 48 minutes, and 22 seconds. The Court congratulates all runner and walkers on their achievements. For complete race results, see page 13.



SUPREME COURT CLERK BRYAN DIETZLER AWARDS 1ST PLACE RUNNER PATRICK STORM WITH HIS PENDLETON.



THIS YEAR'S FIRST PLACE TEAM WAS MYRA BLACKDEER, KEISHA VASQUEZ, AND ALEXIS CLOUD.

Federal Court Decisions

Eighth Circuit Court of Appeals

In re Sac & Fox Tribe of Mississippi in Iowa/Meskwaki Casino Litigation, Nos. 03-2329, 03-2355, 03-2357, 03-2390, 03-2392 and 03-2393, 2003 WL 22015767 (8th Cir. Aug. 27, 2003).

At issue in the case was a temporary closure order by the Chairman of the National Indian Gaming Commission. The Meskwaki casino has been shut down since May 23 as a result of the order. The tribe's appointed council sought enjoinder of the Chairman's order. The 8th Circuit panel held that the temporary closure action is not a "final agency action" subject to judicial review and dismissed the claim for lack of subject matter jurisdiction. The three-judge panel also affirmed the district court's granting of an injunction enforcing a temporary closure order from the Chairman of the NIGC.

Ninth Circuit Court of Appeals

United States v. Alpine Land and Reservoir Co., Nos. 01-15665, 01-15814, 01-15816, 01-16224, 01-16241, 2003 LEXIS 17039 (9th Cir. Aug. 20, 2003).

At issue in the case is Pyramid Lake, the central feature of the almost 500,000 acres in Nevada set aside as a reservation for the Pyramid Lake Paiute Tribe of Indians. This litigation has spanned years and stems from the Reclamation Act of June 17, 1902, in which Congress created the Newlands Reclamation Project. This Project was created to convert arid land into irrigated farmland and diverted water from the principal source for Pyramid Lake. The Project reduced the area of Pyramid Lake and threatened the survival of indigenous fish. In the 1980s, some landowners submitted transfer applications for the rights held in the reclamation project. The Tribe protested the application proceedings, and the United States

intervened on the Tribe's behalf. The Nevada State Engineer granted transfer applications of those landowners holding water rights in the diversion project. The three-judge panel remanded the applications. The opinion set forth findings the State Engineer must include. The panel also held that the State Engineer must apply a clear and convincing standard in evaluating evidence as to whether there has been abandonment and forfeiture of the project rights.



Tenth Circuit Court of Appeals

Winnebago Tribe of Nebraska v. Stovall, No. 02-3301, 2003 WL 22038678 (10th Cir. Aug. 28, 2003).

At issue was whether Kansas could assess fuel taxes on a corporation wholly owned by the Winnebago Tribe of Nebraska. The State of Kansas was attempting to impose its fuel tax on the sale and delivery of fuel within the State as the Winnebago corporation was doing business with three Kansas tribes. When the State was unable to collect the fuel tax, it began seizing tribal property and had initiated criminal proceedings. The tribes involved filed suit seeking injunctive and declaratory relief. A federal judge had previously ordered the injunctive and declaratory relief, and the Tenth Circuit three-judge panel affirmed.

Recent Decisions

Decisions are separated between Trial Court and Supreme Court decisions and categorized by subject matter and date (from oldest to most recent). The following are summaries prepared by the Staff Attorney for the reader's benefit. They should in no way be used as substitution for citations to the actual court opinion.

Within the Trial Court, cases are categorized and docketed as one of the following: Child Support (CS or if filed prior to 1998, CV), Civil Garnishment (CG), Civil (CV), Criminal (CR), Custody (CU), Domestic Violence (DV), or Juvenile (JV). Within this index, case citations will appear in one of these categories and, in the event it may be helpful to the reader as a research tool, the cases may also be summarized in a separate topic area. In some instances a decision may touch upon other topics that may not warrant a summary in this index, but the editor will use the indicator "other topic(s) covered," as a research aid for the reader.

Recent Decisions and **Recent Filings** both begin with the date where the previous Court Bulletin left off.

Trial Court

Child Support

AUGUST 5, 2003

Antoinette Loch v. Larry R. Frostman, CS 03-49 *Order (Default Judgment)* (HCN Tr. Ct., Aug. 5, 2003). (Bossman, W).

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

AUGUST 7, 2003

State of WI/Ashland Co. and Kimberley Otto v. Lenny Cloud, CS 03-50 *Order (Default Judgment for Child Support Deduction from Wages)* (HCN Tr. Ct., Aug. 7, 2003). (Matha, T).

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

State of WI/Jackson Co. v. Leaf O. Funmaker, CS 03-35 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Aug. 7, 2003). (Matha, T).

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

Melissa McGill v. Paul Smith, Chelsae L. Joe v. Paul Joseph Smith, CV 96-62, CS 03-44 *Order (Default Judgment -- Enforcing Child Support)* (HCN Tr. Ct., Aug. 7, 2003). (Matha, T).

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

AUGUST 8, 2003

State of WI/Jackson Co. v. Garrett C. Decorah, CS 03-36 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Aug. 8, 2003). (Matha, T).

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

State of Wisconsin v. Janice Harrison, CS 03-43 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Aug. 8, 2003). (Bossman, W).

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

State of WI/Jackson Co. v. Donald Lee Yellowcloud, CS 03-38 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Aug. 8, 2003). (Matha, T).

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

AUGUST 12, 2003

Patricia L. Elliot v. Michael Zenner, Jr., CS 03-45 *Order (Default Judgment)* (HCN Tr. Ct., Aug. 12, 2003). (Bossman, W).

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

AUGUST 13, 2003

State of Wisconsin/Jackson Co. v. Brian S. LaMere, Sehoya E. Fleischman v. Brian S. LaMere, CS 03-02, CS 03-27 *Order (Default Judgment -- Enforcing Child Support)* (HCN Tr. Ct., Aug. 13, 2003). (Matha, T).

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

AUGUST 14, 2003

County of Pine, Naomie J. Harris v. Terry L. Gourd, CS 03-26 *Order (Enforcing Child Support)* (HCN Tr. Ct., Aug. 14, 2003). (Matha, T).

The Court had to determine whether to enforce a foreign judgment. The respondent filed a timely response stipulating agreement with the enforcement of the foreign order. The Court granted the petitioner's request.

AUGUST 19, 2003

Felicia Topping v. Leon Topping, CS 03-52 *Order (Default Judgment for Child Support Deduction from Wages)* (HCN Tr. Ct., Aug. 19, 2003). (Matha, T).

The Court had to determine whether to enforce a foreign judgment against the respondent's wages. The respondent failed to respond within the specified time frame. The Court granted the request.

Civil Garnishment

AUGUST 6, 2003

Gundersen Lutheran Hospital v. Melissa Windsor, CG 03-55 *Order (Default Judgment)* (HCN Tr. Ct., Aug. 6, 2003). (Bossman, W).

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

AUGUST 7, 2003

Creditor Recovery Service, LLC, Agent for Doctors' Clinic SC v. Kay Weikel, CG 03-51 *Order (Default Judgment)* (HCN Tr. Ct., Aug. 7, 2003). (Matha, T).

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

Gundersen Lutheran Hospital v. Andrew and Vivian Thundercloud, CG 03-49 *Order (Default Judgment)* (HCN Tr. Ct., Aug. 7, 2003). (Matha, T).

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

AUGUST 8, 2003

American Family Mutual Insurance Group v. Glen J. Decora, CG 03-13 *Order to Amend Unpaid Judgment Amount* (HCN Tr. Ct., Aug. 8, 2003). (Matha, T).

The petitioner requested that the Court amend the unpaid judgment amount. The Court granted the request.

Gundersen Lutheran Hospital v. James and Melissa Rochester, CG 03-59 *Order (Default Judgment)* (HCN Tr. Ct., Aug. 8, 2003). (Matha, T).

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

Tomah Memorial Hospital v. Michael T. and Roxanne Peth, CG 03-57 Order (Default Judgment) (HCN Tr. Ct., Aug. 8, 2003). (Matha, T).

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

AUGUST 12, 2003

Ford Motor Credit Company v. Christie L. Ratzel a/k/a Christie L. Gundlach, CG 03-49 Order (Default Judgment) (HCN Tr. Ct., Aug. 12, 2003). (Bossman, W).

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

AUGUST 14, 2003

State Collection Service v. Rick Hernandez, a/k/a Vincent Richard Hernandez, CG 03-11 Order (Petition Granted) (HCN Tr. Ct., Aug. 14, 2003). (Matha, T).

The Court had to determine whether to grant full faith and credit to a foreign judgment. The Court had previously conditionally denied the petition since the respondent claimed an exemption to the earnings garnishment. The Court informed the petitioner of the need to file a certified foreign judgment. The petitioner properly filed such document. The Court granted the petitioner's request for recognition and enforcement.

AUGUST 15, 2003

Oral Surgery Center v. Susan R. Alderman, CG 03-60 Order (Default Judgment) (HCN Tr. Ct., Aug. 15, 2003). (Bossman, W).

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

AUGUST 19, 2003

Black River Hospital v. Peggy Perkins, CG 03-62 Order (Default Judgment) (HCN Tr. Ct., Aug. 19, 2003). (Matha, T).

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

Creditor Recovery Service, LLC, Agent for Roche A Cri Clinic SC v. Jodi L. Mericle, CG 03-63 Order (Default Judgment) (HCN Tr. Ct., Aug. 19, 2003). (Matha, T).

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

AUGUST 21, 2003

Franciscan Skemp Healthcare v. Susette K. LaMere, CG 03-54 Order (Partial Satisfaction of Judgment) (HCN Tr. Ct., Aug. 21, 2003). (Bossman, W).

The petitioner requested that the Court amend the unpaid judgment amount to reflect payments made by the respondent. The Court granted the request.

Children's Trust Fund (CTF)

AUGUST 7, 2003

In the Interest of Minor Child: J.R., DOB 01/13/87, by Barb Rave v. Ho-Chunk Nation Office of Tribal Enrollment, CV 00-107 Order (Motion Granted) (HCN Tr. Ct., Aug. 7, 2003). (Matha, T).

The Court had previously granted a request for release of funds for purposes of orthodontic care. The petitioner requested release of additional funds for a medical procedure related to the ongoing orthodontic care. The Court granted the request.

In the Interest of Minor Child: W.E.T., DOB 06/30/88, by Bonnie Tech v. HCN Office of Tribal Enrollment, CV 02-114 Order (Accepting Accounting) (HCN Tr. Ct., Aug. 7, 2003). (Matha, T).

On December 11, 2002, the Court released funds from the CTF account of the minor child for orthodontics. On two occasions, the Court reminded the petitioner of her duty of accounting for the expenditures. On June 30, 2003, the petitioner submitted the required accounting. The Court accepted the accounting and closed the case.

AUGUST 12, 2003

In the Interest of Minor Children: L.G.B., DOB 03/30/89, C.A.B., DOB 08/26/90, By Tari Lynn Pettibone v. Ho-Chunk Nation Office of Tribal Enrollment, CV 01-136 Order (Demanding Accounting) (HCN Tr. Ct., Aug. 12, 2003). (Matha, T).

On April 28, 2003, the Court released funds from the CTF account of the minor children for orthodontics. The *Order* required the petitioner to provide an accounting within a specified time frame. On July 10, 2003, the Court reminded the petitioner of her duty. On August 12, 2003, the Court again reminded the petitioner of her duty to account for expenditures and warned of possible action regarding the CONTEMPT ORDINANCE.

In the Interest of Minor Child: Z.G.D., DOB 04/20/86, By Sheila M. Pagel v. Ho-Chunk Nation Office of Tribal Enrollment, CV 02-101 Order (Show Cause) (HCN Tr. Ct., Aug. 12, 2003). (Matha, T).

On January 7, 2003, the Court released funds from the CTF account of the minor children for orthodontics. The *Order* required the petitioner to provide an accounting within a specified time frame. On April 16, 2003, the Court reminded the petitioner of her duty. On July 10, 2003, the Court again reminded the petitioner of her duty to account for expenditures and warned of possible action regarding the CONTEMPT ORDINANCE. The Court shall now convene a *Show Cause Hearing* to allow the petitioner the opportunity to explain why the Court should not hold her in contempt of court.

AUGUST 13, 2003

In the Interest of Minor Child: Q.S.G., DOB 05/02/86, by Larry Garvin v. Ho-Chunk Nation Office of Tribal Enrollment, CV 03-48 Order (Dismissal Without Prejudice) (HCN Tr. Ct., Aug. 13, 2003). (Matha, T).

The petitioner requested that the Court dismiss the instant case. The Court granted the request.

In the Interest of Minor Children: J.M.M., DOB 03/03/88, C.M., DOB 04/29/92, by Becky Manuell v. Ho-Chunk Nation Office of Tribal Enrollment,

CV 03-39 Order (Requesting Accounting) (HCN Tr. Ct., Aug. 13, 2003). (Bossman, W).

On May 30, 2003, the Court released funds from the CTF accounts of the minor children for orthodontics. The *Order* required the petitioner to provide an accounting within a specified time frame. On August 13, 2003, the Court reminded the petitioner of her duty.

AUGUST 15, 2003

In the Interest of Adult CTF Beneficiary, Roger L. Houghton, Jr., DOB 12/19/81 v. HCN Office of Tribal Enrollment, CV 02-15 Order (Accepting Accounting) (HCN Tr. Ct., Aug. 15, 2003). (Matha, T).

The petitioner filed an accounting report in accordance with directions from the Court. The Court received no information that might indicate errors with the accounting. The Court accepts the accounting.

AUGUST 29, 2003

A.G., DOB 06/23/85, By Cynthia Loofboro v. HCN Office of Tribal Enrollment, CV 03-49 Order (Granting Motion for Extension of Time to File Answer) (HCN Tr. Ct., Aug. 29, 2003). (Bossman, W).

A request was made for an extension of time to submit documents in the action. The Court granted the request.

Incompetent's Trust Fund Cases**AUGUST 22, 2003**

Elaine Sine, DOB 02/01/55, By Cecelia Sine, Legal Guardian v. HCN Office of Tribal Enrollment, CV 03-27 Order (Granting Petition) (HCN Tr. Ct., Aug. 22, 2003). (Bossman, W).

The Court had to determine whether to grant a release of funds from the ITF account of Elaine Sine for the purchase of a home. The Court granted the request.

CIVIL CASES (ALL CATEGORIES)**AUGUST 5, 2003**

Ho-Chunk Nation Department of Housing, Property Management Division v. Summer Martin and Dustin Jackson, CV 03-23 Order (Permission to Reschedule) (HCN Tr. Ct., August 5, 2003). (Matha, T).

The defendants failed to appear at the *Scheduling Conference*, and did not inform the Court of an inability to attend the proceeding. The Court granted the defendants three weeks to reschedule the *Scheduling Conference*. If the defendants fail to contact the Court within three weeks to make appropriate arrangements, the Court shall enter a default judgment.

AUGUST 13, 2003

Ho-Chunk Nation v. Jess H. Steindorf, CV 03-33 *Scheduling Order* (HCN Tr. Ct., Aug. 13, 2003). (Bossman, W).

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

AUGUST 14, 2003

Loretta J. Patterson v. Four Winds Insurance Agency and Susan Van Riper in her official and Individual Capacity, CV 03-40 *Scheduling Order* (HCN Tr. Ct., Aug. 14, 2003). (Bossman, W).

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

Hope B. Smith v. Ho-Chunk Nation, CV 02-42 *Order (Granting Partial Stay)* (HCN Tr. Ct., Aug. 14, 2003). (Matha, T).

The defendant requested reconsideration and a stay of a portion of the Court's *Order (Final Judgment)*. The defendant disputes the Court's authority to require a former official of the Ho-Chunk Nation to provide a written apology to the plaintiff. The Court granted a partial stay of the final judgment.

AUGUST 15, 2003

Ho-Chunk Housing Authority v. Karen Lipski, CV 02-102 *Order (Satisfaction of Judgment)* (HCN Tr. Ct., Aug. 15, 2003). (Matha, T).

On December 17, 2002, the Court issued an *Eviction Order (Restitution and Relief)* for the plaintiff. The Court directed the Treasury Department to deduct the amount of the judgment from per capita distributions until satisfaction of the debt. On August 11, 2003, the plaintiff filed a *Satisfaction of Judgment*. The Court recognized that this debt has been paid in full and closed the case.

AUGUST 18, 2003

Ho-Chunk Nation Home Ownership Program v. Robert Michael Mobley, CV 01-116 *Order (Satisfaction of Judgment)* (HCN Tr. Ct., Aug. 18, 2003). (Matha, T).

The Court issued an *Order (Default Judgment)* for the plaintiff. The Court directed the Treasury Department to deduct the amount of the judgment from per capita distributions until satisfaction of the debt. On August 11, 2003, the plaintiff filed a *Satisfaction of Judgment*. The Court recognized that this debt has been paid in full and closed the case.

AUGUST 19, 2003

Vaughn Pettibone v. Ho-Chunk Nation Election Board, and Michele Decorah (Ho-Chunk Nation Election Board Chairperson) in her representative capacity, and Ho-Chunk Nation Office of the President, and Troy Swallow (Ho-Chunk Nation President) in his representative capacity, and Ho-Chunk Nation, CV 03-17 *Order Granting Motion to Dismiss in Part and Denying in Part* (HCN Tr. Ct., August 19, 2003). (Bossman, W).

The plaintiff claims that she was improperly removed from her position as Ho-Chunk Nation Election Board Chairperson. The defendants moved to dismiss on the grounds of sovereign immunity and the statute of limitations. The Court granted the motion as to the claim for monetary compensation for lost wages and benefits. The Court denied all other portions of the motion.

Juvenile

AUGUST 7, 2003

In the Interest of the Minor Children: L.M., DOB 01/08/92, K.M., DOB 04/09/93, JV 98-14 -15 Order (Child Protection Review Hearing) (HCN Tr. Ct., Aug. 7, 2003). (Bossman, W).

The Court conducted a *Review Hearing* on the aforementioned matter.

AUGUST 14, 2003

In the Interest of Minor Children: J.G.G., DOB 01/12/89, T.P.G., DOB 03/09/90, JV 02-22 -23 Termination of Order (HCN Tr. Ct., Aug. 14, 2003). (Bossman, W).

The mother had substantially complied with the requirements of the *Dispositional Order*. The Court terminated its jurisdiction and supervision in the instant case.

In the Interest of Minor Child: P.D.R., DOB 08/24/90, JV 03-24 Order (Scheduling Dispositional Hearing) (HCN Tr. Ct., Aug. 14, 2003). (Matha, T).

The Court scheduled a dispositional hearing in the aforementioned matter.

AUGUST 15, 2003

In the Interest of Minor Children: D.L.H., DOB 08/03/97, A.M.H., DOB 12/25/95, D.M.H., DOB 02/16/92, D.L.H., DOB 03/25/89, JV 03-20 -21 -22 -23 Order (HCN Tr. Ct., Aug. 15, 2003). (Matha, T).

The Court recognized the voluntary stipulation entered into by legal counsel on behalf of their respective clients. The Court entered orders regarding the physical placement, legal custody, and additional conditions as reflected in the agreement of the parties.

AUGUST 21, 2003

In the Interest of Minor Children: C.A.T., DOB 07/06/95, B.A.T., DOB 09/11/94, JV 03-27 -28 Order (Granting Emergency Temporary Legal Custody) (HCN Tr. Ct., Aug. 21, 2003). (Bossman, W).

The Court had to determine whether to grant emergency temporary legal custody of the minor children. The Court granted emergency temporary legal custody to the Ho-Chunk Nation Child and Family Services.

In the Interest of Minor Children: C.A.T., DOB 07/06/95; B.A.T., DOB 09/11/94, JV 03-27 -28 Order (Appointment of Guardian Ad Litem) (HCN Tr. Ct., Aug. 21, 2003). (Bossman, W).

The Court appointed a GAL to serve in the aforementioned case.

In the Interest of Minor Child: J.D.J., DOB 12/18/86, JV 98-19 Order (Child Protection Review Hearing) (HCN Tr. Ct., Aug. 21, 2003). (Bossman, W).

The Court conducted a *Review Hearing* on the aforementioned matter. The Court held that certain dispositional recommendations remain necessary for the protection of the child.

Supreme Court

AUGUST 14, 2003

Ho-Chunk Nation v. Bank of America N.A., SU 03-06 Notice of Extension (HCN S. Ct., Aug. 14, 2003).

The Court extended the decision deadline on appellant's *Notice of Motion* and *Motion for Reconsideration to Reinstate Appeal or in the Alternative, to Amend Order Denying Appeal*.

Recent Filings

Trial Court

Civil Garnishment

AUGUST 25, 2003

American General Finance v. Cleo Littlegeorge, CG 03-64. (Matha, T).

Matthew & Angelita Hofmeister v. Mary Ann Dick, CG 03-65. (Matha, T)

Child Support

AUGUST 5, 2003

State of WI/Jackson Co. v. Shannon Duke Rave, CS 03-53. (Bossman, W).

AUGUST 19, 2003

Myrna Littlewolf v. Carl McKee, CS 03-54. (Bossman, W).

AUGUST 27, 2003

State of WI/Sauk Co. & Bethal St. Cyr. V. Geoffrey Lonetree, CS 03-55. (Matha, T).

Civil Cases

AUGUST 1, 2003

Rachel Mendoza v. HCN Office of Tribal Enrollment, CV 03-58. (Matha, T).

AUGUST 11, 2003

HCN Div. Of HHS – CFS v. Victor Perez and Nichole Perez, CV 03-59. (Matha, T).

AUGUST 12, 2003

HCN Dept. of Housing Prop. Mgmt. v. Deanna Hopinkah, CV 03-60. (Matha, T).

AUGUST 14, 2003

Lauren L. Snake v. Douglas Greengrass, CV 03-61. (Matha, T).

AUGUST 15, 2003

Ronald K. Kirkwood v. HCN Housing Dept. and HCN Legislature, CV 03-62. (Matha, T).

Stanley Decorah v. Linda Decorah, CV 03-63. (Matha, T).

AUGUST 20, 2003

HCN Housing, PMD v. Loretta and Dean Hopinka, CV 03-64. (Bossman, W).

