



JANUARY 2005  
VOL. 10, NO. 12

## Inside this Issue

- 1** Traditional Court member, Wallace Blackdeer, passes on
- 2** Attorney General Issues *Opinion* on General Council Resolutions  
Court Announcements
- 4** Updates from Outside Courts
- 6** Recent HCN Court Decisions
- 18** Recent HCN Court Filings
- 20** HCN Court System Judiciary and Staff  
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

## Traditional Court member, Wallace Blackdeer, passes on



**O**n Thursday, December 30, 2004, the Nation lost another beloved elder and member of the Ho-Chunk Nation Traditional Court, Wallace (“Wally”) Blackdeer. Mr. Blackdeer was born on May 4, 1928 in Neilsville, Wisconsin. He was a World War II veteran of the United States Navy and the father of four children. Mr. Blackdeer was also a leader of the Deer Clan and served on the Traditional Court since 2001. Trial Court staff fondly remember Mr. Blackdeer coming to the old Court building for Traditional Court meetings and remarking “it’s a beautiful day” no matter the weather or the mood. The thoughts and prayers of the HCN Judiciary go out to Mr. Blackdeer’s family and friends.

# Attorney General Issues *Opinion* on General Council Resolutions

On December 6, 2004, Ho-Chunk Nation Attorney General Rebecca Weise issued an *Opinion* regarding the resolutions adopted by the General Council at its most recent annual meeting. This *Opinion*, used to determine whether the Legislature can take action on any of the resolutions, regards the constitutionality of the resolutions. Attorney General Weise explained that the General Council has the power to set policy, forward legislative actions to the Legislature for reconsideration, call special elections, remove Legislators, and remove the President. Attorney General Weise further explained that a policy is not a law, and can only be carried out by an enactment of law by the Legislature. Therefore, the policies set forth by the General Council do not take immediate effect.

Those Resolutions which Attorney General Weise deemed to require forwarding to the Secretary of the Interior include: Resolution A (requesting seven Constitutional changes), E (requesting Constitutional changes regarding reapportionment), and N (requesting Constitutional change regarding educational qualifications for members of the Legislature). Attorney General Weise acknowledged that that Resolution C (signature authority limited to enrolled members), Resolution H (tribal-wide health and dental care), part of Resolution S (limiting garnishment of per capita distributions), Resolution X (creating amnesty period for enrolled members to anonymously challenge enrollment of other members), and Resolution GG (retroactive reimbursement of HOP Interest) constitute policy that can be enabled through legislation.

Resolutions F (regarding compact negotiations), Q (limiting Legislative spending), S (limiting garnishments of per capita distributions/immediate effectiveness), T (protecting level of per capita payments), U (rescinding waivers of

sovereign immunity), and W (appropriating funds to the Office of General Council and the General Council Planning Committee) were deemed at least partially outside the scope of the authority of the General Council. Resolution I (support for Lifelong Learning Corporation) was determined to be policy that may not require any further action. Attorney General Weise determined that Resolutions Z (separating removal motions) and CC (removal of Representative Whitewing) were effective upon passage by the General Council. Finally, Attorney General Weise deemed that Resolution EE (removal of L.J. Chamberlain from membership roll) required the Legislature to alter the official roll after certification of compliance with the Membership Code. The other resolutions presented at General Council did not require any action since they were defeated by General Council. For the full text of the Attorney General's *Opinion*, please refer to the Nation's website, [www.ho-chunknation.com](http://www.ho-chunknation.com), and click on "General Council Results."



## COURT ANNOUNCEMENTS

### *Guardian ad litem* April Training

On April 26-27, 2005 the Wisconsin State Bar will host a *Guardian ad litem* ("GAL") training seminar. Those who are interested in becoming a GAL and those who are already serving as GALs and want to obtain further training are encouraged to attend this event. In addition, the Ho-Chunk Nation Judiciary is able to award a limited number of scholarships to attend the state sponsored GAL training seminar to enrolled members or employees of the Ho-Chunk Nation. For more information on becoming a GAL or applying for a training seminar scholarship, contact the Ho-Chunk Nation Trial Court at (715) 284-2722 or (800) 434-4070. More information regarding this specific GAL training event is available online at [www.wisbar.org](http://www.wisbar.org), under the "Marketplace" tab.

## Meet the new Supreme Court Clerk



**Mary Endthoff, HCN Supreme Court Clerk**

**T**he HCN Supreme Court recently hired Mary Endthoff as its new Court Clerk. Mary has been temporarily serving in the position since October 2004. Mary resides in New Lisbon with her husband. Mary also has three daughters and two stepsons. The court staff welcomes Mary into its fold and wishes her a long and happy career with the HCN Judiciary.

## Child Support Establishment and Modification under new Ho-Chunk Nation Code provisions

**I**n October 2004, the Ho-Chunk Nation Legislature enacted legislation authorizing the HCN Trial Court to establish and modify child support. CHILD SUPPORT ENFORCEMENT CODE, 4 HCC § 7 (2004). The CHILD SUPPORT ENFORCEMENT CODE directed the Department of Health and Social Services to establish a Child Support Enforcement Agency. *Id.* at § 7(3a) Among other duties, the Agency is to “prepare a recommendation about the child support and health insurance obligation for each case,” represent the interests of the child in receiving child support in enforcement hearings, and assist the parties in developing an agreed-upon order upon the request of the parties. *Id.* at §§ 7(21b), 7 (32b)(1)(b), 7(26a)(2). In making its child support determination, the Trial Court is to “consider and give great weight to the

recommendation of the Agency, if any.” *Id.* at § 7(25i)(2).

**H**owever, as of the date of publication of this Bulletin, a Child Support Enforcement Agency has not yet been established. Because this Agency is not yet operating, the sections of the Code authorizing the Trial Court to establish and modify child support are, in effect, inoperable. Only upon the establishment of a fully functioning Child Support Enforcement Agency, will the Trial Court be able to establish and modify child support pursuant to the CHILD SUPPORT ENFORCEMENT CODE. Until that time, the Court continues to have authority as to child support only to the extent of enforcing foreign child support orders.

## Guardian ad litem Travel Fees

**P**ursuant to WIS. STAT. § 977.08(4m)(c), attorneys who serve as *Guardians ad litem* (“GALs”) in Wisconsin state courts are paid at reduced rates for time spent in travel related to a case. In an effort to reduce overall expenditures, the Court will begin compensating GALs serving in the Ho-Chunk Nation Courts similarly.

**A**ttorney GALs will continue to be paid \$40.00 per hour for time spent related to a case, excluding travel. The Court will not compensate attorney GALs for travel, except that attorney GALs will be paid \$25 per hour for time spent in travel related to a case, if any portion of the trip is outside the county where the attorney’s office is located or the trip requires traveling more than thirty (30) miles, one way, from the attorney’s office.

**N**on-attorney GALs will continue to be paid \$20.00 per hour for time spent related to a case, excluding travel. Non-attorney GALs will be paid \$12.50 per hour for travel related to a case, if any portion of the trip is outside the county the GAL lives in or the trip requires traveling more than thirty (30) miles, one way, from the GAL’s residence.

All GALs will continue to be compensated for mileage related to a case at \$.375 per mile. The Court requests the cooperation of GALs in this matter, and reminds the GALs to properly itemize time spent in travel on their billing reports. The Court continues to appreciate the efforts of its GALs. This new travel payment system will help to ensure that the Court will be able to engage GALs for years to come.



## UPDATES FROM OUTSIDE COURTS

### **United States Supreme Court**

#### **Petition for Certiorari filed**

*Eastern Shoshone Tribe of the Wind River Reservation v. United States*, 364 F.3d 1339, (Fed. Cir. 2004), *petition for cert. filed*, (U.S., Nov. 24, 2004) (No. 04-731).

*Shenandoah v. Halbriter*, 366 F.3d 89 (2<sup>nd</sup> Cir. 2004), *petition for cert. filed*, (U.S., Dec. 10, 2004) (No. 04-803).

### **District of Columbia Circuit Court of Appeals**

*Cobell v. Norton*, Nos. 03-5262, 04-5084, 2004 U.S. App. LEXIS 25142 (D.C. Cir. Dec. 3, 2004). In *Cobell v. Norton*, 240 F.3d 1081 (D.C. Cir. 2001), the Court of Appeals upheld the district court's holding that the Secretary of the Interior and other defendants breached their fiduciary duties as the trustees of funds held in trust for individual Indians. On remand, the district court entered several preliminary injunctions, one of which required disconnection of the Department of

Interior's ("DOI's") computers from the Internet, due to concerns about the security of individual Indian trust data. The Secretary of the Interior challenged the injunction as an unlawful extension of the district court's authority and as lacking a factual basis.

While the D.C. Circuit Court, over the Secretary's arguments, held that the injunction was not precluded by Pub. L. 108-108 and that the district court's jurisdiction extended to security of the DOI's information technology systems housing or accessing trust data, the Court vacated the injunction. The Court concluded that the district court erred by placing the burden of persuasion on the Secretary, disregarding the DOI's certifications on the state of its information technology security, and failing to hold an evidentiary hearing.

*Cobell v. Norton*, No. 03-5314, 2004 U.S. App. LEXIS 25473 (D.C. Cir. Dec. 10, 2004).

In September 2003, the district court entered an injunction, imposing obligations on the defendants with regard to the management of Individual Indian Money accounts. The district court appointed a court monitor to oversee compliance of the obligations and retained jurisdiction through 2009.

The Circuit Court vacated the district court order's "historical accounting" elements as violating Pub. L. No. 108-108. The Court interpreted Pub. L. No. 108-108 to say that the DOI shall not, under any statute or common law principle, be required to engage in historical accounting in the specified period. The Court vacated the remainder of the district court injunction, aside from the element that DOI complete a trust management plan, as without legal basis. Plaintiffs argued that the legal basis was the ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 500 *et seq.* However, the Court cited the Supreme Court's holdings in *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871 (1990) and *Norton v. S. Utah Wilderness Alliance*, 124 S. Ct. 2373 (2004), which read the ACT as limiting review to attacks on specific agency actions and precluding its use for claims of broad program failure.

## Second Circuit Court of Appeals

*Western Mohegan Tribe & Nation v. Orange County*, No. 04-0449-cv, 2004 U.S. App. LEXIS 26765 (2<sup>nd</sup> Cir. Dec. 23, 2004).

The Western Mohegan Tribe and Nation (“Tribe”) filed suit in district court, alleging that the defendants, the State of New York and its governor, were wrongly in possession of land in the State of New York, in violation of federal common law and the INDIAN TRADE AND INTERCOURSE ACT, 25 U.S.C. § 177. The district court granted the defendants’ motion to dismiss based upon Eleventh Amendment sovereign immunity.

On appeal, the Tribe argued that it could bring suit against the Governor in his official capacity under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908). The Tribe argued that because it alleged ongoing violations of federal law by the State’s retention of the lands, and because it sought only prospective injunctive relief, the case fell within the *Ex parte Young* exception. However, the Second Circuit Court held that the Supreme Court decision in *Idaho v. Coeur d’Alene Tribe of Idaho* directly controlled. 521 U.S. 261 (1997). In *Coeur d’Alene*, the Supreme Court held that the Eleventh Amendment barred suit by a tribe seeking prospective injunctive relief against state officials, where the suit sought a declaration of the tribe’s entitlement to the exclusive use, occupancy, and right to quiet enjoyment of certain lands claimed by the State of Idaho. Finding that the relief requested by the Tribe was the functional equivalent of a quiet title action, as in *Coeur d’Alene*, the Second Circuit Court affirmed the district court’s judgment that the Eleventh Amendment barred the Tribe’s suit.

## Ninth Circuit Court of Appeals

*United States v. Anderson*, No. 03-10516, 2004 U.S. App. LEXIS 25777 (9<sup>th</sup> Cir. Dec. 14, 2004).

Anderson, a member and former chairperson of the Robinson Rancheria Band of Pomo Indians, was convicted of theft and conspiring to commit theft after a jury trial in federal district court. Anderson’s convictions arose out of violations of 18 U.S.C. §§ 371 and 1163. On appeal, the Ninth Circuit Court faced the issue of whether PUBLIC LAW 280, 18

U.S.C. § 1162, granted the State of California exclusive jurisdiction over all crimes committed in Indian country within its borders, thereby depriving the federal district court jurisdiction. Anderson also argued that § 1163 offended the Indian Commerce Clause and could not be applied to Indians.

The Circuit Court held that PUBLIC LAW 280 does not give states exclusive jurisdiction over offenses that arise under federal laws of general applicability. The Court held further that neither § 371 nor § 1163 has location as an element, therefore they are not enclave laws, but rather are laws of nationwide applicability that are unaffected by Public Law 280’s grant of jurisdiction to the State of California. The Court also held that § 1163 applies to tribal members, and that applying § 1163 does not exceed congressional power under the Commerce Clause. The Court concluded that the district court had jurisdiction and affirmed the convictions.

*Kesser v. Cambra*, No. 02-15475, 2004 U.S. App. LEXIS 26105 (9<sup>th</sup> Cir. Dec. 16, 2004).

At the trial level in state court, the prosecutor used peremptory challenges to strike all three Native American members of the venire. The prosecutor offered race-neutral reasons for striking two of the veniremembers and both race-neutral and race-based reasons for striking the third veniremember. Under the test established by the Supreme Court in *Batson v. Kentucky*, 476 U.S. 79 (1986), when challenging a prosecutor’s use of peremptory challenges against members of a cognizable group, the defendant must first make a prima facie showing that a peremptory challenge was exercised on the basis of race. The prosecutor must then offer race-neutral bases for striking the juror in question. Finally, the trial court must determine whether the defendant has shown purposeful discrimination. *Id.* at 96-98.

The state court overruled the defendant’s *Batson* objection and the California Court of Appeals affirmed. The defendant filed a petition for writ of habeas corpus in federal district court. The district court denied the petition and the defendant appealed. The petitioner argued that as to the third veniremember, the prosecutor’s single race-based reason for challenging her violating the Equal

Protection clause. However, the Ninth Circuit Court of Appeals upheld the district court's denial of a habeas writ.

Under the ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT ("AEDPA"), the federal court must give deference to the state court's adjudication of a claim. 28 U.S.C. § 2254(d)(1). A habeas petition may only be granted if the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court." The Court held that, given the overwhelming precedent by the circuit courts endorsing mixed motive analysis, the state appellate court did not "unreasonably apply" federal law in allowing the prosecutor's mixed motives in challenging the three Native American members of the venire.

The Court also had to determine whether the California appellate court's finding that the petitioner failed to carry his burden of proving purposeful discrimination "was based on an unreasonable determination of the facts." 28 U.S.C. § 2254(e)(1). The Court concluded that on appeal the petitioner failed to present clear and convincing evidence to persuade the Court that the state court's finding was incorrect. Therefore, the Court affirmed the district court's denial of a writ of habeas corpus.

## Tenth Circuit Court of Appeals

*Comanche Indian Tribe of Okla. v. 49, L.L.C.*, No. 03-6167, 2004 U.S. App. LEXIS 25281 (10<sup>th</sup> Cir. Dec. 9, 2004).

The Comanche Indian Tribe of Oklahoma ("Tribe") entered into a series of contracts with 49, L.L.C. ("49"), concerning the lease of gaming machines to the Tribe and a loan from 49 to the Tribe. A dispute arose between the parties and 49 submitted a demand for arbitration, pursuant to the arbitration clause contained within the contracts. The Tribe moved to dismiss the demand for arbitration, arguing that it had not effectively waived its sovereign immunity. The Tribe also filed suit in federal court, seeking an order prohibiting the arbitration panel from exercising jurisdiction. The district court granted 49's motion to stay the proceedings and compel arbitration.

The Tenth Circuit Court dismissed the Tribe's appeal for lack of jurisdiction under the FEDERAL ARBITRATION ACT ("FAA"), 9 U.S.C. § 1 *et seq.* Section 16(a)(3) of the Act provides that a party may appeal a "final decision with respect to an arbitration." Under § 16(b)(1), however, "an appeal may not be taken from an interlocutory order granting a stay of any action under section 3." The Court held that since the district court did not enter a final decision on the merits, but rather merely stayed the proceedings and compelled arbitration, the Tribe could not yet appeal the district court's order.



---

## 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 30, 2004**

*Lucy K. Snake v. Roger Dean Snake*, CV 97-01 *Order (Ceasing Child Support Withholding and Intent to Close)* (HCN Tr. Ct., Nov. 30, 2004). (Matha, T).

The petitioner filed a motion requesting that the Court cease child support withholding from the respondent's per capita distributions. The respondent failed to respond within the specified time frame. The Court granted the motion.

### **DECEMBER 1, 2004**

*Tara Gabl v. Jesse Snowball*, CS 04-58 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Dec. 1, 2004). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified time frame. The Court granted the petitioner's request for recognition and enforcement.

*Lisa (Clark) Heidtke v. Craig A. Danks*, CS 04-57 *Order (Default Judgment for Child Support Deduction from Wages)* (HCN Tr. Ct., Dec. 1, 2004). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner's request for recognition and enforcement.

*State of Wisconsin/Juneau Co. v. Bridget A. Whipple*, CS 04-55 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Dec. 1, 2004). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified time frame. The Court granted the petitioner's request for recognition and enforcement.

*Nadine C. Thundercloud (Decorah) v. Ashley J. Decorah*, CS 02-38 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Dec. 1, 2004). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to amend child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified time frame. The Court granted the motion.



### **DECEMBER 6, 2004**

*State of Wisconsin/Jackson Co. v. Garrett C. Decorah*, CS 03-36 *Order (Enforcing Arrearage Withholding)* (HCN Tr. Ct., Dec. 6, 2004). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to enforce child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified time frame. The Court granted the motion.

*Morgan White v. Sky C. Sparks*, CS 04-40 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Dec. 6, 2004). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified time frame. The Court granted the petitioner's request for recognition and enforcement.

*Casey Whitegull v. Harriet M. Whitegull*, CV 97-61 *Order (Ceasing Withholding Child Support Arrears)* (HCN Tr. Ct., Dec. 6, 2004). (Matha, T).

The petitioner filed a motion requesting that the Court cease withholding from the respondent's per capita distributions for child support arrears. The respondent failed to respond within the specified time frame. The Court granted the motion.

**DECEMBER 7, 2004**

*Samantha Casarez v. Edward C. Decorah*, CS 00-36 *Order (Modifying & Enforcing Child Support)* (HCN Tr. Ct., Dec. 7, 2004). (Matha, T).

The petitioner filed a motion requesting modification of current child support withholding with a certified copy of the modified foreign support order. The respondent failed to respond within the specified time frame. The Court granted the motion.

*Kelli O'Connor v. Domonic D. Bell*, CS 02-12; *Nicky L. Woolhouse v. Domonic D. Bell*, CS 00-28 *Order (Modifying & Enforcing Child Support)* (HCN Tr. Ct., Dec. 7, 2004). (Matha, T).

The petitioner filed a motion requesting modification of current child support withholding with a certified copy of the modified foreign support order and a certified copy of a payment history. The respondent failed to respond within the specified time frame. The Court granted the motion.

**DECEMBER 8, 2004**

*Oliva M. Fox v. Charles V. Fox*, CS 04-02 *Order (Default Judgment for Child Support Deduction from Wages)* (HCN Tr. Ct., Dec. 8, 2004). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's wages. The respondent failed to respond within the specified time frame. The Court granted the petitioner's request for recognition and enforcement.

*Rebecca Rave v. Andrew S. Rave*, CS 02-57 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Dec. 8, 2004). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to amend child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified time frame. The Court granted the motion.

*State of Wisconsin/Jackson Co. in re: Roberta J. Yellowcloud v. Donald Lee Yellowcloud*, CS 98-01 *Order (Enforcing Arrearage Withholding)* (HCN Tr. Ct., Dec. 8, 2004). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to enforce child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified time frame. The Court granted the motion.

*Tris Yellowcloud v. Jeffrey A. Link*, CV 97-07; *Charlene Smolinski v. Jeffrey A. Link*, CV 97-34 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Dec. 8, 2004). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to amend child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified time frame. The Court granted the motion.

**DECEMBER 10, 2004**

*County of Pine & Naomie J. Harris v. Terry L. Gourd*, CS 03-26 *Order (Enforcing Arrearage Withholding)* (HCN Tr. Ct., Dec. 10, 2004). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to enforce child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified time frame. The Court granted the motion.

*State of Wisconsin & Christie-Ann Flick v. Orin White Eagle*, CV 96-56 *Order (Enforcing Arrearage Withholding)* (HCN Tr. Ct., Dec. 10, 2004). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to enforce child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified time frame. The Court granted the motion.

**DECEMBER 13, 2004**

*State of Wisconsin/Jackson Co. v. Robert Orozco*, CS 02-18 Order (Renewing Child Support Withholding) (HCN Tr. Ct., Dec. 13, 2004). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to renew current child support withholding with a certified copy of the modified foreign judgment. The respondent failed to respond within the specified time frame. The Court granted the motion.

**DECEMBER 16, 2004**

*State of Wisconsin/Sauk Co. & Victoria Blackcoon v. John S. Cloud*, CS 98-34 Order (Granting Telephonic Appearance) (HCN Tr. Ct., Dec. 16, 2004). (Matha, T).

The Court's granted the party's request to appear by telephone at the *Motion Hearing*.



**DECEMBER 20, 2004**

*Rosemarie C. Funmaker v. Dennis Funmaker*, CV 97-63 Notice (Child Turning 18 – Requiring Proof of Enrollment) (HCN Tr. Ct., Dec. 20, 2004). (Bossman, W).

The minor child turned eighteen (18) years of age. In accordance with state law, the respondent's obligation ends when the child turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

*Barbara J. Kelly v. Vance E. Fontenelle, Jr.*, CS 98-72 Notice (Child Turning 18 – Requiring Proof of Enrollment) (HCN Tr. Ct., Dec. 20, 2004). (Bossman, W).

The minor child turned eighteen (18) years of age. In accordance with state law, the respondent's obligation ends when the child turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

*Neil T. McAndrew v. Lisa Miner McAndrew*, CV 97-14 Notice (Child Turning 18 – Requiring Proof of Enrollment) (HCN Tr. Ct., Dec. 20, 2004). (Bossman, W).

The minor child turned eighteen (18) years of age. In accordance with state law, the respondent's obligation ends when the child turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

*State of Wisconsin/Jackson Co. & Eunice G. Wamego v. Edward Troy Decorah*, CV 96-83 Notice (Child Turning 18 – Requiring Proof of Enrollment) (HCN Tr. Ct., Dec. 20, 2004). (Bossman, W).

The minor child turned eighteen (18) years of age. In accordance with state law, the respondent's obligation ends when the child turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

**DECEMBER 21, 2004**

*Jan C. LaCount v. Curtis J. Pidgeon*, CS 03-11 Order (Updating Arrearage Withholding) (HCN Tr. Ct., Dec. 21, 2004). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to amend child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified time frame. The Court granted the motion.

*State of Wisconsin/Sauk Co. & Victoria Blackcoon v. John S. Cloud*, CS 98-34 Order (Denying Post-Judgment Motion) (HCN Tr. Ct., Dec. 21, 2004). (Matha, T).

The Court convened a *Motion Hearing* in response to the respondent's post-judgment motion, alleging a violation of due process within the underlying foreign court proceeding. The respondent failed to appear at the hearing. The Court granted a judgment against the respondent and upheld the previous court order.

#### **DECEMBER 23, 2004**

*Jesus Gonzalez v. Jill M. Gonzalez*, CS 04-66 *Order (Enforcing Child Support)* (HCN Tr. Ct., Dec. 23, 2004). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent filed a motion, denoting her acquiescence. The Court granted the petitioner's request for recognition and enforcement.

#### **DECEMBER 28, 2004**

*Melissa A. Smith v. Paul C. Smith*, CV 96-79 *Notice (Intent to Close)* (HCN Tr. Ct., Dec. 28, 2004). (Matha, T).

The Court informed the parties of its intent to close the file.

### **Civil Garnishment**

#### **DECEMBER 1, 2004**

*Alliance Collection Agencies, Inc. v. James L. Schier*, CG 04-115 *Order (Default Judgment)* (HCN Tr. Ct., Dec. 1, 2004). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Discover Fin. Servs., Inc. v. Jeremy Wayne Bagnowski*, CG 04-110 *Order (Default Judgment)* (HCN Tr. Ct., Dec. 1, 2004). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Franciscan Skemp Healthcare v. Luann Littlegeorge*, CG 04-111 *Order (Default Judgment)* (HCN Tr. Ct., Dec. 1, 2004). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Platinum Fin. Servs., Inc. v. Michelle L. Hazuga a/k/a Michelle Ingersoll*, CG 04-105 *Order (Default Judgment)* (HCN Tr. Ct., Dec. 1, 2004). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

#### **DECEMBER 8, 2004**

*Alliance Collection Agencies, Inc. v. Laurie Krutke*, CG 04-131 *Order (Default Judgment)* (HCN Tr. Ct., Dec. 8, 2004). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.



#### **DECEMBER 14, 2004**

*Calvary Investments, LLC v. Debbie Pettibone*, CG 04-119 *Order (Default Judgment)* (HCN Tr. Ct., Dec. 14, 2004). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Larry Richardson v. Kimberly Lynn Kuhn*, CG 04-130 *Order (Petition Granted)* (HCN Tr. Ct., Dec. 14, 2004). (Matha, T).

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent filed a timely response, but failed to provide a cognizable objection to the action. The Court granted the petitioner's request for recognition and enforcement.

**DECEMBER 15, 2004**

*Credit Recovery Serv., LLC, agent for Carroll Prop. Mgmt., LLC v. Diana Blackhawk*, CG 04-129 *Order (Default Judgment)* (HCN Tr. Ct., Dec. 15, 2004). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Discover Bank by its Servicing Agent v. Jaime Syens*, CG 04-87 *Order (Granting Sixty Days to Achieve Service)* (HCN Tr. Ct., Dec. 15, 2004). (Bossman, W).

The Court has been unable to provide the respondent service of process. The Court granted a sixty (60) day extension so that the Court may achieve service of process upon the respondent.

*Philip Prahl v. William Brown*, CG 04-116 *Order (Default Judgment)* (HCN Tr. Ct., Dec. 15, 2004). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**DECEMBER 17, 2004**

*Gundersen Lutheran Clinic v. Melissa Dockerty*, CG 04-133 *Order (Default Judgment)* (HCN Tr. Ct., Dec. 17, 2004). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*State Collection Service v. Lori Littlegeorge*, CG 04-123 *Order (Enforcing Judgment)* (HCN Tr. Ct., Dec. 17, 2004). (Bossman, W).

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent failed to provide a cognizable objection to the action. The Court granted the petitioner's request for recognition and enforcement.

**DECEMBER 21, 2004**

*Alliance Collection Agencies, Inc. v. Donna R. Pabst*, CG 04-53 *Order (Modifying Garnishment)* (HCN Tr. Ct., Dec. 21, 2004). (Matha, T).

The Court previously recognized and enforced a foreign civil judgment against the respondent's wages. The petitioner filed a motion to amend garnishment, requesting accrued interest until the debt obligation is paid in full. The respondent failed to respond within the specified time frame. The Court granted the uncontested motion.

*Liberty Credit Servs., Inc. v. Frederick Sass*, CG 04-134 *Order (Granting Special Appearance)* (HCN Tr. Ct., Dec. 21, 2004). (Bossman, W).

The Court granted the petitioner's *Motion to Appear Pro Hac Vice*.

**DECEMBER 22, 2004**

*Homeowners Fin. Serv. v. Harry Terwall & Tammie Terwall*, CG 04-125 *Order (Default Judgment)* (HCN Tr. Ct., Dec. 22, 2004). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**DECEMBER 30, 2004**

*Creditor Recovery Servs., LLC v. Thomas P. Weigel*, CG 04-71 *Order (Default Judgment)* (HCN Tr. Ct., Dec. 30, 2004). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**Civil Cases****BUDGET PROCESS & APPROPRIATIONS ACT****NOVEMBER 17, 2004**

*HCN Legislature v. George Lewis*, CV 04-73 *Scheduling Order* (HCN Tr. Ct., Nov. 17, 2004). (Bossman, W).

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

## **CHILDREN'S TRUST FUND (CTF)**

### **DECEMBER 6, 2004**

*In the Interest of Minor Child: J.L.G., DOB 07/24/92, by Willa RedCloud v. HCN Office of Tribal Enrollment, CV 04-101 Order (Petition Granted) (HCN Tr. Ct., Dec. 6, 2004). (Matha, T).*  
The Court had to determine whether the temporary guardian could access CTF monies on behalf of the minor child for costs associated with orthodontics and eyewear. The Court granted the request.

*In the Interest of Minor Child: M.W., DOB 07/09/95, by Melody Whiteagle-Fintak v. HCN Office of Tribal Enrollment, CV 04-83 Order (Requesting Respondent's Recommendations) (HCN Tr. Ct., Dec. 6, 2004). (Matha, T).*

The Court previously conditionally granted the petitioner's request, provided that the petitioner submit the proper documentation to the Court. Both Ho-Chunk Nation and federal law impose the condition of necessity pertaining to expenditures concerning a child's welfare. The Court requested the assistance of the policy-making branch of government in erecting reasonable guidelines for use in this, and other, CTF cases.



### **DECEMBER 7, 2004**

*In the Interest of Minor Child: C.B., DOB 02/09/88, by Corinna M. Climer v. HCN Office of Tribal Enrollment, CV 04-61 Order (Requesting Accounting) (HCN Tr. Ct., Dec. 7, 2004). (Matha, T).*

The Court requested that the petitioner submit the required accounting.

*In the Interest of Minor Child: D.W.B., DOB 09/13/89, by Corinna M. Climer v. HCN Office of Tribal Enrollment, CV 04-68 Order (Requesting Accounting) (HCN Tr. Ct., Dec. 7, 2004). (Matha, T).*

The Court requested that the petitioner submit the required accounting.

*In the Interest of Minor Child: K.B., DOB 07/16/92, by Corinna M. Climer v. HCN Office of Tribal Enrollment, CV 04-67 Order (Requesting Accounting) (HCN Tr. Ct., Dec. 7, 2004). (Matha, T).*

The Court requested that the petitioner submit the required accounting.

*In the Interest of Minor Child: K.R.D., DOB 02/06/87, by Karena M. Nichols v. HCN Office of Tribal Enrollment, CV 04-62 Order (Requesting Accounting) (HCN Tr. Ct., Dec. 7, 2004). (Matha, T).*

The Court requested that the petitioner submit the required accounting.

*In the Interest of Minor Child: T.L.M., DOB 04/10/94, by Sherry McKinley v. HCN Office of Tribal Enrollment, CV 04-23 Order (Requesting Accounting) (HCN Tr. Ct., Dec. 7, 2004). (Matha, T).*

The Court requested that the petitioner submit the required accounting.

### **DECEMBER 8, 2004**

*In the Interest of Minor Child: V.B., DOB 02/15/92, by April Daniels v. HCN Office of Tribal Enrollment, CV 02-113 Order (Requesting Accounting) (HCN Tr. Ct., Dec. 8, 2004). (Matha, T).*

The Court requested that the petitioner submit the required accounting.

*In the Interest of Minor Child: L.C., DOB 10/29/88, by Phyllis Smoke v. HCN Office of Tribal Enrollment, CV 04-54 Order (Requesting Accounting) (HCN Tr. Ct., Dec. 8, 2004). (Matha, T).*

The Court requested that the petitioner submit the required accounting.

*In the Interest of Minor Child: K.R.R., DOB 10/08/88, by Samuel Rodriguez v. HCN Office of Tribal Enrollment, CV 04-64 Order (Requesting Accounting) (HCN Tr. Ct., Dec. 8, 2004). (Matha, T).*

The Court requested that the petitioner submit the required accounting.

*In the Interest of Minor Child: N.L.S., DOB 02/15/92, by Jennifer L. White Eagle v. HCN Office of Tribal Enrollment, CV 04-26 Order (Requesting Accounting) (HCN Tr. Ct., Dec. 8, 2004). (Matha, T).*

The Court requested that the petitioner submit the required accounting.

**DECEMBER 9, 2004**

*In the Interest of Minor Child: J.E.M., DOB 07/13/91, by Tina L. Boisen v. HCN Office of Tribal Enrollment, CV 04-44 Order (Requesting Accounting) (HCN Tr. Ct., Dec. 9, 2004). (Bossman, W).*

The Court requested that the petitioner submit the required accounting.

*In the Interest of Minor Child: N.K.M., DOB 08/13/93, by Angela Cox v. HCN Office of Tribal Enrollment, CV 01-73 Order (Dismissal Without Prejudice) (HCN Tr. Ct., Dec. 9, 2004). (Bossman, W).*

The Court informed the parties of its intent to dismiss the instant matter in thirty (30) days since there has been no filing or other activity on the record for a period of time exceeding six (6) months.

*Manuel Ramirez, DOB 01/28/84 v. HCN Office of Tribal Enrollment, CV 04-65 Order (Dismissal Without Prejudice) (HCN Tr. Ct., Dec. 9, 2004). (Bossman, W).*

The Court informed the parties of its intent to dismiss the instant matter in thirty (30) days for failure of the petitioner to substantially comply with an order of the Court.

**DECEMBER 10, 2004**

*In the Interest of Minor Child: R.W., DOB 11/07/94, by Lana Greengrass v. HCN Office of Tribal Enrollment, CV 04-17 Order (Requesting Accounting) (HCN Tr. Ct., Dec. 10, 2004). (Matha, T).*

The Court requested that the petitioner submit the required accounting.

**DECEMBER 13, 2004**

*In the Interest of Minor Child: L.B.A.K., DOB 07/22/87, by Melissa Buffalohead-Johnson v. HCN Office of Tribal Enrollment, CV 04-104 Order (Petition Granted) (HCN Tr. Ct., Dec. 13, 2004). (Matha, T).*

The Court had to determine whether the temporary guardian could access CTF monies on behalf of the minor child for costs associated with eyewear and orthodontic procedures. The Court granted the request.

*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 Order (Show Cause) (HCN Tr. Ct., Dec. 13, 2004). (Matha, T).*

The Court previously released funds from the CTF account of a minor child for costs associated with professional tutoring programs. The petitioner failed to submit an accounting confirming the specified use of the funds within the specified timeframe. The Court ordered a *Show Cause Hearing* to allow the petitioner the opportunity to explain why the Court should not hold her in contempt of court.

**DECEMBER 15, 2004**

*In the Interest of Minor Children: Z.A.W., DOB 07/28/91 & S.J.W., DOB 11/15/99, by Rita J. Wolf v. HCN Office of Tribal Enrollment, CV 04-10 Order (Accepting Accounting) (HCN Tr. Ct., Dec. 15, 2004). (Matha, T).*

The Court previously released funds from the CTF account of a minor child for costs associated with orthodontic procedures. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

**DECEMBER 16, 2004**

*In the Interest of Minor Children: M.W., DOB 07/09/95, by Melody Whiteagle-Fintak v. HCN Office of Tribal Enrollment, CV 04-83 Order (Partial Granting of Petition) (HCN Tr. Ct., Dec. 16, 2004). (Matha, T).*

The Court had to determine whether the temporary guardian could access CTF monies on behalf of the minor child for costs associated with the purchase of clothing and a washer and dryer. The Court previously requested that the respondent provide the

Court with suggested guidelines for use in such cases, as well as a recommendation. The Court granted the petitioner's clothing request. In addition, the Court authorized the release of funds for a washer and dryer, provided that the petitioner submit a revised purchase order for a washer and dryer in a more moderate price range. The Court denied the petitioner's request for clothing from an on-line retailer, since the items of clothing did not constitute necessities.

#### **DECEMBER 17, 2004**

*In the Interest of Minor Child: J.L.G., DOB 07/24/92, by Willa RedCloud v. HCN Office of Tribal Enrollment, CV 04-101 Order (Motion Granted) (HCN Tr. Ct., Dec. 17, 2004). (Matha, T).*

The Court previously released funds from the CTF account of a minor child for costs associated with orthodontic procedures. The petitioner filed a motion requesting the further release of CTF funds, due to a billing oversight. The Court granted the uncontested motion.

#### **DECEMBER 20, 2004**

*In the Interest of Minor Child: L.C., DOB 10/29/88, by Phyllis Smoke v. HCN Office of Tribal Enrollment, CV 04-54 Order (Accepting Accounting) (HCN Tr. Ct., Dec. 20, 2004). (Matha, T).*

The Court previously released funds from the CTF account of a minor child for costs associated with orthodontic procedures. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

*In the Interest of Minor Child: S.D., DOB 07/09/91, by Karena Nichols v. HCN Office of Tribal Enrollment, CV 04-87 Order (Requesting Accounting) (HCN Tr. Ct., Dec. 20, 2004). (Bossman, W).*

The Court requested that the petitioner submit the required accounting.



#### **DECEMBER 23, 2004**

*In the Interest of Minor Child: K.R.D., DOB 02/06/87, by Karena Nichols v. HCN Office of Tribal Enrollment, CV 04-62 Order (Accepting Accounting) (HCN Tr. Ct., Dec. 23, 2004). (Matha, T).*

The Court previously released funds from the CTF account of a minor child for costs associated with the purchase of a lap top computer and attendance at college. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

*In the Interest of Minor Child: E.T.H., DOB 12/19/91, by Karen L. Snow v. HCN Office of Tribal Enrollment, CV 04-106 Order (Petition Granted) (HCN Tr. Ct., Dec. 23, 2004). (Matha, T).*

The Court had to determine whether the temporary guardian could access CTF monies on behalf of the minor child for costs associated with eyewear and orthodontic procedures. The Court granted the request.

#### **DEBTS TO THE NATION**

##### **DECEMBER 15, 2004**

*HCN Heath & Soc. Servs. and Ho-Chunk Nation v. Sterling Greenwood & Roseann Mann a/k/a Roseann Mann Greenwood, CV 04-47 Order (Partial Default Judgment) (HCN Tr. Ct., Dec. 15, 2004). (Matha, T).*

The defendants failed to answer the *Amended Complaint* despite proper service of process. The Court granted a default judgment against the defendants. However, the Court granted only that relief requested by the plaintiffs that is permissible under the laws of the HCN.

#### **EMPLOYMENT**

##### **DECEMBER 1, 2004**

*Renee Rhoades-Lembcke v. Elethe Nichols, Hattie Walker, Betty Funmaker, Toni McDonald & George Lewis, CV 04-74 Stipulation & Order for Settlement & Dismissal (HCN Tr. Ct., Dec. 1, 2004). (Bossman, W).*

The parties agreed to settle the case pursuant to a settlement agreement and incorporated terms. The Court approved the agreement and dismissed the case.

#### **DECEMBER 2, 2004**

*Elizabeth Deer v. Annette Littlewolf, In her Individual and Official Capacity*, CV 04-75 *Scheduling Order* (HCN Tr. Ct., Dec. 2, 2004). (Bossman, W).

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

*Elizabeth Deer v. Willard Lonetree, Individually and in his Official Capacity, Monty Green, Individually and in his Official Capacity, HCN Pers. Dep't. and Ho-Chunk Nation*, CV 04-76 *Scheduling Order* (HCN Tr. Ct., Dec. 2, 2004). (Bossman, W).

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

*Sherry M. Fitzpatrick v. Ho-Chunk Nation, HCN Bus. Dep't., HCN Dep't of Pers., Majestic Pines Bingo & Casino, Mary Whitegull, Jonette Pettibone, Ida Carrier & James T. Webster*, CV 04-82 *Scheduling Order* (HCN Tr. Ct., Dec. 2, 2004). (Matha, T).

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

*Kristen K. WhiteEagle v. Ho-Chunk Casino & Ho-Chunk Nation*, CV 04-97 *Scheduling Order* (HCN Tr. Ct., Dec. 2, 2004). (Matha, T).

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

#### **DECEMBER 6, 2004**

*Kathy Dlask v. Ho-Chunk Casino*, CV 04-60 *Order (Granting Motion to Dismiss)* (HCN Tr. Ct., Dec. 6, 2004). (Bossman, W).

The Court had to determine whether to grant the defendant's *Motion to Dismiss*. The Court concluded that the plaintiff did not file her *Complaint* within the timeframe provided in the HCN PERSONNEL POLICIES AND PROCEDURES MANUAL and in the HCN STATUTE OF LIMITATIONS. The Court granted the defendant's *Motion to Dismiss*.

*Kathy Dlask v. Ho-Chunk Casino & Steve Anderson*, CV 04-60 *Order (Granting Motion to Dismiss)* (HCN Tr. Ct., Dec. 6, 2004). (Bossman, W).

The Court had to determine whether to grant defendants' *Motion to Dismiss*. The Court concluded that the plaintiff did not file her *Complaint* within the timeframe provided in the HCN PERSONNEL POLICIES AND PROCEDURES MANUAL and in the HCN STATUTE OF LIMITATIONS. The Court also concluded that the doctrine of *respondeat superior* did not apply. The Court granted the defendants' *Motion to Dismiss*.

#### **DECEMBER 7, 2004**

*Rita Annette Brown v. Toni McDonald, HCN Dep't of Pers., James Webster, HCN Bus. Dep't*, CV 04-91 *Scheduling Order* (HCN Tr. Ct., Dec. 7, 2004). (Bossman, W).

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

#### **DECEMBER 21, 2004**

*Joyce L. Warner v. Ona Garvin, Dir. of Gaming & James Webster, Dir. of Bus.*, CV 04-72 *Order (Motion Hearing)* (HCN Tr. Ct., Dec. 21, 2004). (Bossman, W).

The plaintiff filed a motion requesting summary judgment. The Court scheduled a *Motion Hearing* in order to address the matter.

#### **DECEMBER 28, 2004**

*Joyce L. Warner v. Ona Garvin, Dir. of Gaming & James Webster, Dir. of Bus.*, CV 04-72 *Order (Denying Motion for Continuance)* (HCN Tr. Ct., Dec. 28, 2004). (Bossman, W).

The plaintiff requested a continuance of the *Motion Hearing*. The Court denied the plaintiff's request.



### **ENROLLMENT**

#### **DECEMBER 23, 2004**

*Sarita White v. HCN Office of Tribal Enrolment*, CV 04-58 *Order (Motion Hearing)* (HCN Tr. Ct., Dec. 23, 2004). (Bossman, W).

The plaintiff filed a motion requesting summary judgment. The Court scheduled a *Motion Hearing* in order to address the matter.

## **INCOMPETENT TRUST FUND (ITF)**

### **DECEMBER 17, 2004**

*In re: Bruce Patrick O'Brien, by Elethe Nichols v. HCN Office of Tribal Enrollment, CV 96-46 Order (Accepting Accounting in Part)* (HCN Tr. Ct., Dec. 17, 2004). (Bossman, W).

The Court previously released funds from the ITF account of an adult incompetent for various expenses. The petitioner submitted a payment history statement, confirming proper use of a portion the funds. The Court accepted this accounting. The Court requested accounting as to the remaining funds.

### **DECEMBER 21, 2004**

*In the Interest of Adult Incompetent: Oliver S. Rockman, CV 97-117 Order (Granting Release of Per Capita Funds)* (HCN Tr. Ct., Dec. 21, 2004). (Bossman, W).

The Court had to determine whether the protective payee could access ITF monies on behalf of the ward for costs associated with family Christmas gifts. The Court granted the request.

## **Juvenile**

### **DECEMBER 2, 2004**

*In the Interest of Minor Children: R.B., DOB 06/23/95; J.V., DOB 09/03/99; S.V., DOB 10/22/98, JV 02-18-20 Order (Child Protection Review Hearing)* (HCN Tr. Ct., Dec. 2, 2004). (Bossman, W).

The Court conducted a *Child Protection Review Hearing*. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo.

*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 03-20-23 Order (Child Protection Review Hearing)* (HCN Tr. Ct., Dec. 2, 2004). (Matha, T).

The Court conducted a *Child Protection Review Hearing*. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo.

### **DECEMBER 3, 2004**

*In the Interest of Minor Child: D.P.S., DOB 12/12/88, JV 02-14 Order (Dispositional Requirements)* (HCN Tr. Ct., Dec. 3, 2004). (Bossman, W).

The Court conducted a *Dispositional Hearing*. The court had to assess the extent and scope of the dispositional recommendations proposed by CFS. The dispositions contained within the order hopefully will serve to reunify the family.

### **DECEMBER 6, 2004**

*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 (Appointment of Guardian Ad Litem)* (HCN Tr. Ct., Dec. 6, 2004). (Bossman, W).

The Court appointed a GAL in this matter.

*In the Interest of Minor Children: V.L.P., DOB 03/03/88; R.K.P., DOB 11/09/89, JV 04-35-36 Order (Submission of Traditional Relatives List)* (HCN Tr. Ct., Dec. 6, 2004). (Bossman, W).

The Court ordered CFS to prepare and submit a list of the minor children's traditional relatives.

### **DECEMBER 7, 2004**

*In the Interest of Minor Children: R.B., DOB 06/23/95; J.V., DOB 09/03/99; S.V., DOB 10/22/98, JV 02-18-20 Order (Appointment of Guardian Ad Litem)* (HCN Tr. Ct., Dec. 7, 2004). (Bossman, W).

The court appointed a GAL in this matter.

*In the Interest of Minor Child: L.R.L., DOB 11/01/02, JV 04-20 Order (Granting Telephonic Appearance)* (HCN Tr. Ct., Dec. 7, 2004). (Matha, T).

The Court's granted the party's request to appear by telephone at the *Child Protection Review/Dispositional Hearing*.

### **DECEMBER 10, 2004**

*In the Interest of Minor Child: D.D.F., DOB 07/08/94, JV 04-28 Order (Granting Emergency Temporary Legal/Physical Custody)* (HCN Tr. Ct., Dec. 10, 2004). (Bossman, W).

The Court had to determine whether to grant emergency temporary legal and physical custody of the minor children. The Court granted custody "as

necessary to ensure the safety of children within the Hocak community.”

*In the Interest of Minor Child: K.L.H., DOB 10/21/88, 92 CU 13, JV 03-35 Order (Appointment of Permanent Guardian) (HCN Tr. Ct., Dec. 10, 2004). (Matha, T).*

The Court had to determine whether to appoint a permanent guardian of the minor child. The Court deemed the appointment to be within the minor child’s best interests.

**DECEMBER 14, 2004**

*In the Interest of Minor Children: A.A.G., DOB 11/13/92; B.G., Jr., DOB 05/12/96, JV 04-33-34 Order (Appointment of Guardian Ad Litem) (HCN Tr. Ct., Dec. 14, 2004). (Matha, T).*

The Court appointed a GAL in this matter.

*In the Interest of Minor Children: V.L.P., DOB 03/03/88; R.K.P., DOB 11/09/89, JV 04-35-36 Order (Appointment of Guardian Ad Litem) (HCN Tr. Ct., Dec. 14, 2004). (Matha, T).*

The Court appointed a GAL in this matter.

**DECEMBER 15, 2004**

*In the Interest of Minor Child: D.D.F., DOB 07/08/94, JV 04-28 Order (Granting Telephonic Appearance) (HCN Tr. Ct., Dec. 15, 2004). (Bossman, W).*

The Court’s granted the party’s request to appear by telephone at the *Initial Emergency Hearing*.



*In the Interest of Minor Children: C.L., DOB 04/25/98; C.D., DOB 09/19/01; L.R.L., DOB 11/02/02, JV 04-30-31-20 Order (Establishment & Modification of Dispositional Requirements) (HCN Tr. Ct., Dec. 15, 2004). (Matha, T).*

The Court conducted a *Dispositional Hearing*. The court had to assess the extent and scope of the dispositional recommendations proposed by CFS. The dispositions contained within the order hopefully will serve to reunify the family.

**DECEMBER 16, 2004**

*In the Interest of Minor Child: M.T.G., DOB 10/05/04, JV 04-38 Order (Granting Emergency Temporary Legal/Physical Custody) (HCN Tr. Ct., Dec. 16, 2004). (Matha, T).*

The Court had to determine whether to grant emergency temporary legal and physical custody of the minor child. The Court granted custody “as necessary to ensure the safety of children within the Hocak community.”

**DECEMBER 20, 2004**

*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., Dec. 20, 2004). (Bossman, W).*

The Court granted the party’s request to appear by telephone at the *Status Hearing*.

*In the Interest of Minor Child: 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., Dec. 20, 2004). (Bossman, W).*

The Court granted the party’s request to appear by telephone at the *Status Hearing*.

*In the Interest of Minor Child: 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., Dec. 20, 2004). (Bossman, W).*

The Court granted the party’s request to appear by telephone at the *Status Hearing*.

**DECEMBER 21, 2004**

*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 (Appointment of Guardian Ad Litem) (HCN Tr. Ct., Dec. 21, 2004). (Matha, T).*

The court appointed a GAL in this matter.

**DECEMBER 23, 2004**

*In the Interest of Minor Child: C.C.P., DOB 02/03/93; G.L.P., DOB 06/10/94, JV 03-25-26 Order (Review Hearing) (HCN Tr. Ct., Dec. 23, 2004). (Bossman, W).*

Tr. Ct., Dec. 2, 2004). (Matha, T).

The Court conducted a *Review Hearing*. The Court had to assess whether to make any changes to its

previous order. The Court determined that the children's physical placement be with the father.

**DECEMBER 27, 2004**

*In the Interest of Minor Child: B.K.P., DOB 08/26/89, JV 04-37 Order (Appointment of Guardian Ad Litem)* (HCN Tr. Ct., Dec. 27, 2004). (Matha, T).

The Court appointed a GAL in this matter.

**DECEMBER 28, 2004**

*In the Interest of Minor Children: C.S.C., DOB 11/22/97; K.K.C., DOB 11/04/99; K.A.C., DOB 11/02/01, JV 04-39-41 Order (Submission of Guardianship Report & Home Study)* (HCN Tr. Ct., Dec. 28, 2004). (Matha, T).

The Court ordered CFS to prepare and submit a list guardianship report and home study to the Court.

*In the Interest of Minor Children: C.S.C., DOB 11/22/97; K.K.C., DOB 11/04/99; K.A.C., DOB 11/02/01, JV 04-39-41 Order (Submission of Traditional Relatives List)* (HCN Tr. Ct., Dec. 28, 2004). (Matha, T).

The Court ordered CFS to prepare and submit a list of the minor children's traditional relatives to the Court.

**DECEMBER 29, 2004**

*In the Interest of Minor Children: C.S.C., DOB 11/22/97; K.K.C., DOB 11/04/99; K.A.C., DOB 11/02/01, JV 04-39-41 Order (Appointment of Guardian Ad Litem)* (HCN Tr. Ct., Dec. 29, 2004). (Matha, T).

The Court appointed a GAL in this matter.

**DECEMBER 30, 2004**

*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 03-07-10 Order Postponing Guardianship Hearing and Order in Review of Placement* (HCN Tr. Ct., Dec. 30, 2004). (Bossman, W).

The Court determined to postpone the *Guardianship Hearing* and alter the placement of the children.

## Supreme Court

**DECEMBER 13, 2004**

*Marx Advertising Agency, Inc. v. Ho-Chunk Nation, d/b/a Ho-Chunk Casino & Bingo, Majestic Pines Casino & Bingo, Rainbow Casino & Bingo, and DeJope Bingo, SU 04-07 Order for Oral Argument* (HCN S. Ct., Dec. 13, 2004).

The Court rescheduled the matter for oral argument.



---

## Recent Filings

### Trial Court

**Child Support**

**DECEMBER 7, 2004**

*Lutisha A. Jones v. Daniel L. Sams*, CS 04-65. (Bossman, W).

**DECEMBER 13, 2004**

*Jesus Gonzalez v. Jill Gonzalez*, CS 04-66. (Matha, T).

**Civil Garnishment**

**DECEMBER 10, 2004**

*Liberty Credit Servs. v. Frederick Sass*, CG 04-134. (Matha, T).

**DECEMBER 13, 2004**

*Wood Co. Telephone Co. v. Lambert Cleveland, Jr.*, CG 04-135. (Matha, T).

*Wood Co. Telephone Co. v. Ivory Kelly*, CG 04-136. (Matha, T).

**DECEMBER 14, 2004**

*Cross Co. Bank v. Esther M. Wolfe, n/k/a Esther M. Youngthunder*, CG 04-137. (Matha, T).

**DECEMBER 17, 2004**

*Check Advance v. Tammy Terwall*, CG 04-138. (Matha, T).

**DECEMBER 28, 2004**

*Alliance Collection Agencies v. Stacy Whitegull*, CG 04-139 (Matha, T).

*Alliance Collection Agencies v. Keith D. Smith et al.*, CG 04-140 (Matha, T).

*Alliance Collection Agencies v. George Merritt et al.*, CG 04-141 (Matha, T).

*Alliance Collection Agencies v. Karen L. Snow*, CG 04-142 (Matha, T).

**Civil Cases**

**DECEMBER 2, 2004**

*In the Interest of Minor Children: Z.D.B.*, DOB 03/22/97; *J.R.B.*, 05/27/98; *R.M.*, DOB 10/22/00, by *Thomasa Patterson v. HCN Office of Tribal Enrollment*, CV 04-105. (Matha, T).

**DECEMBER 13, 2004**

*In the Interest of Minor Child: E.T.H.*, 12/19/91, by *Karen L. Snow v. HCN Office of Tribal Enrollment*, CV 04-106. (Matha, T).

*In the Interest of: Kelly Goodbear*, DOB 05/24/85, CV 04-107. (Matha, T).

**DECEMBER 23, 2004**

*Tammy Temple v. HCN Casino & HCN Table Games Dep't*, CV 04-108. (Bossman, W).

**Juvenile Cases**

**DECEMBER 1, 2004**

*In the Interest of Minor Child: V.L.P.*, DOB 03/03/88, JV 04-35. (Matha, T).

*In the Interest of Minor Child: R.K.P.*, DOB 11/09/89, JV 04-36. (Matha, T).

**DECEMBER 13, 2004**

*In the Interest of Minor Child: B.K.P.*, DOB 08/26/89, JV 04-37. (Matha, T).

*In the Interest of Minor Child: M.T.G.*, DOB 10/05/04, JV 04-38. (Matha, T).

**DECEMBER 27, 2004**

*In the Interest of Minor Child: C.S.C.*, DOB 11/22/97, JV 04-39. (Matha, T).

*In the Interest of Minor Child: K.K.C.*, DOB 11/04/99, JV 04-40. (Matha, T).

*In the Interest of Minor Child: K.A.C.*, DOB 11/02/01, JV 04-41. (Matha, T).

**Supreme Court**

**DECEMBER 7, 2004**

*Daniel M. Brown v. Jim Webster, HCN Exec. Dir. of Bus.*, SU 04-09.

**DECEMBER 13, 2004**

*Kenneth Lee Twin v. Toni McDonald et al.*, SU 04-10.

**A Happy  
New  
Year!**



**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 – Donald Blackhawk  
Dennis Funmaker  
Jim Greendeer  
Douglas Greengrass  
Desmond Mike  
Gavin Pettibone  
Douglas Red Eagle  
Preston Thompson, Jr.  
Eugene Thundercloud  
Morgan White Eagle  
Clayton Winneshiek  
Trial Court – William Bossman, Chief Judge  
Todd R. Matha, Associate Judge  
Clerk of Court, Trial Court – Marcella Cloud  
Assistant Clerk of Court, Trial Court – Selina Joshua  
Bailiff/Process Server – Willa RedCloud  
Administrative Assistant – Jessi Cleveland  
Staff Attorney – Jocelyn Roy  
Supreme Court Clerk – Mary Endthoff

\* 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).





FEBRUARY 2005  
VOL. 10, NO. 12

## Inside this Issue

- 1** EMPLOYMENT RELATIONS  
ACT OF 2004 amends  
Employee Grievance  
Process
- 3** 2004 Marriage  
Ceremonies
- 4** Court Announcements  
  
Updates from Outside  
Courts
- 7** Recent HCN Court  
Decisions
- 18** Recent HCN Court  
Filings
- 20** HCN Court System  
Judiciary and Staff  
  
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](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

## EMPLOYMENT RELATIONS ACT OF 2004 amends Employee Grievance Process

**O**n January 31, 2005, the EMPLOYMENT RELATIONS ACT OF 2004 (“ERA”), 6 HCC § 5, went into effect. The ERA replaces the Ho-Chunk Nation’s Personnel Policies and Procedures Manual (“PPM”), last updated in January of 2004. The ERA amends several of the Nation’s employment policies and procedures, most notably the employee administrative review process.

**P**reviously, under the PPM, employees could grieve several enumerated concerns in writing to supervisors and the Ho-Chunk Nation Department of Personnel (“Personnel Department”). Under the new ERA, employees are only entitled to grieve alleged discrimination and harassment, as well as disciplinary action in the form of a suspension or termination. 6 HCC § 5.34a(2). Additionally, candidates for employment may file a complaint with the Personnel Department regarding the interview and selection process, and may elect to file a complaint directly with the Grievance Review Board. *Id.* at § 5.33d. Employees who elect to grieve must fill out a grievance form and file the document with the Personnel Department within five (5) days of the action that gives rise to the grievance. Filing within the specified timeframe guarantees the grievant a right to have the Grievance Review Board review the grieved action. *Id.* at § 5.34d.

**W**hen the grievant is a non-supervisory employee, the Review Board will consist of five (5) members: two (2) non-supervisory employees, two (2) supervisory employees, and one (1) tribal attorney. When the grievant is a supervisory employee, the Board will have three (3) members: one (1) tribal

attorney and two (2) supervisory employees. *Id.* at § 5.34b. Members of the Grievance Review Board will rotate and be selected from a voluntary pool of employees with grievance review training. *Id.* at § 5.34a(2).

With the request for a hearing, the employee must also notify the HCN Department of Personnel whether or not he or she will be represented by an attorney. *Id.* at § 5.34d. In order to perfect the right to appeal, the ERA seems to implicitly suggest that employees indicate that counsel will represent them, as the ERA does not contain any sanctions for so indicating, regardless of whether the employee later fails to obtain representation. If an attorney will represent the grieving employee, the attorney must file notice of appearance within five (5) days of the date the employee requested a hearing. *Id.*

The ERA, while setting forth other various deadlines for the parties and for the Board entering a decision, does not set forth a timeframe within which the Board must conduct the hearing. At the hearing, the Board will review the records previously submitted by the grievant and supervisor. Personnel Department staff will be present, in order to advise all participants with regard to policy and procedure. *Id.* at § 5.34f(1). The supervisor and the grieving employee will each have the opportunity to present to the Board the reasons why he or she believes that the disciplinary action should or should not be upheld. *Id.* at § 5.34f(2-3). Additionally, both parties will have the right to question witnesses and make closing statements. *Id.* at § 5.34f(5).

The Grievance Review Board may instruct the parties that it needs additional information to make a decision, that it has heard sufficient information to make a recommendation, or that the information being presented is not relevant. *Id.* at §§ 5.34f(4)(b), 5.34g(4). In assessing relevancy, the Board will consider whether the proffered evidence relates to the grieved action and whether it will affect the Board's decision. *Id.* at § 5.34g(5). Apart from this relevancy limitation, no formal rules of

evidence apply to the proceedings. *Id.* at § 5.34g(4).

Also of note is the ERA provision that seems to indicate that the hearing is confidential. *Id.* at §5.24g(1). In contrast, under the AMENDED AND RESTATED GAMING ORDINANCE for instance, hearings regarding the issuance or denial of gaming licenses are “open to all members of the Ho-Chunk Nation and to such other persons who, in the discretion of the Commission or the Attorney General of the Department of Justice, should be allowed to attend.” GAMING ORDINANCE at § 1.817(h). The seeming confidentiality of the Grievance Review Board hearing poses the question of whether Board decisions will be made available to the public in recognition of their precedential value.

It appears as if the Grievance Review Board, although an executive branch sub-entity, will be performing a legislative function, pursuant to authority delegated by the HCN Legislature via ERA. If so, in performing a delegated legislative function, the Board will be articulating legislative rules by entering decisions. *See, e.g.*, TRIBAL ENROLLMENT AND MEMBERSHIP ACT, AMENDED AND RESTATED GAMING ORDINANCE, TRIBAL EMPLOYMENT RELATIONS ACT. As legislative rules formed subsequent to on-the-record adjudication, Board decisions will seemingly have precedential value. At the federal level, agencies which formulate adjudicative rule must “make available for public inspection and copying ... final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases,” and those statements of policy and interpretations which have been adopted by the agency and are not otherwise published in the Federal Register. ADMINISTRATIVE PROCEDURES ACT, 5 U.S.C. § 552(a)(2).

While judicial review is available for grievances involving suspension, termination, discrimination, or harassment, the ERA greatly limits the review by the Trial Court as compared to the judicial review process under the PPM. Under

the new ERA, the Trial Court merely reviews the Board's decision based upon the record before the Board. 6 HCC § 5.35e. In other words, at the Trial Court level there will be no further presentation of evidence or argument, although parties may request an opportunity to supplement the record in Court, either with evidence or statements of their position. The Trial Court may only set aside or modify a Board decision if the decision was "arbitrary and capricious." *Id.*

**P**rior HCN Trial Court case law suggests that under an arbitrary and capricious standard of review, "[a] reviewing court must 'consider whether the decision was based on a consideration of the relevant facts and whether there has been a clear error of judgment.'" *Regina K. Baldwin et al. v. Ho-Chunk Nation et al.*, CV 01-16-19-21 (HCN Tr. Ct., Jan. 9, 2002) at 15 (citing *Bowman Transp. v. Ark.-Best Freight Sys.*, 419 U.S. 281, 285-86 (1974)). In addition, "while [a court] may not supply a reasoned basis for the agency's action that the agency itself has not given, [a court] will uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned." *Id.* However, the issue remains unresolved as to whether the Court should consider further evidence that the Court allowed in at the judicial review level, at the request of the party to supplement the record, under the provisions of the ERA since the Grievance Review Board would not have been privy to this information when entering its decision.

**A**nother notable difference under the newly enacted ERA, is the relief available for grievants. Formerly under the PPM, the limited waiver of sovereign immunity for monetary damages was \$10,000, for actual lost wages *and benefits*. PPM, Ch. 12 at 64. Under the ERA, however, the limited waiver of sovereign immunity permits the Trial Court to award monetary damages for actual wages only, up to \$10,000. 6 HCC § 5.35d(1). Additionally, under the ERA, equitable relief is limited to a court order to reassign or reinstate the employee, the removal of negative references from the file, the award of bridged service credit, and the restoration of seniority. 6

HCC § 5.35d(2)(a)-(d). Under the PPM, these types of relief were provided, but did not constitute an exhaustive list of equitable remedies, as is the case under the ERA. PPM, Ch. 12 at 64. Notably, the Constitution of the Ho-Chunk Nation provides the Trial Court the authority "to issue all remedies in law and in equity." CONST., Art. VII, § 6(a) In accordance with past practice, the Judiciary will continue to adjudicate those employment cases arising out of actions occurring before January 31, 2005, the effective date of the ERA, under the PPM, last updated in January of 2004.

*Parties may obtain copies of the ERA by visiting the HCN website at <http://www.ho-chunknation.com/government/legis/code/INDEX2.html> or by contacting the HCN Department of Personnel.*



## **2004 MARRIAGE CEREMONIES**

---

**January 16, 2004**

**Rachel M. Puzon & Gary J. Montana**

*Presiding Judge: Honorable Todd R. Matha,  
Associate Trial Court Judge*

**January 24, 2004**

**Kerry L. Laufenberg & Ronald C. Decorah**

*Presiding Judge: Honorable Todd R. Matha,  
Associate Trial Court Judge*

**February 25, 2004**

**Henu V.L. Garvin & Joshua L. Garcia**

*Presiding Judge: Honorable Todd R. Matha,  
Associate Trial Court Judge*

**February 27, 2004**

**Carmen L. RedCloud & Simon  
Escamilla, Jr.**

*Presiding Justice: Honorable Mary Jo B.  
Hunter, Associate Supreme Court Justice*

**July 17, 2004**

**Jessica Anne Eades & Matthew  
Mark Hlass**

*Presiding Justice: Honorable Mark  
Butterfield, Associate Supreme Court Justice*

**August 20, 2004**

**Chiara L. Blackcoon & Albert J.  
Cleveland**

*Presiding Justice: Honorable Mark  
Butterfield, Associate Supreme Court Justice*

**September 3, 2004**

**Arlene F. Thunder & Brett A.  
Blackdeer**

*Presiding Justice: Honorable Mark  
Butterfield, Associate Supreme Court Justice*

**September 10, 2004**

**Kathy A. Stacy & Darwin G. DeCamp**

*Presiding Justice: Honorable Mark  
Butterfield, Associate Supreme Court Justice*

**September 17, 2004**

**Kenneth A. LeMeiux & Kathryne  
A. Kenyon**

*Presiding Justice: Honorable Todd R. Matha,  
Associate Trial Court Judge*

**September 18, 2004**

**Ruby L. Roy & Alan L. Rose**

*Presiding Justice: Honorable Mark  
Butterfield, Associate Supreme Court Justice*

**December 31, 2004**

**Adam Kruse & Stella Cleveland  
Bearheart**

*Presiding Justice: Honorable Mark  
Butterfield, Associate Supreme Court Justice*

## COURT ANNOUNCEMENTS

### **Scholarship Application Deadline for *Guardian ad litem* Training**

As previously announced, on April 26-27, 2005 the Wisconsin State Bar will host a *Guardian ad litem* ("GAL") training seminar. The Ho-Chunk Nation Judiciary will award a limited number of scholarships to enrolled members and employees of the Ho-Chunk Nation to attend the state sponsored GAL training. Members and employees must obtain a GAL Service Agreement from the Judiciary, and **submit a signed copy of the Service Agreement with the Court by March 15, 2005** in order to be considered for a training scholarship. Scholarships will be awarded on a first-come, first-serve basis, provided the applicant meets eligibility requirements. For more information or to obtain a GAL Service Agreement, contact the HCN Judiciary at (715) 284-2722 or (800) 434-4070. More information regarding this specific GAL training event is available online at [www.wisbar.org](http://www.wisbar.org), under the "Marketplace" tab.

## UPDATES FROM OUTSIDE COURTS

### **United States Supreme Court**

#### Certiorari denied

*Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin et al. v. United States*, 367 F.3d 650 (7<sup>th</sup> Cir. Wis. 2004), *cert. denied*, 2005 U.S. LEXIS 470 (Jan. 10, 2005).

*Peabody v. Navajo Nation*, 373 F.3d 945 (9<sup>th</sup> Cir. 2004), *cert. denied*, 2005 U.S. LEXIS 508 (Jan. 10, 2005).

*VanGuilder v. United States*, 2004 U.S. App. LEXIS 18198 (D.C. Cir. 2004), *cert. denied*, 2005 U.S. LEXIS 523 (Jan. 10, 2005).

### **Petition for Certiorari filed**

*United States v. Shoshone Indian Tribe of the Wind River Reservation*, 364 F.3d 1339 (Ct. Fed. Cl. 2004), *petition for cert. filed* (U.S. Jan. 7, 2005). (No. 04-929)

*Cholla Ready Mix, Inc. v. Mendez*, 382 F.3d 962 (9<sup>th</sup> Cir. 2004), *petition for cert. filed* (U.S. Jan. 12, 2004) (No. 04-952).

### **Ninth Circuit Court of Appeals**

*United States v. Washington*, No. 03-35145, 2005 U.S. App. LEXIS 192 (9<sup>th</sup> Cir. Jan. 6, 2005).

The Samish Indian Tribe, via Federal Rule of Civil Procedure 60(b)(6), sought to reopen a judgment that denied the Samish treaty fishing rights on the ground that the tribe had not maintained an organized tribal structure. *United States v. Washington*, 476 F. Supp. 1101 (W.D. Wash. 1979) (“*Washington I*”), *aff’d* 641 F.2d 1368 (9<sup>th</sup> Cir. 1981). The Samish filed the motion to reopen after achieving federal recognition. The district court denied the motion to reopen, and the Samish filed a motion for reconsideration, which the district court also denied. The Samish appealed to the Ninth Circuit Court of Appeals.

The Ninth Circuit Court concluded that the district court misinterpreted its precedents, and thereby abused its discretion in ruling that federal recognition had no impact on whether the Samish may exercise treaty fishing rights. While the Court previously held that federal nonrecognition could not divest a tribe of treaty rights, the Court noted that it had never held that federal recognition is not a sufficient condition for the exercise of treaty rights. In fact, federal recognition necessarily includes a determination of tribal organization, the issue upon which the Samish were denied treaty fishing rights in *Washington II*. The Court held that the Samish’s subsequent recognition was an extraordinary circumstance that warranted setting aside the judgment in *Washington II*. The Court, finality concerns cited by the district court could not independently support the district court’s denial of the motion. The Ninth Circuit Court reversed the order of the district court denying the Samish’s Rule 60(b)(6) motion and remanded.

*Ford Motor Co. v. Todecheene*, Nos. 02-17048, 02-17165, 2005 U.S. App. LEXIS 398 (9<sup>th</sup> Cir. Jan. 11, 2005).

The Ninth Circuit Court had to determine the extent to which a tribal court could exercise jurisdiction over a products liability action arising out of an accident occurring on tribal land. An on-duty law enforcement officer of the Navajo Department of Public Safety was killed when her Ford patrol vehicle rolled over while she was driving on a dirt road within the Navajo Nation. Her family filed a products liability action against Ford in Navajo tribal court. Ford sought injunctive and declaratory relief in federal court, challenging the tribal court’s assumption of jurisdiction.

The Ninth Circuit Court affirmed the preliminary injunction, relying on the analysis enunciated in *Montana v. United States*. 450 U.S. 544 (1981). Under *Montana*, tribal courts generally do not have jurisdiction over the conduct of nonmembers, subject to two exceptions: (1) nonmembers who enter into consensual relationships with the tribe or its members, or (2) activities that directly affect the tribe’s political integrity, economic security, health, or welfare. *Strate v. A-1 Contractors*, 520 U.S. 438 (1997). Explaining that it could not “ignore the clear guidance from the Court that tribal jurisdiction is to be limited, rather than expanded,” the Ninth Circuit held that the *Montana* analysis applied regardless of whether the incident occurred on Indian or non-Indian lands.

As to the first *Montana* exception, the Court held that the existence of the financing agreement between Ford Credit and the Nation did not support application of the consensual relations exception, noting that the “product liability action is considerably removed from the agreement itself.” The Court explained further that the second *Montana* exception is narrow, meant only to encompass “events that interfere with a Tribe’s ability to enact or be governed by its own laws.” The Court held that there was no indication that the fatal accident prevented the Nation from enacting or being governed by its laws. Because neither *Montana* exception applied, the Court affirmed the determination that no tribal jurisdiction existed.

*United States v. Bruce*, No. 03-30171, 2005 U.S. App. LEXIS 591 (9<sup>th</sup> Cir. Jan. 13, 2005).

Bruce appealed her conviction for simple assault on an Indian child less than 16 years of age on a reservation. Bruce argued that the case should have been brought under 18 U.S.C. § 1153, the INDIAN MAJOR CRIMES ACT, which applies to certain crimes by Indians, rather than § 1152, the INDIAN GENERAL CRIMES ACT, which excepts crimes by Indians against Indians. At trial, Bruce presented evidence of her Indian status. However, the district court declined to submit the issue to the jury, concluding that Bruce had not satisfied the burden of production under § 1152.

The generally accepted test for Indian status considers: “(1) the degree of Indian blood; and (2) tribal or government recognition as an Indian.” *United States v. Keys*, 103 F.3d 758, 761 (9<sup>th</sup> Cir. 1996). The district court found that Bruce provided evidence to satisfy the first prong of the test. The district court also held, however, that Bruce failed to present evidence of tribal enrollment or federal government recognition of her Indian status.

The Ninth Circuit Court reversed, concluding that Bruce presented sufficient evidence that, if believed, would allow a jury to rationally conclude that she was an Indian. At trial Bruce presented evidence that she had a 1/8 blood quantum, that she had participated in sacred tribal rituals, that she was born on an Indian Reservation and continues to reside on one, that two of her children are enrolled members, that she has been treated by Indian health centers, and has been subject to tribal criminal jurisdiction. The Court stressed the point that Bruce’s burden was one “of mere production.” In addition, the Court held that the district court’s error was not harmless. The Court explained that if Bruce had been charged under § 1153, Bruce’s Indian status would’ve been an essential element that the government would have had to allege in the indictment and prove beyond a reasonable doubt. The Court accordingly reversed the judgment and remanded.

## **Tenth Circuit Court of Appeals**

*Gardner v. Wyasket*, No. 04-4115, 2005 U.S. App. LEXIS 1244 (10<sup>th</sup> Cir. Jan. 25, 2005).

Plaintiffs, members of the Ute Tribe, filed suit alleging that Ute Tribal officials improperly conveyed portions of reservations lands to the State of Utah and several cities and counties in violation of the INDIAN NONINTERCOURSE ACT (“INA”). 25 U.S.C. § 177. After a motion hearing, the district court issued a written order dismissing plaintiffs’ claims with prejudice “for the reasons set forth at the close of the ... hearing.” The Tenth Circuit Court affirmed the district court’s order. The Court explained that the appellants’ failure to provide a hearing transcript pursuant to court rules raised an effective barrier to informed, substantive review. The Court also noted that the INA “was designed to protect the land rights only of *tribes*,” not individual Indians.

## **Supreme Court of Minnesota**

*Dogger v. County of Becker*, A04-713, 2005 Minn. LEXIS 10 (Minn. Jan. 20, 2005).

The Court had to determine whether state law controlled in defining whether a manufactured home located within the boundaries of a reservation may be taxed as real property. Plaintiffs owned fee patented title to land within the boundaries of the White Earth Indian Reservation. In 2002, the county assessor assessed an ad valorem property tax on the plaintiffs’ property, including the value of the manufactured home located on the property. The plaintiffs appealed to the tax court. The tax court held in favor of Becker County and affirmed the assessor’s decision that the manufactured home was real property that the County had the authority to tax.

On appeal to the Supreme Court of Minnesota, the plaintiffs argued that while Congress authorized states to tax real property held in fee by Indians and located within the boundaries of an Indian reservation, Congress did not grant states the authority to define what property may be taxed as real property. The Supreme Court of Minnesota, however, affirmed the tax court. The Court, citing *County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, 502 U.S. 251 (1992), concluded that implicit in a state’s power to

tax is the authority to define what property or goods to tax. Accordingly, Congress granted states “the authority to subject Indian land to its real property taxation scheme, including the authority to determine the definition of real property.” The Court concluded that Becker County could apply Minnesota’s definition of real property to the plaintiff’s property.



---

## 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

JANUARY 5, 2005

*Maria Ruth Goodbear v. William Lowell Goodbear*, CS 03-59 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Jan. 5, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to amend child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*Barbara Long v. Garrett Banuelos, Sr.*, CV 97-88 *Order (Enforcing Arrearage Withholding)* (HCN Tr. Ct., Jan. 5, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to enforce child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*Leora Naqyayouma v. David Naquayouma*, CS 04-56 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Jan. 5, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent’s per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner’s request for recognition and enforcement.

*State of Wisconsin/Jackson County and Eunice G. Wamego v. Edward Troy Decorah*, CV 96-83 *Order (Proof of High School Enrollment Filed)* (HCN Tr. Ct., Jan. 5, 2005). (Bossman, W).

The Court 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.

*Carmelita Varela v. George Myron Plamann*, CS 99-52 *Order (Modifying and Enforcing Child Support)* (HCN Tr. Ct., Jan. 5, 2005). (Bossman, W).

The petitioner filed a motion requesting modification of current child support withholding with a certified copy of the modified foreign support order. The respondent failed to respond within the specified timeframe. The Court granted the motion.

**JANUARY 6, 2005**

*Sawyer County v. Andrew A. Bird*, CS 04-64 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Jan. 6, 2005). (Matha, T).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

**JANUARY 7, 2005**

*Lutisha A. Jones v. Daniel L. Sams*, CS 04-65 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Jan. 7, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified time frame. The Court granted the petitioner's request for recognition and enforcement.



*Barbara J. Kelley v. Vance E. Fontenelle, Jr.*, CS 98-72 *Order (Proof of High School Enrollment Filed)* (HCN Tr. Ct., Jan. 7, 2005). (Bossman, W).

The Court 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.

*Neil T. McAndrew v. Lisa Miner McAndrew*, CV 97-14 *Order (Modifying Current Child Support)* (HCN Tr. Ct., Jan. 7, 2005). (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 Wisconsin/Sauk County v. Stacy McMahan*, CS 04-10 *Order (Enforcing Arrearage Withholding)* (HCN Tr. Ct., Jan. 7, 2005). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to enforce child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

**JANUARY 10, 2005**

*Stephanie R. Walker v. Elliot Lee Walker*, CS 03-69 *Order (Closing Case)* (HCN Tr. Ct., Jan. 10, 2005). (Matha, T).

The Court closed the case and extended its condolences to the respondent's family.

*Rachel Winneshiek v. John C. Houghton, Jr.*, CS 99-29 *Order (Ceasing Withholding Child Support Arrears)* (HCN Tr. Ct., Jan. 10, 2005). (Matha, T).

The petitioner filed a motion requesting cessation of child support arrears withholding. The respondent failed to respond within the specified timeframe. The Court granted the motion.

**JANUARY 11, 2005**

*State of Wisconsin and James Menore v. Michelle L. Mendoza, a/k/a Michelle Funmaker*, CS 00-40 *Order (Ceasing Withholding and Intent to Close)* (HCN Tr. Ct., Jan. 11, 2005). (Bossman, W).

The petitioner filed a motion requesting cessation of current child support withholding with a certified copy of the modified foreign support order. The Court granted the motion and informed the parties of its intention to close the file.

*State of Wisconsin/Sauk County on behalf of Janet C. Day v. Christopher J. Sweet*, CS 999-53 *Order (Enforcing Arrearage Withholding)* (HCN Tr. Ct., Jan. 11, 2005). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to enforce child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

**JANUARY 12, 2005**

*Patricia C. Martinez v. Eldon Powless*, CS 99-17; *Rebecca Nunway v. Eldon Powless*, CS 99-23; *State of Wisconsin/Juneau County and Annette Powless v. Eldon D. Powless*, CS 03-65 *Order (Modifying Current Child Support)* (HCN Tr. Ct., Jan. 12, 2005). (Matha, T).

The Court ceased current child support withholding and performed an equitable adjustment for the companion child support cases.

*Woodrow G. White v. Gail J. Rave*, CS 02-56 *Order (Ceasing Child Support Withholding and Intent to Close)* (HCN Tr. Ct., Jan. 12, 2005). (Matha, T).

The petitioner filed a motion requesting cessation of current child support withholding with a certified copy of the modified foreign support order. The Court granted the motion and informed the parties of its intention to close the file.

**JANUARY 13, 2005**

*Rosemarie C. Funmaker v. Dennis Funmaker*, CV 97-63 *Order (Modifying Current Child Support)* (HCN Tr. Ct., Jan. 13, 2005). (Bossman, W).

The Court 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.

*Neil T. McAndrew v. Lisa Miner McAndrew*, CV 97-14 *Order (Amending Current Child Support)* (HCN Tr. Ct., Jan. 13, 2005). (Bossman, W).

The Court amended the respondent's current child support obligation after a review of the case file.

**JANUARY 17, 2005**

*Angela Decorah v. Christopher Decorah*, CS 99-31 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Jan. 17, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to amend child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*Melissa Redbird v. Thomas Redbird, III*, CS 03-57 *Order (Modifying and Enforcing Child Support)* (HCN Tr. Ct., Jan. 17, 2005). (Matha, T).

The respondent filed a motion requesting modification of current child support withholding with a certified copy of the modified foreign support order. The petitioner responded within the specified timeframe, denoting her acquiescence in the respondent's motion. The Court granted the motion.

*State of Wisconsin/Jackson County v. Donald Lee Yellowcloud*, CS 03-38; *State of Wisconsin/Jackson County in re: Roberta J. Yellowcloud v. Donald Lee Yellowcloud*, CS 98-01 *Order (Enforcing Arrearage Withholding)* (HCN Tr. Ct., Jan. 17, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to enforce child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

**JANUARY 18, 2005**

*State of Wisconsin/Jackson County v. Donald Lee Yellowcloud*, CS 03-38 *Order (Modifying Child Support and Enforcing Deduction from Wages)* (HCN Tr. Ct., Jan. 18, 2005). (Matha, T).

The petitioner filed a motion requesting modification of current child support withholding with a certified copy of the modified foreign support order. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*Melissa Redbird v. Thomas Redbird, III*, CS 03-57 Order (Modifying Child Support and Enforcing Deduction from Wages) (HCN Tr. Ct., Jan. 18, 2005). (Matha, T).