AUGUST 25, 2003

HCN, Dept. of Housing Prop. Mgmt. v. Janice Tourtilott and Ronald Martin, CV 03-65. (Matha, T).

HCN Dept. of Housing, Prop. Mgmt. v. Stacy Yellowcloud, CV 03-66. (Matha, T).

In the Interest of B.M.S., DOB 10/23/88, by Michelle Matlock v. HCN Office of Tribal Enrollment, CV 03-67. (Matha, T).

AUGUST 26, 2003

In the Interest of J.M.M., DOB 03/03/88, by Becky Manuell, CV 03-68. (Matha, T).

HCN Business Dept. v. Cora Lee Murphy, CV 03-69. (Matha, T).

Juvenile Cases

AUGUST 18, 2003

In the Interest of Minor Child: C.C.P., DOB 02/03/93, JV 03-25. (Bossman, W).

In the Interest of Minor Child: G.L.P., DOB 06/10/94, JV 03-26. (Bossman, W).

AUGUST 20, 2003

In the Interest of Minor Child: C.A.T., DOB 07/06/95, JV 03-27. (Bossman, W).

In the Interest of Minor Child: B.A.T., DOB 09/11/94, JV 03-28. (Bossman, W).

AUGUST 28, 2003

In the Interest of Minor Child: H.L.H., DOB 02/18/03, JV 03-29. (Matha, T).

SUPREME COURT

NOTHING TO REPORT AT THIS TIME.



Guardian Ad Litem Training Opportunity

Wisconsin Judicare will be providing guardian ad litem training for interested individuals on September 25th and 26th at the Pine Hills Golf Course Club House located on the Stockbridge-Munsee Reservation. The training is being sponsored by the Forest County Potawatomi and the Stockbridge-Munsee Community. There is no cost for this training. However, individuals will be responsible for covering their own hotel and travel expenses. For more information on this opportunity or to register, you may contact Rose Weckenmann at (800) 434-4070.



Race Results

Ho-Chunk Nation 8th Annual 5K Fun Run/Walk

Best Overall - Individuals

Male	Time	Female	Time
Patrick Storm	20:10	Susan Leadholm	23:18

Best Overall - Team

First Place with a Total Time of 1 hour 48 minutes 22 seconds

Alexis Cloud	30:17
Myra Blackdeer	34:37
Keisha Vasquez	43:28

10 and Under

	Male	Time		Female	Time
1 st	Christopher DeMarrias	25:13	1 st		
2 nd	Gary Garvin	39:44	2 nd		
3 rd	Waukon Blackdeer	39:36	3 rd		

11 to 19

	Male	Time		Female	Time
1 st	Patrick Storm	20:10	1 st	Kayla Cleveland	28:17
2 nd	Dana Lonetree	20:13	2 nd	Gabby Rave	29:16
3 rd	Leonard Hopinka	25:25	3 rd	Alexis Cloud	30:17

20 to 29

	Male	Time		Female	Time
1 st	Brady Palmer	20:11	1 st	Susan Weber	25:37
2 nd			2 nd	Katie Matha	26:00
3 rd			3 rd	Semia Lonetree	39:05

30 to 39

	Male	Time		Female	Time
1 st	Todd Matha	32:13	1 st	Susan Leadholm	23:18
2 nd			2 nd	Laura O'Flanagan	28:12
3 rd			3 rd	Sherry Fitzpatrick	33:34

40 to 49

	Male	Time		Female	Time
1 st	A.C. Sheridan	26:42	1 st	Angie Dowling	48:38
2 nd	Mark Butterfield	27:00	2 nd		
3 rd	Tom Walker	39:24	3 rd		

50 and over

	Male	Time		Female	Time
1 st	Gene Numsen	23:40	1 st	Hattie Walker	53:34
2 nd			2 nd	Theresa Lonetree	1:00:47
3 rd			3 rd	Mary Jo Hunter	1:02:22

All Runners and Walkers – Sorted Alphabetically

Name	Age Category	Time
Blackdeer, Ember	11 to 20	37:03
Blackdeer, Myra	11 to 20	34:37
Blackdeer, Waukon	10 and under	39:36
Butterfield, Mark	40 to 49	27:00
Cleveland, Kayla	11 to 20	28:17
Cloud, Alexis	11 to 20	30:17
Cooper, Mason	11 to 20	28:29
Corbine, Sheila	30 to 39	48:32
DeMarrias, Christopher	11 to 20	25:13
Dowling, Angie	40 to 49	48:38
Dowling, Danny	40 to 49	33:29
Dowling, Danny	11 to 20	1:07:31
Edwards, Natasha	11 to 20	33:26
Fitzpatrick, Sherry	30 to 39	33:34
Garvin, Gary	10 and under	39:44
Garvin, Margaret	30 to 39	25:13
Hopinka, Leonard	11 to 20	25:25
Hunter, Gary	40 to 49	1:02:22
Hunter, Mary Jo	50 and over	1:02:22
King, Tiffany	11 to 20	46:55
King, Trisha	11 to 20	35:41
Leadholm, Susan	30 to 39	23:18
Link, Duana	11 to 20	43:20
Lonetree, Dana Jr.	11 to 20	20:13
Lonetree, Dana Sr.	40 to 49	1:00:47
Lonetree, Semia	21 to 29	39:05
Lontree, Theresa	50 and above	1:00:47
Matha, Katie	20 to 29	26:00

Matha, Todd	30 to 39	32:13
Numsen, Gene	50 and above	23:40
O'Flanagan, Laura	30 to 39	28:12
Owen, Brandon	11 to 20	1:07:32
Palmer, Brady	20 to 29	20:11
Rave, Gabby	11 to 20	29:16
Sheridan, A.C.	40 to 49	26:42
Slowey, Erin	11 to 20	31:09
Smoke, Phyllis	30 to 39	56:36
Snegonee, Angie	30 to 39	33:51
Storm, Patrick	11 to 20	20:10
Vasquez, Keisha	11 to 20	43:28
Vasquez, Valicia	11 to 20	46:55
Weber, Susan	20 to 29	25:37
Wesho, Shelby	11 to 20	51:17
Walker, Hattie	50 and above	53:34
Walker, Leah Ann	30 to 39	53:36
Walker, Tom	40 to 49	39:24





**HO-CHUNK NATION COURT SYSTEM
JUDICIARY AND STAFF**

Supreme Court—Mary Jo B. Hunter, Chief Justice
Mark D. Butterfield, Associate Justice
Jo Deen B. Lowe, Associate Justice

Traditional Court—Wallace Blackdeer

Donald Blackhawk
Dennis Funmaker
Orville Greendeer
Douglas Greengrass
Owen Mike
Gavin Pettibone
Douglas Red Eagle
Preston Thompson, Jr.
Eugene Thundercloud
Morgan White Eagle
Clayton Winneshiek

Trial Court – William H. Bossman, Chief Judge
Todd R. Matha, Associate Judge

Clerk of Court, Supreme Court – Bryan Dietzler
Clerk of Court, Trial Court – Marcella Cloud
Assistant Clerk of Court, Trial Court – Selina Joshua
Bailiff/Process Server – Willa RedCloud
Law Clerk – Rose Weckenmann

Office of Public Advocacy – Dennis Funmaker, Administrator

* The Ho-Chunk Nation Judiciary and its officers are active participants in the following organizations:

WISCONSIN TRIBAL JUDGES ASSOCIATION
(Eleven federally recognized tribes within the State of Wisconsin)

NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION
(Region 5—Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, South Dakota, North Dakota, and Wisconsin)

HCN Court System Fee Schedule

- Filing Fees \$50.00*
*With the exception of petitions to register child support orders – this fee remains at \$20.00 as previously ordered by the Supreme Court.

Note: Filing Fee now includes *Summons* fee.

- Filing Fees for *Petitions to Register and Enforce Foreign Judgment/ Order*. \$20.00
- Copying \$0.10/per page
- Faxing \$0.25/per page (sending and receiving)
- Tapes of Hearings \$10.00/per tape
- CD of Hearing. \$12.50/per tape
- Deposition Videotape \$10.00/per tape
- Certified Copies \$0.50/per page
- Equipment Rental \$5.00/per hour
- Appellate filing fees \$35.00
- Admission to Practice \$50.00
- Pro Hac Vice Appearance \$35.00

Legal Citation Form

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

Ho-Chunk Nation Constitution

Constitution, Article Number, Section, and Subsection.
HCN CONST., Art. II, Sec. (or §) 1(a).
HCN Const., Art. XI, Sec. (or §) 7.

HCN Ordinances

Ordinance Name, Chapter number, Section/Part/Clause, page.
PERSONNEL POLICIES AND PROCEDURE MANUAL, Ch. 12,
Part B, p. 82.
CLAIMS AGAINST PER CAPITA, Sec. (or §) 6.01(b).

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, CV 99-01 (HCN Tr. Ct., Nov. 1, 1999).

Rules of Civil Procedure

HCN R. Civ. P. 19(B).





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Announcements
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- 11** Recent HCN Filings
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Ho-Chunk Nation Court System Fee Schedule
Legal Citation Forms

Ho-Chunk Nation Judiciary
W9598 Hwy 54 East
P.O. Box 70
Black River Falls, WI 54615
(715) 284-2722 Ph.
(800) 434-4070 Ph. (Toll-free)
(715) 284-3136 Fax
<http://www.ho-chunknation.com/government/courts.htm>

Hours of Operation: Monday through Friday
(except holidays) 8 A.M. – 4:30 P.M.

HO-CHUNK NATION COURT BULLETIN

PROGRESS CONTINUES ON NEW JUSTICE CENTER, *WA EHI HOCI*



THE HO-CHUNK NATION TRIBAL JUSTICE CENTER IS SET TO OPEN IN DECEMBER 2003.

Work is continuing rapidly on the Ho-Chunk Nation's new courthouse. This December, the Ho-Chunk Nation Judiciary will relocate to its new judicial center, *Wa Ehi Hoci*. This 14,700 square foot structure will house the Ho-Chunk Nation Traditional Court, Supreme Court, and Trial Court.

Within the new justice center, there will be a traditional courtroom and two hearing rooms. In addition, the center will provide offices for the Ho-Chunk Nation Departments of Justice and Social Services. Watch for details of a grand opening ceremony in future issues of the Court Bulletin.

John Dall Sworn In As Area V Legislator



On September 17, 2003, John Dall was sworn in as a member of the Ho-Chunk Nation Legislature. Representative Dall was elected to fill the Area V, Seat 1 vacancy created by Ho-Chunk Nation President George Lewis. Representative Dall has been serving as the Branch Coordinator for the Chicago Office.



ELECTION BOARD CHAIRPERSON MARY ELLEN DUMAS ADMINISTERS THE OATH TO REP. JOHN DALL.

The ceremony in honor of Representative Dall was held at the Ho-Chunk Nation Executive Building in Black River Falls and was followed by a luncheon. In remarks following the administration of the oath, Representative Dall stated that he is looking forward to serving the people and exceeding the expectations of the position.

Court Announcements

Tribal Courts Please Note: The Ho-Chunk Nation Court Bulletin is currently sent to all tribal courts within Region 5 of the National American Indian Court Judges Association. However, the Ho-Chunk Nation Court has now been placed in Region 10. Therefore, beginning with the November 2003 edition, the Court will discontinue sending the bulletin to tribes within Region 5. Any Region 5 court that would like to continue to receive the Ho-Chunk Nation Court Bulletin should contact the Court's staff attorney Rose Weckenmann at (715)284-2722.

Certificate of Service Available On-Line: The *Ho-Chunk Nation Rules of Civil Procedure* provide in Rule 19 that all motions and responses to such motions filed in the Court should be served on the other parties to an action. As a convenience to parties to actions, a *Certificate of Service* is now available at the Court's webpage: <http://www.ho-chunknation.com/government/courts.htm>. The form may be accessed by choosing the option "Forms Online." A number of other forms remain available at the site.

Federal Court Update

Ninth Circuit Court of Appeals

City of Saint Paul v. Evans, No. 02-35958, 2003 WL 22208787 (9th Cir. Sept. 15, 2003).

The City of St. Paul, Alaska, brought a suit seeking to void the settlement agreement that it had previously reached with Tanadagusix Corporation, a Native corporation. The agreement had settled the issue of land rights on the island of St. Paul. The district court held that St. Paul's claims were barred by the six-year statute of limitations that Alaska law imposes on lawsuits by municipalities. However, the district court did allow identical claims to be asserted as defenses to the Corporation's counterclaims. The Ninth Circuit panel held that St. Paul was time-barred from either asserting the claims or using the same allegations as defenses to the Corporation's counterclaims.

Tenth Circuit Court of Appeals

Davis ex rel. Davis v. U.S., No. 02-6198, 2003 WL 22093915 (10th Cir. Sept. 10, 2003).

The plaintiffs, the Dosar Barkus and Bruner Bands of the Seminole Nation of Oklahoma, brought a suit against the United States seeking declaratory and injunctive relief. The plaintiffs contend that because of their African ancestry, federal officials have allowed the Seminole Tribe to exclude them from participation in its programs and that the Bureau of Indian Affairs improperly refused to issue Certificates of Degree of Indian Blood (CDIB) to members of the bands.

The Seminole Nation includes members of both Native American and African ancestry. Those members of African ancestry are the descendants of escaped slaves who began living among Native American groups in the territory that would become Florida. After an 1823 treaty ceded the Seminole lands in Florida, the Seminole Nation, including those of African ancestry, was removed to Oklahoma. The Seminole Nation entered into a

1866 treaty with the United States in which the membership and rights of the Nation's members of African descent were affirmed.

When the Dawes Rolls were created in 1906, there were two distinct rolls created for the Seminole Nation: the Seminole Blood Roll for those of Native American ancestry and the Freedman Roll for those of African ancestry. Today, a member of the Seminole Nation may obtain a CDIB by proving a relationship to someone listed on the Seminole Blood Roll.

The plaintiffs have been denied access to Seminole Nation judgment-fund programs. These programs were created by the General Council of the Seminole Nation for those enrolled members who were descended from the Seminole Nation as it existed in 1823. This would exclude those members of African descent because they were not recognized as members until the Treaty of 1866.

The district court held that the tribe was an indispensable party with respect to the judgment-fund program claims and dismissed the plaintiffs' CDIB-card claims for failure to exhaust administrative remedies under the BIA's regulations. The three-judge panel of the Tenth Circuit Court of Appeals affirmed.

State Court Update

District III Court of Appeals

Aasen-Robles v. Lac Courte Oreilles Band of Lake Superior Chippewa Indians, No. 03-1143-FT, 2003 WL 22093336 (Wis. Ct. App. Sept. 3, 2003).

The issue in this case was whether the employee exclusion in a general liability policy barred coverage for a tribal employee who fell on the tribe's premises before starting work. The court held that the employee exclusion is limited to those injuries originating from the employee's job and incurred while the employee is engaged in work. In addition, the court held that the Gaming Compact of 1991, which required the tribe to obtain liability insurance for class III gaming activities, has no bearing on whether the employee's injuries are covered by the general liability insurance policy.

Recent Decisions

Decisions are separated between Trial Court and Supreme Court decisions and categorized by subject matter and date (from oldest to most recent). The following are summaries prepared by the Staff Attorney for the reader's benefit. They should in no way be used as substitution for citations to the actual court opinion.

Within the Trial Court, cases are categorized and docketed as one of the following: Child Support (CS or if filed prior to 1998, CV), Civil Garnishment (CG), Civil (CV), Criminal (CR), Custody (CU), Domestic Violence (DV), or Juvenile (JV). Within this index, case citations will appear in one of these categories and, in the event it may be helpful to the reader as a research tool, the cases may also be summarized in a separate topic area. In some instances a decision may touch upon other topics that may not warrant a summary in this index, but the editor will use the indicator "other topic(s) covered," as a research aid for the reader.

Recent Decisions and **Recent Filings** both begin with the date where the previous Court Bulletin left off.

Trial Court

Child Support

SEPTEMBER 2, 2003

State of Wisconsin/Jackson County v. Justin D. Littlewolf, CS 02-39 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Sept. 2, 2003). (Matha, T).

The petitioner filed a motion to amend arrears withholding with a certified accounting statement. The Court updated the arrearage withholding to the amount reflected in the certified accounting statement.

SEPTEMBER 3, 2003

State of WI and Jessica L. Cloud v. Joshua D. Cloud, Sr., CS 03-34 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Sept. 3, 2003). (Bossman, W).

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

SEPTEMBER 5, 2003

Carol S. Wesenberg v. Leslie A. Boisen, Patricia Wenger v. Leslie A. Boisen, CS 99-25, CS 01-11 *Order (Closing Cases)* (HCN Tr. Ct., Sept. 5, 2003). (Matha, T).

The Court became aware of the untimely passing of the respondent. The Court closed these cases.

SEPTEMBER 8, 2003

State of WI/Jackson Co. v. Thunderhawk L. Decorah, CS 03-30 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Sept. 8, 2003). (Matha, T).

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

State of WI/Jackson Co. v. Faye L. Greengrass, CS 03-31 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Sept. 8, 2003). (Matha, T).

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

State of WI and Levi Aaron Lincoln, Sr. v. Louise Marlene Lincoln, CV 97-32 *Order (Ceasing Withholding Child Support Arrears)* (HCN Tr. Ct., Sept. 8, 2003). (Matha, T).

The petitioner requested a modification of child support withholding. The petitioner stated that an arrearage amount had been paid in full. The Court ordered withholding for arrears to cease.

State of WI/Jackson Co. v. Shannon Duke Rave, CS 03-53 *Order (Enforcing Child Support)* (HCN Tr. Ct., Sept. 8, 2003). (Bossman, W).

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to respond within the specified

time frame. The Court granted the petitioner's request for recognition and enforcement.

SEPTEMBER 9, 2003

Myrna Littlewolf v. Carl F. McKee, CS 03-54 Order (Enforcing Child Support) (HCN Tr. Ct., Sept. 9, 2003). (Bossman, W).

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

SEPTEMBER 11, 2003

State of WI, ex rel. Patricia C. White v. Jane M. White, CS 03-41 Default Judgment (Enforcing Child Support) (HCN Tr. Ct., Sept. 11, 2003). (Bossman, W).

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

SEPTEMBER 17, 2003

State of WI/Shawano Co. and Tracy Cobb v. Daniel Bird, CS 03-51 Order (Enforcing Child Support) (HCN Tr. Ct., Sept. 17, 2003). (Bossman, W).

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

SEPTEMBER 19, 2003

Roberta Greendeer v. Frederick K. Greendeer, State of WI, on behalf of Mary Tribble v. Frederick K. Greendeer, State of WI v. Frederick K. Greendeer, State of WI, for Carol L. Miller v. Frederick K. Greendeer, State of WI/Sauk Co. and Pamela L. Mallory v. Frederick K. Greendeer, CV 97-02, CV 97-44, CS 98-32, CS 99-75, CS 03-05 Order (Enforcing Child Support) (HCN Tr. Ct., Sept. 19, 2003). (Bossman, W).

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

SEPTEMBER 22, 2003

State of WI/Brown Co. for State of Iowa v. Kerry Funmaker, CS 03-40 Default Judgment (Enforcing Child Support) (HCN Tr. Ct., Sept. 22, 2003). (Matha, T).

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

SEPTEMBER 24, 2003

John E. Bakken v. Jeanette Dakota, CS 00-06 Notice (Child Turning 18 – Requiring Proof of Enrollment) (HCN Tr. Ct., Sept. 24, 2003). (Bossman, W).

A review of the file indicates that a minor child recently turned eighteen years of age. The Court now requires the parties to furnish proof of high school enrollment. If no such proof is filed on or before October 13, 2003, the Court shall cease withholding for current child support.

SEPTEMBER 25, 2003

Nellie M. Peoples v. Mark S. Houghton, CS 00-39 Notice (Child Turning 18 – Requiring Proof of Enrollment) (HCN Tr. Ct., Sept. 25, 2003). (Matha, T).

A review of the file indicates that a minor child recently turned eighteen years of age. The Court now requires the parties to furnish proof of high school enrollment. If no such proof is filed on or before October 13, 2003, the Court shall cease withholding for current child support.

State of WI/Jackson Co. v. Daniel WhiteEagle, CS 98-66 Notice (Child Turning 18 – Requiring Proof of Enrollment) (HCN Tr. Ct., Sept. 25, 2003). (Matha, T).

A review of the file indicates that a minor child is about to turn eighteen years of age. The Court now requires the parties to furnish proof of high school enrollment. If no such proof is filed on or before October 13, 2003, the Court shall cease withholding for current child support.

State of WI/Nancy Smith v. David A. WhiteEagle, CS 98-27 Notice (Child Turning 18 – Requiring

Proof of Enrollment) (HCN Tr. Ct., Sept. 25, 2003). (Matha, T).

A review of the file indicates that a minor child recently turned eighteen years of age. The Court now requires the parties to furnish proof of high school enrollment. If no such proof is filed on or before October 13, 2003, the Court shall cease withholding for current child support.

Civil Garnishment

SEPTEMBER 3, 2003

M & I Marshall & Ilsley Bank v. Brady Two Bears, CG 03-52 Order (Default Judgment) (HCN Tr. Ct., Sept. 3, 2003). (Matha, T).

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

SEPTEMBER 22, 2003

Discover Bank v. Kathleen J. LaMere, CG 03-50 Order (Default Judgment) (HCN Tr. Ct., Sept. 22, 2003). (Matha, T).

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

Amer. Gen. Fin., Inc. v. Cleo Littlegeorge, CG 03-64 Order (Default Judgment) (HCN Tr. Ct., Sept. 22, 2003). (Matha, T).

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

SEPTEMBER 25, 2003

Matthew and Angelita Hofmeister v. Mary Ann Dick, CG 03-65 Order (Default Judgment) (HCN Tr. Ct., Sept. 25, 2003). (Matha, T).

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

Children's Trust Fund (CTF)

SEPTEMBER 2, 2003

In the Interest of Minor Children: J.M.M., DOB 03/03/88, and C.M., DOB 04/29/92, by Becky Manuell v. HCN Office of Tribal Enrollment, CV 03-39 Order (Accepting Accounting) (HCN Tr. Ct., Sept. 2, 2003). (Bossman, W).