The respondent filed a motion requesting modification of current child support withholding with a certified copy of the modified foreign support order. The petitioner responded within the specified timeframe, denoting her acquiescence in the respondent's motion. The Court granted the motion.

*Angela Decorah v. Christopher Decorah*, CS 99-31 Order (Modifying Judgment for Child Support Deduction from Wages) (HCN Tr. Ct., Jan. 18, 2005). (Matha, T).

The petitioner filed a motion requesting modification of current child support withholding with a certified copy of the modified foreign support order. The respondent failed to respond within the specified timeframe. The Court granted the motion.

**JANUARY 19, 2005**

*State of Wisconsin and Maurine Shegonee v. Jessica L. Cloud*, CS 04-30 Order (Ceasing Child Support Withholding and Intent to Close) (HCN Tr. Ct., Jan. 19, 2005). (Bossman, W).

The petitioner filed a motion requesting cessation of current child support withholding with a certified copy of the modified foreign support order. The Court granted the motion and informed the parties of its intention to close the file.



*Maryla A. Day v. Patrick Day*, CS 03-75 Order (Ceasing Child Support Withholding and Intent to Close) (HCN tr. Ct., Jan. 18, 2005). (Bossman, W).

The petitioner filed a motion requesting cessation of current child support withholding with a certified copy of the modified foreign support order. The Court granted the motion and informed the parties of its intention to close the file.

*Rebecca Rave v. Andrew S. Rave*, CS 02-57 Order (Modifying Child Support and Enforcing Deduction from Wages) (HCN Tr. Ct., Jan. 18, 2005). (Matha, T).

The petitioner filed a motion requesting modification of current child support withholding with a certified copy of the modified foreign support order. The respondent failed to respond within the specified timeframe. The Court granted the motion.

**JANUARY 24, 2005**

*Robert M. Mobley v. Joyce M. St. Cyr*, CS 99-37; *Joyce M. St. Cyr v. Robert M. Mobley*, CS 00-04 Order (Updating Arrearage Withholding) (HCN Tr. Ct., Jan. 24, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to amend child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*State of Wisconsin/Sauk Co. v. Mitchell RedCloud*, CS 02-33; *Cynthia Mobley v. Mitchell RedCloud*, CS 03-42 Order (Updating Arrearage Withholding) (HCN Tr. Ct., Jan. 24, 2005). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to amend child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*State of Wisconsin/Sauk Co. and Pamela L. Mallory v. Frederick K. Greendeer*, CS 03-05; *State of Wisconsin and Carol L. Miller v. Frederick K. Greendeer*, CS 99-75; *State of Wisconsin v. Frederick K. Greendeer*, CV 97-44 Order (Modifying & Enforcing Child Support Arrears Withholding) (HCN Tr. Ct., Jan. 24, 2005). (Bossman, W).

The Court previously recognized and enforced foreign orders for child support. The petitioner filed a motion to enforce child support arrearage withholding with a certified accounting statement.

The respondent failed to respond within the specified timeframe. The Court granted the motion.

**JANUARY 26, 2005**

*Kathleen Waukau by the State of Wisconsin/Shawano Co. v. Eldon Powless*, CV 96-93; *Rebecca Nunway v. Eldon Powless*, CS 99-23 *Order (Granting Telephonic Appearance)* (HCN Tr. Ct., Jan. 26, 2005). (Matha, T).

The Court granted the party's request to appear by telephone at the *Fact-Finding Hearing*.

*State of Wisconsin/Juneau Co. and Annette Powless v. Eldon Powless*, CS 03-65 *Order (Granting Telephonic Appearance)* (HCN Tr. Ct., Jan. 26, 2005).

The Court granted the party's request to appear by telephone at the *Fact-Finding Hearing*.

## Civil Garnishment

**JANUARY 6, 2005**

*Gundersen Lutheran Clinic v. Melissa Dockerty*, CG 04-133 *Order to Vacate Judgment* (HCN Tr. Ct., Jan. 6, 2005). (Matha, T).

The Court vacated the judgment previously entered in the instant case.

**JANUARY 12, 2005**

*Discovery Bank by its Servicing Agent v. Jaime Syens*, CG 04-84 *Order (Default Judgment)* (HCN Tr. Ct., Jan. 12, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**JANUARY 19, 2005**

*Alliance Collection Agencies, Inc. v. George Merritt*, CG 04-141 *Order (Default Judgment)* (HCN Tr. Ct., Jan. 19, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Alliance Collection Agencies, Inc. v. Keith D. Snake*, CG 04-140 *Order (Default Judgment)* (HCN Tr. Ct., Jan. 19, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Alliance Collection Agencies, Inc. v. Karen L. Snow*, CG 04-142 *Order (Default Judgment)* (HCN Tr. Ct., Jan. 19, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**JANUARY 24, 2005**

*Alliance Collection Agencies, Inc. v. Deborah E. Witt*, CG 05-02 *Order (Petition Granted)* (HCN Tr. Ct., Jan. 24, 2005). (Matha, T).

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent filed a timely response, but failed to provide a cognizable objection to the action. The Court granted the petitioner's request for recognition and enforcement.

**JANUARY 26, 2005**

*Creditor Recovery Serv., LLC, for Wood County Tel. Co. v. Lambert Cleveland, Jr.*, CG 04-135 *Order (Default Judgment)* (HCN Tr. Ct., Jan. 26, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**JANUARY 28, 2005**

*Robert Mobley v. Sarah Lemieux*, CG 04-104 *Order (Impound Wage Garnishment)* (HCN Tr. Ct., Jan. 28, 2005). (Bossman, W).

The respondent filed a motion, alleging that she has satisfied the judgment via wage withholding and additional voluntary payment. The Court impounded the funds that would otherwise be withheld under previous order of the Court.

## Civil Cases

### CHILDREN'S TRUST FUND (CTF)

**JANUARY 5, 2005**

*Elena A. Blackhawk v. HCN Office of Tribal Enrollment, CV 04-103 Order (Dismissal Without Prejudice)* (HCN Tr. Ct., Jan. 5, 2005). (Bossman, W).

The petitioner failed to appear at the *Fact-Finding Hearing*, and did not notify the court of an inability to attend the proceeding. The Court dismissed the instant case without prejudice.

**JANUARY 6, 2005**

*In the Interest of Minor Child: K.R.R., DOB 10/08/88, by Samuel Rodriguez v. HCN Office of Tribal Enrollment, CV 04-64 Order (Accepting Accounting)* (HCN Tr. Ct., Jan. 6, 2005). (Bossman, W).

The Court previously released funds from the CTF account of a minor child for costs associated with orthodontic procedures. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.



**JANUARY 10, 2005**

*In the Interest of Minor Child: S.K.B., DOB 12/29/92, by Helene M. Bean v. HCN Office of Tribal Enrollment, CV 04-93 Order (Requesting Accounting)* (HCN Tr. Ct., Jan. 10, 2005). (Matha, T).

The Court requested that the petitioner submit the required accounting.

**JANUARY 11, 2005**

*In the Interest of Adult CTF Beneficiary: Kelly Goodbear, DOB 05/24/85 v. HCN Office of Tribal Enrollment, CV 04-107 Order (Dismissal without Prejudice)* (HCN Tr. Ct., Jan. 11, 2005). (Matha, T).

The petitioner failed to appear at the *Fact-Finding Hearing*, and did not notify the court of an inability to attend the proceeding. The Court dismissed the instant case without prejudice.

*In the Interest of Minor Child: D.W.B., DOB 09/13/89, by Corinna M. Climer v. HCN Office of Tribal Enrollment, CV 04-68 Order (Demanding Accounting)* (HCN Tr. Ct., Jan. 11, 2005). (Matha, T).

The Court demanded that the petitioner submit the required accounting.



*In the Interest of Minor Child: K.B., DOB 07/16/92, by Corinna M. Climer v. HCN Office of Tribal Enrollment, CV 04-67 Order (Demanding Accounting)* (HCN Tr. Ct., Jan. 11, 2005). (Matha, T).

The Court demanded that the petitioner submit the required accounting.

*In the Interest of Minor Child: T.L.M., DOB 04/10/94, by Sherry McKinley v. HCN Office of Tribal Enrollment, CV 04-23 Order (Demanding Accounting)* (HCN Tr. Ct., Jan. 11, 2005). (Matha, T).

The Court demanded that the petitioner submit the required accounting.

*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 Order (Contempt)* (HCN Tr. Ct., Jan. 11, 2005). (Matha, T).

The Court had to determine whether to hold the petitioner in contempt of court for knowingly violating the express terms of several judgments. The Court previously released funds from the CTF account of a minor child for costs associated with professional reading and mathematics tutoring. Despite receiving additional judgments from the Court requesting accounting, the petitioner failed to submit accounting confirming the proper use of the funds. The petitioner subsequently failed to attend the *Show Cause Hearing*, resulting in her inability to rebut the prima facie showing of contempt. The court held the petitioner in contempt and imposed a reasonable remedial sanction.

*In the Interest of Minor Child: R.W., DOB 11/07/94, by Lana Greengrass v. HCN Office of Tribal Enrollment, CV 04-17 Order (Demanding Accounting) (HCN Tr. Ct., Jan. 11, 2005). (Matha, T).*

The Court demanded that the petitioner submit the required accounting.

**JANUARY 12, 2005**

*In the Interest of Adult CTF Beneficiary: Ashley J. Webster, DOB 09/17/85 v. HCN Office of Tribal Enrollment, CV 03-82 Order (Intent to Close) (HCN Tr. Ct., Jan. 12, 2005). (Matha, T).*

The Court previously released funds from the CTF of an adult CTF beneficiary for costs associated with household bills. The petitioner provided an accounting to the court, confirming the proper use of the funds. The Court informed the parties of its intent to close the case.

*In the Interest of Minor Child: J.L.G., DOB 07/24/92, by Willa RedCloud v. HCN Office of Tribal Enrollment, CV 04-101 Order (Accepting Accounting) (HCN Tr. Ct., Jan. 12, 2005). (Matha, T).*

The Court previously released funds from the CTF account of a minor child for costs associated with orthodontic procedures. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

*In the Interest of the Minor Child: N.L.S., DOB 02/15/92, by Jennifer L. White Eagle v. HCN Office of Tribal Enrollment, CV 04-26 Order (Demanding Accounting) (HCN Tr. Ct., Jan. 12, 2005). (Matha, T).*

The Court demanded that the petitioner submit the required accounting.

**JANUARY 13, 2005**

*In the Interest of Minor Child: J.M.H., DOB 07/29/91, by Jeffrey A. Harrison v. HCN Office of Tribal Enrollment, CV 05-03 Order (Petition Granted) (HCN Tr. Ct., Jan. 13, 2005). (Matha, T).*

The Court had to determine whether a parent could access CTF monies on behalf of her minor child for costs associated with orthodontic procedures. The Court granted the request.

*In the Interest of Minor Child: C.B., DOB 02/09/88, by Corinna Climer v. HCN Office of Tribal Enrollment, CV 04-61 Order (Motion Granted) (HCN Tr. Ct., Jan. 13, 2005). (Matha, T).*  
The Court had to determine whether a parent could access CTF monies on behalf of her minor child for unseen costs associated with orthodontic procedures. The Court granted the request.

**JANUARY 14, 2005**

*In the Interest of Minor Child: M.W., DOB 07/09/95, by Melody Whiteagle-Fintak v. HCN Office of Tribal Enrollment, CV 04-83 Order (Addendum to Petition) (HCN Tr. Ct., Jan. 14, 2005). (Matha, T).*

The Court previously granted a release of CTF monies for the purpose of purchasing a washer and dryer, conditioned upon the petitioner filing a reduced quote. The petitioner filed the required documentation. The Court granted the request.

**JANUARY 19, 2005**

*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., Jan. 19, 2005). (Matha, T).*

The Court previously released funds from the CTF account of a minor child for costs associated with orthodontic procedures. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.



*In the Interest of Minor Child: G.T.B.W., DOB 05/28/93, by Nicole L. Ward v. HCN Office of Tribal Enrollment, CV 05-05 Order (Petition Granted) (HCN Tr. Ct., Jan. 19, 2005). (Matha, T).*

The Court had to determine whether a parent could access CTF monies on behalf of her minor child for costs associated with orthodontic procedures. The Court granted the request.

## **JANUARY 21, 2005**

*In the Interest of Minor Children: Z.D.B., DOB 03/22/97; J.R.B., DOB 05/27/98; and R.M., DOB 10/22/00, by Thomasa B. Patterson v. HCN Office of Tribal Enrollment, CV 04-105 Order (Petition Denied)* (HCN Tr. Ct., Jan. 21, 2005). (Matha, T).

The Court had to determine whether a parent could access CTF monies on behalf of her minor children for costs associated with payment of the loan balance on the family vehicle. The Court applied the four-part test enunciated in the PER CAPITA DISTRIBUTION ORDINANCE, 2 HCC § 12.8c to assess the merit of the parent's request. The Court determined that the petitioner failed to show that the request benefited the minor children's health, education or welfare. The Court also held that the petitioner did not establish any "unforeseeable and/or unusual circumstances" capable of justifying the release of CTF funds for the purchase of a family vehicle. The Court accordingly denied the request.

## **JANUARY 24, 2005**

*In the Interest of Minor Child: S.D., DOB 07/09/91, by Karena Nichols v. HCN Office of Tribal Enrollment, CV 04-87 Order (Demanding Accounting)* (HCN Tr. Ct., Jan. 24, 2005). (Bossman, W).

The Court demanded that the petitioner submit the required accounting.

*In the Interest of Minor Child: R.W., DOB 11/07/94, by Lana Greengrass v. HCN Office of Tribal Enrollment, CV 04-17 Order (Accepting Accounting)* (HCN Tr. Ct., Jan. 24, 2005). (Matha, T).

The Court previously released funds from the CTF account of a minor child for costs associated with orthodontic procedures. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.



## **EMPLOYMENT**

### **JANUARY 12, 2005**

*Lisa K. Topping v. Robert Mudd as General Manager of Ho-Chunk Casino, CV 04-102 Scheduling Order* (HCN Tr. Ct., Jan. 12, 2005). (Bossman, W).

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

### **JANUARY 13, 2005**

*Louella Youngthunder v. Jonette Pettibone, CV 04-96 Scheduling Order* (HCN Tr. Ct., Jan. 13, 2005). (Bossman, W).

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

### **JANUARY 18, 2005**

*Kenneth Lee Twin v. Douglas Greengrass, Toni McDonald, George Lewis, Ho-Chunk Nation and HCN Pers. Dep't., CV 04-90 Order (Motion Hearing)* (HCN Tr. Ct., Jan. 18, 2005). (Bossman, W).

The defendants filed a motion requesting summary judgment. The Court scheduled a *Motion Hearing* in order to address the matter.

### **JANUARY 26, 2005**

*Kristen K. WhiteEagle v. Ho-Chunk Casino and Ho-Chunk Nation, CV 04-97 Amended Scheduling Order* (HCN Tr. Ct., Jan. 26, 2005). (Matha, T).

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

## **ENROLLMENT**

### **JANUARY 14, 2005**

*Sarita White v. HCN Office of Tribal Enrollment, CV 04-58 Order (Granting Defendant's Motion for Summary Judgment)* (HCN Tr. Ct., Jan. 14, 2005). (Bossman, W).

The Court had to determine whether to grant the defendant's request for summary judgment. The Court determined that the decision of the Committee on Tribal Enrollment was "supported by substantial evidence and not arbitrary, capricious or an abuse of discretion." The Court accordingly upheld the Committee's decision and granted the defendant's motion for summary judgment.

## **INCOMPETENT TRUST FUND (ITF)**

**JANUARY 18, 2005**

*In re: Roberta Goodbear, by Patrick Rebman v. HCN Office of Tribal Enrollment, CV 96-49 Order (Petition Granted)* (HCN Tr. Ct., Jan. 18, 2005). (Bossman, W).

The Court had to determine whether a guardian could access ITF monies on behalf of the adult incompetent for costs associated with the purchase of a washer and dryer. The Court granted the request.

**JANUARY 19, 2005**

*In the Interest of Adult Incompetent: W.E.S., DOB 12/23/36, by Frank E. Bichanich v. HCN Office of Tribal Enrollment, CV 04-22 Order (Motion Granted)* (HCN Tr. Ct., Jan. 19, 2005). (Matha, T).

The Court had to determine whether a guardian could access ITF monies on behalf of the adult incompetent for costs associated with the determination of appropriate placement. The Court granted the request.

**JANUARY 24, 2005**

*In the Interest of Adult Incompetent: W.E.S., DOB 12/23/36, by Frank E. Bichanich v. HCN Office of Tribal Enrollment, CV 04-22 Order (Motion Granted)* (HCN Tr. Ct., Jan. 24, 2005). (Matha, T).

The Court had to determine whether a guardian could access ITF monies on behalf of the adult incompetent for costs associated with maintaining a residence. The Court granted the request.



## **Juvenile**

**JANUARY 5, 2005**

*In the Interest of Minor Child: J.J.D., DOB 12/18/86, JV 98-19 Order (Termination of Jurisdiction)* (HCN Tr. Ct., Jan. 5, 2005). (Bossman, W).

The Court terminated its jurisdiction over and supervision of the instant case.

*In the Interest of Minor Children: C.L., DOB 04/25/98; C.D., DOB 09/19/01; L.R.L., DOB 11/02/02, JV 04-20-30-31 Order (Establishment of Child Support)* (HCN Tr. Ct., Jan. 5, 2005). (Matha, T).

The Court established a child support obligation for the mother of the minor children.

**JANUARY 6, 2005**

*In the Interest of Minor Child: D.D.F., DOB 07/08/94, JV 04-28 Order (Granting Postponement)* (HCN Tr. Ct., Jan. 6, 2005). (Bossman, W).

The mother of the minor child requested a postponement of the *Plea Hearing*. The Court granted the request.

*In the Interest of Minor Child: T.M.G., DOB 07/19/94, JV 03-45 Notice (Intent to Close)* (HCN Tr. Ct., Jan. 6, 2005). (Matha, T).

The Court informed the parties of its intention to close the file.

*In the Interest of Minor Child: P.D.R., DOB 08/24/90, JV 03-24 Order (Child Protection Review Hearing)* (HCN Tr. Ct., Jan. 6, 2005). (Matha, T).

The Court conducted a *Child Protection Review Hearing*. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo.

**JANUARY 7, 2005**

*In the Interest of Minor Child: M.T.G., DOB 10/05/04, JV 04-38 Order (Appointment of Guardian Ad Litem)* (HCN Tr. Ct., Jan. 7, 2005). (Matha, T).

The Court appointed a GAL in this matter.

**JANUARY 11, 2005**

*In the Interest of Minor Child: D.D.F., DOB 07/08/94, JV 04-28 Order (Appointment of Guardian Ad Litem)* (HCN Tr. Ct., Jan. 11, 2005). (Bossman, W).

The Court appointed a GAL in this matter.

**JANUARY 14, 2005**

*In the Interest of Minor Child: B.K.P., DOB 08/26/89, JV 04-37 Order (Voluntary Dismissal)* (HCN Tr. Ct., Jan. 14, 2005). (Matha, T).

The petitioner indicated his intent to withdraw the guardianship petition. The Court dismissed the instant case without prejudice.

*In the Interest of Minor Child: P.D.R., DOB 08/24/90, JV 03-24 Order (Appointment of Guardian Ad Litem)* (HCN Tr. Ct., Jan. 14, 2005). (Matha, T).

The Court appointed a GAL in this matter.

**JANUARY 18, 2005**

*In the Interest of Minor Child: J.L.G., DOB 07/24/92, JV 04-23 Order (Granting Motion to Recuse)* (HCN Tr. Ct., Jan. 18, 2005). (Matha, T).

The Court granted the request of CFS for recusal of the presiding judge and requested that the Chief Judge seek legislative approval to obtain a *pro tem* judge.

**JANUARY 19, 2005**

*In the Interest of Minor Child: D.D.F., DOB 07/08/94, JV 04-28 Order (Entering Plea)* (HCN Tr. Ct., Jan. 19, 2005). (Bossman, W).

The Court convened a *Plea Hearing* for the purpose of determining whether the mother of the minor child wished to contest the allegations contained in the *Child/Family Protection Petition*. The mother of the minor child entered a plea of guilty. The Court scheduled a *Dispositional Hearing*.

*In the Interest of Minor Child: A.C.L., DOB 03/13/01, JV 04-22 Order (Child Protection Review Hearing)* (HCN Tr. Ct., Jan. 19, 2005). (Matha, T).

The Court conducted a *Child Protection Review Hearing*. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo.

**JANUARY 20, 2005**

*In the Interest of Minor Child: S.E.C., DOB 02/25/96, JV 03-11 Order (Review Hearing)* (HCN Tr. Ct., Jan. 20, 2005). (Bossman, W).

The Court conducted a *Child Protection Review Hearing*. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo.

**JANUARY 21, 2005**

*In the Interest of Minor Children: M.B.K., DOB 04/29/00; A.J.K., DOB 11/12/03, JV 04-04-05 Review Hearing Order* (HCN Tr. Ct., Jan. 21, 2005). (Bossman, W).

The Court conducted a *Child Protection Review Hearing*. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo.

**JANUARY 24, 2005**

*In the Interest of Minor Children: A.A.G., DOB 11/13/92; B.G., DOB 05/12/96, JV 04-33-34 Order (Appointment of Temporary Guardian)* (HCN Tr. Ct., Jan. 24, 2005). (Matha, T).

The Court had to determine whether to appoint a temporary guardian of the minor child. The Court deemed such an appointment to be within the minor child's best interests.

*In the Interest of Minor Children: C.L., DOB 04/25/98; C.D., DOB 09/19/01; L.R.L., DOB 11/02/02, JV 04-30-31-20 Order (Establishment of Paternal Child Support)* (HCN Tr. Ct., Jan. 24, 2005). (Matha, T).

The Court established a child support obligation for the father of the minor children.

*In the Interest of Minor Children: V.L.P., DOB 03/03/88; R.K.P., DOB 11/09/89, JV 04-35-36 Order (Voluntary Dismissal)* (HCN Tr. Ct., Jan. 24, 2005). (Matha, T).

The petitioner filed a correspondence, indicating intent to withdraw the guardianship petition. The Court dismissed the case without prejudice.

## **JANUARY 27, 2004**

*In the Interest of Minor Child: L.K.K., DOB 02/12/87, JV 03-03 Order (Termination of Jurisdiction)* (HCN Tr. Ct., Jan. 27, 2005). (Matha, T).

The Court terminated its jurisdiction over and supervision of the instant case.

*In the Interest of Minor Children: J.R.P., DOB 02/27/92; L.M.P., DOB 02/12/90; L.K.K., DOB 02/12/87, JV 03-01-03 Order (Appointment of Temporary Guardian)* (HCN Tr. Ct., Jan. 27, 2005). (Matha, T).

The Court had to determine whether to appoint a temporary guardian of the minor child. The Court deemed such an appointment to be within the minor children's best interests.

## **Supreme Court**

### **JANUARY 3, 2005**

*Timothy G. Whiteeagle and Gretchen Eagleman v. Alvin Cloud, chairman of the General Council of October 11, 2003, in his official capacity; Roberta Funmaker, Secretary of the General Council, in her official capacity; and the HCN General Council Planning Committee, SU 04-06 Decision* (HCN S. Ct., Jan. 3, 2005).

Two tribal members filed an action, seeking a declaration that a General Council requires a quorum during the passage of any particular act. The Trial Court granted the defendants' *Motion to Dismiss* on several grounds. The Trial Court held that the plaintiffs lacked standing, that the Trial Court had no authority to issue a declaratory judgment absent an enabling Act from the Legislature, and that the General Council Planning Committee ("GCPC") retained sovereign immunity. The plaintiffs appealed the Trial Court's decision.

On appeal, the HCN Supreme Court reversed the Trial Court's decision in part and affirmed in part. The Supreme Court affirmed the Trial Court's dismissal of the GCPC as a defendant. The Court held that appellants failed to allege that the GCPC acted "outside the scope of their duties or authority," an allegation necessary in order to

sustain a suit for non-monetary relief against the Nation or its sub-entities.

On the issue of standing, the Supreme Court held that the appellants had standing to challenge alleged infringements of their rights as participants of the General Council. The Supreme Court held that as tribal members who attended the General Council session, they had the right to bring a case if they could show "some harm to themselves by actions of the General Council." However, the Supreme Court affirmed the dismissal on the ground that there was no actual case or controversy, finding that appellants "failed to allege that the actions of the General Council of October 11, 2003 harmed them in any way." In addition, the Supreme Court noted that the appellants did not show, nor even allege, that a quorum did not exist. The Supreme Court accordingly dismissed the appeal.



### **JANUARY 31, 2005**

*Daniel M. Brown v. Jim Webster, SU 04-09 Denial Order* (HCN S. Ct., Jan. 31, 2005).

The Supreme Court held that the Trial Court's denial of plaintiff's *Motion to Amend the Complaint* was within its sound discretion and affirmed the decision.

*In the Interest of Minor Children: C.C.P., DOB 02/03/93 and G.L.P., DOB 06/10/94, SU 05-02 Scheduling Order* (HCN S. Ct., Jan. 31, 2005).

The court accepted the matter for appeal and established dates and deadlines for the case.

*In re Casimir T. Ostrowski, SU 05-01 Order* (HCN S. Ct., Jan. 31, 2005).

Petitioner filed a *Petition for Writ of Mandamus*. The Court accepted the matter for expedited consideration. The Court invited the trial judge to file a response and invited DOJ to participate as *Amicus Curiae*.

---

# Recent Filings

## Trial Court

### Child Support

**JANUARY 4, 2005**

*State of Wisconsin v. Donald M. Cholka*, CS 05-01.  
(Bossman, W).

**JANUARY 12, 2005**

*State of Wisconsin v. Virgil S. Pettibone*, CS 05-02.  
(Matha, T).

*State of Wisconsin and Danielle T. Knack v. Jason E. King*, CS 05-03. (Matha, T).

*Crystal D. Olson v. Clint A. Beversdorf*, CS 05-04.  
(Bossman, W).

**JANUARY 14, 2005**

*Dencie L. Akeen v. Jason E. King*, CS 05-05.  
(Matha, T).

*Red Wood Cty. Human Servs., on behalf of Rebecca M. Falk v. Donald Blackhawk*, CS 05-06. (Matha, T.)

**JANUARY 19, 2005**

*Nela Stacy v. Alfreda O. Sky*, CS 05-07. (Bossman, W).

**JANUARY 25, 2005**

*Marathon County Dep't of Soc. Servs. v. Benjamin Decorah*, CS 05-08. (Matha, T).

**JANUARY 28, 2005**

*Forest County Potawatomi Child Support Agency v. Corina WhiteCloud*, CS 05-09. (Matha, T).

**JANUARY 31, 2005**

*Wood County Child Support Agency v. Barbara S. Smith*, CS 05-10. (Bossman, W).

*State of Wisconsin and Stephanie Rush v. Dean C. Davis*, CS 05-11. (Bossman, W).

*Theresa Day v. Travis C. Decorah*, CS 05-12.  
(Bossman, W).

*Shane Carter v. Wendy J. Pulvermacher a/k/a Degenhardt*, CS 05-13. (Bossman, W).

*Ramsey County & Gail G. Cleveland v. Donald G. Blackhawk, Jr.*, CS 05-14. (Bossman, W).

*Ramsey County & Rodena A. Hunter v. Dexter Yellowthunder*, CS 05-15. (Bossman, W).

### Civil Garnishment

**JANUARY 10, 2005**

*Community Dental v. Nicole Terry*, CG 05-01.  
(Matha, T).

*Alliance Collection Agencies, Inc. v. Deborah Witt*, CG 05-02. (Matha, T).

**JANUARY 12, 2005**

*Marcie Warfield v. Howard DeCora*, CG 05-03.  
(Matha, T).

*Creditor Recovery Serv., agent for Doctors' Clinic, S.C. v. Wendy Dickerson*, CG 05-04. (Matha, T).

**JANUARY 18, 2005**

*Augusta Hous. Mgmt. Co. v. Faith Kelly*, CG 05-05. (Matha, T).

**JANUARY 20, 2005**

*Augusta Hous. Mgmt. Co. v. Peggy Perkins*, CG 05-06. (Matha, T).

**JANUARY 28, 2005**

*Kris Kohlman Prop. Mgmt., LLC v. Sharon Lombardi*, CG 05-07. (Matha, T).

*Citifinancial v. Angela K. Pospisiel*, CG 05-08.  
(Matha, T).

*American Family Ins. v. Tara Blackcoon*, CG 05-09. (Matha, T).

*Gundersen Clinic v. Diane Wilde*, CG 05-10.  
(Matha, T).

*State Collection Serv. v. Barbara Schultz*, CG 05-11. (Matha, T).

## Civil Cases

### JANUARY 4, 2005

*Nicholas J. Kedrowski v. Sharon Whitebear, Verdie Kivimaki, Sandy Smalley, & Tris Harris*, CV 05-01. (Bossman, W).

*Corrina Climer v. CFS, Betty Kingsley, Liz Haller, & Molli White*, CV 05-02. (Bossman, W).

### JANUARY 6, 2005

*In the Interest of Minor Child: J.M.H., DOB 07/29/91, by Jeffrey A. Harrison v. HCN Office of Tribal Enrollment*, CV 05-03. (Matha, T).

### JANUARY 10, 2005

*In the Interest of Minor Child: M.M.H., DOB 07/26/94, by Michelle Hinchcliff v. HCN Office of Tribal Enrollment*, CV 05-04. (Matha, T).

### JANUARY 13, 2005

*In the Interest of Minor Child: G.T.B.W., DOB 05/28/93, by Nicole L. Ward v. HCN Office of Tribal Enrollment*, CV 05-05. (Matha, T).

### JANUARY 14, 2005

*Chris Lichman v. Ho-Chunk Casino*, CV 05-06. (Matha, T).

*Hillary Lichman v. Ho-Chunk Casino*, CV 05-07. (Matha, T).

### JANUARY 21, 2005

*Fran Kernes v. George Lewis, Toni McDonald and Ho-Chunk Nation*, CV 05-08. (Bossman, W).

### JANUARY 24, 2005

*In the Interest of Minor Child: W.J.M., DOB 04/19/92, by Shelia G. Smoke (Waube) v. HCN Office of Tribal Enrollment*, CV 05-09. (Matha, T).

*Erik William Silgman v. Ho-Chunk Bingo & Casino*, CV 05-10. (Matha, T).

*Nyree Kedrowski v. HCN Dep't of Treas., Payroll Division & HCN Attorney General, Rebecca Weise*, CV 05-11. (Matha, T).

### JANUARY 31, 2005

*In the Interest of Minor Child: J.T.T., by Susan Weber v. HCN Office of Tribal Enrollment*, CV 05-12. (Matha, T).

## Supreme Court

### JANUARY 14, 2005

*In re Casimir T. Ostrowski*, SU 05-01.

### JANUARY 18, 2005

*In the Interest of Minor Children: C.C.P., DOB 02/03/93; G.L.P., DOB 06/10/94*, SU 05-02.





**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—Earl Blackdeer  
 Donald Blackhawk  
 Dennis Funmaker  
 Jim Greendeer  
 Douglas Greengrass  
 Desmond Mike  
 Gavin Pettibone  
 Douglas Red Eagle  
 Preston Thompson, Jr.  
 Eugene Thundercloud  
 Morgan White Eagle  
 Clayton Winneshiek  
 Trial Court – William Bossman, Chief Judge  
 Todd R. Matha, Associate Judge  
 Clerk of Court, Trial Court – Marcella Cloud  
 Assistant Clerk of Court, Trial Court – Selina Joshua  
 Bailiff/Process Server – Willa RedCloud  
 Administrative Assistant – Jessi Cleveland  
 Staff Attorney – Jocelyn Roy  
 Supreme Court Clerk – Mary Endthoff

\* 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 . . . . .	\$.025/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).





MARCH 2005

VOL. 11, NO. 3

## Inside this Issue

**1** Proposed *Rules of Appellate Procedure* Posted for Public Review & Comment

**2** Court Announcements  
Updates from Outside Courts

**4** Recent HCN Court Decisions

**14** Recent HCN Court Filings

**16** HCN Court System Judiciary and Staff  
Ho-Chunk Nation Court System Fee Schedule  
Legal Citation Forms

**App. A** Draft – *HCN Rules of Appellate Procedure*

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

## Proposed *Rules of Appellate Procedure* Posted for Public Review and Comment

On Saturday, February 26, the Ho-Chunk Nation Supreme Court published a proposed draft of the *Ho-Chunk Nation Rules of Appellate Procedure* (hereinafter *Draft HCN R. App. P.*). The *HCN R. App. P.* were originally adopted in 1996, and most recently revised in 2004. A copy of the *Draft HCN R. App. P.* is attached as Appendix A to this *Bulletin*.

The HCN Supreme Court invites all HCN bar members, tribal members, tribal employees, and other interested parties to review the *Draft HCN R. App. P.* and submit any comments or suggestions to the Court. In addition to changes regarding numbering of the *Rules*, other notable differences in the proposed *Rules* include:

- an extension of the timeframe within which parties may file an appeal to sixty (60) days; *Draft HCN R. App. P.* 7(b)(1), 11.
- a provision regarding the status and duties of sureties; *Id.* 7(d).
- reserving the amount of the filing fee to the “schedule of fees;” *Id.* 9(a).
- an extension of the timeframe for parties to submit written briefs to thirty (30) days; *Id.* 12.
- a requirement that the Trial Court Clerk issue a *Certification of the Record*; *Id.* 14.
- an extension of the timeframe within which Supreme Court decisions must be issued to sixty (60) days; *Id.* 16(b).

- an omission of the provision that parties may apply to the Trial Court for equitable relief when a Supreme Court decision does not appear to be forthcoming; *HCN R. App. P.* 15(d).

## UPDATES FROM OUTSIDE COURTS

### United States Supreme Court

#### Certiorari denied

*Taxpayers Against Casinos of Michigan v. Michigan*, 471 Mich. 306 (Mich. 2004), *cert. denied*, 2005 U.S. LEXIS 1470 (Feb. 22, 2005).

#### Petition for Certiorari filed

*Kahawailoaa v. Norton*, 386 F.3d 1271 (9<sup>th</sup> Cir. 2004), *petition for cert. filed* (U.S. Jan. 25, 2005). (No. 04-1041).

### First Circuit Court of Appeals

*Carciari v. Norton*, No. 03-2647, 2005 U.S. App. LEXIS 2046 (1<sup>st</sup> Cir. Feb. 9, 2005).

The Governor, the State of Rhode Island, and the Town of Charlestown appealed the Secretary of the Interior's decision to take into trust a parcel of land for the benefit of the Narragansett Indian Tribe of Rhode Island ("Tribe"). The plaintiffs sought to enjoin the Secretary's decision as contrary to the INDIAN REORGANIZATION ACT ("IRA"), 25 U.S.C. § 461 *et seq.*, the RHODE ISLAND INDIAN CLAIMS SETTLEMENT ACT ("SETTLEMENT ACT"), 25 U.S.C. § 1701 *et seq.*, the ADMINISTRATIVE PROCEDURES ACT ("APA"), 5 U.S.C. § 706, and for alleged violations of various provisions of the United States Constitution. The district court granted a summary judgment in favor of the Secretary.

On appeal, the First Circuit Court held that the Secretary's authority under the IRA extended to the Tribe, despite the fact that the Tribe was not federally recognized at the time of the ACT's enactment in 1934. The Court also upheld the constitutionality of the IRA, holding that § 465 was not an unconstitutional delegation of legislative power and did not offend the Tenth Amendment. The Court also held that the Secretary's acquisition of the parcel into trust did not violate the Enclave Clause, U.S. CONST., art. I, § 8, cl. 17., nor the Admissions Clause, *Id.* art IV, § 3, cl 1.

The First Circuit Court held further that the SETTLEMENT ACT did not prohibit the Secretary

This list of differences between the currently enacted *HCN R. App. P.* and the *Draft HCN R. App. P.* is not exhaustive, and parties are encouraged to compare the proposed *Rules* to the current version in order to discover other differences. A copy of the current *HCN R. App. P.* can be located at the Judiciary's web page at [www.ho-chunknation.com/government/courts.htm](http://www.ho-chunknation.com/government/courts.htm). Comments and suggestions may be submitted in writing to the regular mailing address of the Judiciary or via e-mail to the HCN Supreme Court Clerk, Mary Endthoff, at [mendthoff@ho-chunk.com](mailto:mendthoff@ho-chunk.com). Comments should be submitted no later than March 31, 2005 at 4:30 p.m. CST.



## COURT ANNOUNCEMENTS

### New Citation Format under the LEGISLATIVE ORGANIZATION ACT

The format for citing provisions of the Ho-Chunk Nation Code was recently modified with the LEGISLATIVE ORGANIZATION ACT, 2 HCC § 11, amended and restated on January 4, 2005. The new format is shown generally on page 16 of this *Bulletin* under "Legal Citation Forms". Court users should consult the LEGISLATIVE ORGANIZATION ACT for detailed citation information. *See* 2 HCC § 11.36. Parties can obtain copies of the ACT on the Nation's website at [www.ho-chunknation.com](http://www.ho-chunknation.com) or by contacting the HCN Legislature at (715) 284-9343.

from taking the parcel into trust. Finally, the Court held that the Secretary's acceptance of the parcel into trust did not violate the APA since the BIA complied with the relevant required procedures. Accordingly, the Court affirmed the district court's grant of summary judgment to the Secretary.

*Greene v. Rhode Island*, No. 03-2670, 2005 U.S. App. LEXIS 2252 (1<sup>st</sup> Cir. Feb. 11, 2005).

In 1661, the Chief of the Wampanoags deeded land to a colonist from New Plymouth. The deed reserved a portion of the land for some of the Wampanoags "to plant and sojourn upon." In 1663, King Charles II granted a charter, which provided that the Indians had title to Indian lands and that any conveyance from the Indians must be confirmed and established by royal consent.

In 1978, Congress enacted the SETTLEMENT ACT, 25 U.S.C. § 1701 *et seq.* Under the SETTLEMENT ACT, Congress ratified any prior transfer of land located anywhere within the State by the Narragansetts or any other Indian tribe. 25 U.S.C. §§ 1705(a)(a1), 1712(a)(1). The Seaconke Wampanoag Tribe and its Chief brought suit, seeking a declaration that the Tribe is the lawful and equitable owner of land within the state. The land at issue was a portion of the land deeded to the colonists in 1661. The Wampanoags contended that they are entitled to occupy and use the land as it was reserved in 1661, because following that transfer the Tribe never entered into any treaties or other written agreements that would have legitimately transferred their rights in the land. The district court dismissed the case for failure to state a claim under Federal Rule of Civil Procedure (12)(b)(6).

The First Circuit Court of Appeals affirmed the district court's dismissal. The First Circuit Court held that the Wampanoag Tribe did not have recognized title to the disputed lands, and that the 1661 deed merely reserved a portion of the land for the Wampanoags over which they would continue to have aboriginal title. The Court held, further, that the provisions of the SETTLEMENT ACT barred the Tribe's land claims, under the SETTLEMENT ACT'S broad definition of a "transfer." The Court also upheld the constitutionality of the SETTLEMENT ACT, since the loss of aboriginal title is not a

compensable taking under the Fifth Amendment, and the Tribe brought its constitutional claim outside the statutory limitations period.

## Fourth Circuit Court of Appeals

*United States v. Garrett*, No. 03-4569, 2005 U.S. App. LEXIS 2611 (4<sup>th</sup> Cir. Feb. 15, 2005).

A grand jury in North Carolina indicted Garrett for conducting an illegal gambling business. Garrett filed motions to dismiss the indictment based on the grounds that: 1) North Carolina violated his equal protection rights by prosecuting him for the same activities in which Indian Tribes are permitted to engage; and 2) North Carolina's gaming laws violate the dormant Commerce Clause. The district court denied the motions and Garrett appealed.

On appeal, Garrett contended that because the Indian gaming preferences favor Indians based solely on their race, such laws should be subject to strict scrutiny, citing *Adarand Constructors v. Peña*, 515 U.S. 200 (1995). The Fourth Circuit Court of Appeals upheld the denials of Garrett's motion to dismiss. The Court noted that *Adarand* held that all racial classifications are subject to strict scrutiny. 515 U.S. at 227 (emphasis added). Preferences given to Indian tribes, however, are "political rather than racial in nature." *Morton v. Mancari*, 417 U.S. 535, 554 n.24 (1974). Therefore, *Adarand* did not require that the Court subject INDIAN GAMING REGULATORY ACT (25 U.S.C. § 2701 *et seq.*) or the laws authorizing North Carolina's Tribal-State Compact to strict scrutiny. The Court also dispensed with Garrett's argument that the laws of North Carolina violated the dormant Commerce Clause because Garrett was prosecuted while Harrah's, which provides games in interstate commerce and advertises in interstate commerce, is immune from prosecution, since it did not constitute a viable claim for a violation of the dormant Commerce Clause.

## Ninth Circuit Court of Appeals

*United States v. Becerra-Garcia*, No. 03-10654, 2005 U.S. App. LEXIS 1643 (9<sup>th</sup> Cir. Feb. 2, 2005).

Tribal rangers patrolling on the Tohono O'odham Indian Reservation in southern Arizona noticed a suspicious van and began following the van. When

the rangers turned on their emergency hazard lights the van stopped. As one of the rangers approached the van he saw through the open door more than twenty (20) undocumented aliens inside. Becerra-Garcia was charged with conspiring to transport illegal aliens and with transporting illegal aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(ii). The district court denied Becerra-Garcia's motion to suppress the evidence of the illegal aliens. Becerra-Garcia appealed the district court's denial of his motion.

On appeal, the Ninth Circuit Court noted that although the Fourth Amendment does not apply to the conduct of tribal governments, the INDIAN CIVIL RIGHTS ACT imposed an identical limitation on tribal government conduct. 25 U.S.C. § 1302(2). Therefore, the Court analyzed the reasonableness of the stop under Fourth Amendment precedent. Becerra-Garcia argued that the stop was unreasonable because the tribal rangers lacked authority under tribal law to effectuate the stop. The Court found, however, that the admissibility of evidence in federal court is determined without regard to state or tribal law. Essentially, the legality of the seizure did not depend on the rangers' authority under tribal law. The Court held that the Fourth Amendment required only reasonable suspicion in order to justify an investigative traffic stop. Becerra-Garcia did not challenge the district court's finding that the rangers had reasonable suspicion, therefore the Court upheld the dismissal of Becerra-Garcia's motion to suppress evidence.

## Tenth Circuit Court of Appeals

*Cherokee Nation of Oklahoma v. Norton*, No. 03-5055, 2005 U.S. App. LEXIS 2773 (10<sup>th</sup> Cir. Feb. 16, 2005).

In 1867 the Cherokee Nation of Oklahoma and Delaware Tribe of Indians entered into a contract. In 1979, the Delawares began a quest for federal recognition. The Department of the Interior ("DOI") initially denied the request, since "the Delawares ha[d] been absorbed into the [Cherokee Nation] for general governmental purposes since [1867]." In 1996, at the request of the Delawares, the DOI retracted its previous position via a posting

in the Federal Register, declaring the Delawares a recognized tribal entity. See 61 Fed. Reg. 50862-63 (Sept. 27, 1996).

The Cherokee Nation sued the DOI for allegedly violating the APA, 5 U.S.C. §§ 701-706 by extending recognition to the Delawares. The district court concluded that the DOI's retraction of the 1979 letter did not violate the APA since the Delawares were a federally recognized tribe prior to the letter. The Cherokee Nation appealed to the Tenth Circuit Court.

The Tenth Circuit Court noted that agency action must be upheld, if at all, on the basis the agency articulated. In this case, the DOI based its final decision on a "legal analysis of the pertinent treaties and agreements as well as a review of [its] administrative practice." 61 Fed. Reg. at 50,863. Therefore, the resolution of the case turned on the status of the Delawares under the treaties and agreements entered into by the Cherokees and Delawares in the 1860's. The Tenth Circuit Court reversed the district court's decision, finding that the DOI's recognition of the Delawares was contrary to the United States Supreme Court's interpretation of the 1860's treaties and agreements. The Court also found that, in using a previously unknown "retract and declare" procedure, the DOI's action were arbitrary and capricious. The Court accordingly set aside the DOI's final decision recognizing the Delawares.

---

## 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

#### **FEBRUARY 1, 2005**

*Roxanne Johnson v. Loren James Rave*, CV 97-25 *Order (Enforcing Arrearage Withholding)* (HCN Tr. Ct., Feb. 1, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to enforce child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*State of Wisconsin/Sauk County & Stacie Osorio*, CS 00-30 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Feb. 1, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to amend child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

#### **FEBRUARY 2, 2005**

*Kathleen Waukau by the State of Wisconsin/Sauk County v. Eldon Powless*, CV 96-93; *Rebecca Nunway v. Eldon Powless*, CS 99-23 *Order (Granting Telephonic Appearance)* (HCN Tr. Ct., Feb. 2, 2005). (Matha, T).

The Court's granted the party's request to appear by telephone at the *Fact-Finding Hearing*.

*State of Wisconsin/Jackson County v. Donald M. Cholka*, CS 05-01 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Feb. 2, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

#### **FEBRUARY 4, 2005**

*Crystal D. Olson v. Clint A. Beversdorf*, CS 05-04 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Feb. 4, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.



#### **FEBRUARY 11, 2005**

*Amy Millis v. Robin A. Stone*, CS 04-49 *Order (Enforcing Child Support)* (HCN Tr. Ct., Feb. 11, 2005). (Bossman, W).

The Court had to determine whether to continue enforce a standing foreign child support order against the respondent's per capita distributions. The Court convened a *Fact-Finding Hearing* and determined that the obligation was not being met through wage withholding. The Court directed enforcement of the obligation via per capita distribution withholding.

#### **FEBRUARY 14, 2005**

*Karena Day v. Kevin Day*, CV 96-57 *Order (Modifying Current Child Support)* (HCN Tr. Ct., Feb. 14, 2005). (Matha, T).

A review of the file indicated that the minor child turned eighteen (18) years of age and is enrolled in college. The Court accordingly modified the respondent's current child support obligation.

*Hope B. Smith v. Mary R. Smith*, CS 05-16 *Order (Enforcing Child Support)* (HCN Tr. Ct., Feb. 14, 2005). (Matha, T).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent requested enforcement of the foreign child support order. The Court granted the request for recognition and enforcement.

**FEBRUARY 16, 2005**

*Marathon County Dep't of Soc. Servs. v. Benjamin C. Decorah*, CS 05-08 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Feb. 16, 2005). (Matha, T).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

*State of Wisconsin/Jackson County v. Virgil S. Pettibone*, CS 05-02 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Feb. 16, 2005). (Matha, T).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

*State of Wisconsin/Juneau County on behalf of Chastity Miller v. Arnold R. Decorah*, CS 99-15; *State of Wisconsin/Jackson County, on behalf of Veronica Rosas v. Arnold R. Decorah*, CS 00-32 *Order (Modifying and Enforcing Child Support)* (HCN Tr. Ct., Feb. 16, 2005). (Matha, T).

The petitioner filed a motion requesting modification of current child support withholding with certified copies of the two (2) modified foreign support orders. The respondent failed to respond within the specified timeframe. The Court granted the uncontested motion.

*State of Wisconsin/Sauk Co. & Danielle R. Knak v. Jason E. King*, CS 05-03; *Dencie L. Akeen v. Jason E. King*, CS 05-05 *Order (Default Judgment)* (HCN Tr. Ct., Feb. 16, 2005). (Matha, T).

The Court had to determine whether to enforce two (2) standing foreign child support orders against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioners' requests for recognition and enforcement.

**FEBRUARY 16, 2005**

*Jadie A. Whittier v. Scott Hindes*, CS 04-47 *Order (Enforcing Arrearage Withholding)* (HCN Tr. Ct., Feb. 16, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to enforce child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

**FEBRUARY 18, 2005**

*Joanne Thundercloud v. Roger Thundercloud*, CS 99-45 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Feb. 18, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to enforce child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

**FEBRUARY 22, 2005**

*Rena Lynn LeMieux v. Kenneth Allen LeMieux*, CS 01-02 *Order (Default Judgment)* (HCN Tr. Ct., Feb. 22, 2005). (Matha, T).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's wages. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

**FEBRUARY 24, 2005**

*Shane A. Carter v. Wanda J. Degenhardt a/k/a Wanda J. Pulvermacher*, CS 05-13 *Order (Default Judgment)* (HCN Tr. Ct., Feb. 24, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

*State of Wisconsin/Shawano County & Stephanie Rush v. Dean C. Davis*, CS 05-11 *Order (Default Judgment)* (HCN Tr. Ct., Feb. 24, 2004). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

**FEBRUARY 25, 2005**

*Rena Lynn LeMieux v. Kenneth Allen LeMieux*, CS 01-02 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Feb. 25, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to enforce child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

**Civil Garnishment****FEBRUARY 4, 2005**

*Liberty Credit Servs., Inc. v. Frederick Sass*, CG 04-134 *Order (Default Judgment)* (HCN Tr. Ct., Feb. 4, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**FEBRUARY 7, 2005**

*Alliance Collection Agencies, Inc. v. Deborah E. Witt*, CG 05-02 *Order (Suspension of Judgment)* (HCN Tr. Ct., Feb. 7, 2005). (Matha, T).

The Court had to determine whether to grant the respondent's motion to modify, requesting an exemption from the awarded garnishment. The Court suspended the judgment and provided the foreign jurisdiction the opportunity to enter a superseding decision.

*Citibank (S.D.) N. Am. V. Kerry Crowe*, CG 04-80 *Order (Default Judgment)* (HCN Tr. Ct., Feb. 7, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Credit Recovery Serv., LLC, agent for Doctor's Clinic, SC v. Wendy Dickerson*, CG 05-04 *Order (Default Judgment)* (HCN Tr. Ct., Feb. 7, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Marcie Warfield v. Howard Decora*, CG 05-03 *Order (Default Judgment)* (HCN Tr. Ct., Feb. 7, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**FEBRUARY 14, 2005**

*Check Advance v. Tammy Terwall*, CG 04-138 *Order (Default Judgment)* (HCN Tr. Ct., Feb. 14, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**FEBRUARY 15, 2005**

*Augusta Hous. Mgmt. Co. v. Faith Kelly*, CG 05-05 *Order (Default Judgment)* (HCN Tr. Ct., Feb. 15, 2004). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Drs. Delebo, Overman, Hegna, Reich & Wruck v. Nicole Terry*, CG 05-01 *Order (Dismissal Without Prejudice)* (HCN Tr. Ct., Feb. 15, 2005). (Matha, T).

The petitioner sought to voluntarily dismiss its cause of action. The Court granted a dismissal without prejudice.

*Sherman Acquisition LP v. Anna Berndt*, CG 04-132 *Order (Dismissal Without Prejudice)* (HCN Tr. Ct., Feb. 15, 2005). (Matha, T).

The petitioner sought to voluntarily dismiss its cause of action. The Court granted a dismissal without prejudice.

**FEBRUARY 17, 2005**

*Franciscan Skemp Healthcare v. Susette K. Lamere*, CG 03-54 *Order (Satisfaction of Judgment)* (HCN Tr. Ct., Feb. 17, 2005). (Bossman, W).

The petitioner filed a *Satisfaction of Judgment*. The Court recognized that the debt was paid in full and informed the parties of its intent to close the file.



**FEBRUARY 18, 2005**

*Gundersen Clinic, Ltd. v. Diane Wilde*, CG 05-10 *Order (Default Judgment)* (HCN Tr. Ct., Feb. 18, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*State Collection Serv. v. Barbara J. Schulz*, CG 05-11 *Order (Default Judgment)* (HCN Tr. Ct., Feb. 18, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**FEBRUARY 22, 2005**

*Alliance Collection Agencies, Inc. v. Deborah E. Witt*, CG 05-02 *Order (Continuing Suspension of Judgment)* (HCN Tr. Ct., Feb. 22, 2005). (Matha, T).

The Court continued the suspension imposed on an earlier judgment. The Court emphasized its need for a subsequently entered foreign judgment affirming the earlier order.

*American Family Ins. v. Tara Blackcoon*, CG 05-09 *Order (Default Judgment)* (HCN Tr. Ct., Feb. 22, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Augusta Hous. Mgmt. Co. v. Peggy Perkins*, CG 05-06 *Order (Default Judgment)* (HCN Tr. Ct., Feb. 22, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Robert Mobley v. Sarah LeMieux*, CG 04-104 *Order (Requiring Submission of Documents)* (HCN Tr. Ct., Feb. 22, 2005). (Bossman, W).

The Court ordered the parties to submit updated statements setting forth the amounts paid on the judgment.

## **FEBRUARY 25, 2005**

*Sandra S. Winneshiek v. William B. Collins*, CG 05-12 Order (Petition Granted) (HCN Tr. Ct., Feb. 25, 2005). (Matha, T).

The Court had to determine whether to grant full faith and credit to a foreign judgment. The respondent filed a timely response, consenting to the entry of a garnishment order. The Court granted the petitioner's request for recognition and enforcement.

## **Civil Cases**

### **BUDGET PROCESS & APPROPRIATIONS ACT**

#### **FEBRUARY 1, 2005**

*HCN Legislature and Tracy Thundercloud, in his official capacity as Chair of the HCN Fin. Comm. v. George Lewis, HCN President*, CV 04-73 Order (Motion Hearing) (HCN Tr. Ct., Feb. 1, 2005). (Bossman, W).

The plaintiffs filed a motion requesting summary judgment. The Court scheduled a *Motion Hearing* in order to address the matter.

#### **FEBRUARY 14, 2005**

*HCN Legislature and Tracy Thundercloud, in his official capacity as Chair of the HCN Fin. Comm. v. George Lewis, HCN President*, CV 04-73 Order (Rescheduling Hearing) (HCN Tr. Ct., Feb. 14, 2005). (Bossman, W).

The Court rescheduled the *Pretrial Conference/Motion Hearing* at the request of the defendant.

### **CHILDREN'S TRUST FUND (CTF)**

#### **FEBRUARY 1, 2005**

*In the Interest of Minor Child: T.L.M., DOB 04/10/94, by Sherry McKinley v. HCN Office of Tribal Enrollment*, CV 04-23 Order (Accepting Accounting) (HCN Tr. Ct., Feb. 1, 2005). (Matha, T).

The Court previously released funds from the CTF account of a minor child for costs associated with the purchase of hearing instruments. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

## **FEBRUARY 9, 2005**

*In the Interest of Minor Child: J.T.T., DOB 04/09/93, by Susan Weber v. HCN Office of Tribal Enrollment*, CV 05-12 Order (Petition Granted) (HCN Tr. Ct., Feb. 9, 2005). (Bossman, W).

The Court had to determine whether a parent could access CTF monies on behalf of her minor child for costs associated with orthodontic procedures. The Court granted the request.

## **FEBRUARY 14, 2005**

*In the Interest of Minor Child: C.B., DOB 02/09/88, by Corinna Climer v. HCN Office of Tribal Enrollment*, CV 04-61 Order (Accepting Accounting) (HCN Tr. Ct., Feb. 14, 2005). (Matha, T).

The Court previously released funds from the CTF account of a minor child for costs associated with orthodontic procedures. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.



*In the Interest of Minor Child: D.W.B., DOB 09/13/89, by Corinna Climer v. HCN Office of Tribal Enrollment*, CV 04-68 Order (Accepting Accounting) (HCN Tr. Ct., Feb. 14, 2005). (Matha, T).

The Court previously released funds from the CTF account of a minor child for costs associated with orthodontic procedures. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

*In the Interest of Minor Child: K.B., DOB 07/16/92, by Corinna Climer v. HCN Office of Tribal Enrollment*, CV 04-67 Order (Accepting Accounting) (HCN Tr. Ct., Feb. 14, 2005). (Matha, T).

The Court previously released funds from the CTF account of a minor child for costs associated with orthodontic procedures. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

**FEBRUARY 15, 2005**

*In the Interest of Minor Child: S.K.B., DOB 12/29/92, by Helene M. Bean v. HCN Office of Tribal Enrollment, CV 04-93 Order (Accepting Accounting)* (HCN Tr. Ct., Feb. 15, 2005). (Matha, T).

The Court previously released funds from the CTF account of a minor child for costs associated with orthodontic procedures. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

*In the Interest of Minor Children: B.C.G., DOB 01/18/91, B.A.G., DOB 07/07/92, and S.S.G., DOB 02/05/94, by Sherry Lonetree-Gray v. HCN Office of Tribal Enrollment, CV 04-89 Order (Requesting Accounting)* (HCN Tr. Ct., Feb. 15, 2005). (Matha, T).

The Court requested that the petitioner submit the required accounting.

**FEBRUARY 16, 2005**

*In the Interest of Minor Child: M.M.H., DOB 07/26/94, by Michelle Hinchcliff v. HCN Office of Tribal Enrollment, CV 05-04 Order (Petition Granted)* (HCN Tr. Ct., Feb. 16, 2005). (Matha, T).

The Court had to determine whether a parent could access CTF monies on behalf of her minor child for costs associated with orthodontic procedures. The Court granted the request.

*In the Interest of Minor Child: N.L.S., DOB 02/15/92, by Jennifer L. White Eagle v. HCN Office of Tribal Enrollment, CV 04-26 Order (Show Cause)* (HCN Tr. Ct., Feb. 16, 2005). (Matha, T).

The Court previously released funds from the CTF account of a minor child for costs associated with orthodontic procedures. The petitioner failed to submit an accounting confirming the specified use of the funds within the specified timeframe. The Court ordered a *Show Cause Hearing* to allow the petitioner the opportunity to explain why the Court should not hold her in contempt of court.

*In the Interest of Minor Children: J.A.L., DOB 11/20/91, and K.A.L., DOB 08/14/89, by Gary L. Lonetree, Jr. v. HCN Office of Tribal Enrollment, CV 02-85 Order (Requesting Accounting)* (HCN Tr. Ct., Feb. 16, 2005). (Matha, T).

The Court requested that the petitioner submit the required accounting.

**FEBRUARY 21, 2005**

*In the Interest of Minor Child: S.D., DOB 07/09/91, by Karena Nichols v. HCN Office of Tribal Enrollment, CV 04-87 Order (Accepting Accounting)* (HCN Tr. Ct., Feb. 21, 2005). (Bossman, W).

The Court previously released funds from the CTF account of a minor child for costs associated with orthodontic procedures. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

**EMPLOYMENT****FEBRUARY 1, 2005**

*Kenneth Lee Twin v. Douglas Greengrass, Toni McDonald, George Lewis, Ho-Chunk Nation & HCN Pers. Dep't., CV 04-90 Order (Postponing Trial and Other Matters)* (HCN Tr. Ct., Feb. 1, 2005). (Bossman, W).

Upon request of the parties, the Court agreed to take the matter under advisement until after the HCN Supreme Court renders a decision in a relevant case. The Court postponed the *Trial*.

**FEBRUARY 7, 2005**

*Charles Funk v. Ho-Chunk Casino, Daniel Gander, Ralph Keebler, et al. and Ho-Chunk Casino Security Dep't, 3<sup>rd</sup> Shift, CV 04-20 Scheduling Order* (HCN Tr. Ct., Feb. 7, 2005). (Matha, T).

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

*Kristen K. White Eagle v. Ho-Chunk Casino & Ho-Chunk Nation, CV 04-97 Order (Modification of Scheduling Order)* (HCN Tr. Ct., Feb. 7, 2005). (Matha, T).

The Court granted a modification of the scheduling order due to the timely filing of an amended pleading.

**FEBRUARY 8, 2005**

*Casimir T. Ostrowski v. Ho-Chunk Nation, HCN Pers. Dep't & Ho-Chunk Casino, CV 02-82 Judgment (For Defendants)* (HCN Tr. Ct., Feb. 8, 2005). (Bossman, W).

The plaintiff was terminated from his position as a cage cashier at the Ho-Chunk Casino. The plaintiff filed an action for reinstatement to his former position, lost wages and benefits, and other relief. The Court granted a judgment in favor of the defendants and upheld the termination. The Court found that the plaintiff did not meet his burden of proving that the termination was contrary to the laws of the Nation.

**FEBRUARY 15, 2005**

*Tammy Temple v. HCN Table Games Dep't & Ho-Chunk Casino, CV 04-108 Order (Granting Telephonic Appearance)* (HCN Tr. Ct., Feb. 15, 2005). (Matha, T).

The Court's granted the party's request to appear by telephone at the *Scheduling Conference*.

**FEBRUARY 21, 2005**

*Corrina M. Climer v. CFS; Betty Kingsley, CFS Dir.; Liz Haller, Div. Adm'r; & Molli White, Clinical Dir., CV 05-02 Order (Permission to Reschedule)* (HCN Tr. Ct., Feb. 21, 2005). (Bossman, W).

The plaintiff failed to appear at the *Scheduling Conference*. The Court granted the plaintiff three (3) weeks to reschedule the *Scheduling Conference*.

**FEBRUARY 23, 2005**

*Rita Annette Brown v. Toni McDonald, HCN Dep't of Pers. & James Webster, HCN Bus. Dep't, CV 04-91 Order (Motion Hearing)* (HCN Tr. Ct., Feb. 23, 2005). (Bossman, W).

The defendants filed a motion requesting summary judgment. The Court scheduled a *Motion Hearing* in order to address the matter.

*Chris Lichman v. Ho-Chunk Casino, CV 05-06; Hillary Lichman v. Ho-Chunk Casino, CV 05-07 Order (Postponing Scheduling Conference)* (HCN Tr. Ct., Feb. 23, 2005). (Bossman, W).

The Court granted a postponement of the *Scheduling Conference*.

**FEBRUARY 25, 2005**

*Fran Kernes v. George Lewis, President in his official & individual capacity, Toni McDonald, Pers. Dir. in her official & individual capacity, and the Ho-Chunk Nation, CV 05-08 Order (Rescheduling Scheduling Conference)* (HCN Tr. Ct., Feb. 25, 2005). (Bossman, W).

The Court rescheduled the *Scheduling Conference*.

*Tammy Temple v. HCN Table Games Dep't & Ho-Chunk Casino, CV 04-108 Scheduling Order* (HCN Tr. Ct., Feb. 25, 2005). (Matha, T).

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

**FEBRUARY 28, 2005**

*Rita Annette Brown v. Toni McDonald, HCN Dep't of Pers. & James Webster, HCN Bus. Dep't, CV 04-91 Order (Granting Default Judgment for Defendants)* (HCN Tr. Ct., Feb. 28, 2005). (Bossman, W).

The plaintiff failed to appear at the *Pre-Trial Conference*. The Court granted a default judgment in favor of the defendants.

**HOUSING****FEBRUARY 11, 2005**

*Ronald Kent Kirkwood v. Francis Decorah, in his official capacity as Dir. of HCN Hous. Dep't, and all predecessor directors, in their official capacity; Levi Thunder, Iris Cleveland, Donald Greengrass, Mike Goze & Frank Johnson, in their official capacity as members of the Hous. Bd. of the Ho-Chunk Nation, and their predecessors; and Wade Blackdeer, Elliot Garvin, Clarence Pettibone, Tracy Thundercloud, Dallas WhiteWing, Gerald Cleveland, Sr., Christine Romano, Myrna Thompson, John Dall, Kathyleen Whiterabbit & Sharyn Whiterabbit, in their official capacity as Legislators of the Ho-Chunk Nation, and all predecessor Legislators, CV 04-33 Order (Partially Granting Plaintiff's Motion for Summary Judgment)* (HCN Tr. Ct., Feb. 11, 2005). (Matha, T).

The Court had to determine whether to grant the plaintiff's motion for summary judgment. The Court granted the motion in part, but required further discovery and submission of legal memoranda in order to address the remaining

issues. The Court addressed each of the enumerated defenses offered by the defendants: laches, immunity from suit and failure to state a claim. The Court declined to address the latter defense, due to its constitutional nature, citing the principle that courts should avoid constitutional questions if a judgment may rest on other grounds. *Crowell v. Benson*, 285 U.S. 22, 62 (1932).

The Court also dispensed with the sovereign immunity defense offered by the defendants, finding that the Court could consider granting prospective injunctive relief, which can possess an ancillary monetary impact. The defense under the doctrine of laches reflected the equitable, rather than legal nature of the suit. Within the decision, the Court provided a history of the legal/equitable dichotomy within court systems. The Court noted that the difference between legal and equitable relief is marked by the distinction between retroactive and prospective application.

In order to assess the application of the laches defense to the case at hand, the Court set forth the previously adopted three-part test for determining the proper application of the doctrine of laches. A defendant must demonstrate: “1) unreasonable delay, 2) lack of knowledge on the part of the party asserting the defense that the other party would assert the right on which he bases his suit, and 3) prejudice to the party asserting the defense in the even the action is maintained.” *Funmaker v. Jones et al.*, CV 97-72 (HCN Tr. Ct., Nov. 26, 1997) at 14. The Court found that the defendants did not produce any allegations of prejudice, and held the laches defense inapplicable.

After dispensing with the proffered defenses, the Court considered the plaintiff’s substantive claims and examined the legislative resolution at issue. *See* HCN LEG. RES. 08-18-98B. The Court determined that had the plaintiff filed his suit after Resolution 08-18-98B was passed, but before the resolution regarding “Elder Point Criteria” was passed in 2003, the Court could have entered appropriate injunctive relief. However, at this point in time, the granting of retroactive injunctive relief against officials would constitute compensation for a past statutory violation, which directly equates with a legal claim for monetary damages. The Court could not consider this option

absent an express waiver of sovereign immunity from suit. CONST. ART. XII, § 1.

The Court therefore reopened the discovery period in order for the parties to facilitate a further disclosure of relevant facts. The Court foresaw a two-fold inquiry: 1) whether the practical effect of the “Elder Point Criteria” is to absolutely bar the plaintiff from housing assistance, thereby violating the Membership Act, and 2): if the “Elder Point Criteria” does not constitute an absolute bar, whether it is constitutional. The Court directed the parties to prepare answers to questions relevant to this inquiry.



### **INCOMPETENT TRUST FUND (ITF)**

**FEBRUARY 3, 2005**

*In re: Bruce Patrick O’Brien, by Elethe Nichols v. HCN Office of Tribal Enrollment, CV 96-46 Order (Petition Granted)* (HCN Tr. Ct., Feb. 3, 2005). (Bossman, W).

The Court had to determine whether a guardian could access ITF monies on behalf of the ward for costs associated with the payment of property taxes. The Court granted the request.

*In the Interest of Adult Incompetent: W.E.S., DOB 12/23/36, by Frank E. Bichanich v. HCN Office of Tribal Enrollment, CV 04-22 Order (Accepting Accounting)* (HCN Tr. Ct., Feb. 3, 2005). (Matha, T).

The Court previously released funds from the ITF account of an adult incompetent for costs associated with the purchase of furniture and a quarterly allowance. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

*In the Interest of R.L.W., DOB 11/23/64, by Clarence R. Skinner v. HCN Office of Tribal Enrollment, CV 00-44 Order (Requesting Accounting)* (HCN Tr. Ct., Feb. 3, 2005). (Matha, T).

The Court requested that the petitioner submit the required accounting.

**FEBRUARY 4, 2005**

*In re: Bruce Patrick O'Brien, by Elethe Nichols v. HCN Office of Tribal Enrollment, CV 96-46 Order (Accepting Accounting)* (HCN Tr. Ct., Feb. 4, 2005). (Bossman, W).

The Court previously released funds from the ITF account of an adult incompetent for costs associated with the purchase of furniture and a quarterly allowance. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

**FEBRUARY 9, 2005**

*In the Interest of Kathy Brandenburg v. HCN Office of Tribal Enrollment, CV 98-18 Order (Directing Submission of Documents)* (HCN Tr. Ct., Feb. 9, 2005). (Bossman, W).

The case was previously closed by order of the Court. The petitioner recently filed a new *Petition* in the matter. The Court directed the petitioner to submit certified copies of foreign court orders determining incompetence and appointing a guardian. The Court also directed the petitioner to make a written request to reopen the case.

**FEBRUARY 25, 2005**

*In the Interest of Gerald Greendeer, by Alma Miner v. HCN Office of Tribal Enrollment, CV 05-16 Order (Petition Granted)* (HCN Tr. Ct., Feb. 25, 2005). (Bossman, W).

The Court had to determine whether a guardian could access ITF monies on behalf of the ward for costs associated with the payment of fines. The Court granted the request.

## Juvenile

**FEBRUARY 11, 2005**

*In the Interest of Minor Child: H.D.J., DOB 11/25/88, JV 98-20 Order (Child Protection Review Hearing)* (HCN Tr. Ct., Feb. 11, 2005). (Bossman, W).

The Court conducted a *Child Protection Review Hearing*. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo.

**FEBRUARY 14, 2005**

*In the Interest of Minor Child: M.T.G., DOB 10/05/04, JV 04-38 Order (Second Continuance of Plea Hearing)* (HCN Tr. Ct., Feb. 14, 2005). (Matha, T).

The Court rescheduled the *Plea Hearing* so as to provide the parents of the minor child an opportunity to obtain legal representation.

**FEBRUARY 15, 2005**

*In the Interest of Minor Child: L.R.H., DOB 11/18/87, JV 03-36 Order (Child Protection Review Hearing)* (HCN Tr. Ct., Feb. 15, 2005). (Matha, T).

The Court conducted a *Child Protection Review Hearing*. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo.

*In the Interest of Minor Child: D.M.L., DOB 04/22/97, JV 04-21 Order (Granting Motion to Dismiss)* (HCN Tr. Ct., Feb. 15, 2005). (Matha, T). The Court granted the uncontested *Motion for Dismissal* and terminated its jurisdiction and supervision over the case.

*In the Interest of Minor Child: J.G.W., DOB 06/09/99, JV 03-19 Order (Notification of Sua Sponte Dismissal)* (HCN Tr. Ct., Feb. 15, 2005). (Matha, T).

The Court did not receive filings from either party for nearly nineteen (19) months. The Court informed the parties of its intent to dismiss the case absent a response within thirty (30) days.

**FEBRUARY 17, 2005**

*In the Interest of Minor Child: A.C.G., DOB 04/04/89, JV 98-05 Six Month Review Hearing Order* (HCN Tr. Ct., Feb. 17, 2005). (Bossman, W).

The Court conducted a *Child Protection Review Hearing*. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo.

## **FEBRUARY 22, 2005**

*In the Interest of Minor Children: L.L.T-B, DOB 06/23/96; R.R.T-B., DOB 03/16/94, L.M.T-B., DOB 1/20/93, JV 05-01-03 Order (Appointment of Guardian Ad Litem)* (HCN Tr. Ct., Feb. 22, 2005). (Bossman, W).

The Court appointed a GAL in this matter.

## **FEBRUARY 28, 2005**

*In the Interest of Minor Children: R.B., DOB 06/23/95; J.V, DOB 09/03/99; S.V., DOB 10/22/98, JV 02-18-20 Order (Appointing Counsel)* (HCN Tr. Ct., Feb. 28, 2005). (Bossman, W).

The Court appointed counsel to represent the mother of the minor children.

*In the Interest of Minor Children: R.B., DOB 06/23/95; J.V, DOB 09/03/99; S.V., DOB 10/22/98, JV 02-18-20 Order Allowing Withdrawal of Legal Counsel* (HCN Tr. Ct., Feb. 28, 2005). (Bossman, W).

The Court granted the motion filed by the attorney for the father of the minor child to withdraw as legal counsel.

## **Supreme Court**

### **FEBRUARY 7, 2005**

*In the Interest of Minor Children: C.C.P., DOB 02/03/93, and G.L.P., DOB 06/10/94, SU 05-02 Order (Granting Motion for Expedited Consideration & Granting Stay)* (HCN S. Ct., Feb. 7, 2005).

The Court granted the *Motion for Expedited Consideration* and stayed briefing in the matter pending receipt of a copy of the *Settlement Agreement* and an *Affidavit of Counsel*.

### **FEBRUARY 18, 2005**

*In the Interest of Minor Children: C.C.P., DOB 02/03/93, and G.L.P., DOB 06/10/94, SU 05-02 Order (Extending Stay)* (HCN S. Ct., Feb. 18, 2005).

The Court granted an extension of the *Stay nunc pro tunc*, in order to issue a more comprehensive opinion to guide parties in similar situations in the future.

## **FEBRUARY 21, 2005**

*In re: Casimir T. Ostrowski, SU 05-01 Order to Dismiss* (HCN S. Ct., Feb. 21, 2005).

The plaintiff previously filed a petition seeking a *Writ of Mandamus* from the Court directing the Chief Judge of the Trial Court to issue a decision in a pending action. The Court received a *Response* from the Chief Judge, indicating that he had issued a decision in the matter. The Court dismissed the matter.

## **FEBRUARY 25, 2005**

*Marx Adver. Agency, Inc. v. Ho-Chunk Nation, d/b/a Ho-Chunk Casino & Bingo, Majestic Pines Casino & Bingo, Rainbow Casino & Bingo, and DeJope Bingo, SU 04-07 Notice of Extension* (HCN S. Ct., Feb. 25, 2005).

The Court extended the time allowed for the completion of the decision.



---

## **Recent Filings**

### **Trial Court**

#### **Child Support**

### **FEBRUARY 4, 2005**

*Hope B. Smith v. Mary R. Smith, CS 05-16.* (Matha, T).

### **FEBRUARY 8, 2005**

*Roberta Diaz v. Leonides A. White, CS 05-17.* (Matha, T).

*State of Wisconsin/Sawyer County v. Robert W. Blackdeer, CS 05-18.* (Matha, T).

*State of Wisconsin v. Andrew S. Rave, CS 05-19.* (Matha, T).

**FEBRUARY 11, 2005**

*Theresa Shier v. Eugene Trimble*, CS 05-20. (Matha, T).

**FEBRUARY 17, 2005**

*State of Wisconsin & Sarah L. Acevedo v. Frank Acevedo*, CS 05-21. (Bossman, W).

*Rosalyn Renee Danforth v. Christopher Jerome Kapayou*, CS 05-22. (Bossman, W).

**FEBRUARY 18, 2005**

*Marcia J. Laubenheimer v. Dale D. Laubenheimer*, CS 05-23. (Bossman, W).

**FEBRUARY 28, 2005**

*Kevin L. Bearman v. Gail Whitegull*, CS 05-24. (Matha, T).

**Civil Garnishment****FEBRUARY 4, 2005**

*Sandra Winneshiek v. William Collins*, CG 05-12. (Matha, T).

**FEBRUARY 8, 2005**

*Drs. Delebo, Overman, Hegna, Reich & Wruck v. Lisa Servant*, CG 05-13. (Matha, T).

*Alliance Collection Agencies, Inc. v. Marie A. Wulf*, CG 05-14. (Matha, T).

*Alliance Collection Agencies, Inc. v. Donna Pabst*, CG 05-15. (Matha, T).

*Alliance Collection Agencies, Inc. v. Victoria Ann Lowe*, CG 05-16. (Matha, T).

**FEBRUARY 11, 2005**

*Lutheran Hospital – LaCrosse v. Diane M. & Rene Wallace*, CG 05-17. (Matha, T).

*Co-op Credit Union v. David Youngthunder*, CG 05-18. (Matha, T).

**FEBRUARY 17, 2005**

*All American Plaza v. Brian LaMere*, CG 05-19. (Matha, T).

**FEBRUARY 18, 2005**

*Griffin Westerman v. Louie Filipovich a/k/a Fjubisa Filipovich*, CG 05-20. (Matha, T).

**Civil Cases****FEBRUARY 2, 2005**

*Mary Stone v. Robin A. Stone*, CV 05-13. (Bossman, W).

**FEBRUARY 3, 2005**

*Corrina M. Climer v. CFS; Betty Kingsley, CFS Dir.; Liz Haller, Div. Adm'r; & Molli White, Clinical Dir.*, CV 05-14 (Bossman, W).

**FEBRUARY 11, 2005**

*In the Interest of: David P. Garske v. HCN Office of Tribal Enrollment*, CV 05-15. (Matha, T).

*In the Interest of: Gerald Greendeer v. HCN Office of Tribal Enrollment*, CV 05-16. (Bossman, W).

**FEBRUARY 28, 2005**

*In the Interest of Minor Children: J.J.N., DOB 06/23/88; J.D.N., DOB 08/27/91; J.D.N., DOB 08/27/91 v. HCN Office of Tribal Enrollment*, CV 05-17. (Matha, T).

**Juvenile****FEBRUARY 3, 2005**

*In the Interest of Minor Child: L.L.T-B., DOB 06/23/96; JV 05-01.* (Bossman, W).

*In the Interest of Minor Child: R.R.T-B., DOB 03/16/94, JV 05-02.* (Bossman, W).

*In the Interest of Minor Child: L.M.T-B., DOB 1/20/93, JV 05-03.* (Bossman, W).

**FEBRUARY 4, 2005**

*In the Interest of Minor Child: E.L., DOB 10/11/96, JV 05-04.* (Bossman, W).

**FEBRUARY 14, 2005**

*In the Interest of Minor Child: J.R.M., DOB 10/10/04, JV 05-05.* (Matha, T).



**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 – Earl Blackdeer  
 Donald Blackhawk  
 Dennis Funmaker  
 Jim Greendeer  
 Douglas Greengrass  
 Desmond Mike  
 Gavin Pettibone  
 Douglas Red Eagle  
 Preston Thompson, Jr.  
 Eugene Thundercloud  
 Morgan White Eagle  
 Clayton Winneshiek  
 Trial Court – William Bossman, Chief Judge  
 Todd R. Matha, Associate Judge  
 Clerk of Court, Trial Court – Marcella Cloud  
 Assistant Clerk of Court, Trial Court – Selina Joshua  
 Bailiff/Process Server – Willa RedCloud  
 Administrative Assistant – Jessi Cleveland  
 Staff Attorney – Jocelyn Roy  
 Supreme Court Clerk – Mary Endthoff

\* 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 Judiciary Fee Schedule**

Filing Fees

- *Complaint*.....\$50.00
- *Petition for Release of Per Capita Distribution (Children's Trust Fund)* .....\$50.00
- *Motion to Appear Pro Hac Vice*.....\$35.00
- Appellate Filing Fee.....\$35.00
- *Petition to Register and Enforce Foreign Judgment/Order* .....\$20.00

Court Fees

- Copying .....\$0.10/page
- Faxing .....\$0.25/page (sending & receiving)
- CD of Hearings .....\$10.00/CD
- Deposition Videotape .....\$12.50/tape
- Certified Copies.....\$0.50/page
- Equipment Rental .....\$5.00/hour
- Admission to Practice .....\$50.00

**Legal Citation Form**

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

Ho-Chunk Nation Constitution

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

Ho-Chunk Nation Code

Ordinance/Act Name Title Number HCC Section.  
 ELDER PROTECTION ACT, 4 HCC § 1.  
 EMPLOYMENT RELATIONS ACT, 6 HCC § 5.  
*(for detailed citation information consult LEGISLATIVE ORGANIZATION ACT, 2 HCC § 11.36)*

HCN Supreme Court Case Law

Case Name, Case Number (HCN S. Ct., month, day, year).  
*Johnson v. Department Inc.*, SU 96-21 (HCN S. Ct., Aug. 14, 1996).

HCN Trial Court Case Law

Case Name, Case Number (HCN Tr. Ct., month, day, year)  
*Jane Doe v. Bob Smith*, CV 99-01 (HCN Tr. Ct., Nov. 1, 1999).