On May 30, 2003, the Court released funds from the CTF accounts of the minor children for orthodontics. On August 13, 2003, the Court reminded the petitioner of her duty of accounting for the expenditures. On August 29, 2003, the petitioner submitted the required accounting. The Court accepted the accounting and closed the case.

SEPTEMBER 4, 2003

Kasia Decorah, DOB 10/01/83 v. HCN Office of Tribal Enrollment, CV 03-52 Order (Requiring Submission of Documents) (HCN Tr. Ct., Sept. 4, 2003). (Bossman, W).

The petitioner requested a release of CTF account funds for repair of a vehicle. The respondent raised several issues that indicate a lack of documentation concerning standards the Court has traditionally used in determining the appropriateness of a proposed release of CTF funds. The Court requires that the petitioner submit further documentation in support of the request.

SEPTEMBER 18, 2003

In the Interest of Minor Child: J.H.R., DOB 01/09/95, CU 95-18 Order (Petition Granted) (HCN Tr. Ct., Sept. 18, 2003). (Bossman, W).

The Court had to determine whether to grant a release of funds from the CTF account of the minor child for the purchase of a handicapped accessible van. The Court granted the request.

SEPTEMBER 19, 2003

A.G., DOB 06/23/85, by Cynthia Loofboro v. HCN Office of Tribal Enrollment, CV 03-49 Order (Granting Motion for Extension of Time) (HCN Tr. Ct., Sept. 19, 2003). (Bossman, W).

A request was made for an extension of time to submit documents in the action. The Court granted the request.

SEPTEMBER 22, 2003

In the Interest of Minor Children: L.G.B., DOB 03/30/89, and C.A.B., DOB 08/26/90, by Tari L. Pettibone v. HCN Office of Tribal Enrollment, CV 01-136 Order (Accepting Accounting) (HCN Tr. Ct., Sept. 22, 2003). (Matha, T).

On April 28, 2003, the Court released funds from the CTF accounts of the minor children for orthodontics. On two occasions, the Court reminded the petitioner of her duty of accounting for the expenditures. On August 18, 2003, the petitioner submitted the required accounting. The Court accepted the accounting and closed the case.

In the Interest of Minor Child: B.M.S., DOB 10/23/88, by Michelle R. Matlock, CV 03-67 Order (Petition Granted) (HCN Tr. Ct., Sept. 22, 2003). (Matha, T).

The Court had to determine whether to grant a release of funds from the CTF account of the minor child to pay for costs associated with orthodontic procedures. The Court granted the request.

SEPTEMBER 25, 2003

Joseph Hammer v. HCN Office of Tribal Enrollment, CV 03-71 Order (Fact-Finding Hearing) (HCN Tr. Ct., Sept. 25, 2003). (Bossman, W).

The petitioner requested a release of CTF account funds for a utility bill. The respondent raised several issues that indicate a lack of documentation concerning standards the Court has traditionally used in determining the appropriateness of a proposed release of CTF funds. The Court requires that the petitioner submit further documentation in support of the request and will convene a hearing in the aforementioned matter.

SEPTEMBER 26, 2003

In the Interest of Minor Children: A.W.K., DOB 11/26/88, and D.P.S., Jr., DOB 12/12/88, by Lori Koster v. HCN Office of Tribal Enrollment, CV 03-72 Order (Requiring Submission of Documents) (HCN Tr. Ct., Sept. 26, 2003). (Bossman, W).

The petitioner requested a release of CTF account funds of minor children. The respondent raised several issues that indicate a lack of documentation concerning standards the Court has traditionally

used in determining the appropriateness of a proposed release of CTF funds. The Court requires that the petitioner submit further documentation in support of the request.

In the Interest of Minor Child: S.D.B., DOB 07/30/92, by Carol Barnes v. HCN Office of Tribal Enrollment, CV 00-90 Order (Granting CTF Funds for Orthodontics) (HCN Tr. Ct., Sept. 26, 2003). (Bossman, W).

The Court had to determine whether to grant a release of funds from the CTF account of the minor child to pay for costs associated with orthodontic procedures. The Court granted the request.

Incompetent's Trust Fund Cases**SEPTEMBER 26, 2003**

In the Interest of Adult Incompetent: Oliver S. Rockman, CV 97-117 Order (Granting Release of Per Capita Funds) (HCN Tr. Ct., Sept. 26, 2003). (Bossman, W).

The Court received a *Request for Funds* from the protective payee. No objection to the request was filed. The Court granted the request.

CIVIL CASES (ALL CATEGORIES)**SEPTEMBER 5, 2003**

Kevin Croak v. Joy Rave, CV 03-41 Order (Motion Hearing) (HCN Tr. Ct., Sept. 5, 2003). (Matha, T).

The Court granted the defendant the ability to argue its *Motion for Summary Judgment* at the scheduled pre-trial conference.

Janet M. Funmaker v. HCN, HCN Personnel Dept., HCN Bus. Dept., and HCN Gift Shop, CV 02-111 Order (Motion Hearing) (HCN Tr. Ct., Sept. 5, 2003). (Bossman, W).

The Court granted the defendant the ability to argue its *Motion for Summary Judgment* at the scheduled pre-trial conference.

Francis L. Williams v. Alex B. Chown, Marketing Dir. of Majestic Pines Casino and HCN, CV 02-78 Order (Denying Motion to Reopen Case and Modify Order) (HCN Tr. Ct., Sept. 5, 2003). (Bossman, W).

The defendants requested that the Court reopen the case and modify its order by granting the defendant a judgment on its counterclaim. The Court held that the defendant had failed to properly raise the

counterclaim within its answer. Therefore, the Court denied the motion.

SEPTEMBER 8, 2003

Patricia A. Ennis v. Representatives: Tracy Thundercloud, George Lewis, Myra Thompson, Sharyn Whiterabbit, Elliott Garvin, Clarence Pettibone, Wade Blackdeer, Dallas White Wing, Gerald Cleveland, Christine Romano, Kathyleen Whiterabbit and Cash Systems, CV 03-53 *Order (Dismissal without Prejudice)* (HCN Tr. Ct., Sept. 8, 2003). (Bossman, W).

The defendants requested that the Court dismiss the action because the administrative review process under the TRIBAL EMPLOYMENT RIGHTS ORDINANCE was not completed, and therefore, the action was brought prematurely. The Court dismissed the action without prejudice.

HCN Dept. of Hous., Prop. Man. Div. v. Darren L. Snake and Lena F. Snake, CV 03-21 *Order (Default Judgment)* (HCN Tr. Ct., Sept. 8, 2003). (Matha, T).

The plaintiff filed a complaint requesting a judgment for past due rent and utilities. The defendants failed to respond to the complaint. Therefore, the Court issued a default judgment in favor of the plaintiffs.

SEPTEMBER 10, 2003

Anita Naquayouma v. Jonette Pettibone, CV 03-55 *Scheduling Order* (HCN Tr. Ct., Sept. 10, 2003). (Bossman, W).

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

SEPTEMBER 11, 2003

Joseph D. Ermenc v. HCN Whitetail Crossing, CV 01-88 *Order (Final Judgment)* (HCN Tr. Ct., Sept. 11, 2003). (Matha, T).

The Court had to determine whether the defendant improperly terminated the employment of the plaintiff. The plaintiff failed to produce any evidence at trial either through testimony or production of documents. The Court granted a judgment in favor of the defendant.

SEPTEMBER 16, 2003

Wayne Hanrahan v. Ron Anwash & Larry Garvin, CV 03-57 *Scheduling Order* (HCN Tr. Ct., Sept. 16, 2003). (Bossman, W).

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

Wayne Hanrahan v. Rep. Kathyleen Whiterabbit and Rep. Sharyn Whiterabbit, CV 03-54 *Scheduling Order* (HCN Tr. Ct., Sept. 16, 2003). (Bossman, W).

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

HCN Dept. of Hous., Prop. Man. Div. v. Summer Martin & Dustin Jackson, CV 03-23 *Scheduling Order* (HCN Tr. Ct., Sept. 16, 2003). (Matha, T).

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

SEPTEMBER 22, 2003

Kevin Croak v. Joy Rave, CV 03-41 *Order (Dismissal with Prejudice)* (HCN Tr. Ct., Sept. 22, 2003). (Matha, T).

The plaintiff failed to appear for the scheduled pre-trial conference. The plaintiff did not notify the Court of an inability to attend the proceeding. The Court dismissed the instant case with prejudice.

Joshua F. Smith, Sr. v. Rainbow Casino, HCN, Adam Estes, Jonette Pettibone, and Ida Carrier, CV 03-56 *Scheduling Order* (HCN Tr. Ct., Sept. 22, 2003). (Bossman, W).

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

SEPTEMBER 23, 2003

Ronald Kirkwood v. HCN Hous. Dept. and HCN Legs., CV 03-62 *Order (Granting Telephonic Appearance)* (HCN Tr. Ct., Sept. 23, 2003). (Matha, T).

The defendants' counsel motioned the Court to permit him to appear by telephone for a scheduling conference. The Court granted the request.

Ronald Kirkwood v. HCN Hous. Dept. and HCN Legs., CV 03-62 Order (Granting Telephonic Appearance) (HCN Tr. Ct., Sept. 23, 2003). (Matha, T).

The plaintiff motioned the Court to permit him to appear by telephone for a scheduling conference. The Court granted the request.

SEPTEMBER 24, 2003

Janet M. Funmaker v. HCN, HCN Pers. Dept., HCN Bus. Dept., and HCN Gift Shop, CV 02-111 Order (Denying Motion for Partial Dismissal) (HCN Tr. Ct., Sept. 24, 2003). (Bossman, W).

The plaintiff claims that she was improperly demoted from the position of manger and that she was subsequently improperly terminated from the position of retail associate. The defendants moved to dismiss the portion of the action relating to the plaintiff's demotion because of estoppel. The Court denied the motion.

Ronald Kirkwood v. HCN Hous. Dept. and HCN Legs., CV 03-62 Scheduling Order (HCN Tr. Ct., Sept. 24, 2003). (Matha, T).

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

Laura Snake v. Douglas Greengrass, CV 03-61 Scheduling Order (HCN Tr. Ct., Sept. 24, 2003). (Matha, T).

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

SEPTEMBER 29, 2003

James Menore v. HCN, HC Casino Compliance, CV 03-37 Order (Motion Hearing) (HCN Tr. Ct., Sept. 29, 2003). (Bossman, W).

The Court granted the defendant the ability to argue its *Motion for Summary Judgment* at the scheduled pre-trial conference.

Cornelius Decora v. Adam Hall, HCN Tribal Enrollment Office, George Greendeer, Enrollment Genealogist, Tribal Enrollment Comm., HCN Legs., and HCN, CV 03-25 Order (Postponing Pre-Trial Conference and Trial) (HCN Tr. Ct., Sept. 29, 2003). (Bossman, W).

The plaintiff requested postponement of the pre-trial conference. The Court granted the request.

Juvenile

SEPTEMBER 3, 2003

In the Interest of Minor Child: H.S.H., DOB 02/18/03, JV 03-29 Order (Initial Emergency Hearing) (HCN Tr. Ct., Sept. 3, 2003). (Matha, T).

The Court convened an initial emergency hearing to discuss the legal and procedural status of the instant action. The Court advised the parties of their need to attend a plea hearing and advised the parties of their rights. The Court determined that legal and physical custody of the minor child should remain the same.

In the Interest of Minor Children: C.A.T., DOB 07/06/95; B.A.T., DOB 09/11/94, JV 03-27 -28 Order (Plea Hearing) (HCN Tr. Ct., Sept. 3, 2003). (Bossman, W).

The Court convened a plea hearing in the action. The Court advised the father of the minor children of his rights and entered a plea of not guilty on his behalf. The Court scheduled a formal hearing on the issues.

SEPTEMBER 10, 2003

In the Interest of Minor Children: D.A.F., DOB 09/16/88, K.V.F., DOB 01/15/90, JV 03-16 -17 Order (Appointment of Permanent Guardian) (HCN Tr. Ct., Sept. 10, 2003). (Matha, T).

The Court appointed permanent guardians of minor children. The Court based this determination on the consent of the minor children to the guardianship, the recommendations of CFS and the GAL, the duration in the residence, and the preference of placement in a Ho-Chunk traditional family.

In the Interest of Minor Children: D.L.H., DOB 08/15/97; A.M.H., DOB 12/25/95; D.M.H., DOB 02/16/92; D.L.H., DOB 03/25/89, JV 03-20 -21 -22 -23 Order (Dispositional Requirements) (HCN Tr. Ct., Sept. 10, 2003). (Matha, T).

The Court conducted a hearing to assess the dispositional recommendations proposed by CFS. The Court ordered certain dispositional requirements necessary for the protection of the children and possible reunification of the family.

SEPTEMBER 16, 2003

In the Interest of Minor Child: D.C., DOB 05/12/03, JV 03-34 Order (Acceptance of Transfer) (HCN Tr. Ct., Sept. 16, 2003). (Bossman, W).

The Court had to determine whether to accept transfer of a children's case from Jackson County Circuit Court. The Court determined that it shall not decline the transfer of this action.

SEPTEMBER 17, 2003

In the Interest of Minor Child: D.S.S., DOB 07/12/99, JV 03-15 Order (Postponing Guardianship Hearing) (HCN Tr. Ct., Sept. 17, 2003). (Bossman, W).

The Court re-scheduled the guardianship hearing at the request of parties to the action.

SEPTEMBER 23, 2003

In the Matter of the Child: C.C.P., DOB 02/03/93, G.L.P., DOB 06/10/94, JV 03-25 -26 Order (Rescheduling Plea Hearing) (HCN Tr. Ct., Sept. 23, 2003). (Bossman, W).

The Court was unable to effect personal service on the mother in the action. In order to allow for such service, the Court continued the matter for one week.

SEPTEMBER 24, 2003

In the Interest of Minor Child: H.S.H., DOB 02/18/03, JV 03-29 Order (Entrance of Plea) (HCN Tr. Ct., Sept. 24, 2003). (Matha, T).

The Court convened a plea hearing to determine whether the parents of the minor child wished to contest the allegations contained within the petition filed by CFS. Each parent entered a plea of not guilty. The Court scheduled a trial in the matter.

In the Interest of Minor Child: J.D.S., DOB 09/08/03, JV 03-30 Order (Continuance of Plea Hearing) (HCN Tr. Ct., Sept. 24, 2003). (Matha, T).

The Court convened a plea hearing to determine whether the parent of the minor child wished to contest allegations contained in the petition filed by CFS. The parent requested a continuance after the Court advised her of her rights. The Court rescheduled the plea hearing to provide the parent an opportunity to obtain legal representation.

In the Interest of the Minor Children: B.T., DOB 07/21/99, B.P.T., DOB 08/29/95, B.A.T., DOB 11/18/96, JV 03-31 -32 -33 Order (Continuance of Plea Hearing) (HCN Tr. Ct., Sept. 24, 2003). (Matha, T).

The Court convened a plea hearing to determine whether the parent of the minor children wished to contest allegations contained in the petition filed by CFS. The parent requested a continuance after the Court advised her of her rights. The Court rescheduled the plea hearing.

In the Interest of Minor Child: C.R.P.W., DOB 12/27/96, JV 02-17 Termination of Order (HCN Tr. Ct., Sept. 24, 2003). (Bossman, W).

The Court held a review hearing in this matter. CFS recommended that the order in this case be terminated and that the case be closed. The Court terminated its jurisdiction over and supervision of the case.

Supreme Court

SEPTEMBER 9, 2003

Hope B. Smith v. HCN, SU 03-08 Scheduling Order (HCN Tr. Ct., Sept. 9, 2003).

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

SEPTEMBER 11, 2003

HCN v. Bank of America, N.A., SU 03-06 Order (Denying Motion for Reconsideration and Denying Request for Stay of Proceedings) (HCN S. Ct., Sept. 11, 2003).

The Appellant requested that the Court reconsider its denial of the Appellant's interlocutory request for appeal or amend the *Order Denying Appeal*. The Court denied the motion.

SEPTEMBER 22, 2003

Hope B. Smith v. HCN, SU 03-08 Amended Scheduling Order (HCN Tr. Ct., Sept. 22, 2003).

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

Recent Filings

Trial Court

Civil Garnishment

SEPTEMBER 2, 2003

Community Credit Union v. Betty Gerke, CG 03-66. (Bossman, W).

Black River Memorial Hospital v. Ricky and Kate Folkers, CG 03-67. (Bossman, W).

SEPTEMBER 30, 2003

Wood Co. Telephone v. Wendy Harnemm, CG 03-68. (Bossman, W).

Nehoosa Edwards v. Eugene Topping, CG 03-69. (Bossman, W).

Francican Skemp Healthcare v. Janet Swessls, CG 03-70. (Bossman, W).

Riverbell Dental v. Bonita Roy, CG 03-71. (Bossman, W).

Dr. Connie Jacobson v. Christina Melcher, CG 03-72. (Bossman, W).

State Collection v. June Rogers, CG 03-73. (Bossman, W).

Child Support

SEPTEMBER 12, 2003

Melissa Redbird v. Thomas Redbird III, CS 03-57. (Bossman, W).

SEPTEMBER 25, 2003

Barbara Lowe v. Jonelle Pettibone, CS 03-58. (Matha, T).

Maria Ruth Goodbear v. William Lowell Goodbear, CS 03-59. (Matha, T).

State of WI/Eau Claire Co. v. Cory Funmaker, CS 03-60. (Matha, T).

Civil Cases

SEPTEMBER 2, 2003

Barbara Dent v. HCN, CV 03-70. (Bossman, W).

SEPTEMBER 4, 2003

Joseph Hammer v. HCN Office of Tribal Enrollment, CV 03-71. (Bossman, W).

SEPTEMBER 8, 2003

A.W.K., DOB 11/26/88; D.P.S., DOB 12/12/88 by Lori A. Koster v. HCN Office of Tribal Enrollment, CV 03-72. (Matha, T).

SEPTEMBER 26, 2003

M.J.D., DOB 01/02/86 by Elaine Blackhawk v. HCN Office of Tribal Enrollment, CV 03-73.

Juvenile Cases

SEPTEMBER 11, 2003

In the Interest of Minor Child: B.T., Jr., DOB 07/21/99, JV 03-31. (Matha, T).

In the Interest of Minor Child: B.P.T., DOB 08/29/95, JV 03-32. (Matha, T).

In the Interest of Minor Child: B.A.T., DOB 11/18/96, JV 03-33. (Matha, T).

SEPTEMBER 12, 2003

In the interest of Minor Child: J.D.S., DOB 09/08/03, JV 03-30. (Matha, T).

SEPTEMBER 16, 2003

In the Interest of Minor Child: D.C., DOB 05/12/03, JV 03-34. (Bossman, W).

SEPTEMBER 22, 2003

In the Interest of Minor Child: K.L.H., DOB 10/21/88, JV 03-35. (Matha, T).

SEPTEMBER 24, 2003

In the Interest of Minor Child: L.R.H., DOB 11/18/87, JV 03-36. (Matha, T).

SUPREME COURT

SEPTEMBER 2, 2003

Hope B. Smith v. HCN, SU 03-08.



**HO-CHUNK NATION COURT SYSTEM
JUDICIARY AND STAFF**

Supreme Court—Mary Jo B. Hunter, Chief Justice
Mark D. Butterfield, Associate Justice
Jo Deen B. Lowe, Associate Justice

Traditional Court –Wallace Blackdeer

Donald Blackhawk
Dennis Funmaker
Orville Greendeer
Douglas Greengrass
Owen Mike
Gavin Pettibone
Douglas Red Eagle
Preston Thompson, Jr.
Eugene Thundercloud
Morgan White Eagle
Clayton Winneshiek

Trial Court – William H. Bossman, Chief Judge
Todd R. Matha, Associate Judge

Clerk of Court, Supreme Court – Bryan Dietzler

Clerk of Court, Trial Court – Marcella Cloud

Assistant Clerk of Court, Trial Court – Selina Joshua

Bailiff/Process Server – Willa RedCloud

Staff Attorney – Rose Weckenmann

Office of Public Advocacy – Dennis Funmaker, Administrator

* The Ho-Chunk Nation Judiciary and its officers are active participants in the following organizations:

WISCONSIN TRIBAL JUDGES ASSOCIATION
(Eleven federally recognized tribes within the State of Wisconsin)

NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION
(Region 5—Illinois, Indiana, Iowa, Michigan, Minnesota, Nebraska, South Dakota, North Dakota, and Wisconsin)

HCN Court System Fee Schedule

▪ Filing Fees \$50.00*

*With the exception of petitions to register child support orders – this fee remains at \$20.00 as previously ordered by the Supreme Court.

Note: Filing Fee now includes *Summons* fee.

▪ Filing Fees for *Petitions to Register and Enforce Foreign Judgment/ Order*. \$20.00

Copying \$0.10/per page

Faxing \$0.25/per page (sending and receiving)

Tapes of Hearings \$10.00/per tape

CD of Hearing. \$12.50/per tape

Deposition Videotape \$10.00/per tape

Certified Copies \$0.50/per page

Equipment Rental \$5.00/per hour

Appellate filing fees \$35.00

Admission to Practice \$50.00

Pro Hac Vice Appearance \$35.00

Legal Citation Form

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

Ho-Chunk Nation Constitution

Constitution, Article Number, Section, and Subsection.

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

HCN Const., Art. XI, Sec. (or §) 7.

HCN Ordinances

Ordinance Name, Chapter number, Section/Part/Clause, page.
PERSONNEL POLICIES AND PROCEDURE MANUAL, Ch. 12,
Part B, p. 82.

CLAIMS AGAINST PER CAPITA, Sec. (or §) 6.01(b).

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, CV 99-01 (HCN Tr. Ct., Nov. 1, 1999).

Rules of Civil Procedure

HCN R. Civ. P. 19(B).





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Supreme Court to Review *U.S. v. Lara*

On September 30, 2003, the United States Supreme Court accepted the appeal of an Eight Circuit Court of Appeals decision that will have far-reaching implications for the jurisdiction that tribes exercise over nonmembers. *U.S. v. Lara*, 324 F.3d 635 (8th Cir. 2003) (en banc). The case involves the dual tribal and federal prosecutions of a non-member Indian. However, the Court's decision will not just impact tribal prosecutions. The ramifications of the decision will be felt by all tribes as the Court may resolve the issue as to whether tribal governments have inherent sovereignty over all Native Americans, not just members of the particular tribe.

At play in *Lara*, is the concept of dual sovereignty. Dual prosecutions of separate sovereigns do not violate the Double Jeopardy Clause of the Fifth Amendment. Therefore, the primary question in *Lara* is not whether tribes have criminal jurisdiction over nonmembers, but whether this jurisdiction currently exercised is an inherent or delegated power. If the power is considered delegated, then dual tribal/federal prosecutions would violate the Constitution's prohibition on Double Jeopardy.

Billy Jo Lara, a member of the Turtle Mountain Band of Chippewa Indians, was first convicted of assaulting a police officer by the Spirit Lake Nation tribal court. Three months later, the federal government indicted Lara for assault of a federal officer. This charges stemmed from the same incident.

The defendant moved to dismiss the indictment on double jeopardy grounds. The district court denied the motion, and Lara entered a conditional guilty plea, reserving his right to appeal the denial of his motion. A panel of the Eighth Circuit Court of Appeals upheld the district court's decision, explaining that the Spirit Lake Nation's power to prosecute derives from its inherent power to prosecute and not from Congressional delegation. Therefore, the conviction on the federal charge did not violate the Double Jeopardy Clause of the Fifth Amendment. The Eighth Circuit Court of Appeals, sitting en banc, reversed the order denying the motion to dismiss on double jeopardy grounds. The Eighth Circuit held that "the distinction between a tribe's inherent and delegated powers is of a constitutional magnitude and therefore is a matter ultimately entrusted to the Supreme Court." Lara, at 639. The Eighth Circuit explained that Congress, in giving the tribes inherent power to exercise criminal jurisdiction over non-member Indians through an amendment to the Indian Civil Rights Act, was attempting to override a Supreme Court decision by re-writing history.

In 1990, the United States Supreme Court ruled that tribes do not have the power to criminally prosecute non-member Indians. *Duro v. Reina*, 495 U.S. 676 (1990). In 1990, Congress enacted the "Duro fix" as an amendment to the Indian Civil Rights Act. 25 U.S.C. § 1301(2). The amendment recognized that tribes have the "inherent power" to exercise criminal jurisdiction over all Indians. In *Lara*, the Eighth Circuit did not go so far as to declare the "Duro fix" void. However, the court held that the while Congress could grant criminal jurisdiction over non-member Indians to the tribe, it could not go so far as to re-write history and declare these delegated powers to be inherent. The court was careful to note, however, that "[n]othing in our decision today in any way circumscribes the jurisdiction so conferred." *Lara* at 640.

The Eighth Circuit's decision in *Lara* was ripe for appeal as other circuits have previously ruled differently. The Ninth Circuit Court of Appeals held last year that a tribe exercises its

inherent power when prosecuting non-member Indians. *U.S. v. Enas*, 255 F. 3d 662 (2001) (en banc), cert. denied, 534 U.S. 1115 (2002). Therefore, the court held that the Double Jeopardy Clause was not violated by dual tribal/federal prosecutions.

The Supreme Court will likely have to answer the question of whether tribes retain inherent or delegated jurisdiction over non-members. The Supreme Court has issued a number of opinions which seemingly limit the exercise of inherent sovereign power to the tribe's own members. See *Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001); *Nevada v. Hicks*, 533 U.S. 353 (2001). Through a review of *Lara*, the Supreme Court may be forced to explicitly define the inherent power that tribes retain with respect to all non-members in both the criminal and civil contexts.

Perhaps the more important issue that the Court will address is whether Congress has the power to declare that a power is either delegated or inherent. The question arises as to whether Congress was attempting to re-write history through overriding *Duro*. In the alternative, the Supreme Court may find as did the Ninth Circuit, that Congress has the authority to identify the "parameters of tribal sovereignty." *Enas*, 255 F. 3d at 670 (2001).

Tribes have recently supported the idea of Congressional initiatives to correct the current trend of the Supreme Court to limit sovereignty over nonmembers. If the Court finds the "Duro fix" to be an unconstitutional exercise of Congress' power, this would prevent any similar corrective measures to address case law in which the Supreme Court has limited tribal sovereignty over nonmembers. See *Nevada v. Hicks*, 533 U.S. 353 (2001) (holding that tribal inherent sovereign powers do not extend to activities of nonmembers); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) (holding tribes have no inherent power to prosecute non-Indians). Such a consequence would detrimentally impact tribes in both Public Law 280 and non-Public Law 280 states, including the Ho-Chunk Nation.

Federal Court Update

Eighth Circuit Court of Appeals

Mid States Coalition for Progress v. Surface Transportation Board, 345 F.3d 520 (10th Cir. 2003).

The petitioners challenged a decision by the Surface Transportation Board that approved a proposal by the Dakota, Minnesota & Eastern Railroad Corporation to construct a new rail line to reach the coal mines of Wyoming's Powder River Basin. The petitioners alleged that this approval violated the Fort Laramie Treaty of 1868, as well as provisions of the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). The 8th Circuit vacated the Board's decision and remanded for further proceedings.

The remand was based on deficiencies related to NEPA and NHPA. The 8th Circuit panel rejected the argument put forth by the petitioner, the Oglala Sioux Tribe, that the Board had violated the terms of the Fort Laramie Treaty of April 29, 1868. The Fort Laramie Treaty prohibited the cession of any reservation land without approval by three-fourths of the Tribe's male population.

The three-judge panel concluded that the land in question does not cross the boundaries of the present day reservation, as the land was restored to the public domain through the Act of March 2, 1877 and the Act of February 28, 1877. The Tribe also argued that the 1889 Act was invalid. The panel also rejected this contention.

Ninth Circuit Court of Appeals

United States v. Juvenile, No. 02-30253, 2003 WL 22410829 (9th Cir. Oct. 23, 2003).

The juvenile defendant, a member of the Cheyenne River Sioux, appealed the sentence imposed by the District Court. The District Court's jurisdiction in the matter arose under the Federal Juvenile Delinquency Act (FJDA). The juvenile was charged with aggravated sexual abuse of a child and pleaded guilty pursuant to a plea agreement. The

District Court then sentenced the juvenile to the custody of the Attorney General until his twenty-first birthday, the maximum sentence allowed under the FJDA. The Ninth Circuit Court of Appeals held that the sentence imposed by the District Court was arbitrary and failed to serve the rehabilitative purposes of the FJDA.

Federal Circuit Court of Appeals

Navajo Nation v. United States, No. 00-5086, 2003 WL 22417227 (Fed. Cir., Oct. 24, 2003).

This litigation stemmed from 1987 amendments to a coal lease between the predecessor of Peabody Coal Company and the Navajo Nation. The Secretary of Interior approved the lease amendments. The Tribe brought suit in the Court of Federal Claims under the Indian Tucker Act, alleging a breach of trust under the Indian Mineral Leasing Act (IMLA).

The Court of Federal Claims had previously granted summary judgment in favor of the government. *See Navajo Nation v. United States*, 46 Fed. Cl. 217 (2000). On appeal, the Federal Circuit Court of Appeals held that the IMLA of 1938 imposes a fiduciary duty upon the United States and that a breach of such duty could result in an award of monetary damages. *See Navajo Nation*, 263 F.3d 1325 (Fed. Cir. 2001). The Supreme Court reversed and remanded the case. *See United States v. Navajo Nation*, 537 U.S. 488 (2003).

In the instant action, the Appeals Court remanded the case to the Court of Federal Claims for further proceedings. The Court held that the decision of the Supreme Court in this case was limited to the question of whether the IMLA imposes a judicially enforceable fiduciary duty upon the United States. Therefore, the case was remanded for the Court of Federal Claims to determine (1) whether the Tribe waived a claim with respect to other statutes and regulations and (2) if not, whether such statutes and regulations impose judicially enforceable duties.

Recent Decisions

Decisions are separated between Trial Court and Supreme Court decisions and categorized by subject matter and date (from oldest to most recent). The following are summaries prepared by the Staff Attorney for the reader's benefit. They should in no way be used as substitution for citations to the actual court opinion.

Within the Trial Court, cases are categorized and docketed as one of the following: Child Support (CS or if filed prior to 1998, CV), Civil Garnishment (CG), Civil (CV), Criminal (CR), Custody (CU), Domestic Violence (DV), or Juvenile (JV). Within this index, case citations will appear in one of these categories and, in the event it may be helpful to the reader as a research tool, the cases may also be summarized in a separate topic area. In some instances a decision may touch upon other topics that may not warrant a summary in this index, but the editor will use the indicator "other topic(s) covered," as a research aid for the reader.

Recent Decisions and **Recent Filings** both begin with the date where the previous Court Bulletin left off.

Trial Court

Child Support

OCTOBER 2, 2003

Sara WhiteEagle v. Timothy King, CV 97-24 Notice (Child Turning 18-Requiring Proof of Enrollment) (HCN Tr. Ct., Oct. 2, 2003). (Matha, T).

A review of the file indicated that a minor child recently turned eighteen years of age. The Court ordered the parties to furnish proof of high school enrollment. If no such proof is filed on or before October 13, 2003, the Court shall cease withholding for current child support.

OCTOBER 3, 2003

Melissa L. Redbird v. Thomas Redbird, III, CS 03-57 Default Judgment (Enforcing Child Support) (HCN Tr. Ct., Oct. 3, 2003). (Matha, T).

The Court had to determine whether to grant full faith and credit to a foreign judgment. The

respondent failed to answer within the specified time frame. The Court granted the petitioner's request for recognition and enforcement.

Melissa L. Redbird v. Thomas Redbird, III, CS 03-57 Order (Default Judgment for Child Support Deduction from Wages) (HCN Tr. Ct., Oct. 3, 2003). (Matha, T).

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to answer within the specified time frame. The Court granted the petitioner's request for recognition and enforcement.

OCTOBER 14, 2003

State of WI/Sauk Co. v. Tara I. Blackcoon, CS 03-46 Order (Enforcing Child Support) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to answer within the specified time frame. The Court granted the petitioner's request for recognition and enforcement.

Kathleen K. Waukau-Bourdon v. Timothy W. Bourdon, Sr., CS 99-69 Order (Updating Arrearage Withholding) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

The petitioner filed a motion to amend arrears withholding. The respondent failed to answer within the specified time frame. The Court granted the petitioner's request.

Lynn Marie Coomes v. Phillip Anthony Coomes, CS 03-33 Order (Ceasing Withholding Current Child Support) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

The petitioner requested a modification of child support withholding. The motion stated that current child support withholding should be suspended. The Court ordered withholding for current child support to cease.

State of WI v. Arnold J. Crone, CS 97-35 Order (Enforcing Change in Child Support) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

The petitioner requested a modification of child support withholding. The respondent failed to

answer within the specified time frame. The Court granted the petitioner's request.

John E. Bakken v. Jeanette Dakota, CS 00-06 Order (Proof of High School Enrollment Filed) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

The Court had previously notified the parties that a minor child had turned eighteen years of age. The Court ordered the parties to file proof of high school enrollment, or the Court would cease withholding for current child support. The petitioner filed the required proof.

Nadine C. Decorah v. Ashley J. Decorah, CS 02-38 Order (Modifying and Enforcing Child Support) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

The petitioner requested a modification of child support withholding. The respondent failed to answer within the specified time frame. The Court granted the petitioner's request for arrearage withholding.

State of WI v. Damon E. Funmaker, CS 03-37 Order (Enforcing Child Support) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

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

State of WI v. Damon E. Funmaker, CS 03-37 Order (Default Judgment for Child Support Child Support Deduction from Wages) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

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

State of WI on behalf of Cynthia Loofboro v. William Greendeer, CV 97-96 Order (Proof of High School Enrollment Filed) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

The Court had previously notified the parties that a minor child had turned eighteen years of age. The Court ordered the parties to file proof of high school

enrollment, or the Court would cease withholding for current child support. The petitioner filed the required proof.

State of WI v. Cynthia Hopinka, CV 97-36 Order (Suspending Withholding for Current Child Support) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

The Court had previously notified the parties that a minor child had turned eighteen years of age. The Court ordered the parties to file proof of high school enrollment, or the Court would cease withholding for current child support. The petitioner failed to file the required proof. The Court ordered withholding for current child support to cease.

Nellie M. Peoples v. Mark S. Houghton, CS 00-39 Order (Proof of High School Enrollment Filed) (HCN Tr. Ct., Oct. 14, 2003). (Matha, T).

The Court had previously notified the parties that a minor child had turned eighteen years of age. The Court ordered the parties to file proof of high school enrollment, or the Court would cease withholding for current child support. The petitioner filed the required proof.

Melanie Stacy v. Roger Littlegeorge, CS 99-44 Order (Updating Arrearage Withholding) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

The petitioner filed a motion to amend arrears withholding. The respondent failed to answer within the specified time frame. The Court granted the petitioner's request.

State of WI/Sauk Co. and Bethel St. Cyr v. Geoffrey Lonetree, CS 03-55 Default Judgment (Enforcing Child Support) (HCN Tr. Ct., Oct. 14, 2003). (Matha, T).

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

Cynthia Mobley v. Mitchell Red Cloud, CS 03-42 Order (Enforcing Child Support) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

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

State of WI/Jackson Co. v. Daniel V. WhiteEagle, CS 98-66 Order (Proof of High School Enrollment Filed) (HCN Tr. Ct., Oct. 14, 2003). (Matha, T).

The Court had previously notified the parties that a minor child had turned eighteen years of age. The Court ordered the parties to file proof of high school enrollment, or the Court would cease withholding for current child support. The petitioner filed the required proof.

OCTOBER 15, 2003

Carol Jo Garvin v. George W. Garvin, CS 98-56 Order (Denying Motion to Modify) (HCN Tr. Ct., Oct. 15, 2003). (Matha, T).

The petitioner filed a motion to modify, requesting that per capita distributions be redirected to her home. The Court has no authority to unilaterally modify the foreign court decision it previously enforced in the case. Therefore, the Court denied the petitioner's motion.

State of WI/Jackson Co. v. Christie J. Ryan, CS 99-34 Order (Modifying and Enforcing Child Support) (HCN Tr. Ct., Oct. 15, 2003). (Matha, T).

The petitioner requested a modification of child support withholding. The respondent failed to answer within the specified time frame. The Court granted the petitioner's request for arrearage withholding.

Anita L. Bolander v. Darrell L. Sena, Jr., CS 01-06 Order (Ceasing Withholding Child Support Arrears) (HCN Tr. Ct., Oct. 15, 2003). (Bossman, W).

The petitioner requested a modification of child support withholding. The motion stated that child support withholding for arrears should be suspended. The Court ordered withholding for child support arrears to cease.

Melissa Rogers v. Darrell L. Sena, Jr., CS 02-21 Order (Ceasing Withholding Child Support

Arrears) (HCN Tr. Ct., Oct. 15, 2003). (Bossman, W).

The petitioner requested a modification of child support withholding. The motion stated that child support withholding for arrears should be suspended. The Court ordered withholding for child support arrears to cease.

Melissa K. Johnson v. David A. WhiteEagle, CS 03-22; *State of WI/Suzette Greengrass v. David A. WhiteEagle*, CS 98-26; *State of WI/Nancy Smith v. David A. WhiteEagle*, CS 98-27 Order (Modifying Current Child Support) (HCN Tr. Ct., Oct. 15, 2003). (Matha, T).

The Court had previously notified the parties that a minor child had turned eighteen years of age. The Court ordered the parties to file proof of high school enrollment, or the Court would cease withholding for current child support for the minor child. The petitioner failed to file the required proof. The Court ordered a corresponding modification in current child support withholding.

OCTOBER 16, 2003

Sara WhiteEagle v. Timothy King, CV 97-24; *Kimberly J. Webb v. Timothy King*, CV 97-135 Order (Modifying Child Support) (HCN Tr. Ct., Oct. 16, 2003). (Matha, T).

The Court had previously notified the parties that a minor child had turned eighteen years of age. The Court ordered the parties to file proof of high school enrollment, or the Court would cease withholding for current child support for the minor child. The petitioner failed to file the required proof. The Court ordered a corresponding modification in current child support withholding.

OCTOBER 17, 2003

State of WI/Eau Claire Co. o/b/o Phoenix Redsky Funmaker, CS 03-60 Order (Enforcing Child Support) (HCN Tr. Ct., Oct. 17, 2003). (Bossman, W).

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent filed an answer stipulating agreement with the enforcement of the foreign order. The Court granted the petitioner's request for recognition and enforcement.

Maria Ruth Goodbear v. William Lowell Goodbear, CS 03-59 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Oct. 17, 2003). (Matha, T). The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to answer within the specified time frame. The Court granted the petitioner's request for recognition and enforcement.

State of WI v. Wallace P. Greendeer, CV 97-57 *Order (Modifying and Enforcing Child Support)* (HCN Tr. Ct., Oct. 17, 2003). (Bossman, W). The petitioner requested a modification of child support withholding. The respondent failed to answer within the specified time frame. The Court granted the petitioner's request for an increase in current child support withholding.

Stephanie R. Walker v. Elliot Lee Walker, CS 03-69 *Order (Enforcing Child Support)* (HCN Tr. Ct., Oct. 17, 2003). (Matha, T). The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent filed an answer stipulating agreement with the enforcement of the foreign order. The Court granted the petitioner's request for recognition and enforcement.

OCTOBER 21, 2003

State of Wisconsin v. Cynthia Hopinka, CV 97-36 *Order (Proof of High School Enrollment Filed)* (HCN Tr. Ct., Oct. 21, 2003). (Bossman, W). The Court had previously notified the parties that a minor child had turned eighteen years of age. The Court ordered the parties to file proof of high school enrollment, or the Court would cease withholding for current child support. The petitioner filed the required proof.

Melissa K. Johnson v. David A. WhiteEagle, CS 03-22; *State of WI/Suzette Greengrass*, CS 98-26; *State of WI/Nancy Smith v. David A. WhiteEagle*, CS 98-27 *Order (Modifying Current Child Support)* (HCN Tr. Ct., Oct. 21, 2003). (Matha, T).

The Court had previously notified the parties that a minor child had turned eighteen years of age. The Court ordered the parties to file proof of high school enrollment, or the Court would cease withholding

for current child support. When no proof was filed, the Court issued an order ceasing withholding for current child support. The petitioner has now filed the required proof. Therefore, the Court resumes current child support withholding for the child.

OCTOBER 22, 2003

Yvonne Barrett v. Roger K. Pettibone, CS 03-61 *Order (Default Judgment)* (HCN Tr. Ct., Oct. 22, 2003). (Bossman, W).

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

OCTOBER 28, 2003

State of WI/Eau Claire Co. v. Cory H. Funmaker, CS 03-60; *State of WI/Trempealeau Co. v. Cory H. Funmaker*, CS 03-63 *Order (Default Judgment-Enforcing Child Support)* (HCN Tr. Ct., Oct. 28, 2003). (Bossman, W).

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

Civil Garnishment

OCTOBER 14, 2003

Community Credit Union v. Betty Gerke, CG 03-66 *Order (Default Judgment)* (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

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

OCTOBER 21, 2003

Creditor Recovery Services, L.L.C., Agent for Wood Co. Telephone Company v. Wendy Hanneman, CG 03-68 *Order (Default Judgment)* (HCN Tr. Ct., Oct. 21, 2003). (Bossman, W).

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

Nekoosa Port Edwards State Bank v. Eugene Topping, Jr., CG 03-69 Order (Default Judgment) (HCN Tr. Ct., Oct. 21, 2003). (Bossman, W).

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

Creditor Recovery Service, L.L.C., Agent for Riverhill Dental Associates, SC v. Bonita L. Roy, CG 03-71 Order (Default Judgment) (HCN Tr. Ct., Oct. 21, 2003). (Bossman, W).

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

Dr. Connie Jacobson v. Christina Melcher, CG 03-72 Order (Default Judgment) (HCN Tr. Ct., Oct. 21, 2003). (Bossman, W).

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

OCTOBER 22, 2003

State Collection Service v. Monica R. Cloud, CG 03-56 Order (Default Judgment) (HCN Tr. Ct., Oct. 22, 2003). (Matha, T).

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

OCTOBER 29, 2003

Stafford Roenbaum, LLP v. Elizabeth A. Haller, CG 03-58 Order (Default Judgment) (HCN Tr. Ct., Oct. 29, 2003). (Matha, T).

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

Children's Trust Fund (CTF)

OCTOBER 14, 2003

Kasia Decorah, DOB 10/01/83 v. HCN Office of Tribal Enrollment, CV 03-52 Order (Dismissal without Prejudice) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

The Court previously issued an order requiring that the petitioner submit further documentation before the Court could schedule a fact-finding hearing to consider the merits of petitioner's request. The petitioner failed to submit the requested documentation. Therefore, the Court dismissed the instant case without prejudice.

In the Interest of Minor Child: M.E.K., DOB 01/15/90, by Ethel C. Funmaker v. HCN Office of Tribal Enrollment, CV 03-51 Order (Requesting Accounting) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

The Court previously released money from the CTF account of the minor child for costs concerning orthodontic procedures. The required accounting is now late. The Court requested that the petitioner submit the required accounting.

In the Interest of Minor Child: Adrienne Littlebear, DOB 04/06/85 v. HCN Office of Tribal Enrollment, CV 03-35 Order (Requiring Submission of Documents) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

The petitioner requested a release of CTF account funds. The respondent raised several issues that indicate a lack of documentation concerning standards the Court has traditionally used in determining the appropriateness of a proposed release of CTF funds. The Court required that the petitioner submit further documentation in support of the request.

In the Interest of Minor Child: N.J.L., DOB 09/24/85, by Sarah Littlegeorge v. HCN Office of Tribal Enrollment, CV 03-31 Order (Requesting Accounting) (HCN Tr. Ct., Oct. 14, 2003). (Matha, T).

The Court previously released money from the CTF account of the minor child for costs related to home schooling. The required accounting is now late.

The Court requested that the petitioner submit the required accounting.