Ho-Chunk Nation Rules of Civil Procedure

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



---

---

# Appendix A

## **Draft - Ho-Chunk Nation Rules of Appellate Procedure**

### **INTRODUCTION**

<b>Rule 1.</b>	<b>Scope of Rules</b>
<b>Rule 2.</b>	<b>Composition of the Supreme Court</b>
<b>Rule 3.</b>	<b>Conflict of Interest</b>
<b>Rule 4.</b>	<b>Recusal</b>
<b>Rule 5.</b>	<b>Traditional Advisors</b>
<b>Rule 6.</b>	<b>Jurisdiction and Scope of Review</b>
<b>Rule 7.</b>	<b>Right of Appeal</b>
<b>Rule 8.</b>	<b>Appeal by Permission</b>
<b>Rule 9.</b>	<b>Filing Fees and Costs</b>
<b>Rule 10.</b>	<b>Computation of Time</b>
<b>Rule 11.</b>	<b>Time for Filing and Service of Notice of Appeal</b>
<b>Rule 12.</b>	<b>Time for Filing Briefs and Memoranda</b>
<b>Rule 13.</b>	<b>Form of Briefs, Memoranda and Statements</b>
<b>Rule 14.</b>	<b>Record on Appeal</b>
<b>Rule 15.</b>	<b>Oral Argument</b>
<b>Rule 16.</b>	<b>Opinion of the Supreme Court</b>
<b>Rule 17.</b>	<b>Entry and Form of Judgment</b>
<b>Rule 18.</b>	<b>Interest on Judgments</b>
<b>Rule 19.</b>	<b>Previous Appeals</b>
<b>Rule 20.</b>	<b>Appeals to General Council</b>

- 
- Rule 1. **Scope of Rules**
- a. These rules, adopted by the Supreme Court of the Ho-Chunk Nation, govern the appeal process. Where necessary to promote fairness and justice to parties, the Supreme Court may look to the Ho Chunk customs and traditions and the *Federal Rules of Appellate Procedure* for guidance in applying and supplementing these rules.
  - b. These rules shall be liberally construed to secure a just and speedy determination of every appeal.

- 
- 
- c. These rules should be read and applied in conjunction with the *HO-CHUNK NATION RULES OF JUDICIAL ETHICS* and *HO-CHUNK NATION RULES OF PROFESSIONAL RESPONSIBILITY*.

**Rule 2. Composition of the Supreme Court**

- a. The Supreme Court of the Ho-Chunk Nation shall consist of the Chief Justice and two (2) Associate Justices elected in accordance with the CONSTITUTION OF THE HO CHUNK NATION.
- b. When an elected Justice is not available to hear an appeal, a substitute Justice shall be appointed in accordance with the CONSTITUTION OF THE HO-CHUNK NATION, ART. VII, § 13. Otherwise, all appeals shall be heard by a full Court.

**Rule 3. Conflicts of Interest**

Any Justice with a direct personal or financial interest in the appeal before the Supreme Court shall recuse. All such conflicts or potential conflicts of interest shall be disclosed to all parties in the appeal at the earliest possible date and for the record. See also *HCN RULES OF JUDICIAL ETHICS*.

**Rule 4. Recusal**

A Justice may recuse him/herself or a party may request recusal of a Justice by Motion to the Chief Justice of the Supreme Court with Notice given to all parties. Notice shall also be given to the Legislature of any vacancy due to recusal along with a request to appoint a Justice pro tempore to fill such vacancy.

**Rule 5. Traditional Court**

At the request of a party on its own Motion, the Supreme Court may consult with and be advised by the Elders of the Traditional Court for guidance on the customs and traditions of the Nation.

**Rule 6. Jurisdiction and Scope of Review**

The Supreme Court shall have the power to interpret the CONSTITUTION OF THE HO-CHUNK NATION and to make conclusions of law. The Chief Justice of the Supreme Court shall, when hearing a case, have the authority to compel the production of documents where such is deemed necessary to rendition of the Court's opinion. There shall not be a new trial in the Supreme Court. The Supreme Court may review both the factual findings and conclusion of law of the Trial Court.

**Rule 7. Right of Appeal**

- a. All parties have the right to appeal a final judgment or order of the Trial Court. Any party to a civil action, who is dissatisfied with the judgment or verdict, may appeal to the Supreme Court.

- 
- 
- b. Any party who is aggrieved by a final judgment or order of the Trial Court may appeal in the manner prescribed by this Rule.
- (1) Such party shall within sixty (60) calendar days after the day such judgment or order was rendered, file with the Clerk of Court, a *Notice of Appeal* from such judgment or order, together with a filing fee as stated in appendix or schedule of fees.
  - (2) The party taking the appeal shall be referred to as the appellant; all other parties shall be referred to as the appellees.
- c. In any case in which an appeal is reflected as required by this Rule, the appellant may petition the Supreme Court for an order staying the judgment or order. A stay shall be granted in all cases in which it is requested unless manifest injustice would result therefrom. The Supreme Court may render a stay conditioned upon execution of a bond to guarantee performance of the judgment or order when deemed necessary.
- d. Bond, Proceedings Against Sureties. Relief available in the Supreme Court under this Section may be conditioned upon the filing of a bond or other appropriate security in the Ho-Chunk Nation Trial Court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the Trial Court and irrevocably appoint the Clerk of the Trial Court as his/her agent upon whom any papers affecting his/her liability on the bond or undertaking may be served. It is the responsibility of a surety to provide the Clerk of the Trial Court with his/her proper and current address, and a supply of stamped, self-addressed envelopes, if he/she wishes copies of any papers served upon the Clerk as his/her agent to be mailed to him/her. His/her liability may be enforced on motion in the Trial Court without the necessity of an independent action. The *Motion* and such notice of the motion of the Trial Court shall prescribe may be served on the Clerk of the Trial Court who shall forthwith mail copies to the sureties if their addresses are known.
- e. In the event the appeal is denied, the Supreme Court shall state the reasons for the refusal within thirty (30) calendar days of the receipt of the *Notice of Appeal*.

**Rule 8. Appeal by Permission**

An appeal from an interlocutory order maybe sought by filing a petition for permission to appeal with the Clerk of Court within ten (10) calendar days after the entry of such order with proof of service on all other parties to the action. The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the Trial Court; a statement of the question itself; and a statement of the reasons why substantial basis exists for a difference of opinion on the question and why and immediate appeal may materially advance the termination of the litigation. The petition shall include or have annexed a copy of the order relating

---

---

thereto. Within ten (10) calendar days after service of the petition and adverse party may file an answer in opposition.

Rule 9.       **Filing Fees and Costs**

- a.     The filing fee for an appeal shall be in accordance with the schedule of fees.
- b.     The Chief Justice of the Supreme Court may waive the filing fee upon *Motion For A Fee Waiver* by the Appellant where the Chief Justice is satisfied the Appellant lacks the means to pay the filing fee. The *Motion* must include an affidavit demonstrating inability to pay and must accompany the *Notice of Appeal*.
- c.     A cash deposit or bond in an amount equal to the amount of any judgment, plus costs assessed by the Trial Court, or a *Motion for Waiver* of this requirement, must accompany the *Notice of Appeal*. The deposit/bond requirement may be waived only when in the judgment of the Supreme Court such deposit/bond is not in the interest of justice and such waiver does not unnecessarily harm the judgment holder. The *Motion for Waiver* of the deposit/bond requirement must be requested with Notice to all parties. If the *Motion for Waiver* is denied, the deposit/bond must be submitted within ten (10) calendar days of the denial. The appeal will be dismissed if the deposit/bond is not paid or waived.

Rule 10.       **Computation of Time**

- a.     The computation of any time period in these Rules shall be in calendar days.
- b.     When the interests of justice require an expedited appeal, the Supreme Court shall notify all parties promptly of the reduced time limit.
- c.     There shall be no extension of time limits contained in these rules unless the moving party demonstrates unforeseen or emergency circumstances.

Rule 11.       **Time for Filing and Service of Notice of Appeal**

- a.     A written *Notice of Appeal* from a decision of the Trial Court must be filed with the Clerk of Court within sixty (60) calendar days of the date of the final judgment or order. The *Notice of Appeal* shall identify the party (ies) making the appeal by name and address, and shall identify the final judgment or order being appealed by name and case number.
- b.     The party filing the appeal must file a short statement of the reason or grounds for the appeal.
- c.     Copies of the *Notice of Appeal* shall be served to all parties to the action by the Appellant. Proof of Service shall be promptly filed with the Court.

- 
- 
- d. Upon receipt of the *Notice of Appeal*, the Clerk of Court shall prepare, certify and file with the Supreme Court all papers comprising the record of the case appealed. A separate docket shall be maintained for the Supreme Court in which shall be recorded each state of the proceedings on each case appealed.

**Rule 12. Time for Filing Briefs and Memoranda**

Within thirty (30) calendar days of filing the *Notice of Appeal* or within such longer time as the Supreme Court shall allow, the appellant shall file a written brief. An original and three (3) copies shall be filed with the Clerk and one (1) additional copy shall be served upon or mailed to each other party or his/her counselor or attorney. The appellees shall have a thirty (30) calendar days after receipt of the brief within which to file a *Reply Brief*. A *Response Brief* may be filed within ten (10) calendar days of the receipt of the appellee's *Reply*.

**Rule 13. Form of Briefs**

- a. Briefs shall include the following:

- (1) A cover page stating the name of the case, the numbers assigned to the case by the Trial Court and the Supreme Court, the name, address and telephone number of the party filing the document and the name, address and telephone number of counsel;
- (2) A statement of the case which indicates the nature of the case, the disposition by the Trial Court and the legal issues presented to the Supreme Court;
- (3) Separately identified legal argument for each issue presented to the Supreme Court;
- (4) A conclusion stating precisely the relief sought;
- (5) All pages shall be 8 ½" by 11" double spaced and consecutively numbered;
- (6) All laws, rules, regulations and cases cited in the document shall be attached as an addendum unless previously provided in the appeal;
- (7) No other attachments or addenda shall be permitted and will be disregarded by the Supreme Court.
- (8) All briefs shall not exceed (20) pages in length, excluding addendum, and *response briefs* shall not exceed six (6) pages in length, excluding addendum.

- b. An appeal may be dismissed if the Appellant does not file the written Brief, reply or response or if the Appellant does not serve all parties.

**Rule 14. Record on Appeal**

The papers filed in the Trial Court, the exhibits and the transcript of the proceedings shall constitute the entire record on appeal in all cases.

---

---

The Clerk of Court for the Trial Court shall certify that the record consists of the complete and entire file. The *Certification of the Record* shall be served on all of the parties.

Rule 15.     **Oral Argument**

- a.     At the discretion of the Supreme Court, an oral argument may be ordered in the Appeal. The Supreme Court shall decide the order of presentation, the length of time each party is permitted for their presentation, the issues to be addressed in oral argument, and such other matters as may be necessary. The order giving *Notice of Oral Argument* shall include all such matters and shall be served on all parties at least ten (10) calendar days prior to the date set for argument, except for election challenges pursuant to *Ho-Chunk Nation Rules of Civil Procedure*, Section IX.
- b.     The Supreme Court shall decide all cases upon the briefs', memoranda and statements filed plus the oral argument, if heard.

Rule 16.     **Opinions of the Supreme Court**

- a.     All decisions of the Supreme Court shall be in writing and accompanied by an opinion stating the legal issues and the basis for the decision.
- b.     Decisions of the Supreme Court shall be issued no later than sixty (60) calendar days after the conclusion or oral argument or after the expiration of time to file a *Reply Brief or Response Brief* if no oral argument is held.
- c.     The time for issuing a decision and opinion may be extended provided all parties are notified of the extension. The *Notice of Extension* will include the cause for and length of such extension.
- d.     If no decision and opinion is issued by the Supreme Court within the time designated, the Supreme Court Clerk shall contact the Chief Justice of the Supreme Court to determine the status of the decision and opinion if requested by any party. The Clerk of Court shall report the status of the decision and opinion in writing to all parties.

Rule 17.     **Entry and Form of Judgment**

- a.     The decision and opinion of the Supreme Court shall be by a majority vote. The Supreme Court may dismiss an appeal, make conclusions of law, which reverse and remand the final judgment or order of the Trial Court in whole or in part, or affirm the final judgment or order of the Trial Court.
- b.     The Supreme Court Clerk shall file and enter the final decision and opinion of the Supreme Court.

- 
- 
- c. The Supreme Court Clerk shall serve all parties with a copy of the stamped decision and opinion as entered.
  - d. Any decision of the Supreme Court shall be final according to the CONSTITUTION OF THE HO CHUNK NATION, ART. VIII, § 7(c).

**Rule 18. Interest on Judgments**

If a judgment for money is dismissed on appeal, affirmed or upheld on remand, whatever interest is allowed by Legislative enactment or other Court Rule shall be computed from the date the first judgment was entered by the Trial Court. Any interest accrued shall be awarded to the prevailing party.

**Rule 19. Frivolous Appeals**

If an appeal is determined to be frivolous by the Supreme Court, an appeal shall be dismissed and costs and fees for counsel may be awarded to Appellee(s). The Supreme Court may also assess expenses incurred by the Supreme Court to the Appellant. If an Appellant has been granted a waiver of fees, the Supreme Court may remand to the Trial Court for the imposition of a duty for community service by the Appellant.

**Rule 20. Appeals to General Council**

Any party may request a review by the General Council of a decision of the Supreme Court, which interpret actions of the legislature. The request shall be made according to procedures set forth by the General Council. The General Council does not retain the power to review and reverse decision of the Council of the Supreme Court which interpret the CONSTITUTION OF THE HO CHUNK NATION.

Rules of Appellate Procedure: Adopted 4/13/96. Restated and Revised 11/13/04 by the Ho-Chunk Nation Supreme Court

---

Adopted this 25<sup>th</sup> day of May 1997.



APRIL 2005

VOL. 11, NO. 4

## Inside this Issue

**1** Supreme Court Overturns  
*City of Sherrill v. Oneida  
Indian Nation*

**3** Updates from Outside  
Courts

**5** Recent HCN Court  
Decisions

**18** Recent HCN Court  
Filings

**20** HCN Court System  
Judiciary and Staff

HCN Judiciary 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](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

## Supreme Court Overturns *City of Sherrill v. Oneida Indian Nation*

On Tuesday, March 29, 2005, the United States Supreme Court issued its ruling in *City of Sherrill v. Oneida Indian Nation of New York*. 2005 U.S. LEXIS 2927. In the 8-1 decision, the Court determined that the Oneida Indian Nation of New York's ("Tribe's") purchase of property that was once part of its aboriginal homeland, but was later illegally transferred to the State of New York, did not return the property to sovereign status. *Id.* at \*5. Consequently, the local municipal government retained regulatory authority over the purchased property and could assess property taxes accordingly.

In 1997 and 1998, the Tribe purchased the property at issue, located in what is now the City of Sherrill, New York, in open-market transactions. *Sherrill*, 2005 U.S. LEXIS 2927 at \*28. The parcels of land were once contained within the Tribe's historic 300,000-acre reservation, but were last possessed by the Oneidas as a tribal entity in 1805. *Id.* at \*11. At that time, the Tribe transferred the parcels to one of its members, who sold the land to a non-member in 1807 allegedly in violation of the NONINTERCOURSE ACT of 1790, 25 U.S.C. § 177, which bars the sale of tribal land without the acquiescence of the federal government. The Oneidas maintained that because the parcels lie within the boundaries of the reservation originally occupied by the Oneidas, the properties were exempt from taxation and accordingly refused to pay property taxes assessed by the City of Sherrill. The City of Sherrill initiated state-court eviction proceedings and the Tribe brought the case to federal court seeking equitable relief prohibiting the imposition of property taxes. The district court held that the parcels of land were not

taxable and the Second Circuit Court affirmed. *Id.* at \*28-29.

Prior to the instant cause of action, the Tribe filed suit against two (2) counties in the State of New York, alleging that cession of land to the State in 1795 violated the NONINTERCOURSE ACT. *County of Oneida v. Oneida Indian Nation of N.Y.*, 470 U.S. 226, 236 (1985) (*Oneida II*). In *Oneida II*, the Court held that the Tribe could maintain its right to receive money damages “for violation of their possessory rights based on federal common law.” *Id.* In the case at hand, the Tribe therefore argued that because the Court in *Oneida II* recognized the Oneidas’ aboriginal title to their historic reservation land and because the Tribe had now acquired the parcels at issue in the open market, it had unified fee and aboriginal title and may now assert sovereign authority over the parcels. *Sherrill*, 2005 U.S. LEXIS 2927 at \*30-31. However, the Court rejected the Tribe’s theory holding that too much time had passed for the Tribe to declare sovereignty simply by purchasing the land. “Standards of federal Indian law and federal equity practice’ preclude the Tribe from rekindling embers of sovereignty that long ago grew cold,” Justice Ginsburg wrote for the majority. *Id.* at \*33 (citations omitted).

In reaching its decision, the Court considered the longstanding, distinctly non-Indian character of the area and its inhabitants, the State’s and local governments’ constant exercise of regulatory authority over the area for the last 200 years, and the Tribe’s long delay in seeking judicial relief against the parties. *Id.* at \*34-37. The Court held that these factors “evoke[d] the doctrines of laches, acquiescence and impossibility, and render[ed] inequitable the piecemeal shift in governance this suit [sought] unilaterally to initiate.” *Id.* at \*46. The Court concluded its decision by advising the Tribe that 25 U.S.C. § 465, provides the proper avenue...to reestablish sovereign authority over territory last held by the Oneidas 200 years ago.” *Id.* at \*45-46. Section 465 authorizes the Secretary of the

Interior to acquire trust lands for tribes that would remain exempt from State and local taxation. *Id.* The section requires the Secretary to take into account “the interests of others with stakes in the area’s governance and well being” when acquiring trust lands for tribes. *Id.* at \*45. A senior Bureau of Indian Affairs official has since indicated that the agency is open to acquiring land into trust for the Tribe in light of the Court’s ruling. Indianz.com, *BIA Official Calls High Court Ruling ‘quite depressing’* (Mar. 31, 2005), available at [www.indianz.com/News/2005.asp](http://www.indianz.com/News/2005.asp)

Justice Stevens filed the lone dissent in the case, characterizing the majority’s ruling as a “lawmaking decision” encroaching on congressional territory. *Sherrill*, 2005 U.S. LEXIS 2927 at \*53. Justice Stevens expressed his dismay that the majority’s decision was in violation two (2) principles of Indian law. First, the decision violated the principle that only Congress has the power to diminish or disestablish a tribe’s reservation, and second, the notion that a tribe retains immunity from state and local taxation of reservation land until Congress explicitly revokes that immunity. *Id.* at \*51.

In response to the 8-1 ruling, representatives from five (5) tribes – the Cayuga Nation of New York, the Seneca-Cayuga Tribe of Oklahoma, the St. Regis Mohawk Tribe of New York, the Oneida Tribe of Wisconsin, and the Stockbridge-Munsee Band of Mohican Indians – met to discuss the implications of the Court’s ruling. Associated Press, *Five Land Claim Tribes Meet* (Mar. 31, 2005), available at [www.gazetteextra.com/onedias033105.asp](http://www.gazetteextra.com/onedias033105.asp) The meeting, an attempt to show unity among the tribes, provided a chance for the tribal leaders and representatives to support negotiated resolutions to Indian land claims. *Id.* The tribes commented in a joint statement that the Court’s recent decision “overturns fundamental bedrock principles of Indian law and unfairly subjects the Oneidas to bear the brunt of this decision.” *Id.* The President of the National Congress of American Indians, also reflected on the effect of

the decision. “The passage of time should not make a difference in how justice is dealt – what was right then should be right now.” Indianz.com, *BIA Official Calls High Court Ruling ‘quite depressing’* (Mar. 31, 2005), available at [www.indianz.com/News/2005/007348.asp](http://www.indianz.com/News/2005/007348.asp).



## UPDATES FROM OUTSIDE COURTS

### **United States Supreme Court**

*Cherokee Nation of Oklahoma v. Leavitt*, 125 S. Ct. 1172 (Mar. 1, 2005).

The United States and two (2) Indian Tribes entered into agreements in which the Government promised to pay certain “contract support costs” that the Tribes incurred during fiscal years 1994-1997. The parties entered the agreement pursuant to the INDIAN SELF DETERMINATION AND EDUCATION ASSISTANCE ACT, which authorizes contracts where tribes promise to supply federally funded services that a Government agency would otherwise provide, such as tribal health services. In return, the Government must pay the tribe’s costs, including administrative expenses, which includes “contract support costs.” 25 U.S.C. §§ 450f(a), 450j-1(a)(1),(2). The ACT defines “contract support costs” as other “reasonable costs” that a federal agency would not have incurred, but which nonetheless the tribe would incur in managing the program. *Id.* at § 450j-1(a)(2). In the instances at hand, the Government refused to pay the full amount promised under the contracts.

The Government argued, in essence, that it is legally bound to pay the costs as promised only if Congress appropriated sufficient funds, and in this instance, Congress failed to do so. The Government first argued that the ACT creates a special kind of

“self-determination contract,” different from a “standard government procurement contract,” and tribes should receive only a portion of the total lump-sum appropriation allocated to it, not the entire sum to which a private contractor might be entitled. The court declined to adopt this argument, deeming it contrary to the ACT’s language and general purposes. The Government next pointed to a provision of the ACT, which subjects provisions “to the availability of appropriations.” *Id.* at § 450j-1(b). However, the Court pointed out that Congress had appropriated unrestricted funds sufficient to pay the claims at issue. Finally, the Court interpreted Section 314 of the 1999 APPROPRIATIONS ACT, 105 P.L. 277, to not bar recovery. The Court affirmed the Federal Circuit Court of Appeal’s judgment in favor of the Cherokee Nation and reversed the Tenth Circuit’s judgment in favor of the Government.

*City of Sherrill, New York v. Oneida Indian Nation of New York*, 2005 U.S. LEXIS 2927 (Mar. 29, 2005).

SEE SUMMARY PP. 1-3

#### **Certiorari granted**

*Richards v. Prairie Band Potawatomi Nation*, 379 F.3d 979 (10<sup>th</sup> Cir. 2004), *cert. granted*, 2005 US LEXIS 2084 (U.S. Feb. 28, 2005) (No. 04-631).

#### **Certiorari denied**

*Coeur d’Alene Tribe v. Hammond*, 384 F.3d 674 (9<sup>th</sup> Cir. 2004), *cert. denied*, 73 U.S.L.W. 3513 (Feb. 28, 2005).

#### **Petition for Certiorari filed**

*Prescott v. Little Six*, 387 F.3d 753 (8<sup>th</sup> Cir. 2004), *petition for cert. filed* (U.S. Mar. 7, 2005) (No. 04-1197).

*VanGuilder v. New York*, 2005 N.Y. LEXIS 16 (N.Y. 2005), *petition for cert. filed* (U.S. Mar. 2, 2005) (No. 04-1161).

## Seventh Circuit Court of Appeals

*Native American Arts, Inc v. Waldron Corporation*, No. 04-3182, 2005 U.S. App. LEXIS 3494 (Mar. 2, 2005).

The INDIAN ARTS AND CRAFTS ACT forbids selling a good “in a manner that falsely suggests it is ... an Indian product.”, 25 U.S.C. §§ 305 et seq., 305e(a). The principal plaintiff, a seller of goods produced by Indians, brought suit for damages against a non-Indian manufacturer of Indian-style jewelry. Tags on the jewelry identified the designer, a non-Indian, but contained no disclaimer of authenticity. A jury found for the defendants and the plaintiffs appealed.

The plaintiffs argued that the district court judged erred in holding a regulation established by the Indian Arts and Crafts Board, within the Department of Interior, unconstitutional, and in subsequently refusing to base an instruction to the jury on the regulation. The Seventh Circuit Court agreed that the district court’s characterization of the relevant regulation as unconstitutional was erroneous. However, the Court found that this determination did not aide the plaintiff’s cause. The Court held that the ACT merely authorized the Indian Arts and Crafts Board to define the term “Indian product,” not to determine what constitutes sufficient proof of false advertising via the regulation or enforce the ACT. Therefore, the Court affirmed the district court’s decision to refuse to base a jury instruction on the regulation.

## Eighth Circuit Court of Appeals

*Douglas F. Longie v. Spirit Lake Tribe*, No. 04-1578, 2005 U.S. App. LEXIS 3731 (Mar. 7, 2005).

In 1976, the plaintiff, a tribal member, submitted a request for a land exchange to the Spirit Lake Tribe, seeking to trade his family’s 40-acre allotment for eighty (80) acres of tribal lands. The plaintiff moved onto the 80-acre parcel and made improvements to the land, believing that the agreement would soon be finalized. However, the transfer was not complete because the tribal members did not sign the deed authorizing the formal transfer of title. In 2001, the plaintiff received a letter from the Bureau of Indian Affairs, stating that the transfer had never occurred, that he

owed payment for unauthorized use of the land, and that he needed to obtain leases from the Tribe in order to continue to use the parcel. The plaintiff filed action in federal district court seeking quiet title, an injunction against improvements by the Tribe on the parcel, and other equitable relief. The district court dismissed the case for lack of federal jurisdiction and, alternatively, for the plaintiff’s failure to exhaust tribal court remedies.

On appeal, the plaintiff argued that the federal courts had subject matter jurisdiction over his case under both 28 U.S.C. §§ 1331 and 1361. The Circuit Court held that it would exercise its section 1331 jurisdiction in cases involving reservation affairs only when federal law is determinative of the issues involved. The Court held that the plaintiff’s right to ownership of the 80-acre parcel was contingent upon whether the tribe legally consented to and effectuated the transfer, i.e. whether there was a legal basis to force the Tribe to honor its resolution consenting to the transfer. That issue was contingent upon tribal law, not federal law, and therefore did not provide jurisdiction under section § 1331. The Court also found a lack of jurisdiction under 28 U.S.C. § 1361 since the plaintiff did not name a federal officer as a defendant nor identify a legal basis for the duty he claimed existed. The Court affirmed the order of dismissal and noted the plaintiff’s ability to seek relief in tribal court.

## Tenth Circuit Court of Appeals

*Prairie Band Potawatomi Nation v. Wagnon*, No. 03-33-22, 2005 U.S. App. LEXIS 4861 (Mar. 25, 2005).

The Prairie Band of Potawatomi Indians filed suit against Kansas state officials, seeking to have its motor vehicle registrations and titles recognized by the State. The district court granted the plaintiff’s motion for summary judgment, permanently enjoining the State from applying and enforcing its motor vehicle and titling laws against the Tribe and any persons who operate or own a vehicle registered and titled pursuant to tribal law. The defendants appealed the district court’s ruling. On appeal, the Tenth Circuit Court had to determine whether the district court: (1) abused its discretion in issuing the

permanent injunction; (2) erred in its ruling that defendants were not entitled to sovereign immunity; and (3) erred in ruling that the relief requested by the Tribe (a permanent injunction) did not violate the Tenth Amendment.

As to the first issue, the defendants-appellants argued that the district court improperly applied the balancing test set forth in *White Mountain Apache Tribe v. Bracker* to evaluate the respective federal, state, and tribal interests. 448 U.S. 136, 151 (1980). Defendants alleged that the application of the *Bracker* test in the case at hand violated the Supreme Court's decision in *Nevada v. Hicks*, 533 U.S. 353 (2001). The Circuit Court disagreed, holding that *Hicks* did not address the issue of when a valid tribal ordinance on a reservation has a limited secondary effect off the reservation, and therefore, did not change the application of the *Bracker* balancing test in the case at hand. The Court agreed that the Tribe's interests in self-governance by enacting and enforcing its own vehicle and registration and titling laws prevailed when balanced against the unsupported safety concerns asserted by the State. Thus, the Court held that the district court did not abuse its discretion in granting a permanent injunction.

The defendants argued further that the permanent injunction violated the Eleventh Amendment because the Tribe was effectively suing the state. The Circuit Court dismissed this argument, relying on the exception to state sovereign immunity carved out in *Ex parte Young*, 209 U.S. 123 (1908). As to the final issue, defendants claimed the injunction violated the Tenth Amendment because it was effectively a congressional mandate to recognize the Tribe's motor vehicle licenses and titles. The Court dispensed with this argument as well since the permanent injunction requested by the Tribe did not mandate state participation in the enforcement of a federal regulatory program. The Circuit Court accordingly affirmed the judgment of the district court.



---

## 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

**MARCH 1, 2005**

*State of Wisconsin/Jackson County, on behalf of Sadie Winneshiek, CS 01-39 Order (Ceasing Child Support Withholding and Intent to Close)* (HCN Tr. Ct., Mar. 1, 2005). (Bossman, W).

The petitioner filed a motion requesting cessation of child support arrears withholding. The respondent failed to respond within the specified timeframe. The Court granted the motion and notified the parties of its intent to close the file.

**MARCH 2, 2005**

*Rodena Ann Hunter and State of Minnesota/Ramsey County v. Dexter Yellowthunder*, CS 05-15 *Default Judgment (Enforcing Child Support Arrears)* (HCN Tr. Ct., Mar. 2, 2005). (Matha, T).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Theresa Shier v. Eugene Trimble*, CS 05-20 *Order (Default Judgment)* (HCN Tr. Ct., Mar. 4, 2005). (Matha, T).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's wages. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.



*Nela F. Stacy v. Alfreda O. Sky*, CS 05-07 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Mar. 4, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Nela F. Stacy v. Alfreda O. Sky*, CS 05-07 *Default Judgment (Enforcing Child Support Against Wages)* (HCN Tr. Ct., Mar. 4, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's wages. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

*State of Wisconsin/Wood County v. Barbara S. Smith*, CS 05-10 *Order (Enforcing Child Support)* (HCN Tr. Ct., Mar. 4, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent requested enforcement of the foreign child support order. The Court granted the request for recognition and enforcement.

**MARCH 7, 2005**

*State of Wisconsin/Jackson County v. Robin LaMere*, CS 02-47 *Order (Ceasing Current Child Support & Updating Arrearage Withholding)* (HCN Tr. Ct., Mar. 7, 2005). (Matha, T).

The petitioner filed a motion requesting cessation of current child support withholding and amendment of arrears withholding. The respondent failed to respond within the specified timeframe. The Court granted the motion.

**MARCH 8, 2005**

*Marcie Warfield v. Howard Decora*, CS 03-76 *Order (Enforcing Arrearage Withholding)* (HCN Tr. Ct., Mar. 8, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to enforce child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

**MARCH 9, 2005**

*State of Minnesota/Redwood County, on behalf of Rebecca Marie Falk v. Donald G. Blackhawk, Jr.*, CS 05-06; *Gail Genelle Cleveland and State of Minnesota/Ramsey County v. Donald G. Blackhawk, Jr.*, CS 05-14 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Mar. 9, 2005). (Matha, T).

The Court had to determine whether to enforce a standing foreign child support order and two (2) arrearage obligations against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's requests for recognition and enforcement.

**MARCH 10, 2005**

*State of Wisconsin/Jackson County, on behalf of Erin L. Emerson v. Rueben Rave, Jr.*, CV 97-171; *State of Wisconsin/Jackson County, on behalf of Robin LaMere*, CS 01-38 *Order (Modifying and Enforcing Child Support)* (HCN Tr. Ct., Bossman, W).

The petitioner filed a motion requesting modification of current child support withholding with a certified copy of the modified foreign support order. The respondent failed to respond within the specified timeframe. The Court granted the motion.

**MARCH 11, 2005**

*Theresa Day v. Travis C. Decora*, CS 05-12 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Mar. 11, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Marcia J. Laubenheimer, n/k/a Marcia J. Holtman v. Dale D. Laubenheimer*, CS 05-23 *Order (Default Judgment)* (HCN Tr. Ct., Mar. 11, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's wages. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

*State of Wisconsin/Sauk County and Sarah L. Acevedo v. Frank Acevedo*, CS 05-21 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Mar. 11, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

**MARCH 14, 2005**

*Lisa Harrison v. Rex Whitegull*, CV 96-50 *Notice (Child Turning 18 – Requiring Proof of Enrollment)* (HCN Tr. Ct., Mar. 14, 2005). (Bossman, W).

The minor child turned eighteen (18) years of age. In accordance with state law, the respondent's obligation ends when the child turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

*Lana Lincoln v. Jon Eric Miner*, CS 99-62 *Notice (Child Turning 18 – Requiring Proof of Enrollment)* (HCN Tr. Ct., Mar. 14, 2005). (Bossman, W).

The minor child turned eighteen (18) years of age. In accordance with state law, the respondent's obligation ends when the child turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.



*State of Wisconsin v. Arnold J. Crone*, CV 97-35 *Notice (Child Turning 18 – Requiring Proof of Enrollment)* (HCN Tr. Ct., Mar. 14, 2005). (Bossman, W).

The minor child turned eighteen (18) years of age. In accordance with state law, the respondent's obligation ends when the child turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

*Casey Whitegull v. Harriet M. Whitegull*, CV 97-61 *Notice (Child Turning 18 – Requiring Proof of Enrollment)* (HCN Tr. Ct., Mar. 14, 2005). (Bossman, W).

The minor child turned eighteen (18) years of age. In accordance with state law, the respondent's obligation ends when the child turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

*Veronica Wilbur v. Bernard L. Crowe*, CV 96-54; *Sara Whiteeagle v. Bernard L. Crowe*, CV 97-92 *Order (Proof of High School Enrollment Filed)* (HCN Tr. Ct., Mar. 14, 2005). (Bossman, W).

The petitioner filed proof of the child's high school enrollment. The Court modified current child support accordingly.

**MARCH 15, 2005**

*Roberta Diaz v. Leonides A. White*, CS 05-17 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Mar. 15, 2005). (Matha, T).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Montgomery J. Green v. Eliza M. Green*, CS 02-30 *Notice (Child Turning 18 – Requiring Proof of Enrollment)* (HCN Tr. Ct., Mar. 15, 2005). (Matha, T).

The minor child turned eighteen (18) years of age. In accordance with state law, the respondent's obligation ends when the child turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

*Jan C. LaCount v. Curtis J. Pidgeon*, CS 03-11; *Debra Peters v. Curtis Pidgeon*, CS 03-73 *Order (Modification)* (HCN Tr. Ct., Mar. 15, 2005). (Matha, T).

The court modified current child support in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

*Tari Pettibone v. Gregory Bird*, CS 02-09 *Order (Ceasing Withholding Child Support Arrears)* (HCN Tr. Ct., Mar. 15, 2005). (Bossman, W).

The petitioner filed a motion requesting cessation of child support arrears withholding. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*State of Wisconsin/Shawano County and Tracy Cobb v. Daniel Bird*, CS 03-51 *Notice (Child Turning 18 – Requiring Proof of Enrollment)* (HCN Tr. Ct., Mar. 15, 2005). (Bossman, W).

The minor child turned eighteen (18) years of age. In accordance with state law, the respondent's obligation ends when the child turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

*State of Wisconsin/Harriet M. Whitegull v. Morgan K. Decorah*, CS 98-78; *State of Wisconsin v. Morgan Kyle Decorah*, CS 04-26 *Order (Erratum and Modification)* (HCN Tr. Ct., Mar. 15, 2005). (Matha, T).

The Court issued this order to correct a clerical mistake made in the previous order. The court also modified current child support in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

**MARCH 16, 2005**

*Danae LaBarge v. Joseph Hackey*, CS 99-35; *State of Wisconsin/Agnes Schockto v. Joseph Hackey*, CS 02-01 *Order (Modification)* (HCN Tr. Ct., Mar. 16, 2005). (Matha, T).

The court modified current child support in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

**MARCH 17, 2005**

*State of Wisconsin/Jackson County v. Donald Lee Yellowcloud*, CS 98-01; *State of Wisconsin/Jackson County v. Donald Lee Yellowcloud*, CS 03-38 *Order (Modification)* (HCN Tr. Ct., Mar. 17, 2005). (Matha, T).

The court modified current child support in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

**MARCH 22, 2005**

*Richland County Child Support Agency, for Kathleen Ann Even v. Jeffrey Scott Even, Sr.*, CS 05-32 *Order (Suspension of Activity)* (HCN Tr. Ct., Mar. 22, 2005). (Matha, T).

The Court suspended all case file activity and informed the petitioner of its ability to file a motion to resume activity if the respondent subsequently resumes employment with the Nation.

**MARCH 24, 2005**

*Jodi Dennison v. Marcus Sena*, CS 02-35; *State of Iowa v. Marcus Sena*, CS 03-78 *Order (Modification)* (HCN Tr. Ct., Mar. 24, 2005). (Bossman, W).

The court modified current child support in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

*State of Iowa ex rel., WS1000026, Taylor Justicia Renee Houston v. Jerome J. Houston*, CS 02-42; *State of Iowa ex rel., WS1000026, Destiny Marie Rounds v. Jerome J. Houston*, CS 02-43 *Order (Modification)* (HCN Tr. Ct., Mar. 24, 2005). (Matha, T).

The court modified current child support in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

*State of Iowa/Amy J. Polo v. Timothy M. Browne*, CS 04-42; *State of Wisconsin/Janet L. Krzmarcik v. Timothy M. Browne*, CS 04-43 *Order (Modification)* (HCN Tr. Ct., Mar. 24, 2005). (Bossman, W).

The court modified current child support in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

**MARCH 29, 2005**

*Andrea L. Estebo v. Joseph P. Estebo*, CS 04-16 *Order (Closing Case)* (HCN Tr. Ct., Mar. 29, 2005). (Matha, T).

The Court closed the case and extended its condolences to the family of the late respondent.

**MARCH 30, 2005**

*State of Wisconsin v. John F. Blackdeer*, CS 02-46 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Mar. 30, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*State of Wisconsin v. Arnold J. Crone*, CV 97-35 *Order (Proof of High School Enrollment Filed)* (HCN Tr. Ct., Mar. 30, 2005). (Bossman, W).

The Court 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 Wisconsin v. Charles Dennis Hindsley*, CS 03-20 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Mar. 30, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*State of Wisconsin/Brown County, and Stephanie Passon v. Rodney S. Cloud*, CS 99-08; *Holly A. Wyckoff v. Rodney S. Cloud*, CS 02-31 *Order (Modifying Child Support Withholding)* (HCN Tr. Ct., Mar. 30, 2005). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion, requesting suspension of child support withholding. The Court granted the uncontested motion.

*State of Wisconsin/Jackson County v. Garrett C. Decorah*, CS 03-36 *Order (Ceasing Withholding and Intent to Close)* (HCN Tr. Ct., Mar. 30, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion, requesting suspension of child support withholding. The Court granted the uncontested motion.

*State of Wisconsin/Jackson County v. Thunderhawk L. Decorah*, CS 03-30; *Darlene F. Crowe v. Thunderhawk L. Decorah*, CS 03-84 *Order (Modifying Current Child Support and Updating Arrears)* (HCN Tr. Ct., Mar. 30, 2005). (Matha, T). The court modified current child support in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3). The Court also granted the petitioner's uncontested motion to update the respondent's arrearage obligation.

*State of Wisconsin/Sawyer County, on behalf of Shelly Woller v. Robert Wayne Blackdeer*, CV 97-40; *Sawyer County Child Support v. Robert W. Blackdeer*, CS 05-18 *Order (Default Judgment – Enforcing Child Support)* (HCN Tr. Ct., Mar. 30, 2005). (Matha, T).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

#### **MARCH 31, 2005**

*State of Wisconsin/Jackson County, on behalf of Robin LaMere v. Rueben Rave, Jr.*, CS 01-38 *Order (Enforcing Child Support Against Wages)* (HCN Tr. Ct., Mar. 31, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's wages. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

*State of Wisconsin/Harriet M. Whitegull v. Morgan K. Decorah*, CS 98-78; *State of Wisconsin v. Morgan Kyle Decorah*, CS 04-26 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Mar. 31, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

## **Civil Garnishment**

#### **MARCH 2, 2005**

*Alliance Collection Agencies, Inc. v. Victoria Ann Lowe*, CG 05-16 *Order (Default Judgment)* (HCN Tr. Ct., Mar. 2, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Alliance Collection Agencies, Inc. v. Donna Pabst*, CG 05-15 *Order (Default Judgment)* (HCN Tr. Ct., Mar. 2, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Alliance Collection Agencies, Inc. v. Marie A. Wulf*, CG 05-14 *Order (Default Judgment)* (HCN Tr. Ct., Mar. 2, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Delebo, Overman, Hegna, Reich & Wruck v. Lisa Servant*, CG 05-13 *Order (Default Judgment)* (HCN Tr. Ct., Mar. 2, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

#### **MARCH 4, 2005**

*Co-op Credit Union v. David Youngthunder*, CG 05-18 *Order (Default Judgment)* (HCN Tr. Ct., Mar. 4, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**MARCH 7, 2005**

*Lutheran Hospital – LaCrosse v. Diane M. and Rene Wallace*, CG 05-17 *Order (Default Judgment)* (HCN Tr. Ct., Mar. 7, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**MARCH 10, 2005**

*Griffin Westerman v. Louie Filipovich*, CG 05-20 *Order to Appear Pro Hac Vice* (HCN Tr. Ct., Mar. 10, 2005). (Matha, T).

The Court granted the party's request to make a special appearance in the matter.

**MARCH 11, 2005**

*All American Plaza v. Brian LaMere*, CG 05-19 *Order (Default Judgment)* (HCN Tr. Ct., Mar. 11, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.