In the Interest of Minor Children: R.R., DOB 05/09/87; D.P., DOB 08/09/96; J.P., DOB 04/03/98; by Julie Rockman v. HCN Office of Tribal Enrollment, CV 03-50 Order (Dismissal without Prejudice) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

The Court previously issued an order requiring that the petitioner submit further documentation before the Court could schedule a fact-finding hearing to consider the merits of petitioner's request. The petitioner failed to submit the requested documentation. Therefore, the Court dismissed the instant case without prejudice.

OCTOBER 17, 2003

A.G., DOB 06/23/85, by Cynthia Loofboro v. HCN Office of Tribal Enrollment, CV 03-49 Order (Notice of Intent to Dismiss) (HCN Tr. Ct., Oct. 17, 2003). (Bossman, W).

The Court previously issued an order requiring that the petitioner submit further documentation with respect to the petitioner's request for release of CTF funds. The petitioner has failed to submit the requested documentation. Therefore, the Court announced its intent to dismiss this action in thirty days unless good cause is shown in writing.

OCTOBER 20, 2003

In the Interest of Minor Child: J.H.D., DOB 05/24/86, by Janelle H. Hopinkah, CV 02-99 Order (Denial of Petition) (HCN Tr. Ct., Oct. 20, 2003). (Bossman, W).

The Court had to determine whether to grant a release of funds from the CTF account of the minor child for costs associated with winter clothing, household furnishings, and county fines. The Court denied the request.

OCTOBER 23, 2003

In the Interest of Minor Child: R.C.B., DOB 12/30/86, by Sabrina Decorah v. HCN Office of Tribal Enrollment, CV 03-45 Order (Requesting Accounting) (HCN Tr. Ct., Oct. 29, 2003). (Bossman, W).

The Court previously released money from the CTF

account of the minor child for costs concerning orthodontic procedures. The required accounting is now late. The Court requested that the petitioner submit the required accounting.

OCTOBER 27, 2003

Joseph Hammer v. HCN Office of Tribal Enrollment, CV 03-71 Order (Dismissal without Prejudice) (HCN Tr. Ct., Oct. 27, 2003). (Bossman, W).

The Court previously issued an order requiring that the petitioner submit further documentation before a fact-finding hearing to consider the merits of petitioner's request could be convened. The petitioner failed to submit the requested documentation. Therefore, the Court dismissed the instant case without prejudice.

OCTOBER 28, 2003

In the Interest of the Minor Child: M.E.K., DOB 01/15/90, by Ethel C. Funmaker v. HCN Office of Tribal Enrollment, CV 03-51 Order (Accepting Accounting) (HCN Tr. Ct., Oct. 28, 2003). (Bossman, W).

The Court previously released money from the minor child's CTF account for orthodontics. The petitioner subsequently filed the required accounting, which confirmed the use of the funds. The Court accepted this accounting and gives notice that it shall close the instant case if the Court receives no objection from the parties.

In the Interest of Minor Child: J.R., DOB 01/13/87, by Barb Rave v. HCN Office of Tribal Enrollment, CV 00-107 Order (Accepting Accounting) (HCN Tr. Ct., Oct. 28, 2003). (Matha, T).

The Court previously released money from the minor child's CTF account for a medical procedure related to the ongoing orthodontic care of the minor. The petitioner subsequently filed the required accounting, which confirmed the use of the funds. The Court accepted this accounting and gives notice that it shall close the instant case if the Court receives no objection from the parties.

Incompetent's Trust Fund Cases

OCTOBER 2, 2003

In Re: Bruce Patrick O'Brien, by Elethe Nichols, Guardian, CV 96-46 *Order (Release of Funds)* (HCN Tr. Ct., Oct. 2, 2003). (Bossman, W).

The Court received a request for funds from the guardian. No objection to the request was filed. The Court granted the request.

Civil Cases

OCTOBER 2, 2003

James Menore v. HCN, HCN Casino Compliance, CV 03-37 *Order (Denying Motion for Summary Judgment)* (HCN Tr. Ct., Oct. 2, 2003).

The defendant filed a *Motion for Summary Judgment*. The Court held that the defendants are not entitled to judgment as a matter of law and denied the defendants' motion.

[See also [Drug Policy](#) within this index.]

OCTOBER 3, 2003

Regina K. Baldwin v. HCN, CV 01-16; *Andrea Estebo v. HCN Home Ownership Program, Steve Davis, as Real Estate Manager, and Alvin Cloud, as Hous. Dir.*, CV 01-19; *Carolyn J. Humphrey v. HCN, Alvin Cloud, as Hous. Dir., and Bob Pulley, as Prop. Manager*, CV 01-21 *Order (Final Judgment)* (HCN Tr. Ct., Oct. 3, 2003). (Matha, T).

The plaintiffs challenged the layoffs they received from their respective departments within the Housing Department. The Court had to determine whether the defendants had properly applied the Ho-Chunk Preference and Layoff Policies. The Court upheld the constitutionality of the Ho-Chunk Preference Policy. The Court held that the Ho-Chunk Preference and Layoff Policies had been properly applied and denied the relief sought by the plaintiffs.

[See also [Ho-Chunk Preference](#) and [Layoff Policies](#) within this index.]

OCTOBER 3, 2003

Gerald Cleveland v. President, Gen. Council and Timothy WhiteEagle, CV 03-75. (Matha, T).

The Court had to determine whether to grant an injunction on the basis of a request for an emergency order. The plaintiff failed to allege the imminent presence of irreparable harm. The Court declined to enter an injunction.

OCTOBER 14, 2003

Vincent R. Hernandez v. HC Casino, CV 03-34 *Order (Voluntary Dismissal with Prejudice)* (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

The Court had to determine whether to grant a voluntary dismissal after the filing of a responsive pleading. The defendants filed a settlement agreement and voluntary dismissal, which bore the signatures of the plaintiff and the HCN President. The Court dismissed the action with prejudice and incorporates the settlement agreement into its order.

James Menore v. HCN and HC Casino Compliance, CV 03-37 *Order (Dismissal without Prejudice)* (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

The Court convened a trial in the matter. The plaintiff failed to appear at the trial and did not notify the Court of an inability to attend. The Court dismissed the case without prejudice.

HCN Dept. of Bus. v. Cara Lee Murphy, CV 03-69 *Order (Default Judgment)* (HCN Tr. Ct., Oct. 14, 2003). (Matha, T).

The plaintiff requested a reimbursement of monies, which the defendant neglected to utilize for its intended purpose. The defendant failed to answer the complaint. The Court rendered a default judgment against the defendant.

HCN Dept. of Health and Soc. Serv., Div. of CFS v. Victor Perez and Nichole Perez, CV 03-59 *Order (Default Judgment)* (HCN Tr. Ct., Oct. 14, 2003). (Matha, T).

The plaintiff requested a reimbursement of unauthorized charges the defendants incurred while staying in alternative housing provided by the plaintiff. The defendant failed to answer the complaint. The Court rendered a default judgment against the defendant.

HCN Dept. of Hous., Prop. Mgmt. Div. v. Stacy Yellowcloud, CV 03-59 *Order (Default Judgment)* (HCN Tr. Ct., Oct. 14, 2003). (Matha, T).

The plaintiff requested reimbursement for unpaid monthly payments and late fees incurred while defendant was under lease with plaintiff. The defendant failed to answer the complaint. The

Court rendered a default judgment against the defendant.

OCTOBER 15, 2003

HCN Dept. of Hous., Prop. Mgmt. Div. v. Deanna Hopinka, CV 03-60 Order (Dismissal Without Prejudice) (HCN Tr. Ct., Oct. 15, 2003). (Matha, T).

Prior to the expiration of the response period, the plaintiff sought to voluntarily dismiss its cause of action. The Court granted the dismissal without prejudice.

OCTOBER 16, 2003

Gerald F. Conley v. Christopher Cloud and Diane Cloud Peterson, CV 00-37 Order (Suspension of Remedial Sanctions) (HCN Tr. Ct., Oct. 16, 2003). (Matha, T).

The Court had previously held the defendants in contempt for failure to abide by an earlier Court decision. The Court imposed a remedial monetary sanction, which the plaintiffs could discontinue by showing that they had begun to satisfy the money judgment entered against them. Although the defendants have made no attempt to comply with the default judgment, the Court held the ongoing remedial sanction may represent an inappropriate civil penalty if it has failed to induce the defendants to act and accordingly temporarily suspended withholding for the contempt fines.

OCTOBER 23, 2003

Barbara Dent v. HCN, CV 03-70 Scheduling Order (HCN Tr. Ct., Oct. 23, 2003). (Bossman, W).

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

HCN v. Jess H. Steindorf, CV 03-33 Order (Amending Scheduling Order) (HCN Tr. Ct., Oct. 23, 2003). (Bossman, W).

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

OCTOBER 27, 2003

Clarence Pettibone v. HCN Gen. Council, Alvin Cloud, Acting Chair of the Gen. Council; Roberta Funmaker (aka Roberta Greendeer), Sec'y of the

General Council; Gloria Visintin; Wade Blackdeer, Dallas Whitewing, Myrna Thompson, Christine Romano, Gerald Cleveland, Sharon Whiterabbit, Kathyleen Lonetree Whiterabbit, John Dall, Tracy Thundercloud, and Elliot Garvin, Legislators in the HCN Legislature; and Maryann Dumas, Chair of the Election Bd., CV 03-77 Order (Preliminary Injunction Hearing) (HCN Tr. Ct., Oct. 17, 2003). (Bossman, W).

The plaintiff filed a motion requesting a preliminary injunction. The Court scheduled a hearing on the motion.

OCTOBER 28, 2003

Harry J. Cholka v. HCN Casino, CV 02-116 Order (Final Judgment) (HCN Tr. Ct., Sept. 23, 2003). (Bossman, W).

The Court had to determine whether the defendant's failure to hire the plaintiff violated the Ho-Chunk Preference Policy. The Court held that the Ho-Chunk Preference Policy required the hiring of the plaintiff. The Court granted the plaintiff his requested relief.

[See also **Ho-Chunk Preference** within this index.]

Loretta Patterson v. Four Winds Comm. and Susan Van Riper, CV 03-40 Order (Motion Hearing) (HCN Tr. Ct., Oct. 28, 2003). (Bossman, W).

The defendants filed a motion to dismiss in the instant case. The Court scheduled a hearing to hear arguments on the motion.

OCTOBER 30, 2003

Stanley J. Decorah v. Linda Decorah, CV 03-63 Order (Granting Extension) (HCN Tr. Ct., Oct. 30, 2003). (Matha, T).

The plaintiff filed a petition that failed to establish a basis for the Court's exercise of subject matter jurisdiction. The plaintiff requested an extension of time to amend his complaint. The Court granted the request.

Cornelius DeCora, on behalf of Minors: J.D., DOB 09/17/85; S.D., DOB 03/20/87; F.D., DOB 06/14/88; and B.D., DOB 11/22/89 v. Adam Hall, HCN Tribal Enrollment Off., George Greendeer, Enrollment Genealogist, Tribal Enrollment Comm.,

HCN Legislature, and HCN, CV 03-25 Order (HCN Tr. Ct., Oct. 30, 2003). (Bossman, W).

The Court previously postponed the pre-trial conference and trial. The Court now orders that further deadlines shall be set at the pre-trial conference, if necessary.

Custody

OCTOBER 17, 2003

In the Interest of Minor Child: H.H., DOB 10/04/85, 92-CU-11 Order (Termination of Jurisdiction) (HCN Tr. Ct., Oct. 17, 2003). (Matha, T).

The minor child attained the age of majority. Therefore, the Court terminated its jurisdiction over and supervision of the instant case.

Domestic Violence

OCTOBER 21, 2003

Luann M. Littlegeorge on behalf of R.B.L., DOB 05/29/01, and P.J.L.-D., DOB 01/13/03 v. Bryan Dietzler, DV 03-02 Ex Parte Order for Protection (HCN Tr. Ct., Oct. 21, 2003). (Matha, T).

The petitioner requested an order for protection on behalf of minor children against the respondent. The Court found there to be reasonable grounds to believe that the respondent had committed acts of domestic violence. The Court granted the order for protection.

OCTOBER 31, 2003

Luann M. Littlegeorge on behalf of R.B.L., DOB 05/29/01, and P.J.L.-D., DOB 01/13/03 v. Bryan Dietzler, DV 03-02; Bryan C. Dietzler v. Stephanie L. Littlegeorge, DV 03-03; Bryan C. Dietzler on behalf of P.J.L.-D., DV 03-04 Order (Dismissal Without Prejudice) (HCN Tr. Ct., Oct. 31, 2003). (Goodman, M).

The Court consolidated the aforementioned cases as they arose from one particular set of circumstances. At the request of all parties, the Court dismissed the actions without prejudice.

Juvenile

OCTOBER 2, 2003

In the Interest of Minor Child: D.C., DOB 05/12/03, JV 03-34 Order (Plea Hearing) (HCN Tr. Ct., Oct. 2, 2003). (Bossman, W).

The Court held a plea hearing. The Court entered a plea of not guilty on behalf of the parents and scheduled a trial.

In the Interest of Minor Child: C.L., DOB 01/28/93, JV 97-08 Order (Submission of Guardianship Report and Home Study) (HCN Tr. Ct., Oct. 2, 2003). (Bossman, W).

The petitioner filed a petition for temporary guardianship of the minor child. The Court scheduled a guardianship hearing. The Court directed the HCN CFS to submit a guardianship report and home study to the Court.

In the Interest of Minor Child: C.L., DOB 01/28/93, JV 97-08 Order (Submission of Traditional Relatives List) (HCN Tr. Ct., Oct. 2, 2003). (Bossman, W).

The Court requested that HCN CFS prepare and submit a list of the minor child's traditional relatives. The Court limited the request to the maternal and paternal grandparents and their descendants.

OCTOBER 6, 2003

In the Interest of Minor Children: B.E.Y., DOB 07/25/89, N.R.Y., DOB 07/07/91, JV 03-37 -38 Order (Initial Emergency Hearing) (HCN Tr. Ct., Oct. 6, 2003). (Matha, T).

The Court conducted an initial emergency hearing to discuss the legal and procedural status of the case. The Court notified the parties of their need to attend a plea hearing and advised the parties of their rights.

OCTOBER 10, 2003

In the Interest of Minor Child: H.S.H., DOB 02/18/03, JV 03-29 Order (Granting Telephonic Appearance) (HCN Tr. Ct., Oct. 10, 2003). (Matha, T).

The attorney for CFS requested permission for three witnesses to appear at the trial by telephone.

OCTOBER 14, 2003

In the Matter of the Children: C.C.P., DOB 02/03/93; G.L.P., DOB 06/10/94, JV 03-25 -26 Third Order (Rescheduling Plea Hearing) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

A plea hearing was convened. However, personal service has not been made upon the mother, and she was not present at the hearing. Therefore, the Court rescheduled the plea hearing.

In the Interest of Minor Child: J.D.S., DOB 09/08/03, JV 03-30 Order (Entrance of Plea) (HCN Tr. Ct., Oct. 14, 2003).

The Court convened a plea hearing to determine whether the parent of the minor child wished to contest the allegations contained within the petition filed by CFS. The parent entered a plea of not guilty. The Court scheduled a trial in the matter.

In the Interest of Minor Children: B.E.Y., DOB 07/25/89, N.R.Y., DOB 07/07/91, JV 03-37 -38 Order (Rescheduling Plea Hearing) (HCN Tr. Ct., Oct. 14, 2003). (Bossman, W).

A plea hearing was convened. However, personal service has not been made upon the mother. Therefore, the Court rescheduled the plea hearing.

OCTOBER 16, 2003

In the Interest of Minor Children: L.R.H., DOB 11/18/87; K.L.H., DOB 10/21/88, JV 03-35 -36 Order (Redirecting Child Support) (HCN Tr. Ct., Oct. 16, 2003). (Matha, T).

The Court redirected child support to CFS, which recently regained legal custody of the minor children. In addition, the Court reduced child support in the instant case to reflect that one child has reached nineteen years of age and is no longer entitled to child support.

OCTOBER 17, 2003

In the Interest of Minor Children: L.R.H., DOB 11/18/87; K.L.H., DOB 10/21/88, JV 03-35 -36 Order (Entrance of Plea) (HCN Tr. Ct., Oct. 17, 2003). (Matha, T).

The Court convened a plea hearing to determine whether the parents of the minor child wished to contest the allegations contained within the petition filed by CFS. The parent present at the hearing entered a plea of not guilty. The Court entered a plea of not guilty on behalf of the parent who was not present at the hearing. The Court scheduled a trial in the matter.

OCTOBER 20, 2003

In the Interest of Minor Children: V.J.F., DOB 09/26/98; I.D.F., DOB 03/30/02, JV 03-39 -40 Order (Continuance of Plea Hearing) (HCN Tr. Ct., Oct. 20, 2003). (Matha, T).

The Court convened a plea hearing to determine whether the parents of the minor child wished to contest the allegations contained within the petition filed by CFS. The father of the minor children requested a continuance after being informed of his rights. The Court rescheduled the plea hearing to allow the father an opportunity to obtain legal representation.

OCTOBER 21, 2003

In the Interest of Minor Child: M.S.B., DOB 09/14/99, JV 03-12 Order (Granting Telephonic Appearance) (HCN Tr. Ct., Oct. 21, 2003). (Bossman, W).

A maternal aunt to the minor child requested permission to appear at the scheduled review hearing by telephone. The Court granted the request.

OCTOBER 22, 2003

In the Interest of Minor Child: T.V.F., DOB 02/18/02, JV 03-14 Order (Termination of Jurisdiction) (HCN Tr. Ct., Oct. 22, 2003). (Matha, T). CFS recommended that the Court terminate its continuing jurisdiction over the matter. CFS acknowledged substantial completion of the dispositional requirements. The Court terminated its jurisdiction over and supervision of the instant case.

OCTOBER 24, 2003

In the Interest of Minor Child: M.S.B., DOB 09/14/99, JV 03-12 Order (Child Protection Review Hearing) (HCN Tr. Ct., Oct. 24, 2003). (Bossman, W).

The Court conducted a review hearing in the instant case. The Court concluded that legal and physical custody of the child should remain the same for an indeterminate period of time unless the parties document earlier completion of the dispositional requirements.

OCTOBER 27, 2003

In the Interest of Minor Child: J.J.F., DOB 11/07/00, JV 02-27 Order (Granting Stipulation and Motion to Postpone) (HCN Tr. Ct., Oct. 27, 2003). (Bossman, W).

The parties stipulated to rescheduling the review hearing in the instant case. The Court granted the request.

In the Interest of Minor Children: B.E.Y., DOB 07/25/89; N.R.Y., DOB 07/07/91, JV 03-37 -38 Order (Entrance of Plea) (HCN Tr. Ct., Oct. 27, 2003). (Bossman, W).

The Court convened a plea hearing to determine whether the father of the minor children wished to contest the allegations contained within the petition filed by CFS. The father entered a plea of guilty. The Court scheduled a dispositional hearing in the matter.

In the Interest of Minor Children: B.E.Y., DOB 07/25/89; N.R.Y., DOB 07/07/91, JV 03-37 -38 Order (Concerning Plea Hearing) (HCN Tr. Ct., Oct. 27, 2003). (Bossman, W).

A plea hearing was convened. However, personal service had not been made upon the mother. Therefore, the Court determined that with respect to the mother, this matter should be continued until a time when proper service can be effected.

OCTOBER 30, 2003

In the Interest of Minor Children: C.C.P., DOB 02/03/93; G.L.P., DOB 06/10/94, JV 03-25 -26 Order (Entrance of Plea) (HCN Tr. Ct., Oct. 30, 2003). (Bossman, W).

The Court convened a plea hearing to determine whether the parent of the minor child wished to contest the allegations contained within the petition filed by CFS. The Court entered a plea of not guilty on behalf of the parent. The Court scheduled a trial in the matter.

OCTOBER 31, 2003

In the Interest of Minor Child: P.J.L.-D., DOB 01/13/03, JV 03-44 Order (Dismissal Without Prejudice) (HCN Tr. Ct., Oct. 31, 2003). (Goodman, M).

The petitioner filed a motion to dismiss with the Court prior to the filing of an answer in the case.

Therefore, the Court granted the dismissal without prejudice.

In the Interest of Minor Children: B.T., DOB 07/21/99; B.P.T., DOB 08/29/95; and B.A.T., DOB 11/18/96, JV 03-31 -32 -33 Order (Entrance of Plea) (HCN Tr. Ct., Oct. 31, 2003). (Matha, T).

The Court convened a plea hearing to determine whether the parent of the minor children wished to contest the allegations contained within the petition filed by CFS. The parent entered a plea of not guilty. The Court scheduled a trial in the matter.

Drug Policy

OCTOBER 2, 2003

James Menore v. HCN, HCN Casino Compliance, CV 03-37 Order (Denying Motion for Summary Judgment) (HCN Tr. Ct., Oct. 2, 2003). (Bossman, W).

The Court had to determine whether the plaintiff was wrongfully terminated under the HO-CHUNK NATION DRUG, ALCOHOL, AND CONTROLLED SUBSTANCE POLICY. The plaintiff was terminated after testing positive for a controlled substance. The plaintiff contended that he had accidentally ingested the drug for which his friend had a prescription.

The defendants contended that there were no facts in dispute in the case. However, the defendants contended that it was irrelevant whether the defendant intended to take the drug because the Drug Policy does not provide an exception for accidental usage. The plaintiff argued that accidental usage of illegal drugs should not be grounds for discipline or termination.

The Court held that the HCN Drug Policy mandates that the intent to use the illegal substances be shown. The Court explained that to hold otherwise would allow for unconscionable results. Therefore, the Drug Policy's prohibition of the "use of drugs" should be interpreted to prohibit the "intentional use of drugs."

[See also **Civil Cases** within this index.]



Ho-Chunk Preference

OCTOBER 3, 2003

Regina K. Baldwin v. HCN, CV 01-16; *Andrea Estebo v. HCN Home Ownership Program, Steve Davis, as Real Estate Manager, and Alvin Cloud, as Hous. Dir.*, CV 01-19; *Carolyn J. Humphrey v. HCN, Alvin Cloud, as Hous. Dir., and Bob Pulley, as Prop. Manager*, CV 01-21 *Order (Final Judgment)* (HCN Tr. Ct., Oct. 3, 2003). (Matha, T). In this case, the Court examined the constitutionality and application of the Ho-Chunk Nation Preference Policy. While the Court generally attempts to remain consistent in its decisions, the Court objected to earlier Court application of administrative deference. The Court held that administrative deference in this case would amount to a judicial sanctioning of an arbitrary business practice.

The Court explained that the Ho-Chunk Nation Preference Policy constitutes neither unlawful racial discrimination nor national origin discrimination. The Nation is further justified in its application of the Ho-Chunk Preference by its power to exclude non-Indians, which represents an inherent right derived from the Nation's sovereign status. The power to exclude includes the power to place conditions on the presence of non-Indians on Indian land.

The Ho-Chunk Nation Preference Policy applies to recruiting, hiring, promotion, transfers, layoff, and all other conditions of employment. The Court assessed the Preference Policy through the rational basis standard of review as the preference does not serve as a bar to non-member employment nor do affected non-members represent a suspect classification. Therefore, the Court held that the Ho-Chunk Nation Preference Policy is constitutionally sound.

The Court examined the application of the Ho-Chunk Preference Policy. The Court held that because the policy explicitly states that the policy shall be applied, this does not allow for application of business deference in applying the policy. Therefore, a tribal member who meets or exceeds the stated qualifications of a job shall receive preference over non-Ho-Chunk counterparts.

[See also **Civil Cases** within this index.]

OCTOBER 28, 2003

Harry J. Cholka v. HCN Casino, CV 02-116 *Order (Final Judgment)* (HCN Tr. Ct., Sept. 23, 2003). (Bossman, W).

The Court adopted the reasoning of the *Baldwin* decision in its application of the Ho-Chunk Nation Preference Policy, stating the principle that the Court should attempt to stay consistent in its decisions. The Court re-stated the ruling in *Baldwin*, which required that a tribal member who meets or exceeds the stated job qualifications shall receive preference over non-Ho-Chunk counterparts. In this case, the plaintiff was entitled to preference over the non-members hired for a position in which plaintiff met all qualifications.

[See also **Civil Cases** within this index.]

Layoff Policies

OCTOBER 3, 2003

Regina K. Baldwin v. HCN, CV 01-16; *Andrea Estebo v. HCN Home Ownership Program, Steve Davis, as Real Estate Manager, and Alvin Cloud, as Hous. Dir.*, CV 01-19; *Carolyn J. Humphrey v. HCN, Alvin Cloud, as Hous. Dir., and Bob Pulley, as Prop. Manager*, CV 01-21 *Order (Final Judgment)* (HCN Tr. Ct., Oct. 3, 2003). (Matha, T). The Court determined what should be the appropriate interplay between the Ho-Chunk Nation Preference and Layoff Policies. The Court noted that it was erecting a presumption in favor of basing layoffs on seniority because it is easily calculable. However, the Court explained that while the employer retains discretion in determining seniority and ability, the employer retains no discretion in applying tribal preference with respect to layoffs.

[See also **Civil Cases** within this index.]

Supreme Court

OCTOBER 3, 2003

Hope B. Smith v. HCN, SU 03-08 *Order Granting Motion and Setting Oral Argument* (HCN Tr. Ct., Oct. 3, 2003).

The Court ordered that the appellee had shown sufficient basis to allow for late filing of the response brief. The Court established the date, time, and location for oral arguments.

OCTOBER 28, 2003

Hope B. Smith v. HCN, SU 03-08 *Order Granting Stay* (HCN Tr. Ct., Oct. 28, 2003).

The appellant requested a stay of the lower court's order. The appellee did not file any responsive pleadings. The Court ordered the Trial Court order issued in this matter stayed pending the appeal.

Recent Filings

Trial Court

Civil Garnishment**OCTOBER 21, 2003**

State Collection Service v. Matthew S. Cooley, CG 03-76. (Bossman, W).

Creditor Recovery Service, re: Uniform Shop v. Eugene Topping, Jr., CG 03-77. (Matha, T).

Child Support**OCTOBER 1, 2003**

Yvonne Barret v. Roger K. Pettibone, CS 03-61. (Bossman, W).

State of WI/Jackson Co. v. Allyson Finch, CS 03-62. (Bossman, W).

OCTOBER 6, 2003

State of WI/Trempeleau Co. v. Cory Funmaker, CS 03-63. (Bossman, W).

OCTOBER 7, 2003

Lawrence D. Corbesia v. Melissa J. Corbesia, CS 03-64. (Matha, T).

OCTOBER 9, 2003

State of WI/Juneau Co. v. Eldon Powless, CS 03-65. (Matha, T).

OCTOBER 14, 2003

State of WI v. Charles Hindsley, CS 03-66. (Matha, T).

State of WI/Millie Decorah v. Tyrone Decorah, CS 03-67. (Matha, T).

OCTOBER 15, 2003

State of WI/Sauk Co., Bradley A. Fiske v. Leah L. Fiske, CS 03-68. (Bossman, W).

Virginia C. Murphy v. Hunter Littlejohn, CS 03-72. (Matha, T).

OCTOBER 16, 2003

Stephanie R. Walker v. Elliott Lee Walker, CS 03-69. (Matha, T).

OCTOBER 20, 2003

Taryn H. Greendeer v. Wm J. Greendeer, CS 03-70. (Matha, T).

OCTOBER 22, 2003

State of WI/Eau Claire Co. Child Support/Dawn M. Javens v. Lee D. Javens, CS 03-71. (Matha, T).

OCTOBER 24, 2003

Debra Peters v. Curtis Pidgeon, CS 03-73. (Matha, T).

OCTOBER 31, 2003

Erica Jurgella v. Randall Appell, CS 03-74.

Civil Cases**OCTOBER 1, 2003**

E.R.W., DOB 05/27/88; S.L.W., DOB 12/02/86; by Sadie Wesho v. HCN Office of Tribal Enrollment, CV 03-74. (Bossman, W).

OCTOBER 9, 2003

Gerald Cleveland v. President, Gen. Council and Timothy WhiteEagle, CV 03-75. (Matha, T).

OCTOBER 10, 2003

Clarence Pettibone v. Gloria Visintin, CV 03-76. (Bossman, W).

OCTOBER 16, 2003

Clarence Pettibone v. Gen. Council, Legislature, and Election Bd., CV 03-77. (Bossman, W).

Domestic Violence**OCTOBER 21, 2003**

Luann M. Littlegeorge on behalf of R.B.L., DOB 05/29/01 and P.J.L.-D., DOB 01/13/03 v. Bryan Dietzler, DV 03-02. (Goodman, M).

Juvenile Cases

OCTOBER 1, 2003

In the Interest of Minor Child: B.E.Y., DOB 07/25/89, JV 03-37. (Bossman, W).

In the Interest of Minor Child: N.R.Y., DOB 07/07/91, JV 03-38. (Bossman, W).

OCTOBER 9, 2003

In the Interest of Minor Child: V.J.F., DOB 09/26/98, JV 03-39. (Matha, T).

In the Interest of Minor Child: I.D.F., DOB 03/30/02, JV 03-40. (Matha, T).

OCTOBER 10, 2003

In the Interest of Minor Child: T.D., DOB 11/04/86, JV 03-41.

OCTOBER 22, 2003

In the Interest of Minor Child: P.J.L., DOB 01/13/03, JV 03-44. (Goodman, M).

SUPREME COURT

NOTHING TO REPORT AT THIS TIME.

Trick-Or-Treat



On October 30, 2003, the Ho-Chunk Nation Head Start students visited the Court while on a search for Halloween candy.



Traditional Court Elder and Office of Public Advocacy Administrator, Dennis Funmaker, passed out the candy to the kids.



**HO-CHUNK NATION COURT SYSTEM
JUDICIARY AND STAFF**

Supreme Court—Mary Jo B. Hunter, Chief Justice
Mark D. Butterfield, Associate Justice
Jo Deen B. Lowe, Associate Justice

Traditional Court—Wallace Blackdeer
Donald Blackhawk
Dennis Funmaker
Orville Greendeer
Douglas Greengrass
Owen Mike
Gavin Pettibone
Douglas Red Eagle
Preston Thompson, Jr.
Eugene Thundercloud
Morgan White Eagle
Clayton Winneshiek

Trial Court – William H. Bossman, Chief Judge
Todd R. Matha, Associate Judge
Clerk of Court, Supreme Court – Bryan Dietzler
Clerk of Court, Trial Court – Marcella Cloud
Assistant Clerk of Court, Trial Court – Selina Joshua
Bailiff/Process Server – Willa RedCloud
Staff Attorney – Rose Weckenmann

Office of Public Advocacy – Dennis Funmaker, Administrator

* The Ho-Chunk Nation Judiciary and its officers are active participants in the following organizations:

WISCONSIN TRIBAL JUDGES ASSOCIATION
(Eleven federally recognized tribes within the State of Wisconsin)

NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION
(Region 10—Illinois, Indiana, Michigan, Minnesota, and Wisconsin)

HCN Court System Fee Schedule

- Filing Fees \$50.00*
- *With the exception of petitions to register child support orders – this fee remains at \$20.00 as previously ordered by the Supreme Court.

Note: Filing Fee now includes *Summons* fee.

- Filing Fees for *Petitions to Register and Enforce Foreign Judgment/ Order*. \$20.00
- Copying \$0.10/per page
- Faxing \$0.25/per page (sending and receiving)
- Tapes of Hearings \$10.00/per tape
- CD of Hearing. \$12.50/per tape
- Deposition Videotape \$10.00/per tape
- Certified Copies \$0.50/per page
- Equipment Rental \$5.00/per hour
- Appellate filing fees \$35.00
- Admission to Practice \$50.00
- Pro Hac Vice Appearance \$35.00

Legal Citation Form

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

Ho-Chunk Nation Constitution

Constitution, Article Number, Section, and Subsection.
HCN CONST., Art. II, Sec. (or §) 1(a).
HCN Const., Art. XI, Sec. (or §) 7.

HCN Ordinances

Ordinance Name, Chapter number, Section/Part/Clause, page.
PERSONNEL POLICIES AND PROCEDURE MANUAL, Ch. 12,
Part B, p. 82.
CLAIMS AGAINST PER CAPITA, Sec. (or §) 6.01(b).

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, CV 99-01 (HCN Tr. Ct., Nov. 1, 1999).

Rules of Civil Procedure

HCN R. Civ. P. 19(B).





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Ho-Chunk Nation Judiciary
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HO-CHUNK NATION COURT BULLETIN

HCN SUPREME COURT HEARS ORAL ARGUMENTS AT HAMLINE UNIV. SCHOOL OF LAW

On November 7, 2003, the Native American Law Society at Hamline University School of Law hosted an oral argument before the Ho-Chunk Nation Supreme Court. The Ho-Chunk Nation had appealed an adverse ruling by the Trial Court in *Hope B. Smith v. Ho-Chunk Nation*.¹ Chief Justice Mary Jo B. Hunter, director of Hamline's children's clinic, Associate Justice Mark D. Butterfield, and Justice Pro Tempore John Wabaunsee heard the arguments in the appeal.



SUPREME COURT CHIEF JUSTICE MARY JO B. HUNTER ALSO SERVES AS AN ASSOCIATE CLINICAL PROFESSOR AT HAMLINE UNIVERSITY.

In *Smith*, the defendant terminated the plaintiff's employment for improper usage of a tribal credit card.² The defendants contended that the plaintiff knew or should have known of the credit card abuse perpetrated by the plaintiff's son while he was also employed in the same branch office.³ The Trial Court held that the decision to terminate the plaintiff bore no rational relation to the facts as known to her supervisory staff.⁴ Accordingly, the Trial Court held that the plaintiff's discharge was an arbitrary and capricious action.⁵ The Trial Court ordered compensation for actual lost wages, ordered the Ho-Chunk Nation Department of Personnel to raise the plaintiff's salary to a comparable wage, and ordered the plaintiff's supervisor to submit a formal written apology to the plaintiff.⁶

The Supreme Court heard the oral argument in a packed Annette K. Levine Moot Courtroom at Hamline's campus in St. Paul. An estimated seventy people attended the argument. Associate Justice Jo Deen B. Lowe had previously recused herself from *Smith* because she has a family member involved in the case. Justice Pro Tempore John Wabaunsee, Chief Judge for the Prairie Band Potawatomi Nation, sat in for Justice Lowe. Michael P. Murphy, a Ho-Chunk Nation Department of Justice Attorney, represented the appellant, the Ho-Chunk Nation. William Gardner represented the appellee.

During Attorney Murphy's oral argument, Justice Butterfield asked the attorney to explain where he believed the Trial Court had made an error. Murphy explained that the Trial Court failed to examine whether Smith should have known that her son was using the credit card inappropriately. Murphy asserted that the defendant had terminated the plaintiff for negligence and that the Trial Court ignored this fact.

Justice Wabaunsee asked Attorney Murphy which standard of review the Supreme Court should apply to the case at bar in light of Murphy's objection to the use of the arbitrary and capricious standard. Murphy suggested that the Supreme Court should apply abuse of discretion. Murphy explained that the Trial Court abused its discretion in its analysis and consideration of the evidence before it. Chief Justice Hunter asked Attorney Murphy if he felt that the Trial Court retains the ability to order an apology in light of HCN Leg. Res. 6-9-98A. Attorney Murphy explained that the aforementioned resolution limits the Trial Court to granting monetary remedies.

Prior to the argument, a tribal prayer was recited. After the oral arguments had concluded, the Supreme Court took questions from the audience. Audience members asked questions about the structure of the Court, sovereign immunity, and the Ho-Chunk Nation.

The Ho-Chunk Nation Judiciary Act of 1995 allows the Judiciary to hear cases outside of tribal land. The Act provides that "[p]roceedings of the Judiciary shall be conducted in a public place suitable for the purpose, but not necessarily in Ho-Chunk territory."⁷ The Judiciary has previously held court in Tomah and Wittenberg.

¹ *Hope B. Smith v. Ho-Chunk Nation*, CV 02-42 (HCN Tr. Ct., July 31, 2003).

² *Id.* at 1.

³ *Id.* at 16.

⁴ *Id.*

⁵ *Id.* at 17.

⁶ *Id.* at 17-18.

⁷ HO-CHUNK NATION JUDICIARY ACT OF 1995, § 3.

CTF CASE UPDATE



In previous editions of this Court Bulletin, Associate Judge Todd R. Matha offered a survey of Children's Trust Fund (CTF) cases.¹ In this article, the Court provides an update to that survey. The Court examined all CTF cases since publication of the previous survey.² Therefore, this update should be read in conjunction with the previous survey.

The update shall first address CTF cases involving requests for children under the age of sixteen (16) years of age. Next, the Court shall update cases involving requests for children over the age of sixteen (16) years of age through the age of twenty-five (25) years of age. Categories of requests divide each of these aforementioned sections. The order of the categories corresponds with the volume of requests received in each such category.

CTF CASES INVOLVING REQUESTS FOR CHILDREN UNDER THE AGE OF 16

Orthodontics:

The Court first granted a request to pay orthodontic expenses on March 27, 1998.³ The Court has consistently held that such expenses provide a "necessary health and welfare benefit to the child(ren)."⁴ Since the initial survey of CTF cases, the Court has granted a number of requests for orthodontia.⁵



Automobiles:

The Court has received two recent requests for a release of funds for the purchase of automobiles.⁶ In *Light Storming*, the petitioner requested a release of fund from the minor's CTF account to purchase an automobile used primarily for the petitioner's employment.⁷ The Court held that the petitioner failed to show that the automobile would benefit the minor's health, education, or welfare.⁸ The parent did not intend to utilize the car to transport the child to and from school, the child's study center, or his youth activities.⁹ Although the plaintiff expressed an intention to transport the minor child to the dentist, such an intention did not persuade the Court that the automobile would sufficiently further the health of the child.¹⁰



The Court recently held that an automobile would further the health and welfare needs of a child.¹¹ However, the minor child in the aforementioned case suffers severe handicaps and needed handicapped accessible transportation.¹² With respect to automobiles, the Court previously held that the petitioner must show "unforeseeable and/or unusual circumstances".¹³ In *J.H.R.*, the Court held that severe physical and mental handicaps create such circumstances.¹⁴

Recently, the Court also has examined requests for automobile repairs.¹⁵ In *Whiteagle-Fintak*, the Court denied the request for release of automobile repairs.¹⁶ The Court held that while the vehicle repairs would have a positive impact on the health of the minor due to the need to transport the child to non-emergency medical appointments, such facts would not warrant a release of funds since "the articulated need may dissipate over a short period of time."¹⁷

However, in *Swan*, the Court found sufficient circumstances “outside the control of a reasonable parent” when reviewing that request for a release for vehicle repair.¹⁸ In allowing for a release of funds from the CTF account of the minor child, the Court held that the case was distinguishable in that “the trying family circumstances do not result from poor parental decision-making.”¹⁹ In *Swan*, the petitioner and sole parent suffered from a debilitating medical condition, and the petitioner and minor child subsisted solely on Supplemental Security Income.²⁰ The aforementioned circumstances, coupled with the petitioner’s ability to show an education necessity, since the child needed to be transported to tutoring sessions, persuaded the Court to grant a release for automobile repairs.²¹



Clothing:

The Court generally recognizes that parents have the responsibility to meet a child’s basic needs, including the need for clothing.²² Therefore, in *Whiteagle-Fintak*, the Court conjectured that an extension of that principle meant that a release might be warranted if for the purchase of a school uniform.²³ However, the Court denied the request for a normal clothing allocation.²⁴

In one recent case, the Court did grant a release for clothing for two minor children.²⁵ However, the Court found that the petitioner had demonstrated a “special financial need” in *Johnson*.²⁶ The petitioner demonstrated this special financial need by a showing that he was unemployed, disabled, and currently receiving no support from the children’s mother.²⁷

Furniture:

The Court has denied both recent requests for household furnishings.²⁸ The Court has consistently held that, in general, household furniture does not significantly benefit the child’s health, education, or welfare.²⁹ Further, while a bed may benefit the welfare of a child, children “should not bear the financial responsibility of providing a bed upon which to sleep.”³⁰



Private School Tuition:

With respect to requests for private school tuition, the Court requires a showing that the child has special needs that cannot be met through the public school system.³¹ In *Brown*, the Court denied a request for private school tuition because the petitioner failed to show any such special needs.³² However, the Court has granted tuition in light of showing by the petitioner that the minor child has been diagnosed with attention deficit hyperactivity disorder and oppositional defiant disorder and that as a result, the educational needs of the child cannot be appropriately met by public schools.³³

Miscellaneous:

The Court has recently granted releases for educational related requests, including school meal expenses,³⁴ the purchase of musical instruments and continuing music lessons,³⁵ and a professional tutoring program.³⁶ In addition, the Court granted a release of funds for the purchase of a vacuum cleaner and an air humidifier.³⁷ In granting those requests, the Court noted that although the family would benefit from the purchases, the family would not purchase the items absent the medical condition of the minor.³⁸ The Court has recently denied requests for release of CTF funds for a telephone bill,³⁹ household expenses,⁴⁰ a driveway,⁴¹ a sun porch,⁴² and a television.⁴³

CTF CASES INVOLVING REQUESTS FOR CHILDREN BETWEEN THE AGES OF 16 AND 25

Attorney's Fees and Legal Fines:

In general, the Court denies requests made for release of funds for criminal defense purposes.⁴⁴ Because there exists a constitutional right to appointment of counsel under the Sixth Amendment, petitioners cannot show the absence of either a state or federal entitlement.⁴⁵ The Court recently granted one request for a release for legal and psychological services in relationship to a pending criminal action.⁴⁶ However, this case is distinguishable from most requests for funds for legal representation in that the petitioner suffered from a serious medical disorder.⁴⁷ The Court held that the disorder made the specific attorney's services necessary, thereby eliminating the possibility of the state funding.⁴⁸



The Court generally bases its decision to grant or not grant requests for payment of restitution resulting from the delinquent acts of the minor on the severity of the consequences of non-payment of the fines.⁴⁹ The Court has granted a release of funds for restitution when the petitioner showed that the minor child would go to jail absent payment.⁵⁰ However, absent a showing of severe circumstances upon non-payment of the fines, the Court has denied requests for such fines.⁵¹

Bills:

The Court has generally not granted requests for a release of funds for bills and other debt obligations.⁵² However, in *Little Bear*, the Court authorized the release of funds to pay past due rent and utility payments.⁵³ In that case, the petitioner articulated special financial need in her request.⁵⁴ Further, the Court held that the petitioner had sufficiently shown the request to be a necessity.⁵⁵



Clothing:

The Court denied both recent requests for a release to purchase clothing.⁵⁶

Miscellaneous:

The Court recently granted a release of CTF funds for home schooling because the minor child had departed public school because she was pregnant.⁵⁷ Alternatively, the Court has denied requests for an automobile⁵⁸ and a band trip to Florida.⁵⁹



¹ See Todd R. Matha, *Part I: A Survey of Children's Trust Fund (CTF) Cases*, HO-CHUNK NATION COURT BULLETIN, March 2002, at 2-5; Todd R. Matha, *Part II: A Survey of Children's Trust Fund (CTF) Cases*, HO-CHUNK NATION COURT BULLETIN, April/May 2002, at 2-6.

² Any individual may view the Court's public compilation of judicial decisions maintained in the library located in the Tribal Court Building in Black River Falls, WI. The public may also access case files and courtroom minutes. The only blanket exception to this open records policy concerns confidential juvenile proceedings.

³ *In the Interest of Casey J. Tripp v. HCN Enrollment Dep't*, CV 98-10 (HCN Tr. Ct., Mar. 27, 1998).

⁴ See *Matha, Part I, supra* note 1, at 2.

⁵ See, e.g. *In the Interest of Minor Children: J.A.L., DOB 1/20/91, and K.A.L., DOB 08/14/89, by Gary Lonetree, Jr. v. HCN Office of Tribal Enrollment*, CV 02-85 (HCN Tr. Ct., Oct. 21, 2002); *In the Interest of the Child: M.W., DOB 07/09/95, by Melody Whiteagle-Fintak v. HCN Enrollment Office*, CV 01-154 (HCN Tr. Ct., Mar. 13, 2002).