*Kris Kohlman v. Sharon Lombardi*, CG 05-07 *Order (Suspension of Activity)* (HCN Tr. Ct., Mar. 11, 2005). (Matha, T).

The Court suspended all case file activity and informed the petitioner of its ability to file a motion to resume activity if the respondent subsequently resumes employment with the Nation.

*Griffin Westerman v. Louie Filipovich a/k/a Ljubisa Filipovich*, CG 05-20 *Order (Default Judgment)* (HCN Tr. Ct., Mar. 11, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**MARCH 15, 2005**

*Co-op Credit Union v. David Youngthunder*, CG 05-18 *Order (Satisfaction of Judgment)* (HCN Tr. Ct., Mar. 15, 2005). (Matha, T).

The petitioner filed a *Satisfaction of Judgment*. The Court recognized that the debt was paid in full and informed the parties of its intent to close the file.

**MARCH 24, 2005**

*Alliance Collection Agencies v. Dan Downing*, CG 04-62 *Order (Dismissal Without Prejudice)* (HCN Tr. Ct., Mar. 24, 2005). (Bossman, W).

The defendant was not properly served with *Summons* and more than one hundred twenty (120) days elapsed since the issuance of the *Summons*. The Court dismissed the case.

*Alliance Collection Agencies v. Thomas Weigel*, CG 04-63 *Order (Dismissal Without Prejudice)* (HCN Tr. Ct., Mar. 24, 2005). (Bossman, W).

The defendant was not properly served with *Summons* and more than one hundred twenty (120) days elapsed since the issuance of the *Summons*. The Court dismissed the case.

*State Collection Service v. Christ Gorde*, CG 04-74 *Order (Default Judgment)* (HCN Tr. Ct., Mar. 24, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**MARCH 30, 2005**

*Credit Recovery Service, LLC, agent for Wood County Telephone Company v. Ivory Kelly*, CG 04-136 *Order (Default Judgment)* (HCN Tr. Ct., Mar. 30, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

## **MARCH 31, 2005**

*Drs. Delebo, Overman, Hegna, Reich & Wruck v. Kelley Griffin*, CG 05-23 Order (Default Judgment) (HCN Tr. Ct., Mar. 31, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

## **Civil Cases**

### **BUDGET PROCESS & APPROPRIATIONS ACT**

#### **MARCH 1, 2005**

*HCN Legislature et al. v. George Lewis, HCN President*, CV 04-73 Order (Scheduling Matters) (HCN Tr. Ct., Mar. 1, 2005). (Bossman, W).

The Court modified the deadlines established in the previous *Scheduling Order*.

### **CHILDREN'S TRUST FUND (CTF)**

#### **MARCH 7, 2005**

*In the Interest of Minor Children: B.C.G., DOB 01/18/91, B.A.G., DOB 07/07/92, and S.S.G., DOB 02/05/94, by Sherry Lonetree-Gray v. HCN Office of Tribal Enrollment*, CV 04-89 Order (Accepting Accounting) (HCN Tr. Ct., Mar. 7, 2005). (Matha, T).

The Court previously released funds from the CTF accounts of the minor children for costs associated with orthodontic procedures. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.



#### **MARCH 8, 2005**

*In the Interest of Minor Child: S.M.T., DOB 03/12/87, by Donna L. Thundercloud v. HCN Office of Tribal Enrollment*, CV 04-52 Order (Requesting Accounting) (HCN Tr. Ct., Mar. 8, 2005). (Matha, T).

The Court requested that the petitioner submit the required accounting.

## **MARCH 10, 2005**

*In the Interest of Minor Child: W.J.M., DOB 04/19/92, by Sheila G. Smoke v. HCN Office of Tribal Enrollment*, CV 05-09 Order (Dismissal without Prejudice) (HCN Tr. Ct., Mar. 10, 2005). (Matha, T).

The petitioner failed to appear at the *Fact-Finding Hearing*, and did not notify the Court of an inability to attend the proceeding. The Court dismissed the case without prejudice.

## **MARCH 11, 2005**

*In the Interest of Minor Child: M.M.H., DOB 07/26/94, by Michelle Hinchcliff v. HCN Office of Tribal Enrollment*, CV 05-04 Order (Accepting Accounting) (HCN Tr. Ct., Mar. 11, 2005). (Matha, T).

The Court previously released funds from the CTF account of the minor child for costs associated with orthodontic procedures. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

*In the Interest of Minor Child: C.T.W., DOB 01/22/94, by Stacy WhiteCloud v. HCN Office of Tribal Enrollment*, CV 05-18 Order (Petition Granted) (HCN Tr. Ct., Mar. 11, 2005). (Bossman, W).

The Court had to determine whether a parent could access CTF monies on behalf of her minor child for costs associated with orthodontic procedures. The Court granted the request.

## **MARCH 15, 2005**

*In the Interest of Minor Child: L.B.A.K., DOB 07/22/87, by Melissa Buffalohead-Johnson v. HCN Office of Tribal Enrollment*, CV 04-104 Order (Requesting Accounting) (HCN Tr. Ct., Mar. 15, 2005). (Matha, T).

The Court requested that the petitioner submit the required accounting.

## **MARCH 16, 2005**

*In the Interest of Minor Child: N.L.S., DOB 02/15/92, by Jennifer L. White Eagle v. HCN Office of Tribal Enrollment*, CV 04-26 Order (Contempt) (HCN Tr. Ct., Mar. 16, 2005). (Matha, T).

The Court had to determine whether to hold the petitioner in contempt of court for knowingly

violating the express terms of several judgments. The petitioner failed to attend the *Show Cause Hearing*, resulting in an inability to rebut the *prima facie* showing of contempt. The Court held the petitioner in contempt and imposed a reasonable remedial sanction.

**MARCH 17, 2005**

*In the Interest of Minor Children: J.A.L., DOB 11/20/91, and K.A.L., DOB 08/14/89, by Gary L. Lonetree, Jr. v. HCN Office of Tribal Enrollment, CV 02-85 Order (Accepting Accounting)* (HCN Tr. Ct., Mar. 17, 2005). (Matha, T).

The Court previously released funds from the CTF account of the minor child for costs associated with orthodontic surgery, the purchase of musical instruments and lessons, and a European orchestral tour. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

**MARCH 22, 2005**

*In the Interest of Minor Child: T.W.B., DOB 02/25/96, by Kathleen K. Waukau-Bourdon v. HCN Office of Tribal Enrollment, CV 04-11 Order (Requiring Submission of Documents)* (HCN Tr. Ct., Mar. 22, 2005). (Bossman, W).

The Court required the petitioner to submit further documentation in support of her *Petition*.

**MARCH 30, 2005**

*In the Interest of Minor Child: S.M.T., DOB 03/12/87, by Donna L. Thundercloud v. HCN Office of Tribal Enrollment, CV 04-52 Order (Accepting Accounting)* (HCN Tr. Ct., Mar. 30, 2005). (Matha, T).

The Court previously released funds from the CTF account of the minor child for costs associated with transportation to and attendance at college. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.



*In the Interest of Minor Children: J.J.N., DOB 06/23/88; J.D.N., DOB 08/27/91; J.D.N., DOB 08/27/91, by Mary Frances Ness v. HCN Office of Tribal Enrollment, CV 05-17 Order (Petition Granted)* (HCN Tr. Ct., Mar. 30, 2005). (Bossman, W).

The Court had to determine whether a parent could access CTF monies on behalf of her minor children for costs associated with a home mortgage. The Court employed the standard enunciated in the PER CAPITA DISTRIBUTION ORDINANCE, 2 HCC § 12.8c, to assess the merits of the parent's request. The Court noted the similarity of the instant case to *In the Interest of Minor Children: T.J.M., DOB 10/25/88; A.M.M., DOB 07/02/90, by Kendra Tarr v. HCN Office of Tribal Enrollment*, wherein there were "egregious circumstances" warranting the release of CTF funds to pay home mortgage expenses. *Order (Petition Granted)* CV 03-83 (HCN Tr. Ct., Feb. 3, 2004). In the case at hand, as in *Tarr*, the family faced the possible loss of the family home through foreclosure. The Court also noted that the petitioner satisfied her burden of proof, that the petitioner had no other available recourse to tribal or any other programs or funds, and that the petitioner had requested assistance on an already existing mortgage, representing a significant commercial investment on behalf of the family. The Court further noted that the petitioner limited her request to mortgage assistance, that she requested a relatively minimal amount, and that she did not request either full satisfaction of the mortgage or an ongoing payment scheme. Taking these factors into account, the Court granted the petitioner's request.

**MARCH 31, 2005**

*In the Interest of Decedent Member: A.W.G., DOB 12/13/89, by LuAnne E. Macomber v. HCN Office of Tribal Enrollment, CV 05-27 Order (Releasing Children's Trust Fund to Estate)* (HCN Tr. Ct., Mar. 31, 2005). (Matha, T).

The Court had to determine whether to release the monies from a decedent tribal member's CTF to the estate. The Court directed the release of the CTF.

## **EMPLOYMENT**

### **MARCH 1, 2005**

*Elizabeth Deere v. Annette Littlewolf, Individually and in her Individual Capacity*, CV 04-75; *Elizabeth Deere v. Willard Lonetree, Individually and in his Individual Capacity et al.*, CV 04-76 *Order (Postponing Pre-Trial Conference and Trial)* (HCN Tr. Ct., Mar. 1, 2005). (Bossman, W).

The plaintiff requested postponement of the proceedings in order to consult with an attorney. The Court granted the plaintiff's request.

### **MARCH 4, 2005**

*Kristen K. WhiteEagle v. Ho-Chunk Casino et al.*, CV 04-97 *Order (Granting Telephonic Appearance)* (HCN Tr. Ct., Mar. 4, 2005). (Matha, T).

The Court granted the defendants' request to allow a witness to appear by telephone at the *Trial*.

### **MARCH 16, 2005**

*Erik William Silgman v. HCN Bingo & Casino*, CV 05-10 *Scheduling Order* (HCN Tr. Ct., Mar. 16, 2005). (Matha, T).

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

### **MARCH 17, 2005**

*Chris Lichman v. Ho-Chunk Casino*, CV 05-06 *Order (Notice of Intent to Dismiss)* (HCN Tr. Ct., Mar. 17, 2005). (Bossman, W).

The plaintiff previously failed to attend the *Scheduling Conference*. The Court then granted the plaintiff additional time to reschedule the *Conference* and notify the Court. The Court notified the parties of its intent to dismiss the action in thirty (30) calendar days absent a written showing of good cause otherwise.

*Hillary Lichman v. Ho-Chunk Casino*, CV 05-07 *Order (Notice of Intent to Dismiss)* (HCN Tr. Ct., Mar. 17, 2005). (Bossman, W).

The plaintiff previously failed to attend the *Scheduling Conference*. The Court then granted the plaintiff additional time to reschedule the *Conference* and notify the Court. The Court notified the parties of its intent to dismiss the action in thirty (30) calendar days absent a written showing of good cause otherwise.

### **MARCH 21, 2005**

*Fran Kernes v. George Lewis, President in his official and individual capacity; Toni McDonald, Personnel Director, in her official and individual capacity; and the Ho-Chunk Nation*, CV 05-08 *Scheduling Order* (HCN Tr. Ct., Mar. 21, 2005). (Bossman, W).

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

### **MARCH 24, 2005**

*Guy Frederick Beebe v. Ho-Chunk Nation*, CV 04-34 *Order (Final Judgment)* (HCN Tr. Ct., Mar. 24, 2005). (Matha, T).

The plaintiff initiated the cause of action after his termination for the alleged revelation of the nature and contents of a confidential meeting. The plaintiff's supervisor received an incident report from a member of the HCN Gaming Commission, indicating that the plaintiff informed her that he had tipped off a vendor in regards to a confidential meeting held a few days earlier. The plaintiff's supervisor brought the report to the department's Executive Director, who subsequently terminated the plaintiff. The plaintiff received no forewarning, nor an opportunity to be heard, prior to his termination. The plaintiff subsequently exhausted his remedies under the Administrative Review Process. The Court had to determine whether to uphold the plaintiff's termination.

The Court declined to uphold the plaintiff's termination since the plaintiff did not receive a pre-termination hearing. The Court noted the recurring history and explanation of the requirement of a meaningful opportunity to be heard prior to an employee's termination, which appears in the binding precedent of the HCN Judiciary. Furthermore, the Court declined to proceed to determining whether the plaintiff's termination was justified for breach of confidentiality, since the justification for an employment decision is irrelevant when an employee does not receive constitutionally mandated due process protections.

While the Court overturned the plaintiff's termination, the Court denied the plaintiff's requested injunctive relief because the plaintiff did not properly request the injunction. The Court awarded the plaintiff \$10,000.00 in monetary damages and directed the HCN Department of

Personnel to reinstate the plaintiff to a position with a comparable wage. The Court also ordered the Personnel Department to remove negative references from the plaintiff's personnel file, award the plaintiff bridged service credit, and restore the plaintiff's seniority.

**MARCH 25, 2005**

*Corinna Climer v. HCN Child & Family Services, Molli White, Betty Kingsley, and Elizabeth Haller*, CV 05-14 *Scheduling Order* (HCN Tr. Ct., Mar. 25, 2005). (Matha, T).

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

**MARCH 29, 2005**

*Louella Youngthunder v. Jonette Pettibone*, CV 04-96 *Order (Dismissal Without Prejudice)* (HCN Tr. Ct., Mar. 29, 2005). (Bossman, W).

The Court dismissed the matter without prejudice upon the request of both parties.

**MARCH 30, 2005**

*Nyree Dawn Kedrowski v. HCN Department of Treasury/Payroll, HCN Attorney General Rebecca Weise*, CV 05-11 *Order (Permission to Reschedule)* (HCN Tr. Ct., Mar. 30, 2005). (Matha, T).

The plaintiff failed to appear at the *Scheduling Conference*, and did not inform the Court of an inability to attend the proceeding. The Court granted the plaintiff three (3) weeks to reschedule the *Scheduling Conference*.

**INCOMPETENT TRUST FUND (ITF)**

**MARCH 10, 2005**

*In the Interest of Kathy Brandenburg v. HCN Office of Tribal Enrollment*, CV 98-18 *Order (Reopening Case and Directing Submission of Documents)* (HCN Tr. Ct., Mar. 10, 2005). (Bossman, W).

The Court determined to reopen the case and directed the guardian to submit further information.

**MARCH 17, 2005**

*In the Interest of Adult Incompetent: W.E.S., DOB 12/23/36, by Frank E. Bichanich v. HCN Office of Tribal Enrollment*, CV 04-22 *Order (Accepting Accounting)* (HCN Tr. Ct., Mar. 17, 2005). (Matha, T).

The Court previously released funds from the ITF account of an adult incompetent member for costs associated with the determination of appropriate placement. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

**MARCH 22, 2005**

*In the Interest of Adult Incompetent: Oliver S. Rockman*, CV 97-117 *Order Granting Release of Funds and Releasing Protective Payee* (HCN Tr. Ct., Mar. 22, 2005). (Bossman, W).

The Court had to determine whether a protective payee could access ITF monies on behalf of the adult incompetent member for costs associated with the purchase of electronics, a computer for a family member and protective payee services. The Court granted the request as to the electronics and protective payee expenses. The Court also granted the protective payee's request to be relieved of her duties.

**Juvenile**

**MARCH 2, 2005**

*In the Interest of Minor Child: H.D.J., DOB 11/25/88, JV 98-20 Order (Child Protection Review Hearing)* (HCN Tr. Ct., Mar. 2, 2005). (Bossman, W).

The Court conducted a *Child Protection Review Hearing*. The Court had to assess the extent of compliance with the dispositional order. The Court modified the dispositional requirements as necessary for the protection of the child.

*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 03-07-10 Order in Review of Placement* (HCN Tr. Ct., Mar. 2, 2005). (Bossman, W).

The Court conducted a *Child Protection Review Hearing*. The Court had to assess the extent of compliance with the dispositional order. The Court modified the dispositional requirements as necessary for the protection of the child.

**MARCH 3, 2005**

*In the Interest of Minor Children: R.B., DOB 06/23/95; J.V., DOB 09/03/99; S.V., DOB 10/22/98, JV 02-18-20 Order (Child Protection Review Hearing)* (HCN Tr. Ct., Mar. 3, 2005). (Bossman, W).

The Court conducted a *Child Protection Review Hearing*. The Court continued the *Hearing* in order for the mother of the minor children to obtain representation.

**MARCH 4, 2005**

*In the Interest of Minor Children: L.L.T.B., DOB 06/23/96; R.R.T.B., DOB 03/16/94, L.S.T.B., DOB 01/20/93, JV 05-01-03 Order* (HCN Tr. Ct., Mar. 4, 2005). (Bossman, W).

The Court convened a *Plea Hearing* for the purpose of determining whether the mother of the minor children wished to contest the allegations contained in the *Child/Family Protection Petition*. The mother of the minor children entered a plea of guilty. The Court scheduled a *Dispositional Hearing*.

**MARCH 7, 2005**

*In the Interest of Minor Child: J.R.M., DOB 10/10/04, JV 05-05 Order (Appointment of Guardian Ad Litem)* (HCN Tr. Ct., Mar. 7, 2005). (Bossman, W).

The Court appointed a GAL in this matter.

**MARCH 8, 2005**

*In the Interest of Minor Children: W.O.B., DOB 04/29/00; R.L.B., DOB 11/12/03, JV 04-06-07 Order (Dispositional Requirements)* (HCN Tr. Ct., Mar. 8, 2005). (Bossman, W).

The Court conducted a *Dispositional Hearing*. The court had to assess the extent and scope of the dispositional recommendations proposed by CFS. The dispositions contained within the order hopefully will serve to reunify the family.

**MARCH 8, 2005**

*In the Interest of Minor Children: W.O.B., DOB 04/08/98; R.L.B., DOB 03/31/97, JV 04-06-07 Order (Entry of Plea)* (HCN Tr. Ct., Mar. 8, 2005). (Bossman, W).

The Court convened a *Plea Hearing* for the purpose of determining whether the father of the minor child wished to contest the allegations contained in the *Child/Family Protection Petition*. The mother of the minor child entered a plea of guilty. The Court scheduled a *Dispositional Hearing*.

**MARCH 10, 2005**

*In the Interest of Minor Children: R.B., DOB 06/23/95; J.V., DOB 09/03/99; S.V., DOB 10/22/98, JV 02-18-20 Order (Granting Telephonic Appearance)* (HCN Tr. Ct., Mar. 10, 2005). (Bossman, W).

The Court's granted the party's request to appear by telephone at the *Review Hearing*.

*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 (Termination of Jurisdiction)* (HCN Tr. Ct., Mar. 10, 2005). (Matha, T).

The Court terminated its jurisdiction over and supervision of the instant case.

**MARCH 14, 2005**

*In the Interest of Minor Child: S.E.C., DOB 02/25/96, JV 03-11 Order (Appointment of Guardian Ad Litem)* (HCN Tr. Ct., Mar. 14, 2005). (Bossman, W).

The Court appointed a GAL in this matter.

**MARCH 15, 2005**

*In the Interest of Minor Child: L.K.B., DOB 09/27/89, JV 05-06 Order (Granting Emergency Temporary Legal/Physical Custody)* (HCN Tr. Ct., Mar. 15, 2005). (Bossman, W).

The Court had to determine whether to grant emergency temporary legal and physical custody of the minor children. The Court granted custody "as necessary to ensure the safety of children within the Hocak community."

**MARCH 16, 2005**

*In the Interest of Minor Children: R.B., DOB 06/23/95; J.V. DOB 09/03/99; S.V., DOB 10/22/98, JV 02-18-19 Order (HCN Tr. Ct., Mar. 16, 2005).* (Bossman, W).

The Court conducted a *Child Protection Review Hearing*. The Court continued the Hearing to a later date in order to hear all testimony. The Court modified the dispositional requirements as necessary in the best interests of the children.

*In the Interest of Minor Children: J.H.D., DOB 12/08/87; J.W.P., DOB 12/06/93, JV 02-03, 06 Order (Appointment of Guardian Ad Litem) (HCN Tr. Ct., Mar. 16, 2005).* (Bossman, W).

The Court appointed a GAL in this matter.

*In the Interest of Minor Child: J.P.F., DOB 03/15/87, JV 98-17 Order (Termination of Jurisdiction) (HCN Tr. Ct., Mar. 16, 2005).* (Bossman, W).

The court terminated its jurisdiction over and supervision of the instant case.

**MARCH 23, 2005**

*In the Interest of Minor Child: D.T.S., DOB 11/21/01, JV 05-08 Order (Submission of Guardianship Report and Home Study) (HCN Tr. Ct., Mar. 23, 2005).* (Matha, T).

The Court ordered CFS to prepare and submit a guardianship report and home study to the Court.

*In the Interest of Minor Child: D.T.S., DOB 11/21/01, JV 05-08 Order (Submission of Traditional Relatives List) (HCN Tr. Ct., Mar. 23, 2005).* (Matha, T).

The Court ordered CFS to prepare and submit a list of the minor children's traditional relatives to the Court.

*In the Interest of Minor Child: D.R.W., DOB 08/12/04, JV 05-07 Order (Submission of Guardianship Report and Home Study) (HCN Tr. Ct., Mar. 23, 2005).* (Matha, T).

The Court ordered CFS to prepare and submit a guardianship report and home study to the Court.

*In the Interest of Minor Child: D.R.W., DOB 08/12/04, JV 05-07 Order (Submission of Traditional Relatives List) (HCN Tr. Ct., Mar. 23, 2005).* (Matha, T).

The Court ordered CFS to prepare and submit a list of the minor children's traditional relatives to the Court.

**MARCH 24, 2005**

*In the Interest of Minor Child: L.K.B., DOB 09/27/89, JV 05-06 Order (Entry of Plea) (HCN Tr. Ct., Mar. 24, 2005).* (Bossman, W).

The Court convened a *Plea Hearing* for the purpose of determining whether the guardian of the minor child wished to contest the allegations contained in the *Child/Family Protection Petition*. The guardian of the minor child entered a plea of not guilty. The Court scheduled a *Jury Trial*.

*In the Interest of Minor Children: V.J.F., DOB 09/26/88; I.D.F., DOB 03/30/02, JV 03-39-40 Order (Termination of Paternal Child Support) (HCN Tr. Ct., Mar. 24, 2005).* (Matha, T).

A review of the file indicated the enforcement of a foreign child support order against the father's per capita payments. The Court ceased the withholding of child support as established by previous order of the Court.

## Supreme Court

**MARCH 11, 2005**

*In the Interest of the Minor Children: C.C.P., DOB 2-3-93 and G.L.P., DOB 6-10-94, SU 05-02 Order (Dismissing Appeal) (HCN S. Ct., Mar. 11, 2005).*

The Court accepted the withdrawal of the appeal in this matter after ensuring that the proper parties agreed to the factual underpinnings of the withdrawal of the appeal and after reviewing the terms of the *Settlement Agreement*. The Court advised the parties that a *Settlement Agreement* for a case on appeal must not have the effect of disturbing a Trial Court order or judgment without the permission of the Supreme Court or the Trial Court. The court also noted the importance of transparent proceedings in the HCN Judiciary.

**MARCH 21, 2005**

*Kenneth Lee Twin v. Toni McDonald*, SU 04-10 Decision (HCN S. Ct., Mar. 21, 2005).

The appellant served as Executive Director of the HCN MIS Division in 2003. The appellant filed an application for Family Medical Leave, which was subsequently approved. In February 2004, the appellant acquired a new residence. In March 2004, the HCN Personnel Department advised the appellant via written correspondence that if the appellant did not return to work on March 4, the Nation would consider the failure to report to work as a voluntary resignation. The March 2 correspondence, as well as a March 8 letter informing the appellant that the Nation had determined that he had voluntarily resigned, were sent to the appellant's former address. The appellant subsequently filed a *Complaint* in the HCN Trial Court. On November 12, 2004, the Trial Court granted the Nation's *Motion for Summary Judgment* on the grounds that the appellant failed to exhaust his administrative remedies, citing *Loa L. Porter v. Chloris Lowe, Jr.*, SU 96-05 (HCN S. Ct., Jan. 10, 1997). The appellant appealed the Trial Court's decision.

The issue before the Court was whether the Trial Court properly applied *HCN R. Civ. P. 55* regarding summary judgments. The Court held that the Trial Court did not make an analysis as to whether there was a genuine issue as to material fact or explain why the motion was granted as a summary judgment matter. The Trial Court cited *Porter* as holding that a *Complaint* cannot be addressed on employment appeals if the matter has not proceeded through the administrative process. The Supreme Court noted that this is a correct interpretation of *Porter*, but would only be applicable to the instant case if the appellee had filed a *Motion to Dismiss* below, rather than a *Motion for Summary Judgment*. The Court held that the case should have proceeded at the trial level on the merits or until a *Motion to Dismiss* was filed. The Court reversed the Trial Court's decision and remanded for further proceedings.



---

# Recent Filings

## Trial Court

### Child Support

**MARCH 2, 2005**

*Dencie Akeen v. Mitchell Smith*, CS 05-25. (Matha, T).

**MARCH 14, 2005**

*State of Wisconsin/Eau Claire County v. Forrest M. Downey, Sr.*, CS 05-26. (Bossman, W).

**MARCH 15, 2005**

*Johnathan C. Finch v. Allyson L. Finch*, CS 05-27. (Bossman, W).

*Roberta Mustache/Milwaukee County v. Douglas Decorah*, CS 05-28. (Bossman, W).

*State of Wisconsin/Linda Decorah v. Stanley Decorah*, CS 05-29. (Bossman, W).

*State of Wisconsin/Lenora Smith v. Ruth Yellowthunder*, CS 05-30. (Bossman, W).

**MARCH 22, 2005**

*State of Wisconsin v. Marsha H. Funmaker*, CS 05-31. (Bossman, W).

### Civil Garnishment

**MARCH 2, 2005**

*Midland Credit Management v. Monica Cloud*, CG 05-21. (Matha, T).

**MARCH 4, 2005**

*Franciscan Skemp Healthcare v. Michael & Roxanne Peth*, CG 05-22 (Matha, T).

*Drs. Delebo, Overman, Hegna, Reich & Wruck v. Kelly Griffin*, CG 05-23. (Matha, T).

**MARCH 9, 2005**

*Gross Motors, Inc. v. Anna Reichenbach*, CG 05-24. (Matha, T).

*Westview Court v. Irene Hoffman*, CG 05-25. (Matha, T).

**MARCH 22, 2005**

*Alliance Collection Agencies v. Wendy Dickerson*, CG 05-26. (Matha, T).

**MARCH 23, 2005**

*St. Joseph's Community Health Services v. Wendy Preuss Givois*, CG 05-27. (Matha, T).

**MARCH 29, 2005**

*Quick Cash Loans v. John Huffman*, CG 05-27. (Matha, T).

**Civil Cases**

**MARCH 2, 2005**

*In the Interest of Minor Child: C.T.W., DOB 01/22/94, by Stacy WhiteCloud v. HCN Office of Tribal Enrollment*, CV 05-18. (Matha, T).

*In the Interest of Minor Children: L.O.M., DOB 01/08/92, and K.O.M., DOB 04/09/93, by Shelly Williams*, CV 05-19. (Matha, T).

*In the Interest of Minor Child: A.T.H., DOB 03/24/88, by Tom Hopinkah*, CV 05-20. (Matha, T).

**MARCH 8, 2005**

*Sheryl Cook v. Tammy Modica et al.*, CV 05-21. (Matha, T).

**MARCH 15, 2005**

*Mary Bernhardt v. HoCak Construction et al.*, CV 05-22. (Bossman, W).

**MARCH 16, 2005**

*Kevin Kuehl v. Ho-Chunk Casino Table Games*, CV 05-23. (Bossman, W).

**MARCH 17, 2005**

*Jill Christine Wirtz v. Ho-Chunk Nation*, CV 05-24. (Bossman, W).

**MARCH 22, 2005**

*Gary Dean Albrecht v. Ho-Chunk Nation*, CV 05-25. (Matha, T).

*In the Interest of Minor Child: M.C.G., DOB 06/28/91, by Shelby R. Grant v. HCN Office of Tribal Enrollment*, CV 05-26. (Matha, T).

*In the Interest of Decedent: Anthony W. Giles*, DOB 12/13/89, CV 05-27. (Matha, T).

**MARCH 23, 2005**

*Adriane Walker v. Amy Kirby*, CV 05-28. (Matha, T).

*In the Interest of Alicia Blackhawk*, CV 05-29. (Matha, T).

**MARCH 29, 2005**

*In the Interest of Minor Child: D.R.G., DOB 09/16/91, by Donald Greengrass v. HCN Office of Tribal Enrollment*, CV 05-30. (Bossman, W).

*Ruth Funmaker v. Kent Funmaker*, CV 05-32. (Bossman, W).

**Juvenile**

**FEBRUARY 15, 2005**

*In the Interest of Minor Child: L.K.B., DOB 09/27/89, JV 05-06*. (Matha, T).

**MARCH 18, 2005**

*In the Interest of Minor Child: D.R.W., DOB 08/12/05, JV 05-07*. (Bossman, W).

**MARCH 22, 2005**

*In the Interest of Minor Child: D.T.S., DOB 11/21/01, JV 05-08*. (Matha, T).

**Supreme Court**

**MARCH 11, 2005**

*Casimir T. Ostrowski v. Ho-Chunk Nation et al.*, SU 05-03.



**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 – Earl Blackdeer  
 Donald Blackhawk  
 Dennis Funmaker  
 Jim Greendeer  
 Douglas Greengrass  
 Desmond Mike  
 Gavin Pettibone  
 Douglas Red Eagle  
 Preston Thompson, Jr.  
 Eugene Thundercloud  
 Morgan White Eagle  
 Clayton Winneshiek

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

Clerk of Court, Trial Court – Marcella Cloud  
 Assistant Clerk of Court, Trial Court – Selina Joshua  
 Bailiff/Process Server – vacant  
 Administrative Assistant – Jessi Cleveland  
 Staff Attorney – Jocelyn Roy  
 Supreme Court Clerk – Mary Endthoff

\* 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 Judiciary Fee Schedule**

Filing Fees

- *Complaint*.....\$50.00
- *Petition for Release of Per Capita Distribution (Children's Trust Fund)* .....\$50.00
- *Motion to Appear Pro Hac Vice*.....\$35.00
- Appellate Filing Fee.....\$35.00
- *Petition to Register and Enforce Foreign Judgment/Order* .....\$20.00

Court Fees

- Copying .....\$0.10/page
- Faxing .....\$0.25/page (sending & receiving)
- CD of Hearings .....\$10.00/CD
- Deposition Videotape .....\$12.50/tape
- Certified Copies.....\$0.50/page
- Equipment Rental .....\$5.00/hour
- Admission to Practice .....\$50.00

**Legal Citation Forms**

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

Ho-Chunk Nation Constitution

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

Ho-Chunk Nation Code

Ordinance/Act Name Title Number HCC Section.  
 ELDER PROTECTION ACT, 4 HCC § 1.  
 EMPLOYMENT RELATIONS ACT, 6 HCC § 5.  
*(for detailed citation information consult LEGISLATIVE ORGANIZATION ACT, 2 HCC § 11.36)*

HCN Supreme Court Case Law

Case Name, Case Number (HCN S. Ct., month, day, year).  
*Johnson v. Department Inc.*, SU 96-21 (HCN S. Ct., Aug. 14, 1996).

HCN Trial Court Case Law

Case Name, Case Number (HCN Tr. Ct., month, day, year)  
*Jane Doe v. Bob Smith*, CV 99-01 (HCN Tr. Ct., Nov. 1, 1999).

Ho-Chunk Nation Rules of Civil Procedure

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





MAY 2005

VOL. 11, NO. 5

## Inside this Issue

- 1** Ho-Chunk Nation Judiciary Celebrates 10<sup>th</sup> Anniversary!
- 6** HCN Judiciary Staff Attorneys: Where are they now?
- 7** Updates from Outside Courts
- 8** Recent HCN Court Decisions
- 20** Recent HCN Court Filings
- 22** HCN Court System Judiciary and Staff  
HCN Judiciary 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

## Ho-Chunk Nation Judiciary Celebrates 10<sup>th</sup> Anniversary!

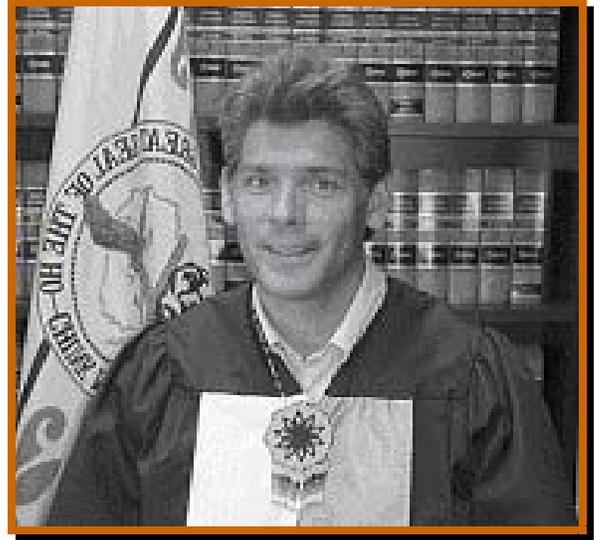
**J**une 2005 will mark the 10-year anniversary of the Ho-chunk Nation Judiciary. In the summer of 1995, the Ho-Chunk Nation Judiciary was created, pursuant to the HO-CHUNK NATION JUDICIARY ESTABLISHMENT ACT OF 1995 (superseded by the HCN JUDICIARY ESTABLISHMENT AND ORGANIZATION ACT, 1 HCC § 1). The first position posted within the Judiciary was that of Chief Judge of the Trial Court. The Honorable **Mark Butterfield** was selected for the position by the HCN Legislature and formally sworn in as the first Trial Court Judge on June 13, 2005, thus becoming the first member of the HCN Judiciary. Despite the fact that Justice Butterfield became a judge without a courtroom or staff, Chief Justice Hunter notes that there was a large celebration at his swearing in, since it marked the beginning of the Nation's court system and "the reality of the HCN [Judiciary] was a reason to celebrate." Notably, Justice Butterfield was also the first member to the Ho-Chunk Nation Bar and continues to serve in the Judiciary as an Associate Justice on the HCN Supreme Court.

**T**he first member of the HCN Supreme Court and second member of the HCN Bar, **Chief Justice Mary Jo Hunter**, was sworn in as Chief Justice on July 5, 1995. Chief Justice Hunter continues to serve in the capacity of Chief Justice of the Supreme Court. Once the Judiciary had a judge and a justice, the next task became hiring administrative court staff. **Helen Harden, Jean Day, Verdi Kivamaki, and Marcella Cloud**, the current Clerk of Court, constituted the first administrative staff of the Trial Court. All of those individuals who constituted the original Trial Court and staff continue to work for the Ho-Chunk Nation in various

capacities. **Cindy Haro** of Wisconsin Judicare was also instrumental in providing the Judiciary with assistance and support in getting off the ground.

**Joan Greendeer-Lee** joined Justice Butterfield on the Trial Court as an Associate Judge in March of 1996. Ms. Greendeer-Lee served on the bench until 1999, and now works in the Nation's Central Health Office. **Debra Greengrass** and **Forrest Whiterabbit** joined Chief Justice Hunter on the Supreme Court on July 12, 1995, as Associate Justices and served until 2002 and 1997, respectively. Mr. Whiterabbit still serves the Nation in his employment in the Office of the President. The other members of the Supreme Court over its ten (10) year existence include **Rita Cleveland**, who served as an Associate Justice on the Supreme Court from 1997-2002, and **Associate Justice Jo Deen B. Lowe**, who has served on the Supreme Court alongside Chief Justice Hunter and Justice Butterfield since October of 2002.

filed in the Court even before he was sworn in as the Court's first judge. Since final decisions had to be reached within twenty (20) days of filing under the special rules regarding election challenges, Justice Butterfield remembered some of the early days of the Trial Court as very hectic and including marathon-type evidentiary hearings and late nights spent writing opinions.



**Associate Justice of the HCN Supreme Court Mark Butterfield served as the first judge in the Trial Court.**



**Chief Justice Mary Jo B. Hunter has served in the capacity of Chief Justice of the HCN Supreme Court since the formation of the HCN Judiciary.**

**T**he HCN Traditional Court also has been part of the Judiciary in its 10-year existence. In the summer of 1995, the initial members of the Traditional Court, **William Blackdeer, Donald Blackhawk, Bert Funmaker, Orville Greendeer, Dr. Charles Kingswan, and Eli Youngthunder**, met to determine the role and composition of what came to be the Traditional Court. Mr. Blackhawk is the only member of the Traditional Court who has been with the Court since its inception. Justice Butterfield remembered the integral role these men played in not only forming the Traditional Court, but also in getting the Judiciary as a whole up off the ground.

**M**any of the earliest filings in the Trial Court, and subsequently in the Supreme Court, were cases involving challenges to the June 6, 1995 General Election. Justice Butterfield recalled that many of those election cases were

**F**ounding Traditional Court member Donald Blackhawk recalls the early days of the Traditional Court as formative. He commented that much of the early meetings of the Traditional

Court were devoted to the complex task of figuring out how to fit a traditional tribal entity into a “mainstream” court system. The leaders of the clans of the Ho-Chunk Nation had historically always met, and now they had to determine how to expand and evolve into a division of the Judiciary. He explained that the Traditional Court went through a trial period, using a “hit and miss” approach to determine their function and responsibilities within the court system.



**Donald Blackhawk, who has served on the Traditional Court since its first days as part of the Judiciary.**

Today’s result is a unique entity, which includes among its responsibilities serving as a forum for dispute resolution for tribal members according to the customs and traditions of Ho-Chunk people. The Traditional Court also serves as an advisory body for wayward youth and other tribal members, as well as for the Trial Court and Supreme Court, and for other branches of the Nation’s government on issues of tradition and custom. The sophistication and progress of the Traditional Court is often recognized by other tribes, who consult with the Traditional Court in their efforts to establish a similar entity within their own tribal governments. Mr. Blackhawk also explained that state agencies, such as the Department of Natural Resources, contact the Traditional Court for advice and input on naming such things as landmarks or wolf packs in the

area, or for guidance on locating tribal burial sites on land earmarked for timber harvest.

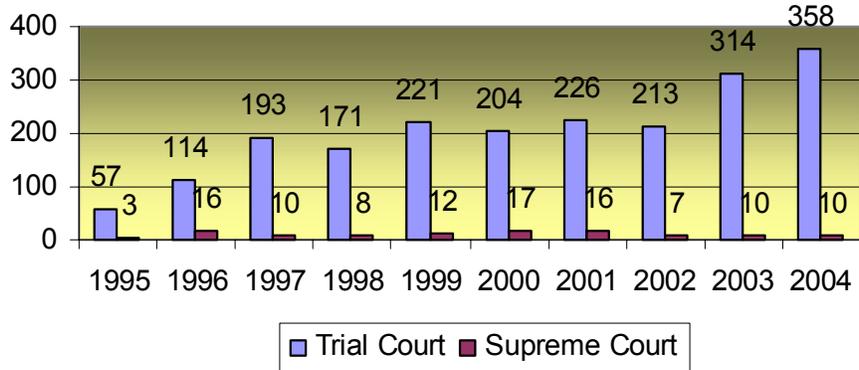
The caseloads of the Ho-Chunk Nation Trial Court and Supreme Court have increased dramatically since the early days of the Judiciary, despite the fact that the number of judges and justices over the years to handle those cases has not changed. As the chart on the next page indicates, in its first year, the Trial Court saw fifty-seven (57) cases filed, whereas by 2004 the caseload of the Trial Court had increased five (5)-fold to 358 cases. In 1995, the Supreme Court had three (3) cases before it, and by 1996 the caseload had jumped to sixteen (16) cases.