⁶ *In the Interest of Minor Child: J.H.R., DOB 01/09/95, CU 95-18 (HCN Tr. Ct., Sept. 18, 2003).*; *In the Interest of Minor Child: P.S., DOB 04/10/87, by Pearl Light Storming v. HCN Office of Tribal Enrollment*, CV 02-44 (HCN Tr. Ct., Sept. 20, 2002).

⁷ *Light Storming* at 6.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *In the Interest of Minor Child: J.H.R., DOB 01/09/95, CU 95-18 (HCN Tr. Ct., Sept. 18, 2003).*

¹² *Id.* at 8.

¹³ *In the Interest of Minor Children: V.D.C., DOB 10/03/84, et al. by Debra Crowe v. HCN Office of Tribal Enrollment*, CV 00-25 (HCN Tr. Ct., Apr. 6, 2001) at 14.

¹⁴ *J.H.R.* at 8.

¹⁵ *In the Interest of Minor Child: D.A.S., DOB 10/14/87, by Larry Swan v. HCN Office of Tribal Enrollment*, CV 02-36 (HCN Tr. Ct., July 15, 2002); *Whiteagle-Fintak*, CV 01-154 at 11.

¹⁶ *Whiteagle-Fintak* at 11.

¹⁷ *Id.* at 12.

¹⁸ *Swan* at 9.

¹⁹ *Id.*

²⁰ *Id.* at 6.

²¹ *Id.*

²² *Whiteagle-Fintak* at 11.

²³ *Id.*

²⁴ *Id.*

²⁵ *In the Interest of Minor Children: S.C.M.J., DOB 06/25/92, et al., by Gregory Charles Johnson v. HCN Office of Tribal Enrollment*, CV 02-97 (HCN Tr. Ct., Apr. 4, 2003).

²⁶ *Id.* at 6.

²⁷ *Id.*

²⁸ *Whiteagle-Fintak* at 11; *In the Interest of Minor Children: T.M.K., DOB 08/22/85, et al., by Sara J. White Eagle v. HCN Office of Tribal Enrollment*, CV 03-18 (HCN Tr. Ct., July 2, 2003) at 11.

²⁹ *Whiteagle-Fintak* at 11.

³⁰ *Id.*

³¹ *In the Interest of Minor Child: C.Y.B., DOB 05/04/92, by Charles A. Brown v. HCN Office of Tribal Enrollment*, CV 02-104 (HCN Tr. Ct., Apr. 3, 2003); *In the Interest of Minor Child: B.L., DOB 11/22/96, by Michelle Lewis v. HCN Office of Tribal Enrollment*, CV 02-86 (HCN Tr. Ct., Nov. 26, 2002).

³² *Brown* at 5.

³³ *Lewis* at 6.

³⁴ *Whiteagle-Fintak* at 11.

³⁵ *In the Interest of Minor Children: J.A.L., DOB 01/20/91, et al., by Gary L. Lonetree, Jr. v. HCN Office of Tribal Enrollment*, CV 02-85 (HCN Tr. Ct., Oct 21, 2002).

³⁶ *In the interest of Minor Child: W.S.S., DOB 01/26/94, by Tina S. Smith-Kelly v. HCN Office of Tribal Enrollment*, CV 02-94 (HCN Tr. Ct., Dec. 12, 2002).

³⁷ *Whiteagle-Fintak* at 12.

³⁸ *Id.*

³⁹ *Id.* at 12.

⁴⁰ *Brown* at 5.

⁴¹ *White Eagle* at 10.

⁴² *Id.*

⁴³ *Id.* at 11.

⁴⁴ *In the Interest of the Minor Child: R.T., DOB 01/09/85, by Roger Thundercloud v. HCN Office of Tribal Enrollment*, CV 02-16 (HCN Tr. Ct., May 31, 2003); *In the Interest of Adult CTF Beneficiary: Rory L. Deer, Jr., DOB 09/24/90, CV 01-132 (HCN Tr. Ct., Apr. 7, 2003).*

⁴⁵ *Deer* at 8.

⁴⁶ *Jason Nathaniel Hopinka, DOB 12/17/83, by Wesley T. Martin, Jr. v. HCN Office of Tribal Enrollment*, CV 03-15 (HCN Tr. Ct., Apr. 7, 2003).

⁴⁷ *Id.* at 7.

⁴⁸ *Id.*

⁴⁹ *In the Interest of Minor Child: C.J.W., DOB 01/03/84, by Anne Johnson v. HCN Office of Tribal Enrollment*, CV 99-68 (HCN Tr. Ct., Oct. 8, 1999) at 8.

⁵⁰ *Thundercloud*, CV 02-16 at 4.

⁵¹ *In the Interest of Minor Child: J.H.D., DOB 05/24/86, by Janelle Hopinkah v. HCN Office of Tribal Enrollment*, CV 02-99 (HCN Tr. Ct., Oct. 20, 2003).

⁵² *In the Interest of Adult CTF Beneficiary: Calvin Whiteagle, DOB 01/03/84 v. HCN Office of Tribal Enrollment*, CV 02-12 (HCN Tr. Ct., July 24, 2002); *Thundercloud* at 5.

⁵³ *Cassandra Little Bear, DOB 09/06/80 v. HCN Office of Tribal Enrollment*, CV 02-79 (HCN Tr. Ct., Dec. 10, 2003).

⁵⁴ *Id.* at 5.

⁵⁵ *Id.*

⁵⁶ *Little Bear* at 6; *Hopinkah* at 9.

⁵⁷ *In the Interest of Minor Child: N.J.L., DOB 09/24/85, by Sarah Littlegeorge v. HCN Office of Tribal Enrollment*, CV 03-31 (HCN Tr. Ct., May 19, 2003) 9.

⁵⁸ *Little Bear* at 6.

⁶⁰ *In the Interest of Minor Child: A.F.L., DOB 04/16/85, by Marcella Patton v. HCN Office of Tribal Enrollment*, CV 03-24 (HCN Tr. Ct., Apr. 4, 2003).



Federal Court Update

U.S. Supreme Court

Pataki v. Saratoga County Chamber of Commerce Inc., 2003 U.S. LEXIS 8378 (Nov. 26, 2003).

The Supreme Court denied the petition for a writ of certiorari from the New York Court of Appeals decision in *Saratoga County Chamber of Commerce Inc. v. Pataki*, 2003 N.Y. Lexis 1470 (N.Y., June 12, 2003). The plaintiffs challenged the governor's authority to negotiate and sign agreements without legislative authorization.

On October 15, 1993, the governor of New York entered into a "Tribal-State Compact" with the St. Regis Mohawk Tribe. The compact allowed the Tribe to conduct gambling, including baccarat, blackjack, craps and roulette. Then, on May 27, 1999, the governor and the Tribe executed an amendment to the compact. The amendment allowed the Tribe to operate electronic class III games, including keno. This amendment expired on May 27, 2000. The Department of Interior disapproved later amendments. However, electronic gaming continues at the casino.

Plaintiffs based the challenge of the compact and subsequent amendment on the belief that the governor's actions had violated the principle of separation of powers and the gambling prohibition under the New York Constitution. The Supreme Court of New York had granted summary judgment to the plaintiffs and held that the compact and amendment were void and unenforceable. The Appellate Division affirmed.

The New York Court of Appeals held that the plaintiffs' challenges to the 1999 amendment were moot because the amendment had expired in May 2000, and thus, there would be no practical effect in declaring the amendment either valid or invalid. However, with respect to the compact itself, the Court of Appeals held that the gubernatorial action was "legislative" in character and that the governor lacks the power to unilaterally negotiate and execute tribal gaming compacts. Therefore, the Court of Appeals held that the compact is void and unenforceable.

Tenth Circuit Court of Appeals

Peltier v. Booker, No. 02-3384, 2003 WL 22490095 (10th Cir., Nov. 4, 2003).

Leonard Peltier is currently serving consecutive life sentences for the 1975 murders of two FBI agents. He filed a petition for habeas corpus, seeking release on parole. The district court denied this requested relief. The Tenth Circuit Court of Appeals affirmed.

United States v. Hess, No. 02-1212, 2003 WL 22664678 (10th Cir., Nov. 12, 2003).

This case was brought by the United States on behalf of the Southern Ute Indian Tribe. In 1948, the United States issued a patent for a tract of land "subject to the reservation of all minerals in and to the land, including oil and gas, to the United States for the use and benefit of the Southern Ute Tribe." The district court held that the commercial quality gravel underlying the property is included in the patent's reservation. The Tenth Circuit held that if property is underlain with gravel and such gravel cannot be mined without disturbing the property's surface, the general rule is that a mineral reservation does not include gravel.

D.C. Circuit Court of Appeals

City of Roseville v. Norton, No. 02-5277, 2003 WL 22681310 (D.C. Cir., Nov. 14, 2003).

In 1967, Congress withdrew federal recognition from the Auburn Indian Band. In 1994, the Auburn Indian Restoration Act restored federal recognition to the Band, located near Sacramento, California. In addition, the Act authorized the Secretary of Interior to take land into trust to serve as the Band's reservation. Because most of the former reservation was held in fee by individual Indians and non-Indians, the Band applied for a parcel of land located outside of the former reservation.

The cities of Roseville and Rocklin, located near the Band's new reservation, and Citizens for Safer Communities challenged the Secretary of Interior's decision to take the land into trust under section 20 of IGRA. The plaintiffs asserted that under IGRA, the Secretary was required to find that

that gaming “would not be detrimental to the surrounding community” and secure the consent of the governor. The district court held that the Secretary properly acted under the “restoration of lands” provision in IGRA even though the land is not located on the Band’s former reservation as of the time the Band lost federal recognition. The Court of Appeals affirmed.

respondent no longer has a current child support obligation and no further arrears withholding has been requested, the Court informed the parties of its intent to close this file.

NOVEMBER 13, 2003

Lawrence D. Corbesia v. Melissa J. Corbesia, CS 03-64 *Order (Enforcing Child Support)* (HCN Tr. Ct., Nov. 13, 2003). (Matha, T).

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

State of WI v. Charles Dennis Hindsley, CS 03-20; *State of WI/Jackson Co. v. Charles D. Hindsley*, CS 03-66 *Order (Default Judgment -- Enforcing Child Support)* (HCN Tr. Ct., Nov. 13, 2003). (Matha, T).

The Court had to determine whether to grant full faith and credit to another foreign judgment against a serial payor’s per capita payments. The respondent failed to answer within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

Regina K. Baldwin v. Hunter D. Littlejohn, CS 99-46; *Virginia C. Murphy v. Hunter D. Littlejohn, Sr.*, CS 03-72 *Order (Default Judgment -- Enforcing Child Support)* (HCN Tr. Ct., Nov. 13, 2003). (Matha, T).

The Court had to determine whether to grant full faith and credit to another foreign judgment against a serial payor’s per capita payments. The respondent failed to answer within the specified time frame. The Court granted the petitioner’s request for recognition and enforcement.

State of WI/Sawyer Co. and Josi E. Trepanier v. Tyrone L. Walker, CS 02-17, -60 *Order (Modifying and Enforcing Child Support)* (HCN Tr. Ct., Nov. 13, 2003). (Matha, T).

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

Recent Decisions

Decisions are separated between Trial Court and Supreme Court decisions and categorized by subject matter and date (from oldest to most recent). The following are summaries prepared by the Staff Attorney for the reader’s benefit. They should in no way be used as substitution for citations to the actual court opinion.

Within the Trial Court, cases are categorized and docketed as one of the following: Child Support (CS or if filed prior to 1998, CV), Civil Garnishment (CG), Civil (CV), Criminal (CR), Custody (CU), Domestic Violence (DV), or Juvenile (JV). Within this index, case citations will appear in one of these categories and, in the event it may be helpful to the reader as a research tool, the cases may also be summarized in a separate topic area. Due to the great incidence of civil cases before the Court, the category for civil cases is divided into broad sub-categories. In some instances a decision may touch upon other topics that may not warrant a summary in this index, but the editor will use the indicator “other topic(s) covered,” as a research aid for the reader.

Recent Decisions and **Recent Filings** both begin with the date where the previous Court Bulletin left off.

Trial Court

Child Support

NOVEMBER 5, 2003

State of WI v. Frederick K. Greendeer, CS 98-32 *Order (Intent to Close)* (HCN Tr. Ct., Nov. 5, 2003). (Bossman, W).

A review of the file indicated that a minor child had recently graduated from high school. As the

NOVEMBER 18, 2003

Marilyn E. Conto v. Harry D. Blackhawk, CV 97-144 Order (Updating Arrearage Withholding) (HCN Tr. Ct., Nov. 18, 2003). (Bossman, W).

The petitioner filed a motion to amend arrears withholding. The respondent failed to answer within the specified time frame. The Court granted the petitioner's request.

NOVEMBER 26, 2003

Erica Jurgella v. Randall Appell, CS 03-74 Order (Default Judgment for Child Support Deduction from Wages) (HCN Tr. Ct., Nov. 26, 2003). (Bossman, W).

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

Civil Garnishment**NOVEMBER 13, 2003**

Creditor Recovery Service LLC, Agent for The Uniform Shoppe v. Eugene Topping, Jr., CG 03-77 Order (Default Judgment) (HCN Tr. Ct., Nov. 13, 2003). (Bossman, W).

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

Nekoosa Port Edwards State Bank v. Eugene Topping, Jr., CG 03-69 Order (Satisfaction of Judgment) (HCN Tr. Ct., Nov. 13, 2003). (Bossman, W).

The Court had granted full faith and credit to a foreign judgment. The petitioner filed a satisfaction of judgment. The Court recognized that the debt has been paid in full and informed the parties of its intent to close the case.

NOVEMBER 21, 2003

American General Finance, Inc. v. Cleo Littlegeorge, CG 03-64 Order (Suspension of the Judgment) (HCN Tr. Ct., Nov. 21, 2003). (Matha, T).

The Court had to determine whether to grant the respondent's motion in which she requested a

termination of the judgment. The respondent presented documentation that appeared to demonstrate satisfaction of an earlier default judgment. The Court granted a suspension of the judgment.

Civil Cases**Children's Trust Fund (CTF)****NOVEMBER 18, 2003**

In the Interest of Minor Child: N.J.L., DOB 09/24/85, by Sarah Littlegeorge, CV 03-31 Order (Demanding Accounting) (HCN Tr. Ct., Nov. 18, 2003). (Matha, T).

The Court released money from the CTF account of the minor child for costs related to home schooling. The Court had previously requested that the petitioner submit the required accounting. The Court again requested that the petitioner submit the required accounting.

NOVEMBER 19, 2003

In the Interest of Minor Children: E.R.W., DOB 05/27/88, and S.L.W., DOB 12/02/86, by Sadie L. Wesho v. HCN Office of Tribal Enrollment, CV 03-74 Order (Requiring Submission of Documents and Setting Fact Finding Hearing) (HCN Tr. Ct., Nov. 19, 2003). (Bossman, W).

The petitioner previously filed a petition requesting a release of the CTF accounts of minor children. The respondent raised several issues that indicate a lack of documentation concerning standards traditionally used in determining the appropriateness of a release of funds. The Court requested further documentation and scheduled a hearing.

NOVEMBER 24, 2003

In the Interest of Minor Child: T.D., DOB 04/10/88, by David Lavy v. HCN Office of Tribal Enrollment, CV 03-30 Order (Dismissal Without Prejudice) (HCN Tr. Ct., Nov. 24, 2003). (Matha, T).

The petitioner previously filed a petition requesting a release of the CTF account of a minor child. The respondent requested that the petitioner submit further documentation. The petitioner made no such filings. The Court dismisses the instant case without prejudice.

NOVEMBER 25, 2003

In the Interest of Minor Child: J.J.F., DOB 07/13/98, by Lisa M. Matchopatow v. HCN Office of Tribal Enrollment, CV 03-79 Order (Requiring Submission of Documents and Setting Fact Finding Hearing) (HCN Tr. Ct., Nov. 25, 2003). (Bossman, W).

The petitioner previously filed a petition requesting a release of the CTF accounts of minor children. The respondent raised several issues that indicate a lack of documentation concerning standards traditionally used in determining the appropriateness of a release of funds. The Court requested further documentation and scheduled a hearing.

Election

NOVEMBER 5, 2003

Clarence Pettibone v. HCN Gen. Council, Alvin Cloud, Acting Chair of the Gen. Council; Roberta Funmaker (aka Roberta Greendeer), Sec'y of the General Council; Gloria Visintin; Wade Blackdeer, Dallas Whitewing, Myrna Thompson, Christine Romano, Gerald Cleveland, Sharon Whiterabbit, Kathyleen Lonetree Whiterabbit, John Dall, Tracy Thundercloud, and Elliot Garvin, Legislators in the HCN Legislature; and Maryann Dumas, Chair of the Election Bd., CV 03-77 Order (Granting Preliminary Injunction) (HCN Tr. Ct., Nov. 5, 2003). (Bossman, W).

The Ho-Chunk Nation General Council enacted a resolution providing for the removal of the plaintiff from the Ho-Chunk Nation Legislature. The plaintiff sought a *Preliminary Injunction* to enjoin the defendants from acting in furtherance of the resolution. The Court granted the request for a *Preliminary Injunction*.

[See also [Preliminary Injunctions](#) within this index.]

Employment

NOVEMBER 13, 2003

Loretta Patterson v. Four Winds Comm'n and Susan Van Riper, CV 03-40 Order (Granting Motion to Dismiss) (HCN Tr. Ct., Nov. 13, 2003). (Bossman, W).

The plaintiff claimed she was wrongfully denied workers' compensation benefits. The defendants moved to dismiss for lack of jurisdiction. The

Court granted the motion to dismiss due to lack of jurisdiction and due to the failure of the plaintiff to appear at a hearing.

Charles L. Stands v. Stephanie Lewis, CV 03-03 Order (Dismissal without Prejudice) (HCN Tr. Ct., Nov. 13, 2003). (Bossman, W).

The Court convened a scheduling conference in this matter. The plaintiff failed to appear at the scheduling conference and did not notify the Court of an inability to attend the proceeding. The Court dismissed the instant case without prejudice.

NOVEMBER 14, 2003

Lorna M. Hach v. HCN C-Store, Baraboo, and Deb Hinds, Manager, CV 01-98 Order (Granting Defendants' Motion for Summary Judgment) (HCN Tr. Ct., Nov. 14, 2003). (Matha, T).

The Court had to determine whether to grant the defendants' motion for summary judgment. The Court held that the defendants acted within the scope of the Ho-Chunk Nation progressive discipline policy. Therefore, the Court granted the motion for summary judgment.

NOVEMBER 18, 2003

Anita Naquayouma v. Jonette Pettibone, CV 03-55 Order (Motion Hearing) (HCN Tr. Ct., Nov. 18, 2003). (Bossman, W).

The defendants filed a motion for summary judgment in the instant case. The Court scheduled a hearing to hear arguments on the motion.

NOVEMBER 25, 2003

Harry J. Cholka v. Ho-Chunk Casino, CV 02-116 Order (For Show Cause Hearing) (HCN Tr. Ct., Nov. 25, 2003). (Bossman, W).

The Court previously granted a judgment in favor of the plaintiff. The plaintiff filed letters with the Court alleging that the defendant has not complied with the Court's order. The Court shall convene a show cause hearing to allow the defendant the opportunity to explain why the Court should not hold it in contempt of court.

Wayne S. Hanrahan v. HCN Legislators Sharyn Whiterabbit and Kathyleen Whiterabbit, CV 03-54; Wayne S. Hanrahan v. Ron Anwash, HCN Dep't of Natural Res. Lands Supervisor, and Larry Garvin,

Interim Executive Dir. of Heritage Pres., CV 03-57 *Order (Amended Scheduling Order)* (HCN Tr. Ct., Nov. 25, 2003). (Bossman, W).

The Court had previously entered a scheduling order. The plaintiff requested a delay to produce discovery. The Court amended the scheduling order.

Gaming

NOVEMBER 19, 2003

Troy S. Westphal v. HCN, Ho-Chunk Casino and Bally Gaming, Inc., CV 02-75 *Order (Dismissal)* (HCN Tr. Ct., Nov. 19, 2003). (Matha, T).

Both the plaintiff and the defendants filed motions to dismiss the instant action. The Court had to determine whether to dismiss the instant case with or without prejudice. With respect to the defendant that had not filed an answer in the action, the case was dismissed without prejudice. With respect to the remaining defendant the case was dismissed with prejudice.

[See also **Dismissals** within this index.]

Housing

NOVEMBER 20, 2003

HCN Dep't of Hous., Prop. Mgmt. Div. v. Stacy Yellowcloud, CV 03-66 *Order (Satisfaction of Judgment)* (HCN Tr. Ct., Nov. 20, 2003). (Matha, T).

The Court had previously issued a default judgment for the plaintiff. The plaintiff filed proof of satisfaction of the judgment. The Court recognized that the debt is paid in full and informs the parties of its intent to close the case.

NOVEMBER 24, 2003

HCN Dep't of Hous., Prop. Mgmt. Div. v. Darren L. Snake and Lena F. Snake, CV 03-21 *Order (Satisfaction of Judgment)* (HCN Tr. Ct., Nov. 24, 2003). (Matha, T).

The Court had previously issued a default judgment for the plaintiff. The plaintiff filed proof of satisfaction of the judgment. The Court recognized that the debt is paid in full and informs the parties of its intent to close the case.

HCN Dep't of Hous., Prop. Mgmt. Div. v. Janice Tourtilott and Ronald Martin, CV 03-65 *Order*

(Default Judgment) (HCN Tr. Ct., Nov. 24, 2003). (Matha, T).

The Court had to determine whether to grant the relief requested by the plaintiff. The defendant failed to file an answer in the case despite proper service of process. The Court issued a default judgment against the defendant.

Incompetent's Trust Fund

NOVEMBER 5, 2003

Elaine Sine, DOB 02/01/55, by Cecelia Sine, Legal Guardian v. HCN Office of Tribal Enrollment, CV 03-27 *Order (Requesting Accounting)* (HCN Tr. Ct., Nov. 5, 2003). (Bossman, W).

The Court previously released funds from the ITF account for expenses related to the purchase of a home. The required accounting is now late. The Court requested that the petitioner submit the required accounting.

Miscellaneous

NOVEMBER 24, 2003

Stanley J. Decorah v. Linda Decorah, CV 03-63 *Order (Dismissal Without Prejudice)* (HCN Tr. Ct., Nov. 24, 2003). (Matha, T).

The Court had to determine whether to dismiss the instant case. The plaintiff requested a dismissal of the action. The Court dismissed the case without prejudice.

Juvenile

NOVEMBER 3, 2003

In the Interest of Minor Children: L.R.H., DOB 11/18/87; K.L.H., DOB 10/21/88, JV 03-35 -36 *Order (Default Judgment)* (HCN Tr. Ct., Nov. 3, 2003). (Matha, T).

The Court convened a trial to determine whether the allegations presented in the child protection petition proved more likely true than not and whether the best interests of the minor children would be served by continued court intervention. CFS moved for a default judgment for the failure of the permanent legal guardian to appear at the trial. Following the presentation of its case in chief, the Court determined that CFS did satisfy its burden by a preponderance of the evidence. The Court scheduled a dispositional hearing in the matter.

In the Interest of Minor Children: C.C.P., DOB 02/03/93; G.L.P., DOB 06/10/94, JV 03-25 -26 Order (Granting Telephonic Appearance) (HCN Tr. Ct., Nov. 3, 2003). (Bossman, W).

The attorney for CFS requested permission for a witness to appear at the trial by telephone. The Court granted the request.

In the Interest of Minor Children: C.A.T., DOB 01/28/93; B.A.T., DOB 09/11/94, JV 03-27 -28 Order (Formal Hearing and Dispositional Order) (HCN Tr. Ct., Nov. 3, 2003). (Bossman, W).

The Court convened a formal hearing in this matter. At the hearing, the Court allowed the parents of the minor children to change their pleas from not guilty to no contest. The Court finds the minor children to be in need of protection or services.

NOVEMBER 4, 2003

In the Interest of Minor Children: V.J.F., DOB 09/26/98; I.D.F., DOB 03/30/02, JV 03-39 -40 Order (Second Continuance of Plea Hearing) (HCN Tr. Ct., Nov. 4, 2003). (Matha, T).

The Court convened a plea hearing to determine whether the parents of the minor children wished to contest the allegations contained in the child protection petition. At the hearing, the mother of the minor children requested a continuance after the Court advised her of her rights. The Court granted the continuance to provide the mother an opportunity to obtain legal representation.

In the Interest of Minor Child: T.M.G., DOB 07/19/94, JV 03-45 Order (Conditional Acceptance of Transfer) (HCN Tr. Ct., Nov. 4, 2003). (Matha, T).

The Court had to determine whether to conditionally accept the transfer of a state children's case in which an enrolled minor child is subject to foster care placement. The Court held that it shall not decline transfer of this action.

In the Interest of Minor Children: B.T., DOB 07/21/99; B.P.T., DOB 08/29/95; B.A.T., DOB 11/18/86, JV 03-31 -32 -33 Order (Appointment of Guardian Ad Litem) (HCN Tr. Ct., Nov. 4, 2003). (Matha, T).

The Court appointed a *Guardian ad litem* to serve in the instant case.

NOVEMBER 6, 2003

In the Interest of Minor Child: J.L., DOB 12/14/89, JV 97-06 Order (Submission of Guardianship Report and Home Study) (HCN Tr. Ct., Nov. 6, 2003). (Bossman, W).

The petitioner filed a petition for permanent guardianship of the minor child. The Court scheduled a guardianship hearing. The Court requested that CFS prepare and submit a guardianship report and home study to the Court.

In the Interest of Minor Child: J.L., DOB 12/14/89, JV 97-06 Order (Submission of Traditional Relatives List) (HCN Tr. Ct., Nov. 6, 2003). (Bossman, W).

The Court requested that CFS prepare and submit a list of the minor child's traditional relatives. The Court limited the request to the maternal and paternal grandparents and their descendants.

In the Interest of Minor Child: R.L., DOB 04/27/91, JV 97-07 Order (Submission of Guardianship Report and Home Study) (HCN Tr. Ct., Nov. 6, 2003). (Bossman, W).

The petitioner filed a petition for permanent guardianship of the minor child. The Court scheduled a guardianship hearing. The Court requested that CFS prepare and submit a guardianship report and home study to the Court.

In the Interest of Minor Child: R.L., DOB 04/27/91, JV 97-07 Order (Submission of Traditional Relatives List) (HCN Tr. Ct., Nov. 6, 2003). (Bossman, W).

The Court requested that CFS prepare and submit a list of the minor child's traditional relatives. The Court limited the request to the maternal and paternal grandparents and their descendants.

NOVEMBER 7, 2003

In the Interest of Minor Child: T.E.D., DOB 11/04/86, JV 03-41 Order (Appointment of Guardian Ad Litem) (HCN Tr. Ct., Nov. 7, 2003). (Matha, T).

The Court appointed a *Guardian ad litem* to serve in the instant case.

In the Interest of Minor Children: T.J., DOB 05/02/97; M.L.C.R., DOB 11/03/95, JV 03-46 -47 Order (Conditional Acceptance of Transfer) (HCN Tr. Ct., Nov. 7, 2003). (Matha, T).

The Court had to determine whether to conditionally accept the transfer of a state children's case in which enrolled minor children are subject to foster care placement. The Court held that it shall not decline transfer of this action.

In the Interest of Minor Child: J.D.S., DOB 09/08/03, JV 03-30 Order (Continuance of Trial) (HCN Tr. Ct., Nov. 7, 2003). (Matha, T).

The Court convened a trial to determine whether the allegations contained in the child protection petition proved more likely true than not and whether the best interests of the child would be served by continued court intervention. At the hearing, legal counsel to the mother of the minor children requested a continuance due to the non-appearance of his client. The Court granted the continuance.

NOVEMBER 12, 2003

In the Interest of Minor Children: B.E.Y., DOB 07/25/89; N.R.Y., DOB 07/07/91, JV 03-37 -38 Order (Appointment of Guardian Ad Litem) (HCN Tr. Ct., Nov. 12, 2003). (Bossman, W).

The Court appointed a *Guardian ad litem* to serve in the instant case.

NOVEMBER 13, 2003

In the Interest of Minor Child: B.T., DOB 08/10/91, JV 98-10 Order (Appointment of Guardian Ad Litem) (HCN Tr. Ct., Nov. 13, 2003). (Bossman, W).

The Court appointed a *Guardian ad litem* to serve in the instant case.

NOVEMBER 18, 2003

In the Interest of Minor Child: D.D.W., DOB 12/16/94, JV 01-17 Order (Submission of Guardianship Report and Home Study) (HCN Tr. Ct., Nov. 18, 2003). (Bossman, W).

The petitioner filed a petition for permanent guardianship of the minor child. The Court scheduled a guardianship hearing. The Court requested that CFS prepare and submit a guardianship report and home study to the Court.

In the Interest of Minor Child: D.D.W., DOB 12/16/94, JV 01-17 Order (Submission of Traditional Relatives List) (HCN Tr. Ct., Nov. 18, 2003). (Bossman, W).

The Court requested that CFS prepare and submit a list of the minor child's traditional relatives. The Court limited the request to the maternal and paternal grandparents and their descendants.

In the Interest of Minor Child: D.R.W., DOB 09/22/92, JV 01-18 Order (Submission of Guardianship Report and Home Study) (HCN Tr. Ct., Nov. 18, 2003). (Bossman, W).

The petitioner filed a petition for permanent guardianship of the minor child. The Court scheduled a guardianship hearing. The Court requested that CFS prepare and submit a guardianship report and home study to the Court.

In the Interest of Minor Children: D.G.W., DOB 11/09/95; D.S.W., DOB 02/19/98, JV 01-19 -20 Order (Submission of Guardianship Report and Home Study) (HCN Tr. Ct., Nov. 18, 2003). (Bossman, W).

The petitioner filed a petition for permanent guardianship of the minor children. The Court scheduled a guardianship hearing. The Court requested that CFS prepare and submit a guardianship report and home study to the Court.

In the Interest of Minor Children: D.R.W., DOB 09/22/92; D.G.W., DOB 11/09/95; D.S.W., DOB 02/19/98, JV 01-18 -19 -20 Order (Submission of Traditional Relatives List) (HCN Tr. Ct., Nov. 18, 2003). (Bossman, W).

The Court requested that CFS prepare and submit a list of the minor children's traditional relatives. The Court limited the request to the maternal and paternal grandparents and their descendants.

NOVEMBER 20, 2003

In the Interest of Minor Child: S.E.C., DOB 02/25/86, JV 03-11 Order (Child Protection Review Hearing) (HCN Tr. Ct., Nov. 20, 2003). (Matha, T).

The Court conducted a child protection review hearing. At the hearing, the Court had to assess the extent of compliance with the dispositional order.

The Court performed this review and determined to maintain the status quo.

In the Interest of Minor Children: C.C.P., DOB 02/03/93; G.L.P., DOB 06/10/94, JV 03-25 -26 Order (Dispositional Requirements) (HCN Tr. Ct., Nov. 20, 2003). (Bossman, W).

The Court conducted a dispositional hearing. At the hearing, the Court had to assess the extent and scope of the dispositional recommendations proposed by CFS. The Court ordered certain dispositional recommendations necessary for the protection of the children and possible reunification of the family.

In the Interest of Minor Children: C.C.P., DOB 02/03/93; G.L.P., DOB 06/10/94, JV 03-25 -26 Order (Formal Hearing) (HCN Tr. Ct., Nov. 20, 2003). (Bossman, W).

The Court had previously entered a not guilty plea to the allegations contained in the child protection petition on behalf of the mother. The Court convened a formal hearing in this matter. The Court found that CFS met its burden of proving the allegations and that the minor children are in need of protection or services.

NOVEMBER 21, 2003

In the Interest of Minor Children: L.R.H., DOB 11/18/87; K.L.H., DOB 10/21/88, JV 03-35 -36 Order (Dispositional Requirements) (HCN Tr. Ct., Nov. 21, 2003). (Matha, T).

The Court conducted a dispositional hearing. At the hearing, the Court had to assess the extent and scope of the dispositional recommendations proposed by CFS. The Court ordered certain dispositional recommendations necessary for the protection of the children and possible reunification of the family.

In the Interest of Minor Children: K.B.M., DOB 10/29/93; G.E.M., DOB 08/25/95; A.D.M., DOB 04/25/97; L.A.M., DOB 12/16/00, JV 03-07 -08 -09 -10 Six Month Review Hearing Order (HCN Tr. Ct., Nov. 21, 2003). (Matha, T).

The Court conducted a child protection review hearing. At the hearing, the Court had to assess the extent of compliance with the dispositional order.

The Court performed this review and determined to maintain the status quo.

NOVEMBER 25, 2003

In the Interest of Minor Child: J.J.F., DOB 11/07/00, JV 02-27 Order (Dispositional Hearing) (HCN Tr. Ct., Nov. 25, 2003). (Bossman, W).

The Court convened a review hearing. The Court ordered that the review hearing should be postponed in order to allow time for the Court to appoint a *Guardian ad litem*, for the parents to seek legal counsel, for the parties to be fully prepared to respond to the recommendations of CFS, and for the parties to be fully prepared to respond to the motion to revoke filed by the grandparents.

In the Interest of Minor Child: P.D.R., DOB 08/24/90, JV 03-24 Order (Dispositional Requirements) (HCN Tr. Ct., Nov. 25, 2003). (Matha, T).

The Court conducted a dispositional hearing. At the hearing, the Court had to assess the extent and scope of the dispositional recommendations proposed by CFS. The Court ordered certain dispositional recommendations necessary for the protection of the children and possible reunification of the family.

In the Interest of Minor Child: T.E.D., DOB 11/04/86, JV 03-41 Order (Appointment of Temporary Guardian) (HCN Tr. Ct., Nov. 26, 2003).

The Court had to determine whether to appoint a temporary guardian of the minor child. The Court deemed the appointment to be within the best interest of the child.

Preliminary Injunctions

NOVEMBER 5, 2003

Clarence Pettibone v. HCN Gen. Council, Alvin Cloud, Acting Chair of the Gen. Council; Roberta Funmaker (aka Roberta Greendeer), Sec'y of the General Council; Gloria Visintin; Wade Blackdeer, Dallas Whitewing, Myrna Thompson, Christine Romano, Gerald Cleveland, Sharon Whiterabbit, Kathyleen Lonetree Whiterabbit, John Dall, Tracy Thundercloud, and Elliot Garvin, Legislators in the HCN Legislature; and Maryann Dumas, Chair of the Election Bd., CV 03-77 Order (Granting

Preliminary Injunction) (HCN Tr. Ct., Nov. 5, 2003). (Bossman, W).

The Court previously adopted a four-part test for the purpose of evaluating requests for preliminary injunctions. Furthermore, the HCN Supreme Court has upheld the use of this incorporated federal standard. Therefore, the Court must deny a request for a preliminary injunction if the plaintiff does not allege facts capable of satisfying the four-part test.

In the instant matter, the Court applied this relevant standard. The Court first had to determine whether there was an adequate remedy at law. More specifically, the Court had to determine whether the plaintiff could reasonably be compensated through money damages. The Court held that money damages will not be available for any damages the plaintiff might suffer under the law of the HCN.

The Court next considered the second prong of the relevant standard: whether the threatened harm to the plaintiff outweighs the harm of issuing the injunction. The Court held that the possible harms to the plaintiff do in fact outweigh the harms posed by issuance of an injunction. The Court then examined the third prong of the applicable standard: whether the plaintiff has a reasonable likelihood of success. The Court held the plaintiff has a reasonable likelihood of success in proving that either his notice or opportunity to be heard was constitutionally deficient.

The fourth prong of the test is whether issuing the injunction serves the public interest. The Court held that postponement of the Special Election serves the public interest in this case. Therefore, the Court granted the preliminary injunction.

[See also **Civil Cases** within this index.]

Dismissals

NOVEMBER 19, 2003

Troy S. Westphal v. HCN, Ho-Chunk Casino and Bally Gaming, Inc., CV 02-75 *Order (Dismissal)* (HCN Tr. Ct., Nov. 19, 2003). (Matha, T).

The Court had to determine whether to grant a dismissal of the action with or without prejudice. Rule 56 of the *Ho-Chunk Nation Rules of Civil Procedure* provides that a plaintiff may voluntarily dismiss an action at anytime prior to the filing of an answer and that such dismissal *shall* be dismissed

without prejudice. In this case, Bally Gaming never filed an answer. Therefore, the Court followed the clear direction of the rule and dismissed the case without prejudice.

The Court was unable to apply the same rule with respect to the action against the Nation and Ho-Chunk Casino. Those defendants had filed an answer nearly nine months before the voluntary dismissal request by the plaintiff. In addition, the defendants had previously filed a motion to dismiss with prejudice.

Rule 56 provides that after an answer is filed, a motion to dismiss will be granted at the discretion of the Court. The previous version of Rule 56 provided that involuntary dismissals were granted with prejudice. The Supreme Court omitted this line from the revised rule.

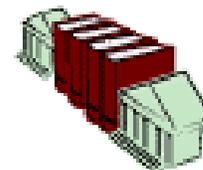
The Court held that the Supreme Court's decision to omit the requirement that involuntary dismissals be with prejudice allowed the Trial Court the discretion to grant involuntary dismissals with or without prejudice. Therefore, the Court exercises discretion equivalent to that exercised by federal courts. However, the Court held that it would be improper for the Court's use of discretion to resemble a federal district court's resolution of a similarly filed motion to dismiss. The Court explained that it has no basis for applying foreign common law concepts, which never informed the earlier version of the rule.

The Court noted the time and effort it had expended throughout the proceeding, as well as the inconvenience suffered by the defendants in defending the suit. In light of these factors, the Court granted the dismissal with prejudice as against the Nation and Ho-Chunk Casino.

[See also **Civil Cases** within this index.]

Supreme Court

NOTHING TO REPORT AT THIS TIME.



Recent Filings

Trial Court

Civil Garnishment

NOVEMBER 5, 2003

Capitol One v. Teresa L. Geissler, CG 03-78.
(Matha, T).

NOVEMBER 10, 2003

Black River Mem'l Hosp. v. David Gray, Jr., CG 03-79. (Bossman, W).

NOVEMBER 17, 2003

St. Claire Hosp. v. William P. Raftery, CG 03-80.
(Matha, T).

Child Support

NOVEMBER 6, 2003

Maryla Day v. Patrick R. Day, CS 03-75.
(Bossman, W).

NOVEMBER 10, 2003

Yona Montelongo v. State of WI, CS 03-77.
(Bossman, W).

NOVEMBER 21, 2003

State of IA and Angie Mullin v. Marcus D. Sena, CS 03-78. (Matha, T).

Civil Cases

NOVEMBER 7, 2003

In the Interest of Minor Child: J.J.F., DOB 07/13/98, by Lisa M. Matchopatow v. HCN Office of Tribal Enrollment, CV 03-79. (Bossman, W).

Jill Adair v. Dan Brown, CV 03-80. (Bossman, W).

NOVEMBER 13, 2003

Owen C. Mike v. Victoria Cloud, CV 03-81.
(Matha, T).

NOVEMBER 17, 2003

In the Interest of Minor Child: A.W., DOB 09/17/85, CV 03-82. (Matha, T).

Juvenile Cases

NOVEMBER 5, 2003

In the Interest of Minor Child: T.J., DOB 05/02/97, JV 03-46. (Matha, T).

In the Interest of Minor Child: M.R., DOB 11/03/95, JV 03-47. (Matha, T).

NOVEMBER 17, 2003

In the Interest of Minor Child: M.C.S.C., DOB 01/09/96, JV 03-48. (Matha, T).

In the Interest of Minor Child: J.D.C., DOB 12/21/98, JV 03-49. (Matha, T).

In the Interest of Minor Child: J.C.C., DOB 07/16/03, JV 03-50. (Matha, T).

SUPREME COURT

NOVEMBER 17, 2003

Clarence Pettibone v. HCN Gen. Council et al., SU 03-09.

NOVEMBER 25, 2003

Harry J. Cholka v. Ho-Chunk Casino, SU 03-10.



Announcements

COURT SEEKS STAFF ATTORNEY/LAW CLERK

The Ho-Chunk Nation Judiciary instituted the law clerk program shortly after its establishment in 1995. The Judiciary employs the law clerk for the term of one year beginning on or around July 1. Eight recent law school graduates have participated in the program since its inception. Several of those individuals currently practice and/or teach in the area of Indian law. The intention of the program is to provide a starting attorney with the necessary foundation to ably continue in this regard.

An interested applicant must submit the following documents to receive consideration for the law clerk position: 1) cover letter, 2) recent résumé, 3) transcript from an accredited law school, 4) writing sample, and 5) contact information for three professional/academic references. The Judiciary must receive the above application materials by mail on or before December 31. Applicants should direct materials to the following address:

Ho-Chunk Nation Trial Court
Attn.: Hon. William H. Bossman
P.O. Box 70
Black River Falls, WI 54615-0070

The Judiciary will inform applicants of the need to attend an on-site interview, and consequently applicants must be willing to travel to *Wa Ehi Hocira* for such purpose. The Judiciary will reimburse travel expenses to the extent possible. This reimbursement may include overnight accommodation.

The Judiciary will afford Indian and Ho-Chunk preference to applicants for the position.



COURT TO BE CLOSED FOR CHRISTMAS HOLIDAY

Due to the Christmas holiday, on Wednesday, December 24, 2003, the Court will close at noon. The Court will not re-open until Monday, December 29, 2003. All pleadings or filings ordinarily due on December 24th, 25th, or 26th may be filed on the next full business day, December 29, 2003.





**HO-CHUNK NATION COURT SYSTEM
JUDICIARY AND STAFF**

Supreme Court—Mary Jo B. Hunter, Chief Justice
Mark D. Butterfield, Associate Justice
Jo Deen B. Lowe, Associate Justice

Traditional Court—Wallace Blackdeer

Donald Blackhawk
Dennis Funmaker
Orville Greendeer
Douglas Greengrass
Owen Mike
Gavin Pettibone
Douglas Red Eagle
Preston Thompson, Jr.
Eugene Thundercloud
Morgan White Eagle
Clayton Winneshiek

Trial Court – William H. Bossman, Chief Judge
Todd R. Matha, Associate Judge

Clerk of Court, Supreme Court – Bryan Dietzler
Clerk of Court, Trial Court – Marcella Cloud
Assistant Clerk of Court, Trial Court – Selina Joshua
Bailiff/Process Server – Willa RedCloud
Staff Attorney – Rose M. Weckenmann

Office of Public Advocacy – Dennis Funmaker, Administrator

* The Ho-Chunk Nation Judiciary and its officers are active participants in the following organizations:

WISCONSIN TRIBAL JUDGES ASSOCIATION
(Eleven federally recognized tribes within the State of Wisconsin)

NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION
(Region 10—Illinois, Indiana, Michigan, Minnesota, and Wisconsin)

HCN Court System Fee Schedule

- Filing Fees \$50.00*

*With the exception of petitions to register child support orders – this fee remains at \$20.00 as previously ordered by the Supreme Court.

Note: Filing Fee now includes *Summons* fee.

- Filing Fees for *Petitions to Register and Enforce Foreign Judgment/ Order*. \$20.00

Copying \$0.10/per page
Faxing \$0.25/per page (sending and receiving)
Tapes of Hearings \$10.00/per tape
CD of Hearing. \$12.50/per tape
Deposition Videotape \$10.00/per tape
Certified Copies \$0.50/per page
Equipment Rental \$5.00/per hour
Appellate filing fees \$35.00
Admission to Practice \$50.00
Pro Hac Vice Appearance \$35.00

Legal Citation Form

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

Ho-Chunk Nation Constitution

Constitution, Article Number, Section, and Subsection.

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

HCN Const., Art. XI, Sec. (or §) 7.

HCN Ordinances

Ordinance Name, Chapter number, Section/Part/Clause, page.
PERSONNEL POLICIES AND PROCEDURE MANUAL, Ch. 12,
Part B, p. 82.

CLAIMS AGAINST PER CAPITA, Sec. (or §) 6.01(b).

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, CV 99-01 (HCN Tr. Ct., Nov. 1, 1999).

Rules of Civil Procedure

HCN R. Civ. P. 19(B).