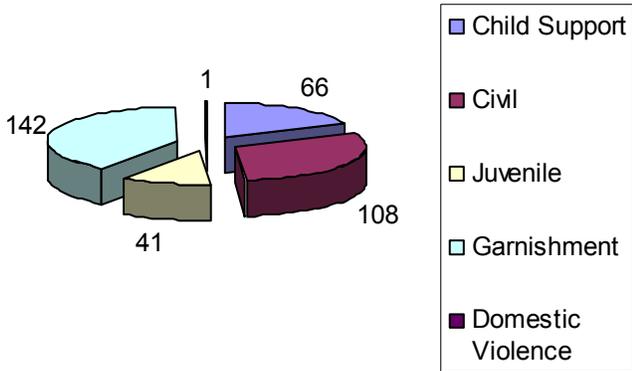
A large portion of the increased caseload can be attributed to the increased jurisdiction of the Judiciary over the years. The Trial Court assumed jurisdiction over child support matters in 1996 and over civil garnishments in 2003, which together account for a majority of the cases before the Trial Court, as can be seen on the chart on page 3. Despite its expanding caseload and jurisdiction over the years, there have only been four judges to serve on the Trial Court throughout its existence, lending to the stability of the Court: Justice Butterfield, Ms. Greendeer-Lee, and the current Trial Court judges, **Chief Judge William Bossman** and **Associate Judge Todd R. Matha**.

Additionally, the composition of case filings in the Trial Court is likely to change even more in the coming months and years due to recent legislative enactments altering the Trial Court’s jurisdiction. The Court expects to see a lower number of cases filed involving employment disputes, which previously constituted a large portion of civil filings, with the enactment of the EMPLOYMENT RELATIONS ACT OF 2004, 6 HCC § 5, under which employment-

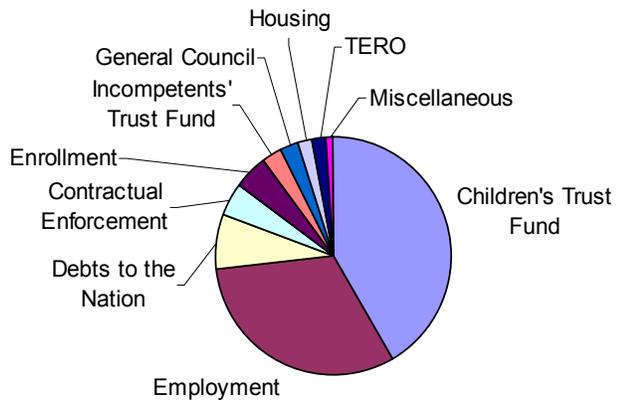
### HCN Judiciary: Cases Filed 1995-2004



### HCN Trial Court: 2004 Court Cases Filed



### HCN Trial Court: 2004 Civil Cases



related grievances are initially heard by a Grievance Review Board before an employee can appeal a decision against him or her to the Trial Court. *Id.* § 5.34a(2-3). The HCN Legislature also recently expanded the Trial Court’s jurisdiction to include paternity, divorce, including issues of custody, placement, and the division of property, and the issuance of marriage licenses. See DIVORCE AND CUSTODY ORDINANCE, 4 HCC § 9; MARRIAGE ORDINANCE, 4 HCC § 10. Additionally, upon the establishment of a fully functioning HCN Child Support Enforcement Agency, the Trial Court will have the authority to establish and modify child support judgments. See CHILD SUPPORT ENFORCEMENT CODE, 4 HCC § 7.

Not only has the caseload of the Judiciary grown by leaps and bounds over the years, the facilities housing the Judiciary have changed dramatically as well. In the first days of the Judiciary, the Judiciary was, in essence, without a home. The first hearings within the Trial Court took place in extra office space available at the Blue Wing Community Center in Tomah. Chief Justice Hunter remembers the Supreme Court “roughing it” in the beginning, “work[ing] out of bank boxes and me[eting] at the Arrowhead Lodge on weekends.”



After the Executive offices moved to their current location, the Judiciary took over their old office space in September 1995, in the building that now stands next door to the Judiciary’s current facilities at *Wa Ehi Hoci*. The Judiciary remained in that building until December 29, 2003, when *Wa Ehi Hoci* became its new home. *Wa Ehi Hoci* provides ample space for each of the three divisions of the Judiciary and boasts two fully-equipped courtrooms, a law library, administrative offices, conference rooms,

an archive room, and a meeting room designed specifically for Traditional Court.



The building that served as the home to the Judiciary from September 1995 until December 2003.

As Chief Justice Hunter noted, when the Judiciary began operating, “we did not have a court building. We did not have computers or laptops. We barely had access to fax machines...It is so amazing to see how far we have come in ten (10) years!” The new building certainly stands as a reminder of this progress. It not only represents the progress of the Judiciary over the past ten (10) years, but also stands as a reminder of both the stability of the Judiciary and of the potential the Judiciary has to grow.

As a closing note, the Judiciary would like to recognize certain individuals for their service to the Judiciary over the last ten (10) years. **Chief Justice Mary Jo Hunter, Justice Mark Butterfield, Clerk of Court Marcella Cloud, and Traditional Court founding member Donald Blackhawk** have been working in the HCN Judiciary since its formation. Their continuous efforts to improve the service of the Judiciary and their unwavering dedication to the Nation are truly inspiring. They have each helped to mold the Judiciary into the entity it is today and will continue to be an integral part of its progression.



All three divisions of the HCN Judiciary have resided at *Wa Ehi Hoci* since December 2003.



## HCN JUDICIARY STAFF ATTORNEYS: WHERE ARE THEY NOW?

The coming year also marks the tenth anniversary of the law clerk program in the HCN Judiciary. The mission of the law clerk program is to provide a starting attorney with the necessary foundation and skills to practice in Indian law. The program requires a one-year commitment with the Trial Court in the position of Law Clerk/Staff Attorney. The Judiciary is pleased to note that a majority of the attorneys who have participated in the program have proceeded to working for other Indian tribes or law firms specializing in the field of Indian law. A list of those who have participated in the program follows:

**1996-97 William Boulware**, the first and longest-serving Staff Attorney, took a position with the HCN Department of Justice in June 1997, immediately after serving as Staff Attorney. Since January 2001, William has served as

counsel for the HCN Legislature. After a 9-year stint with the Nation as an attorney, Mr. Boulware is soon departing for his next legal adventure. His last day with the Nation will be June 30, 2005. William states that his time spent with the Nation and Ho-Chunk people has been a “grand learning experience and an amazing career run.”

**1997-98 Raymond Torgeson** relocated to Houston, Texas after his tenure with the Ho-Chunk Nation Judiciary and currently works for the law firm of Porter & Hedges, LLP.

**1998-99 Mike Oeser** coincidentally also relocated to Houston, Texas in August 2002 after spending some time working in the Indian Law and Litigation Practice Sections of Von Briesen & Roper, S.C. in Milwaukee, WI. Mr. Oeser joined the firm of Adair & Myers, P.L.L.C. this spring and recently applied for membership in the Ho-Chunk Nation bar. Mike is an enrolled member of the Cherokee Nation of Oklahoma

**1999-2000 David Neubeck** began his work as a Staff Attorney for the Lummi Nation in Bellingham, Washington immediately following his employment with the HCN Judiciary. Mr. Neubeck stated that his experience as a law clerk with the Ho-Chunk Nation helped him ease into practicing law. He also commented on how great everyone at the Judiciary was to work with.

**2000-01 Katherine Kruger** joined the Ritger Law Office in Random Lake, Wisconsin shortly after her tenure with the HCN Judiciary. Ms. Kruger specializes in the areas of family law, criminal defense, and bankruptcy. When contacted, Ms. Kruger stated that although she does not often run into Indian law issues in her practice, she “thoroughly enjoyed” the time she spent working for the Nation.

**2001-02 Anetra Parks**, an enrolled member of the Cherokee Nation of Oklahoma, now works for the law firm of Greene, Meyer & McElroy in Boulder, Colorado, a law firm specializing in complex litigation, particularly in several areas of Indian law including federal recognition and water rights.

**2002-03 Rebecca Chapman (Tavares)** now works as Deputy Solicitor for the Mille Lacs Band of Ojibwe in Onamia, Minnesota. In her role as Deputy Solicitor, Ms. Chapman handles housing matters, construction matters and issues regarding land disputes. Rebecca notes that her time spent as a Staff Attorney for the Trial Court was valuable in preparing her to practice in the legal field. She commented that Judge Matha gave her an “invaluable experience” and taught her “how to put her best foot forward as an attorney.” Ms. Chapman is an enrolled member of the Wyandotte Band of Anderson.

**2003-04 Rose Weckenmann** currently works for the Lac Courte Oreilles Band of Lake Superior Chippewa Indians and will soon be moving on to work as an attorney for the Chickasaw Nation in Oklahoma. Ms. Weckenmann reflected fondly on her time

spent with the Judiciary, commenting that it was “the most rewarding and important experience that I could have chosen for myself upon leaving law school.” Rose also stated that while working for “such a gifted and detail-oriented judge” as Judge Matha, her “writing skills and...ability to consider the nuances of a variety of legal issues, some particular to Tribal Courts and others not, developed dramatically.” Rose “believe[s] strongly that the quality of the Ho-Chunk Trial Court may be attributed directly to the hard work of individuals such as Judge Matha and the entire Court staff.”

**2004-05 Jocelyn Roy**, the current Law Clerk/Staff Attorney and enrolled member of the Sault Ste. Marie Tribe of Chippewa Indians, will be leaving her position later this month and heading off to work as Associate General Counsel for the Saginaw Chippewa Indian Tribe in Mt. Pleasant, Michigan.

**2005-06 Amanda Rockman Cornelius**, the incoming Law Clerk/Staff Attorney and enrolled member of the Ho-Chunk Nation, will begin her tenure with the Judiciary on May 23, 2005. Ms. Cornelius will be graduating from the University of Wisconsin Law School this month.

## UPDATES FROM OUTSIDE COURTS

### United States Supreme Court

#### Certiorari granted

*Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 389 F.3d 973 (10<sup>th</sup> Cir. 2004), *cert. granted*, 2005 U.S. LEXIS 3326 (Apr. 18, 2005) (No. 04-1084).

#### Certiorari denied

*Blaine County v. United States*, 363 F.3d 897 (9<sup>th</sup> Cir. 2004), *cert. denied*, 2005 U.S. LEXIS 3215 (Apr. 18, 2005).

*Cholla Ready Mix v. Mendez*, 382 F.3d 969 (9<sup>th</sup> Cir. 2004), *cert. denied*, 2005 U.S. LEXIS 3338 (Apr. 18, 2005).

*Eastern Shoshone Tribe of the Wind River Reservation v. U.S.*, 364 F.3d 1339 (Fed. Cir. 2004), *cert. denied*, 2005 U.S. LEXIS 3328 (Apr. 18, 2005).

*Shenandoah v. Halbritter*, 366 F.3d 89 (2<sup>nd</sup> Cir. 2004), *cert. denied*, 2005 U.S. LEXIS 3330 (Apr. 18, 2005).

#### Petition for Certiorari filed

*Delaware Tribe of Indians v. Cherokee Nation of Oklahoma*, 389 F.3d 1074 (10<sup>th</sup> Cir. 2004), *petition for cert. filed* (Apr. 11, 2005) (No. 04-1368).

*VanGuilder v. United States*, 2005 U.S. App. LEXIS 3245 (D.C. Cir. 2005), *petition for cert filed* (Apr. 13, 2005). (No. 04-1401).

*Cogger v. Becker County*, 690 N.W.2d 739 (Minn. 2005), *petition for cert filed* (Apr. 20, 2005). (No. 04-1419).

## **Eighth Circuit Court of Appeals**

*United States v. Pemberton*, No. 03-1302, 2005 U.S. App. LEXIS 6958 (Apr. 22, 2005).

Pemberton appealed his convictions and sentence following a guilty plea in federal district court to three (3) counts of assault with a dangerous weapon in violation of various federal statutes. He first argued that the district court lacked jurisdiction over him because there was insufficient factual basis to conclude that he was an Indian under 18 U.S.C. § 1153(a). The Eighth Circuit Court noted that while the dispute over the appellant's status as an Indian or non-Indian was relevant to the matter of proof at trial, it did not deprive the district court of jurisdiction. The Court noted further that even if § 1153 was in fact jurisdictional, a defendant who has pleaded guilty must establish that the face of the indictment failed to charge a federal offense in order to sustain a challenge to the district court's jurisdiction. In this case the appellant did not challenge the sufficiency of the indictment, and the

indictment charged all the necessary elements, including the appellant's Indian status under § 1153(a). The appellant then claimed that the admitted facts were insufficient to establish that he was an Indian since there were no facts admitted that showed he had Indian blood or was recognized as an Indian by a tribe or the federal government. Citing an earlier Eighth Circuit decision, the Court held that defendants who hold themselves out to be Indians and who are of Indian blood are considered Indians for purposes of § 1153. Finally, the Court rejected Pemberton's claims challenging his enhanced sentence since the facts he admitted were more than sufficient to withstand plain error review.



---

## **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**

### **APRIL 5, 2005**

*Casey Whitegull v. Harriet M. Whitegull*, CV 97-61 *Order (Proof of High School Enrollment Filed)* (HCN Tr. Ct., Apr. 5, 2005). (Bossman, W).

The Court previously notified the parties that a minor child had turned eighteen (18) 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 Wisconsin v. Wilfrid Cleveland*, CS 03-19 *Order (Modifying Child Support Deduction from Wages)* (HCN Tr. Ct., Apr. 5, 2005). (Bossman, W).

The petitioner filed a motion requesting modification of current child support withholding with a certified copy of the modified foreign support order. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*State of Wisconsin/Jackson County v. Robin E. McKee*, CS 99-33 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Apr. 5, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*State of Wisconsin/Jackson County v. Virgil S. Pettibone*, CS 05-02 *Order (Ceasing Child Support Withholding)* (HCN Tr. Ct., Apr. 5, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion, requesting suspension of child support withholding. The Court granted the uncontested motion.

### **APRIL 7, 2005**

*Kevin L. Beaman v. Gail Whitegull*, CS 05-24 *Order (Adjournment of Hearing)* (HCN Tr. Ct., Apr. 7, 2005). (Bossman, W).

The Court convened a *Fact-Finding Hearing*. The parties informed the Court of their desire to pursue a settlement agreement. The Court adjourned the matter.

*State of Wisconsin/Jackson County v. Robert Orozco*, CS 02-18 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Apr. 7, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

### **APRIL 8, 2005**

*Montgomery J. Green v. Eliza M. Green*, CS 02-30 *Order (Modifying Current Child Support Withholding)* (HCN Tr. Ct., Apr. 8, 2005). (Matha, T).

The Court previously notified the parties that a minor child had turned eighteen (18) 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 parties failed to file the required proof. The Court modified the respondent's child support obligation accordingly.



*Lisa Harrison v. Rex Whitegull*, CV 96-50 *Order (Modifying Child Support Withholding)* (HCN Tr. Ct., Apr. 8, 2005). (Bossman, W).

The Court previously notified the parties that a minor child had turned eighteen (18) 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.

*Lana Lincoln v. Jon Eric Miner*, CS 99-62 *Order (Modifying Current Child Support Withholding)* (HCN Tr. Ct., Apr. 8, 2005). (Bossman, W).

The Court previously notified the parties that a minor child had turned eighteen (18) 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 parties failed to file the required proof. The Court modified the respondent's child support obligation.

*State of Wisconsin/Shawano County & Tracy Cobb v. Daniel Bird*, CS 03-51 *Order (Modifying Current Child Support Withholding)* (HCN Tr. Ct., Apr. 8, 2005). (Bossman, W).

The Court previously notified the parties that a minor child had turned eighteen (18) 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 parties failed to file the required proof. The Court modified the respondent's child support obligation.

**APRIL 11, 2005**

*Berna Bigthunder v. Conrad Funmaker*, CS 98-44 *Order (Closing Case)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The Court closed the case and extended its condolences to the family of the late respondent.

*Rosalyn Renee Danforth v. Christopher Jerome Kapayou*, CS 05-22 *Order (Default Judgment)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's wages. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Jessica Hopkins v. Mitchell Smith*, CS 04-33; *Dencie Akeen v. Mitchell Smith*, CS 05-25 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The Court had to determine whether to enforce a second standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified

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

*State of Iowa ex rel., WS1000026, Destiny Marie Rounds v. Jerome J. Houston*, CS 02-43 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Apr. 11, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.



*Heather Lemieux v. Murton Greengrass*, CS 98-05 *Order (Modifying & Enforcing Child Support)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The petitioner filed a motion requesting modification of current child support withholding with a certified copy of a foreign support order. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*Roberta Mustache v. Douglas Decora*, CS 05-28 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Roberta Mustache v. Douglas Decora*, CS 05-28 *Order (Default Judgment)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's wages. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Cheyenne Powless v. Wilfred Cloud*, CS 04-36; *Dasa Marie Pappas v. Wilfred H. Cloud*, CS 01-29 *Order (Modifying Current Child Support)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The court modified current child support in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

*Melanie Stacy v. Roger Littlegeorge*, CS 99-44; *Felicia Jo Helgeson v. Roger B. Littlegeorge*, CS 99-57 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Apr. 11, 2005).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*Anna Webb v. Nathaniel H. Long III*, CS 98-49; *Misty Marie Long v. Nathaniel Long, Jr.*, CS 02-03 *Order (Modifying Current Child Support)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The court modified current child support in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

*State of Wisconsin v. Damon Funmaker*, CS 03-13; *State of Wisconsin v. Damon E. Funmaker*, CS 03-37 *Order (Modifying Current Child Support)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The court modified current child support in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

*State of Wisconsin v. Wallace P. Greendeer*, CV 97-57 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*State of Wisconsin v. Melody A. Hale a/k/a Melody A. Greengrass*, CS 98-52 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*State of Wisconsin v. Stuart A. Taylor, Jr.*, CS 00-23 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.



*State of Wisconsin v. Vern E. White Eagle*, CS 03-14 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*State of Wisconsin & Lenora A. Smith v. Ruth Yellowthunder*, CS 05-30 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

*State of Wisconsin/Eau Claire County v. Cory H. Funmaker*, CS 03-60; *State of Wisconsin/Trempealeau County v. Cory H. Funmaker*, CS 03-63; *State of Wisconsin v. Cory H. Funmaker*, CS 04-27 *Order (Enforcing Arrearage Withholding)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to enforce child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*State of Wisconsin/Jackson County v. Brent Funmaker*, CV 97-18 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*State of Wisconsin/Jackson County v. Michael Gromoff*, CS 98-76 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*State of Wisconsin/Jackson County v. Adam J. LeGarde*, CS 04-11 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*State of Wisconsin/Jackson County v. Kim Whitegull*, CV 97-162 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*State of Wisconsin/Sauk County v. Mitchell RedCloud*, CS 02-33; *Cynthia Mobley v. Mitchell RedCloud*, CS 03-42 *Order (Modification)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The court modified current child support in order to guarantee compliance with the HO-CHUNK NATION RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE, 4 HCC § 2.8b(3).

*State of Wisconsin/Sauk County, on behalf of Matthew Thundercloud v. Leah L. Fiske, f/k/a Leah L. Topping*, CS 99-05; *State of Wisconsin/Sauk County & Bradley A. Fiske v. Leah L. Fiske*, CS 03-68 *Order (Amending Arrearage Withholding)* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

#### **APRIL 12, 2005**

*Johnathan C. Finch v. Allyson L. Finch*, CS 05-27 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Apr. 12, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Forest County Potawatomi Child Support Agency v. Corena Whitecloud*, CS 05-09 *Judgment (Enforcing Child Support)* (HCN Tr. Ct., Apr. 12, 2005). (Matha, T).

The Court had to determine whether to enforce a second standing foreign child support order against the respondent's per capita distributions. The respondent filed a timely answer to the petitioner's submissions. The Court conducted a *Fact-Finding Hearing*, at which it decided to grant the petitioner's request for relief.

*State of Wisconsin, on behalf of Nellie McKee v. Bryan D. Powless*, CS 98-28; *State of Wisconsin, on behalf of Victoria Blackcoon v. Bryan D. Powless*, CS 98-39 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Apr. 12, 2005). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

**APRIL 13, 2005**

*Kathleen Waukau v. Eldon Powless*, CV 96-93; *Margaret A. King v. Eldon D. Powless*, CS 99-22; *Rebecca Nunway v. Eldon Powless*, CS 99-23; *State of Wisconsin/Juneau County & Annette Powless v. Eldon D. Powless*, CS 03-65 *Order (Releasing Impound & Modifying Child Support)* (HCN Tr. Ct., Apr. 13, 2005). (Matha, T).

The Court had to determine whether to continue withholding from the respondent's per capita distributions to satisfy his various child support obligations. The Court convened a *Fact-Finding Hearing* to determine the current status of each of the obligations. The Court modified the withholding in each matter and released the impounded funds.

*State of Wisconsin v. Michael A. Hernandez*, CS 01-37 *Order (Modifying Child Support)* (HCN Tr. Ct., Apr. 13, 2005). (Bossman, W).

The Court had to determine whether to modify a standing child support judgment. The Court previously terminated its jurisdiction and ceased the respondent's child support obligation in a companion case. The Court modified the respondent's child support obligation in the instant matter.

*State of Wisconsin/Sauk County & Carole L. St. Cyr v. Joyce M. St. Cyr*, CS 98-15; *Robert M. Mobley v. Joyce M. St. Cyr*, CS 99-37; *Joyce M. St. Cyr v. Robert M. Mobley*, CS 00-04 *Order (Modifying & Enforcing Child Support)* (HCN Tr. Ct., Apr. 13, 2005). (Matha, T).

The petitioner filed a motion requesting modification of current child support withholding with a certified copy of the modified foreign support order. The respondent failed to respond within the specified timeframe. The Court granted the motion.

**APRIL 15, 2005**

*State of Wisconsin v. Marsha H. Funmaker*, CS 05-31 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Apr. 15, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

*State of Wisconsin/Eau Claire County v. Forrest M. Downey, Sr.*, CS 05-26 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Apr. 15, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

*State of Wisconsin/Jackson County v. Allyson L. Finch*, CS 03-62 *Order (Ceasing Child Support Withholding)* (HCN Tr. Ct., Apr. 15, 2005). (Bossman, W).

The Court ceased withholding for child support and notified the parties of its intent to close the case.

*State of Wisconsin & Lenora A. Smith v. Ruth Yellowthunder*, CS 05-30 *Amended Order Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Apr. 15, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the

respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

**APRIL 18, 2005**

*Rosalyn Renee Danforth v. Christopher Jerome Kapayou*, CS 05-22 *Order (Erratum)* (HCN Tr. Ct., Apr. 18, 2005). (Bossman, W).

The Court entered this order to correct a clerical mistake made in a previous order.

*State of Wisconsin v. Kenneth N. Littlegeorge*, CS 01-23 *Order (Ceasing Withholding Child Support Arrears)* (HCN Tr. Ct., Apr. 18, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion, requesting suspension of withholding for child support arrears. The Court granted the uncontested motion.

*State of Wisconsin/Jackson County v. Justin D. Littlewolf*, CS 02-39 *Order (Ceasing Child Support Withholding)* (HCN Tr. Ct., Apr. 18, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion, requesting suspension of child support withholding. The Court granted the uncontested motion.

*State of Wisconsin/Jackson County v. Heather A. McKee*, CS 00-54 *Order (Enforcing Arrearage Withholding)* (HCN Tr. Ct., Apr. 18, 2005). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to enforce child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

*State of Wisconsin & Crystal L. Monteen-Martin v. Ronald David Martin*, CS 00-35 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Apr. 18, 2005). (Bossman, W).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed

a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

**APRIL 19, 2005**

*Rebecca Rave v. Andrew S. Rave*, CS 02-57; *State of Wisconsin/Juneau County v. Andrew S. Rave*, CS 05-19 *Order (Default Judgment – Enforcing Child Support)* (HCN Tr. Ct., Apr. 19, 2005). (Matha, T).

The Court had to determine whether to enforce a second standing foreign child support order against the respondent's per capita distributions. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Sawyer County Child Support v. Tyrone A. Blackdeer*, CS 04-38 *Order (Modifying & Enforcing Child Support)* (HCN Tr. Ct., Apr. 19, 2005). (Matha, T).

The petitioner filed a motion requesting modification of current child support withholding with a certified copy of the modified foreign support order. The Court granted the motion.

*State of Wisconsin/Juneau County v. Andrew S. Rave*, CS 05-19 *Order (Default Judgment)* (HCN Tr. Ct., Apr. 19, 2005). (Matha, T).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's wages. The respondent failed to respond within the specified timeframe. The Court granted the petitioner's request for recognition and enforcement.

**APRIL 22, 2005**

*Julia Goodbear v. Ted L. Brown*, CS 98-20; *State of Wisconsin/Jackson County and Anna Brown v. Ted L. Brown*, CS 00-37 *Order (Impound Child Support)* (HCN Tr. Ct., Apr. 22, 2005). (Matha, T).

The Court previously recognized and enforced two (2) foreign orders for child support. The petitioner filed a motion, requesting suspension of withholding for current child support. The Court directed the Treasury Department to impound the funds otherwise withheld for current child support, in order to allow the petitioner sufficient time to respond to the petitioner's motion.

*Denise Thiry v. Ira Laes*, CS 02-07 *Order (Updating Arrearage Withholding)* (HCN Tr. Ct., Apr. 22, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to update child support arrearage withholding with a certified accounting statement. The respondent failed to respond within the specified timeframe. The Court granted the motion.

**APRIL 27, 2005**

*Leah Kasanaha Cornelius v. Randal Cloud*, CS 01-13 *Order (Modifying & Enforcing Child Support)* (HCN Tr. Ct., Apr. 27, 2005). (Matha, T).

The petitioner filed a motion requesting modification of current child support withholding with a certified copy of the modified foreign support order. The respondent failed to respond within the specified timeframe. The Court granted the motion.



## Civil Garnishment

**APRIL 7, 2005**

*Griffin Westerman v. Louie Filipovich a/k/a Lujubisa Filipovich*, CG 05-20 *Order (Granting Motion to Modify)* (HCN Tr. Ct., Apr. 7, 2005). (Matha, T).

The petitioner filed a motion to modify, requesting that the Court cease wage withholding. The Court granted the petitioner's request.

**APRIL 11, 2005**

*Franciscan Skemp Healthcare v. Michael & Roxanne Peth*, CG 05-22 *Order (Default Judgment)* (HCN Tr. Ct., Apr. 11, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**APRIL 19, 2005**

*Quick Cash Loans v. Mary Locey*, CG 04-128 *Order (Default Judgment)* (HCN Tr. Ct., Apr. 19, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**APRIL 20, 2005**

*Alliance Collection Agencies, Inc. v. Wendy Dickerson*, CG 05-26 *Order (Default Judgment)* (HCN Tr. Ct., Apr. 20, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*St. Joseph's Community Health Services v. Wendy Pruess Grivois*, CG 05-27 *Order (Default Judgment)* (HCN Tr. Ct., Apr. 20, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**APRIL 21, 2005**

*Gross Motors, Inc. v. Anna Reichenbach*, CG 05-24 *Order (Satisfaction of Judgment)* (HCN Tr. Ct., Apr. 21, 2005). (Matha, T).

The Court recognized that the debt had been paid in full and informed the parties of its intent to close the file.

**APRIL 28, 2005**

*State Collection Service v. Michael R. Terry*, CG 05-31 *Order (Default Judgment)* (HCN Tr. Ct., Apr. 28, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**APRIL 29, 2005**

*Alliance Collection Agencies, Inc. v. Chad Gilbertson*, CG 05-30 *Order (Default Judgment)* (HCN Tr. Ct., Apr. 29, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

## Civil Cases

### **BUDGET PROCESS & APPROPRIATIONS ACT**

**APRIL 18, 2005**

*HCN Legislature, Tracy Thundercloud, in his official capacity as Chair of the HCN Legislature Finance Committee v. HCN President, George Lewis*, CV 04-05 *Order (Denying Plaintiff's Motion for Summary Judgment)* (HCN Tr. Ct., Apr. 18, 2005). (Bossman, W).

The Court had to determine whether to grant the plaintiff's motion for summary judgment. The Court determined that the plaintiff failed to establish that there were no genuine issues as to material fact. The Court denied the plaintiff's motion.

**APRIL 19, 2005**

*HCN Legislature, Tracy Thundercloud, in his official capacity as Chair of the HCN Legislature Finance Committee v. HCN President, George Lewis*, CV 04-05 *Stipulation and Order* (HCN Tr. Ct., Apr. 19, 2005). (Bossman, W).

The Court adopted the stipulation of the parties and dismissed the case with prejudice.

### **CHILDREN'S TRUST FUND (CTF)**

**APRIL 5, 2005**

*In the Interest of Minor Child: A.T.H., DOB 03/24/88, by Tom Hopinkah v. HCN Office of Tribal Enrollment*, CV 05-20 *Order (Postponing Fact-Finding Hearing)* (HCN Tr. Ct., Apr. 5, 2005). (Bossman, W).

The Court postponed the *Fact-Finding Hearing* by the agreement of the parties.

*In the Interest of Minor Child: E.T.H., DOB 12/19/91, by Karen L. Snow v. HCN Office of Tribal Enrollment*, CV 04-106 *Order (Requesting*

*Accounting)* (HCN Tr. Ct., Apr. 5, 2005). (Matha, T).

The Court requested that the petitioner submit the required accounting.

**APRIL 7, 2005**

*In the Interest of Minor Child: J.T.T., DOB 04/09/93, by Susan Weber v. HCN Office of Tribal Enrollment*, CV 05-12 *Order (Accepting Accounting)* (HCN Tr. Ct., Apr. 7, 2005). (Bossman, W).

The Court previously released funds from the CTF accounts of the minor children for costs associated with orthodontic procedures. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

**APRIL 19, 2005**

*In the Interest of Minor Child: J.M.H., DOB 07/29/91, by Jeffrey A. Harrison v. HCN Office of Tribal Enrollment*, CV 05-03 *Order (Requesting Accounting)* (HCN Tr. Ct., Apr. 19, 2005). (Matha, T).

The Court requested that the petitioner submit the required accounting.

*In the Interest of Minor Child: L.B.A.K., DOB 07/22/87, by Melissa Buffalohead-Johnson v. HCN Office of Tribal Enrollment*, CV 04-104 *Order (Demanding Accounting)* (HCN Tr. Ct., Apr. 19, 2005). (Matha, T).

The Court demanded that the petitioner submit the required accounting.

*In the Interest of Minor Child: M.W., DOB 07/09/95, by Melody Whiteagle-Fintak v. HCN Office of Tribal Enrollment*, CV 04-83 *Order (Requesting Accounting)* (HCN Tr. Ct., Apr. 19, 2005). (Matha, T).

The Court requested that the petitioner submit the required accounting.

**APRIL 21, 2005**

*In the Interest of Minor Child: M.C.G., DOB 06/28/91, by Shelby R. Grant v. HCN Office of Tribal Enrollment*, CV 05-26 *Order (Petition Granted)* (HCN Tr. Ct., Apr. 21, 2005). (Matha, T).

The Court had to determine whether a parent could access CTF monies on behalf of her minor child for costs associated with orthodontic procedures. The Court granted the request.

**APRIL 22, 2005**

*In the Interest of Minor Child: L.B.A.K., DOB 07/22/87, by Melissa Buffalohead-Johnson v. HCN Office of Tribal Enrollment, CV 04-104 Order (Accepting Accounting)* (HCN Tr. Ct., Apr. 22, 2005). (Matha, T).

The Court previously released funds from the CTF accounts of the minor child for costs associated with orthodontic procedures. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

**APRIL 25, 2005**

*In the Interest of Minor Child: G.T.B.W., DOB 05/28/93, by Nicole L. Ward v. HCN Office of Tribal Enrollment, CV 05-05 Order (Requesting Accounting)* (HCN Tr. Ct., Apr. 25, 2005). (Matha, T).

The Court requested that the petitioner submit the required accounting.

**APRIL 27, 2005**

*In the Interest of Minor Child: J.M.H., DOB 07/29/91, by Jeffrey A. Harrison v. HCN Office of Tribal Enrollment, CV 05-03 Order (Accepting Accounting)* (HCN Tr. Ct., Apr. 27, 2005). (Matha, T).

The Court previously released funds from the CTF accounts of the minor child for costs associated with orthodontic procedures. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

**DEBTS TO AN ELDER**

**APRIL 27, 2005**

*Ruth Funmaker v. Kent Funmaker, CV 05-32 Order (Default Judgment)* (HCN Tr. Ct., Apr. 27, 2005). (Bossman, W).

The plaintiff filed an action, seeking repayment of a gas bill from the defendant via garnishment of the defendant's future per capita distributions. The defendant failed to respond within the specified timeframe. The Court granted the plaintiff's requested relief.

**EMPLOYMENT**

**APRIL 7, 2005**

*Lisa K. Topping v. Ho-Chunk Nation, Ho-Chunk Casino, HCN Dep't of Pers., and Robert Mudd, in his capacity as Gen. Mgr. Of Ho-Chunk Casino, CV 04-90 Order (Postponing Trial & Other Matters)* (HCN Tr. Ct., Apr. 7, 2005). (Bossman, W).

The Court granted the plaintiff leave to file an *Amended Complaint*. The Court modified the *Scheduling Order* accordingly.

**APRIL 13, 2005**

*Corinna M. Climer v. CFS; Betty Kingsley, CFS Dir.; Liz Haller, Div. Adm'r; and Molli White, Clinical Dir., CV 05-02 Order (Dismissal)* (HCN Tr. Ct., Apr. 13, 2005). (Bossman, W).

The defendants filed a *Motion to Dismiss*. The respondent failed to respond within the specified timeframe. The Court granted the motion.

**APRIL 27, 2005**

*Sheryl Cook v. Tammie Modica & Steve Garvin, CV 05-21 Scheduling Order* (HCN Tr. Ct., Apr. 27, 2005). (Matha, T).

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

**INCOMPETENT TRUST FUND (ITF)**

**APRIL 25, 2005**

*In the Interest of Adult Incompetent: W.E.S., DOB 12/23/36, by Frank E. Bichanich v. HCN Office of Tribal Enrollment, CV 04-22 Order (Motion Granted)* (HCN Tr. Ct., Apr. 25, 2005). (Matha, T).

The Court had to determine whether a guardian could access ITF monies on behalf of the ward for costs associated with his adult child's wedding expenses. The Court partially granted the request.

**APRIL 29, 2005**

*In the Interest of Gerald Greendeer, DOB 01/03/43, by Alma Miner v. HCN Office of Tribal Enrollment, CV 05-16 Order (Release of Per Capita Distribution)* (HCN Tr. Ct., Apr. 29, 2005). (Bossman, W).

The Court had to determine whether a guardian could access ITF monies on behalf of the ward for costs associated with the ward's court fines, civil judgments, and other expenses. The Court granted the request.

## Juvenile

### MARCH 22, 2005

*In the Interest of Minor Child: L.K.B., DOB 09/27/89, JV 05-06 Order (Appointment of Guardian Ad Litem)* (HCN Tr. Ct., Mar. 22, 2005). (Bossman, W).

The Court appointed a GAL in this matter.

### APRIL 4, 2005

*In the Interest of Minor Child: S.L.C., DOB 08/28/89, JV 05-09 Order (Submission of Guardianship Report and Home Study)* (HCN Tr. Ct., Apr. 4, 2005). (Bossman, W).

The Court ordered CFS to prepare and submit a guardianship report and home study to the Court.

*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 (Regarding Petition for Permanent Guardianship)* (HCN Tr. Ct., Apr. 4, 2005). (Bossman, W).

The Court determined to suspend action on the *Petition for Permanent Guardianship*, pending the upcoming hearing in the matter.

*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 03-07-10 Order (Granting Motion to Reschedule Hearing)* (HCN Tr. Ct., Apr. 4, 2005). (Bossman, W).

The Court granted the petitioner's motion to reschedule the *Review Hearing*.

### APRIL 6, 2005

*In the Interest of Minor Child: D.T.W., DOB 11/12/01, JV 05-08 Order (Appointment of Guardian Ad Litem)* (HCN Tr. Ct., Apr. 6, 2005). (Matha, T).

The Court appointed a GAL in this matter.

*In the Interest of Minor Child: D.R.W., DOB 08/12/04, JV 05-07 Order (Appointment of Guardian Ad Litem)* (HCN Tr. Ct., Apr. 6, 2005). (Bossman, W).

The Court appointed a GAL in this matter.

### APRIL 7, 2005

*In the Interest of Minor Child: L.K.B., DOB 09/27/89, JV 05-06 Order (Postponing Jury Trial)* (HCN Tr. Ct., Apr. 7, 2005). (Bossman, W).

The Court granted the petitioner's motion to postpone the *Jury Trial*.

*In the Interest of Minor Child: S.L.C., DOB 08/28/89, JV 05-09 Order (Appointment of Guardian Ad Litem)* (HCN Tr. Ct., Apr. 7, 2005). (Bossman, W).

The Court appointed a GAL in this matter.

*In the Interest of Minor Children: W.O.B., DOB 04/29/00; R.L.B., DOB 11/12/03, JV 04-06-07 Order (Dispositional Requirements)* (HCN Tr. Ct., Apr. 7, 2005). (Bossman, W).

The Court conducted a *Dispositional Hearing*. The court had to assess the extent and scope of the dispositional recommendations proposed by CFS. The dispositions contained within the order hopefully will serve to reunify the family.

*In the Interest of Minor Children: I.J.W., DOB 08/02/95; L.L.R., DOB 02/17/94, JV 05-10-11 Order (Appointment of Guardian Ad Litem)* (HCN Tr. Ct., Apr. 7, 2005). (Bossman, W).

The Court appointed a GAL in this matter.

### APRIL 11, 2005

*In the Interest of Minor Children: R.B., DOB 06/23/95; J.V., DOB 09/03/99; S.V., DOB 10/22/98, JV 02-18-20 Order* (HCN Tr. Ct., Apr. 11, 2005). (Bossman, W).

The Court conducted a *Child Protection Review Hearing*. The Court had to assess the extent of compliance with the dispositional order. The Court modified the dispositional requirements as necessary for the protection of the child.

### APRIL 13, 2005

*In the Interest of Minor Child: S.J.W., DOB 02/10/93, JV 04-12 Order (Child Protection Review Hearing)* (HCN Tr. Ct., Apr. 13, 2005). (Matha, T).

The Court conducted a *Child Protection Review Hearing*. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo.

*In the Interest of Minor Child: S.J.W., DOB 02/10/93, JV 04-12 Order (Notification of Assumed Jurisdiction)* (HCN Tr. Ct., Apr. 13, 2005). (Matha, T).

The Court determined to notify the Oneida Tribe of Indians of Wisconsin with notice of the pending action.

*In the Interest of Minor Children: J.V., DOB 09/03/99; S.V., DOB 10/22/98, JV 02-19-20 Order* (HCN Tr. Ct., Apr. 13, 2005). (Bossman, W).

The Court convened a *Motion Hearing*. The Court deemed that all parties did not receive proper notice and rescheduled the *Hearing*.

#### **APRIL 14, 2005**

*In the Interest of Minor Child: S.E.C., DOB 02/25/96, JV 03-11 Order (Termination of Case)* (HCN Tr. Ct., Apr. 14, 2005). (Bossman, W).

The Court convened a *Child Protection Review Hearing*. Following the recommendations of CFS and the GAL, the Court determined to return legal custody of the minor child to the mother and terminate its jurisdiction over the instant matter.



*In the Interest of Minor Children: M.B.K., DOB 04/29/00; A.J.K., DOB 11/12/03, JV 04-04-05 Review Hearing Order* (HCN Tr. Ct., Apr. 14, 2005). (Bossman, W).

The Court conducted a *Child Protection Review Hearing*. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo.

#### **APRIL 19, 2005**

*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 (Child Protection Review Hearing)* (HCN Tr. Ct., Apr. 19, 2005). (Matha, T).

The Court conducted a *Child Protection Review Hearing*. The Court had to assess the extent of compliance with the dispositional order. The Court determined to maintain the status quo.

#### **APRIL 22, 2005**

*In the Interest of Minor Child: J.D.S., DOB 09/08/03, JV 03-30 Order (Ceasing Child Support)* (HCN Tr. Ct., Apr. 22, 2005). (Matha, T).

The Court previously established a child support obligation on the part of the mother of the minor child. The guardians of the minor child filed a motion, requesting suspension of child support withholding. The Court granted the request.

## **Supreme Court**

#### **APRIL 9, 2005**

*In the Matter of Timely Issuance of Decisions*, Admin. Rule 05-01. (HCN S. Ct., Apr. 9, 2005).

The Supreme Court adopted an internal rule governing the timeliness of issuance of decisions by the Trial Court in order to strengthen the administration of justice. The Court directed the Trial Court Clerk to compile a monthly list of cases where no decision or order has been issued within ninety (90) days of the hearing. The list shall be submitted each month to the Chief Justice of the Supreme Court for the Chief Justice's review.

#### **APRIL 29, 2005**

*Marx Advertising Agency, Inc. v. Ho-Chunk Nation d/b/a Ho-Chunk Casino & Bingo, Majestic Pines Casino & Bingo, Rainbow Casino & Bingo, and DeJope Bingo, SU04-07 Decision* (HCN S. Ct., Apr. 29, 2005).

Marx Advertising Agency ("Marx") appealed the Trial Court's decision dismissing the case. On appeal, the Ho-Chunk Nation Supreme Court affirmed the Trial Court's decision. At issue was the proper interpretation of provisions of a contract between the parties. Marx claimed that the Trial Court erred by not finding ambiguity in the written contract and resolving any such ambiguity in Marx's favor. The Supreme Court agreed with the Trial court's determination that the express terms of the contract were clear and unambiguous and could have been made effective by awarding injunctive relief. Marx failed to request an injunction within its *Complaint* or any subsequent pleading. Therefore, Marx did not pursue the proper remedy and was not entitled to damages.

---

# Recent Filings

## Trial Court

### Child Support

**APRIL 6, 2005**

*State of Wisconsin/Eau Claire County v. Forrest M. Downey, Sr.*, CS 05-33. (Matha, T).

**APRIL 12, 2005**

*David Posey v. Beverly S. WhiteEagle*, CS 05-34. (Bossman, W).

*State of Wisconsin v. Douglas Red Eagle*, CS 05-35. (Bossman, W).

**APRIL 20, 2005**

*Celina Webster v. Eric B. Davis*, CS 05-36. (Matha, T).

*Cynthia L. Satonica v. Patrick A. Edwards*, CS 05-37. (Matha, T).

*State of Wisconsin v. Stanley G. White Eagle*, CS 05-38. (Matha, T).

### Civil Garnishment

**MARCH 29, 2005**

*Quick Cash Loans v. John Huffman*, CG 05-28. (Matha, T).

*Roy Puttbrese v. Ralph Snake*, CG 05-29. (Matha, T).

**APRIL 4, 2005**

*Alliance Collection Agencies, Inc. v. Chad Gilbertson*, CG 05-30. (Matha, T).

**APRIL 5, 2005**

*State Collection Service v. Michael R. Terry*, CG 05-31. (Matha, T).

**APRIL 14, 2005**

*State Collection Service v. Thomas Raymond*, CG 05-32. (Matha, T).

**APRIL 20, 2005**

*Household Credit Service v. Laurie A. Dorwin*, CG 05-33. (Matha, T).

*Citibank Credit Services, Inc. v. Victoria A. Lowe*, CG 05-34. (Matha, T).

*Budgetline Cash Advance v. Mary Locey*, CG 05-35. (Matha, T).

*W R Capital, LLC v. Gale S. Youngthunder*, CG 05-36. (Matha, T).

**APRIL 25, 2005**

*Creditor Recovery Service LLC, agent for Doctors' Clinic SC v. Elizabeth Young*, CG 05-37. (Matha, T).

*Oral Surgery Center v. Tina L. Olsen*, CG 05-38. (Matha, T).

**APRIL 29, 2005**

*Valued Services of WI, LLC d/b/a Check Advance v. Shannon Hansford*, CG 05-39. (Matha, T).

*Midland Credit Management Inc. v. Nina Garvin*, CG 05-40. (Matha, T).

*Capital One v. Mary T. Kasuboski*, CG 05-41. (Matha, T).

### Civil Cases

**APRIL 14, 2005**

*In the Interest of Minor Child: N.C.P., DOB 02/18/91, by Janice Savage v. HCN Office of Tribal Enrollment*, CV 05-33. (Bossman, W).

**APRIL 18, 2005**

*HCN Department of Housing, Property Management Division v. Mary Fisher & Jason Youngthunder*, CV 05-34. (Matha, T).

**APRIL 27, 2005**

*In the Interest of Crystal Dawn Willis, DOB 10/01/85 v. HCN Office of Tribal Enrollment*, CV 05-35. (Bossman, W).

**APRIL 28, 2005**

*Anna Rae Funmaker v. HCN Election Board*, CV 05-36. (Bossman, W).

**APRIL 29, 2005**

*In the Interest of: K.R.M., DOB 04/21/88; D.K.M., DOB 06/07/89, by Neil McAndrew v. HCN Office of Tribal Enrollment*, CV 05-37. (Bossman, W).

*Kenneth Lee Twin v. Ho-Chunk Nation, HCN Legislature and HCN Election Bd.*, CV 05-38. (Bossman, W).

**Family**

**APRIL 20, 2005**

*Carol Lamere v. Mike Lamere*, FM 05-01. (Bossman, W).

**Juvenile**

**APRIL 1, 2005**

*In the Interest of Minor Child: S.L.C., DOB 08/28/89*, JV 05-09. (Bossman, W).

**APRIL 5, 2005**

*In the Interest of Minor Child: I.J.W., DOB 08/02/95*, JV 05-10. (Matha, T).

*In the Interest of Minor Child: L.L.R., DOB 02/17/94*, JV 05-11. (Matha, T).

**APRIL 20, 2005**

*In the Interest of Minor Child: B.A.T., DOB 09/11/94*, JV 05-12. (Matha, T).

*In the Interest of Minor Child: C.A.T., DOB 07/06/96*, JV 05-13. (Matha, T).

**Supreme Court**

**APRIL 21, 2005**

*Guy Fredrick Beebe v. Ho-Chunk Nation*, SU 05-04.



**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 – Earl Blackdeer

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

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

Clerk of Court, Trial Court – Marcella Cloud  
Assistant Clerk of Court, Trial Court – Selina Joshua  
Bailiff/Process Server – vacant  
Administrative Assistant – Jessi Cleveland  
Staff Attorney – Jocelyn Roy  
Supreme Court Clerk – Mary Endthoff

\* 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 Judiciary Fee Schedule**

Filing Fees

- *Complaint*.....\$50.00
- *Petition for Release of Per Capita Distribution (Children's Trust Fund)* .....\$50.00
- *Motion to Appear Pro Hac Vice*.....\$35.00
- Appellate Filing Fee.....\$35.00
- *Petition to Register and Enforce Foreign Judgment/Order* .....\$20.00

Court Fees

- Copying .....\$0.10/page
- Faxing .....\$0.25/page (sending & receiving)
- CD of Hearings .....\$10.00/CD
- Deposition Videotape .....\$12.50/tape
- Certified Copies.....\$0.50/page
- Equipment Rental .....\$5.00/hour
- Admission to Practice .....\$50.00

**Legal Citation Forms**

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

Ho-Chunk Nation Constitution

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

Ho-Chunk Nation Code

Ordinance/Act Name Title Number HCC Section.  
ELDER PROTECTION ACT, 4 HCC § 1.  
EMPLOYMENT RELATIONS ACT, 6 HCC § 5.  
(for detailed citation information consult LEGISLATIVE ORGANIZATION ACT, 2 HCC § 11.36)

HCN Supreme Court Case Law

Case Name, Case Number (HCN S. Ct., month, day, year).  
*Johnson v. Department Inc.*, SU 96-21 (HCN S. Ct., Aug. 14, 1996).

HCN Trial Court Case Law

Case Name, Case Number (HCN Tr. Ct., month, day, year)  
*Jane Doe v. Bob Smith*, CV 99-01 (HCN Tr. Ct., Nov. 1, 1999).

Ho-Chunk Nation Rules of Civil Procedure

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





JUNE 2005  
VOL. 11, NO. 6

## Inside this Issue

- 1** American Indian Probate Reform Act of 2004
- 3** Updates from Outside Courts
- 5** Recent HCN Court Decisions
- 13** Recent HCN Court Filings
- 15** HCN Court System Judiciary and Staff
- HCN Judiciary Fee Schedule
- Legal Citation Forms
- App.** DRAFT Ho-Chunk Nation Probate Code

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

## American Indian Probate Reform Act of 2004

\*Article is intended to address Tribes and tribal members.

**T**he American Indian Probate Reform Act (AIPRA) of 2004 was enacted on October 27, 2004. The Act amends the Indian Land Consolidation Act, and this act affects your ownership rights in trust land. AIPRA changes the way trust estates are distributed to your heirs after your death. This increases the importance and benefits of writing a will or doing an estate plan. AIPRA also improves your ability to consolidate your interests in trust or restricted land. AIPRA is perhaps the most wide-reaching legislation affecting Indian Country passed in years. The impact will be felt by tribes and tribal members for generations to come.

**T**he Act creates a new nation-wide probate code that changes how your trust property will be distributed among your heirs if you die without a will. Other changes include an amended definition of “Indian” and “eligible heirs” for purposes of inheriting in trust. The changes also provide opportunities for the tribe to purchase your interest in trust land at probate. In order to give you time to plan, the inheritance changes take effect after one (1) year.

**W**ith the implementation and enactment of the AIPRA, the Department of the Interior (DOI) has an opportunity to assist Indians in understanding their rights to control the management and distribution of their trust assets during their life and upon their death. Recently, however, the DOI discontinued the practices of assisting Indians in preparing wills by acting as a scrivener and accepting wills for storage. For many years, it was the practice for DOI employees to provide will-drafting services for individual Indians. The DOI is not required by law to perform these services. AIPRA encourages the use of outside attorneys or legal specialists to draft wills and provide estate planning services. By allowing others to draft wills, DOI can focus their resources on the priorities of trust reform and management of trust assets.



## Who can inherit land under AIPRA?

Under AIPRA, an “Indian” is a person who is a member of an Indian tribe; or is eligible to become a member; or who was an owner of an interest in trust on October 27, 2004; or meets the definition of Indian under the Indian Reorganization Act; or in California any Indian or individual who owns trust or restricted land in California.

One of the main purposes of the Act was to preserve trust land and reduce the fractionated interests in Indian lands. The Act accomplishes this by providing individuals and tribes with more opportunities to consolidate those interests and removed some restrictions on what tribes and individuals can do with their lands. Certain people can purchase your interest in the parcel during probate. Your heirs, other co-owners, and the tribe where the land is located will be able to purchase your interest in the parcel during probate. If your heirs are to receive a 5% interest or more in the parcel, or if they live on the parcel, your heirs’ consent to the purchase is required. Heirs have a great amount of freedom to decide whether they want to inherit the land, sell it to the other co-owners, sell it to the tribe, or give it to another named Indian person.



On May 18, 2005, the Land Tenure Center, Great Lakes Indian Law Center, and the Indigenous Law Students Association held a Continuing Legal Education Seminar at the University of Wisconsin Law School regarding the AIPRA. Department of Justice Attorney Michelle Greendeer and von Briesen and Roper, s.c. attorney, Brian Pierson spoke regarding the importance of developing tribal probate codes. Attorney Greendeer spoke specifically regarding the DRAFT Ho-Chunk Nation Probate Code. Although the AIPRA is designed to combat fractionation issues by

## Why write a will?

If you write a will, you can designate how your trust land will be transferred in trust at your death to any Indian person or to your descendants even if they are not tribal members. AIPRA protects your rights as a property owner to transfer your property by will, therefore AIPRA does not trump or replace wills or estate planning.

## What happens with a will?

Your land can be transferred in trust to any Indian person, the tribe that has jurisdiction, or any Indian co-owners. You can also transfer your land in trust to any of your descendants, even if they are non-Indian. You can transfer your interests out of trust to anybody. Even if your spouse is not mentioned in a will, your spouse may inherit some of your trust property.

## What happens without a will?

If you do not have an estate plan, your trust property will pass under the new AIPRA or approved tribal probate code, rather than under the state laws that currently govern Indian probate. Your trust land will be inherited by your immediate family, and if you have none, then to your parents, then to your brothers or sisters. All of these people will be eligible to inherit your trust property as long as they meet the definition of “Indian,” or they are co-owners in the same property. If you do not write a will and your ownership is less than 5% of the total parcel, then your spouse (if you have one) will have a lifetime interest in the parcel. The new probate law will limit the inheritance to the oldest eligible child, grandchild or great-grandchild. Additionally the DOI may purchase interests in land that are less than 5% of the total for fair market value during the probate proceeding without the consent of the heirs.

providing less stringent standards for devising property, it also provided a pan-Indian approach to property division. Whereas not every tribe would divide property the same way, the Ho-Chunk Nation is proposing a probate code unique to the Ho-Chunk Nation. Please read the attached DRAFT Probate Code. If you have any comments or questions about the probate code, please contact the Ho-Chunk Nation Legislature paralegal Lou Blazek (715/284-3170 or lblazek@ho-chunk.com).

Furthermore, in August 2005, community education and estate planning activities targeting Wisconsin's Native American population will begin. Samantha Webb Kading, a 2005 graduate of the University of Wisconsin Law School, will begin a Skadden, Arps, Slate, Meagher & Flom, Inc. fellowship with Wisconsin Judicare and the Land Tenure Center at the University of Wisconsin-Madison. Her efforts will include community workshops, estate planning and document drafting. More information will be posted as it is available.

## Definitions

According to Black's Law Dictionary, here are the definitions of words used in the AIPRA:

**Hier(s)** – A person or persons who, under the laws of intestacy, is/are entitled to receive an intestate decedent's property.

**Trust** – The right or property interest held by one person at the request of another for the benefit of a third party beneficiary.

**Will** – A document by which a person directs his or her estate to be distributed upon death.

**Estate Plan** – A preparation for the distribution and management of a person's estate at death through the use of wills, trusts, insurance policies, and other arrangements.

**Probate** – The judicial procedure or process by which a testamentary document is established to be a valid will. It is the proving of a will to the satisfaction of the court.

**Intestacy** – The state of a person's having died without a valid will.

**Asset(s)** – All the owned property of a person that has value, including cash, real estate, and accounts receivable.

**Transfer in trust** – To convey property or title from one person to another for another's benefit.

**Lifetime interest** (or life estate) – An interest in real or personal property held only for the duration of a specified person's life.

**Interest in trust** – Having a legal title to property, and holding it in trust for the benefit of another.

**Parcel** – A tract of land.

**Scrivener** – A writer, or professional drafter of contracts or other documents.

**Fractionation** – The division of Tribal lands due to non-Indians inheriting lands, thereby resulting in less and less land owned by "Indians."

\*A special thank you to Andrew Adams III for allowing the Court Bulletin to use the appliqué pattern, and also a thank you to summer law clerk Anfin Jaw for her help with the lead article.



## UPDATES FROM OUTSIDE COURTS

### United States Supreme Court

#### Certiorari granted

*Richards v. Prairie Band of Potawatomi Nation*, 125 S. Ct. 1397 (2005).

#### Certiorari denied

*Van Guilder v. United States*, 125 S. Ct. 1976 (2005).

*Ackerman v. Edwards*, 2005 U.S. LEXIS 4201 (2005).

*Prescott v. Little Six*, 2005 U.S. LEXIS 4201 (2005).

*City of Sherrill v. Oneida Nation*, 2005 U.S. LEXIS 4317 (2005).

### First Circuit Court of Appeals

*Narragansett Indian Tribe v. Rhode Island*, 407 F.3d 450 (1st Cir. 2005).

Rhode Island State Police executed a search warrant and confiscated inventory at a smoke shop located on tribal land. The court faced a number of questions including whether the Narragansett Tribe had sovereign immunity from the Rhode Island tax on cigarettes, and whether the State exceeded its authority in the enforcement of its cigarette tax on settlement lands in violation of the Tribe's sovereignty. On the first issue, the legal incidence of the tax fell on the consumer. The State could require the Tribe to comply with the cigarette tax in order for the State to collect the cigarette taxes that were passed on to the Tribe's non-Indian consumers. On the last issue, the State violated the Tribe's sovereign rights when it enforced the criminal provisions of its cigarette tax laws by executing a search warrant against the Tribal government's Smoke Shop, forcibly entering the Shop and seizing the Tribe's stock of unstamped cigarettes, and arresting tribal officials who were acting in their official capacity.

### **Ninth Circuit Court of Appeals**

*Western States Paving Co., Inc. v. Washington State Department of Transportation*, 407 F.3d 983 (9th Cir. 2005).

The 9th Circuit Court of Appeals rejected the state of Washington's minority contracting policy as unconstitutional but upheld federal law affecting Indian and other minority businesses. A non-minority subcontractor brought civil rights action against state, county, and city alleging race discrimination in violation of Fourteenth Amendment and state law. The contractor's bid for a contract was rejected under the State's preference program in favor of a higher bid by a minority-owned firm. The contractor contended that the TEA-21, both on its face and as applied by the State, violated the constitutional guarantee of equal protection of the laws. The appellate court first held that TEA-21 was constitutional on its face based on strong statistical and anecdotal evidence of discrimination in the transportation contracting industry and a narrowly drawn statutory scheme to achieve minority participation in contracting. Minority-conscious remedies were proper under

TEA-21 only when minority-neutral means proved ineffective, the minority-conscious measures were employed in a flexible manner and for a limited duration, and the program was tied to the labor market in each state and was designed to minimize the burden on non-minorities. However, claims of general societal discrimination did not establish that minorities suffer or suffered discrimination in the State's transportation contracting industry and, absent such evidence, TEA-21 was unconstitutionally applied by the State.

### **Tenth Circuit Court of Appeals**

*U.S. v. Jarvison*, 2005 U.S. App. LEXIS 9363 (10th Cir. 2005).

The district court found that the couple had a valid marriage and concluded that the spousal testimonial privilege applied. Both the wife, Esther Jarvison and defendant, Ben Jarvison were subject to Navajo Nation laws regarding marriage and domestic relations. The wife testified to having married defendant in a traditional Navajo ceremony on June 25, 1953 within the Navajo Reservation. The Court found that the wife's testimony and other inferences supported the district court's conclusion that a valid traditional Navajo marriage ceremony occurred in 1953. Additionally, under Navajo law, an unlicensed traditional marriage occurring prior to 1954 was valid. Furthermore, the couple cohabited together and held themselves out as husband and wife. Therefore the Court concluded that the couple did have a valid marriage. The court said the Navajo Nation "retains sovereign authority to regulate domestic relations laws, including marriage of its Indian subjects, Navajo law is dispositive as to the validity of the marriage in question." Finally, the Court rejected the government's request to create a new exception to the spousal testimonial privilege for child abuse cases.

*Shawnee Tribe v. United States*, 405 F.3d 1121 (10th Cir. 2005).

The Shawnee Tribe filed an action against the United States seeking a transfer of the Sunflower Army Ammunition Plant. The Tribe sought judicial review of General Service Administration (GSA) finding that "excess property," available for disposal under Federal Property and Administrative

Services Act, was not within boundaries of reservation. The United States District Court for the District of Kansas granted summary judgment for the government, and the Tribe appealed. While the Tribe's appeal was pending, Congress passed § 2841 of the Ronald W. Reagan Nation Defense Authorization Act which gave the Secretary of the Army specific discretion to convey the Sunflower property to any entity of Johnson County Kansas. A sale of the Sunflower property was in the process of being confirmed, thus the Tribe's appeal was moot. The court dismissed the Tribe's appeal and ordered the district court to vacate its earlier order and dismiss the Tribe's complaint.



## Trial Court

### Child Support

**MAY 05, 2005**

*David Posey v. Beverly S. White Eagle*, CS 05-34 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., May 05, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita payments. The respondent failed to respond within the specified timeframe. The Court granted a *Default Judgment* in favor of the petitioner.

*State of Wisconsin v. Douglas RedEagle*, CS 05-35 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., May 05, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita payments. The respondent failed to respond within the specified timeframe. The Court granted a *Default Judgment* in favor of the petitioner.

**MAY 06, 2005**

*Julia Goodbear v. Ted L. Brown*, CS 98-20; *State of Wisconsin Jackson County and Anna Brown v. Ted L. Brown*, CS 00-37 *Order (Release of Impound and Modifying Child Support)* (HCN Tr. Ct., May 06, 2005). (Matha, T).

The Court had to decide whether to release the impound placed upon a percentage of the respondent's per capita distribution, and whether to grant the respondent's recent motion to modify. The petitioner failed to respond within the specified timeframe. Thus the court granted the uncontested motion and released the impounded portion of the per capita distribution.

*Sawyer County Child Support v. Andrew A. Bird*, CS 04-64 *Order (Modifying and Enforcing Child Support)* (HCN Tr. Ct., May 06, 2005). (Matha, T).

---

## 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). 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.**

The Court had to determine whether to grant the petitioner's motion to modify current child support. The respondent agreed with the requested change in enforcement. The Court granted the petitioner's motion.

**MAY 19, 2005**

*Rosemarie C. Funmaker v. Dennis Funmaker*, CV 97-63 Order (Terminating Child Support Orders) (HCN Tr. Ct., May 19, 2005). (Bossman, W).

The Juneau County Department of Human Services Child Support Unit filed a request to terminate the child support order because of the death of minor child.



## Civil Garnishment

**MAY 02, 2005**

*State Collection Services v. Christ Gorde*, CG 04-74 Order (Suspension of Judgment) (HCN Tr. Ct., May 02, 2005). (Bossman, W).

The petitioner filed a motion, expressing its desire to release the garnishment. The Court ordered the Treasury Department to suspend withholding from the respondent's wages until further order of the Court.

**MAY 11, 2005**

*Household Credit Service v. Laurie A. Dorwin*, CG 05-33 Order (Default Judgment) (HCN Tr. Ct., May 11, 2005). (Matha, T).

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

*W R Capital, LLC v. Gale S. Youngthunder*, CG 05-36 Order (Default Judgment) (HCN Tr. Ct., May 11, 2005). (Matha, T).

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

**MAY 17, 2005**

*Valued Services of Wisconsin, LLC d/b/a Check Advance v. Shannon Hansford*, CG 05-39 Order (Satisfaction of Judgment) (HCN Tr. Ct., May 17, 2005). (Matha, T).

The petitioner sought recognition and enforcement for a foreign money judgment. However, prior to the entry of the decision, respondent completely satisfied the debt. The Court recognizes that the debt has been paid in full.

*Oral Surgery Center v. Tina L. Olsen*, CG 05-38 Order (Voluntary Dismissal) (HCN Tr. Ct., May 17, 2005). (Matha, T).

The petitioner sought recognition and enforcement of a foreign money judgment. Prior to the responsive pleading deadline, the petitioner filed a request to dismiss. The petitioner noted its acceptance of a satisfactory voluntary wage assignment from the respondent. The Court dismissed the case without prejudice.

*Quick Cash Loans v. John Huffman*, CG 05-28 Order (Default Judgment) (HCN Tr. Ct., May 17, 2005). (Matha, T).

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

**MAY 18, 2005**

*Creditor Recovery Service, LLC, agent for Doctors' Clinic SC v. Elizabeth Young*, CG 05-37 Order (Default Judgment) (HCN Tr. Ct., May 18, 2005). (Matha, T).

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

**MAY 19, 2005**

*Lutheran Hospital – LaCrosse v. Diane M. and Rene Wallace*, CG 05-17 *Order (Granting Motion to Modify)* (HCN Tr. Ct., May 19, 2005). (Matha, T).

The petitioner indicated that the respondent initiated a bankruptcy proceeding. The Court direct the Ho-Chunk Nation Department of Treasury to cease withholding until further notice from the Court.

#### **MAY 25, 2005**

*Calvary Investments, LLC v. Debbie Pettibone*, CG 04-119 *Order (Satisfaction of Judgment)* (HCN Tr. Ct., May 25, 2005). (Matha, T).

The Court previously issued a default judgment against the respondent. The petitioner filed a *Garnishee Release* indicating that the petitioner has “discharged [the respondent] from further liability.” The Court recognizes that the debt has been satisfied.

*Midland Credit Management v. Nina Garvin*, CG 05-40 *Order (Default Judgment)* (HCN Tr. Ct., May 25, 2005). (Matha, T).

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.

*Capital One v. Mary T. Kasuboski*, CG 05-41 *Order (Default Judgment)* (HCN Tr. Ct., May 25, 2005). (Matha, T).

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. The respondent failed to timely respond, thus the Court granted a default judgment in favor of the petitioner.



## **Civil Cases**

#### **MAY 03, 2005**

*Charles Funk v. Ho-Chunk Nation, Ho-Chunk Casino Security Dept., Ho-Chunk Dept. of Business, Ho-Chunk Dept. of Personnel, Daniel Gander, and*

*Ralph Kleeber*, CV 04-20 *Amended Scheduling Order* (HCN Tr. Ct., May 03, 2005). (Matha, T).

The Court amended the *Scheduling Order* to reestablish dates and deadlines for the instant case.

#### **MAY 04, 2005**

*Christopher Lichman and Hillary Lichman v. Ho-Chunk Nation*, CV 05-06-07 *Scheduling Order* (HCN Tr. Ct., May 04, 2005). (Matha, T).

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

#### **MAY 05, 2005**

*Corinna M. Climer v. Ho-Chunk Nation Children and Family Services, Molli White, Elizabeth Haller and Betty Kingsley*, CV 05-14 *Order (Dismissal without Prejudice)* (HCN Tr. Ct., May 05, 2005). (Matha, T).

The Court determined to dismiss the instant case. The plaintiff informed the Court of her intention to withdraw her case during the discovery period. Therefore the Court dismisses the action without prejudice.

*Sherry M. Fitzpatrick v. Ho-Chunk Nation, Ho-Chunk Nation Business Department, Ho-Chunk Nation Department of Personnel Majestic Pines Bingo and Casino, Mary Whitegull, Jonette Pettibone, Ida Carrier, and James T. Webster*, CV 04-82 *Order (Regarding Settlement Conference)* (HCN Tr. Ct., May 05, 2005). (Bossman, W).

The Court ordered the parties’ briefs be submitted as per the *Scheduling Order*.

#### **MAY 06, 2005**

*In the Interest of Minor Child: N.L.S., DOB 02/15/92 by Jennifer L. White Eagle v. Ho-Chunk Nation Office of Tribal Enrollment*, CV 04-26 *Order (Partial Release of Contempt Fine)* (HCN Tr. Ct., May 06, 2005). (Matha, T).

The Court must determine whether to retain the entire contempt fine withheld from the petitioner’s per capita distribution. The petitioner failed to submit an accounting prior to the date upon which the Court indicated that it would purge the fine. Yet, the contempt fine served its remedial purpose of compelling obedience with standing judicial directives. The Court will release the majority of the accumulated contempt fine to the petitioner.

**MAY 17, 2005**

*Ho-Chunk Nation Department of Property Management v. Carole Lou St. Cyr*, CV 04-56 *Order (Satisfaction of Judgment)* (HCN Tr. Ct., May 17, 2005). (Matha, T).

The Court granted a money judgment against the defendant and directed the Ho-Chunk Nation Department of Treasury to withhold per capita income to satisfy a debt to the Nation. The Court recognizes that the debt has been paid in full.

*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 (Granting Plaintiffs' Motion to Reopen and Modify)* (HCN Tr. Ct., May 17, 2005). (Matha, T).

The Court must determine whether to modify its previous decision, which amended payment terms of a settlement agreement that the Court incorporated into the decision. The plaintiffs filed a motion requesting that the Court enter a judgment against the defendants due to a failure to adhere to the conditions of the settlement agreement. The defendants admitted to the infractions. The Court grants the plaintiffs' motion in light of the admission.

*Ho-Chunk Nation Department of Housing, Property Management Division v. Mary J. Fisher and Jason Youngthunder*, CV 05-34 *Order (Default Judgment)* (HCN Tr. Ct., May 17, 2005). (Matha, T).

The Court must determine whether to grant the relief requested by the plaintiff. The defendants failed to answer the *Complaint* despite proper service of process. The Court renders a default judgment against the defendants, awarding the plaintiff permissible relief sought in the *Complaint*.

**MAY 20, 2005**

*Kevin Kuehl v. Ho-Chunk Casino Table Games*, CV 05-23 *Order (Postponing Scheduling Conference)* (HCN Tr. Ct., May 20, 2005). (Bossman, W).

By agreement, the parties requested postponement of the *Scheduling Conference*. The Court granted the request.

**MAY 23, 2005**

*Mary Bernhardt v. HoCak Construction, LLC and Ho-Chunk Nation Department of Housing*, CV 05-22 *Scheduling Order* (HCN Tr. Ct., May 23, 2005). (Bossman, W.).

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

**MAY 25, 2005**

*Gary D. Albrecht v. Ho-Chunk Nation*, CV 05-25 *Scheduling Order* (HCN Tr. Ct., May 25, 2005). (Matha, T).

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

**MAY 26, 2005**

*Kevin Kuehl v. Ho-Chunk Casino Table Games*, CV 05-23 *Scheduling Order* (HCN Tr. Ct., May 25, 2005). (Bossman, W.).

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

*Jill Christine Wirtz and Gary Dean Albrecht v. Ho-Chunk Nation*, CV 05-24, 25 *Amended Scheduling Order* (HCN Tr. Ct., May 26, 2005). (Matha, T).

The Court amended the *Scheduling Order* to reestablish dates and deadlines for the instant case.

**ELECTION CHALLENGES****MAY 04, 2005**

*Kenneth Lee Twin v. Ho-Chunk Nation, Ho-Chunk Nation Legislature, and Ho-Chunk Nation Election Board*, CV 05-38 *Order* (HCN Tr. Ct., May 04, 2005). (Bossman, W).

The plaintiff filed an election challenge, and the court scheduled a trial. The plaintiff has the burden of proving by clear and convincing evidence that there was a violation of the Election Ordinance, and that the outcome of the election would have been different but for the violation. The Court consolidated this case with the case of *Anna R. Funmaker v. Ho-Chunk Nation Election Board and Mary Ellen Dumas as Chair of the Ho-Chunk Nation Election Board*, CV 05-36 due to the similarity of the issues presented.

*Isaac (Ike) Wayne Greyhair v. Ho-Chunk Nation and Ho-Chunk Nation Election Board*, CV 05-39

*Scheduling Order* (HCN Tr. Ct., May 04, 2005). (Matha, T).

The plaintiff timely challenged the results of the General Primary Election. The Court enters this *Order* to facilitate and ensure a just and fair proceeding within the condensed timeframe required by the CONSTITUTION.

*Kenneth Lee Twin v. Douglas Greengrass, Toni McDonald, George Lewis, Ho-Chunk Nation and Ho-Chunk Nation Personnel Department*, CV 04-90 *Order (Stay of Proceedings)* (HCN Tr. Ct., May 04, 2005). (Bossman, W).

The proceedings in this matter are stayed until there is a ruling on the *Motion to Dismiss* filed in case number CV 04-27.

#### **MAY 05, 2005**

*Dennis M. Funmaker Sr. v. Ho-Chunk Nation Election Board: Mary Ellen Dumas et al.*, CV 05-40 *Scheduling Order* (HCN Tr. Ct., May 05, 2005). (Matha, T).

The Court issued this *Scheduling Order* to establish dates and deadlines for the instant case. The plaintiff timely challenged the results of the General Primary Election. The Court entered this *Order* to facilitate and ensure a just and fair proceeding within the condensed timeframe required by the CONSTITUTION.

#### **MAY 09, 2005**

*Kenneth L. Twin v. Toni McDonald et al.*, CV 04-27 *Amended Scheduling Order* (HCN Tr. Ct., May 09, 2005). (Matha, T).

The Court amended the *Scheduling Order* to reestablish dates and deadlines for the instant case.

#### **MAY 13, 2005**

*Dennis M. Funmaker, Sr. v. Ho-Chunk Nation Election Board: Mary Ellen Dumas et al.*, CV 05-40 *Order (Preliminary Determinations)* (HCN Tr. Ct., May 13, 2005). (Matha, T).

The Court must rule upon a challenge to the General Primary Election. In its preliminary determinations, the Court performed an exhaustive review of nineteen (19) cases dealing with recusal, and none of decisions directly dealt with the current factual situation. However the Court drew comparisons. First, the Supreme Court sought the

appointment of *pro tempore* justices on four (4) occasions due to a current or past working relationship between the sitting justice and the parties. Second, no sitting justice should hear an appeal involving an incumbent justice's challenge to his or her election. As no conflict exists, the presiding judge will fully adjudicate the case. Furthermore the Court joined Associate Justice Jo Deen B. Lowe as a party to the instant suit.

#### **MAY 16, 2005**

*Anna R. Funmaker v. Ho-Chunk Nation Election Board, Mary Ellen Dumas, as Chair of the Ho-Chunk Nation Election Board, Kenneth Lee Twin, v. Ho-Chunk Nation, Ho-Chunk Nation Legislature, and Ho-Chunk Nation Election Board*, CV 05-36-38 *Order* (HCN Tr. Ct., May 16, 2005). (Bossman, W).

The Court granted defendants' request to allow a witness to testify telephonically at Trial.

#### **MAY 19, 2005**

*Anna R. Funmaker v. Ho-Chunk Nation Election Board, Mary Ellen Dumas, as Chair of the Ho-Chunk Nation Election Board*, CV 05-36 *Order Denying Election Challenge* (HCN Tr. Ct., May 19, 2005). (Bossman, W).

The plaintiff has the burden of proving by clear and convincing evidence that there was a violation of the Election Ordinance, and that the outcome of the election would have been different but for the violation. The violation alleged in this case is that the recount conducted on April 24, 2005 was not done according to the applicable law. The programming error that led to the incorrect official results being made available to the public was extremely unfortunate. However, the Court cannot find that there has been a violation of the Election Ordinance.

*Kenneth Lee Twin v. Ho-Chunk Nation, Ho-Chunk Nation Legislature, and Ho-Chunk Nation Election Board*, CV 05-38 *Order Denying Election Challenge* (HCN Tr. Ct., May 19, 2005). (Bossman, W).

The plaintiff has the burden of proving by clear and convincing evidence that there was a violation of the Election Ordinance, and that the outcome of the election would have been different but for the

violation. The violation alleged in this case is that the recount conducted on April 24, 2005 was not done according to the applicable law. The programming error that led to the incorrect official results being made available to the public was extremely unfortunate. However, the Court cannot find that there has been a violation of the Election Ordinance.

**MAY 20, 2005**

*Dennis M. Funmaker, Sr. v. Ho-Chunk Nation Election Board: Mary Ellen Dumas et al.*, CV 05-40 Order (Granting Motion for Discovery) (HCN Tr. Ct., May 20, 2005). (Matha, T).

Previously, the Court chose to join defendant Lowe to afford her an opportunity to protect her interests. As a result, the defendant had a diminished ability to conduct discovery. Therefore, the Court provided additional discovery time.

**MAY 23, 2005**

*Isaac (Ike) Wayne Greyhair v. Ho-Chunk Nation Election Board*, CV 05-39 Order (Denying Election Challenge) (HCN Tr. Ct., May 23, 2005). (Matha, T).

The Court must determine whether to grant the plaintiff's request or relief. However, the plaintiff failed to satisfy the statutorily imposed burden of proof. Thus the Court denies the election challenge.

**MAY 24, 2005**

*Dennis M. Funmaker Sr. v. Ho-Chunk Nation Election Board: Mary Ellen Dumas et al.*, CV 05-40 Order (Final Judgment) (HCN Tr. Ct., May 24, 2005). (Matha, T).

A strict application of the Election Ordinance to the facts would result in a victory for the plaintiff. The Supreme Court has identified a difference that separates the constitutional judicial election provisions and its presidential and legislative counterparts, namely the addition of the phrase, "unless otherwise provide." CONST., ART. VII, § 10. The Court enjoined the holding of a run-off election for Associate Justice, and directed the Election Board to declare the plaintiff the winner of the General Election, due to his receipt of a majority vote in the Primary Election.

**CHILDREN'S TRUST FUND (CTF)**

**MAY 03, 2005**

*In the Interest of Minor Children: J.J.N., DOB 06/23/88; J.D.N., DOB 08/27/91; J.D.N., DOB 08/27/91, by Mary Ness v. Ho-Chunk Nation Office of Tribal Enrollment*, CV 05-17 Order (Accepting Accounting) (HCN Tr. Ct., May 03, 2005). (Bossman, W).

The Court released funds from the CTF accounts to pay for costs associated with payments on the family mortgage. The Court accepted the accounting and informed the parties of its intent to close.

**MAY 19, 2005**

*In the Interest of Minor Child: N.L.P. DOB 02/18/91 by Janice Savage v. Ho-Chunk Nation Office of Tribal Enrollment*, CV 05-33 Order (Petition Granted) (HCN Tr. Ct., May 19, 2005). (Bossman, W).

The Court determined that the parent can access monies on behalf of the minor child from the Children's Trust Fund to pay for the costs associated with orthodontic procedures. The Court granted a release of funds to satisfy the request of the petitioner.

**MAY 27, 2005**

*In the Interest of Adult CTF Beneficiary: Alicia Blackhawk, DOB 10/25/81 v. Ho-Chunk Nation Office of Tribal Enrollment*, CV 05-29 Order (Granting Petition) (HCN Tr. Ct., May 27, 2005). (Matha, T).

The Court must determine whether an adult can access her Children's Trust Fund (CTF) account to secure funds to purchase an automobile. The Court grants a release of funds because the petitioner has satisfied the standard erected for consideration of an automobile request.

**DEBTS TO AN ELDER**

**MAY 26, 2005**

*Mary Stone v. Robin A. Stone*, CV 05-13 Order (Default Judgment) (HCN Tr. Ct., May 26, 2005). (Bossman, W.).

The Court must determine whether to award the plaintiff the relief requested in her *Complaint*. The defendant failed to file a timely answer, leading the

Court to grant a default judgment in favor of the plaintiff.

### **INCOMPETENT TRUST FUND (ITF)**

**MAY 19, 2005**

*In the Interest of Decedent Member: G.P.M., DOB 04/26/03 by Owen Mike v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-41 Order (Releasing Incompetent's Trust Fund to Estate)* (HCN Tr. Ct., May 19, 2005). (Matha, T).

The Ho-Chunk Nation has deposited a substantial sum of money in the Incompetent's Trust Fund (ITF) account prior to the unfortunate passing of the tribal member. These monies remain in an irrevocable trust held by the Ho-Chunk Nation. The Court now directs the release of the ITF to the court-appointed representative of the estate.

**MAY 27, 2005**

*In the Interest of D.P.G., DOB 08/28/82, by Regina Taylor and Tony Salo v. HCN Office of Tribal Enrollment, CV 05-15 Order (Motion Granted in Part)* (HCN Tr. Ct., May 27, 2005). (Matha, T).

The Court must determine whether the general conservators can access monies on behalf of an adult incompetent member from the Incompetent's Trust Fund (ITF) to pay for costs associated with housing, household items, and entertainment-related expenses. The Court grants a release of funds to satisfy the requests of the conservators.



### **Juvenile**

**APRIL 29, 2005**

*In the Interest of Minor Child: B.A.T., DOB 09/11/94; C.A.T., DOB 07/06/95, JV 05-12-13 Order (Appointment of Guardian Ad Litem)* (HCN Tr. Ct., Apr. 29, 2005). (Matha, T).

The Court appointed a GAL in this matter.

**MAY 02, 2005**

*In the Interest of Minor Child: D.R.W., DOB 08/12/04, JV 05-07 Order (Rescheduling of*

*Guardianship Hearing)* (HCN Tr. Ct., May 02, 2005). (Bossman, W).

The Court rescheduled the hearing to allow the GAL and CFS to obtain more information and to make further reports to the court.

*In the Interest of Minor Child: L.K.B., DOB 09/27/89, JV 05-06 Order (Submission of Guardianship Report and Home Study)* (HCN Tr. Ct., May 03, 2005). (Bossman, W).

The Court ordered CFS to prepare and submit a guardianship report and home study to the Court.

*In the Interest of Minor Child: L.K.B., DOB 09/27/89, JV 05-06 Order (Submission of Traditional Relatives List)* (HCN Tr. Ct., May 03, 2005). (Bossman, W).

The Court ordered CFS to prepare and submit a list of the minor children's traditional relatives to the Court.

**MAY 06, 2005**

*In the Interest of Minor Child: D.T.S., DOB 08/12/04, JV 05-08 Order (Continuation of Guardianship Hearing)* (HCN Tr. Ct., May 06, 2005). (Matha, T).

The Court rescheduled the *Guardianship Hearing* to provide the parties an opportunity to obtain legal representation.

*In the Interest of Minor Child: H.D.J., DOB 11/25/88, JV 98-20 Order (Child Protection Review Hearing)* (HCN Tr. Ct., May 06, 2005). (Bossman, W).

The Court conducted a *Child Protection Review Hearing*. The Court reaffirmed the dispositional requirements as necessary for the protection of the child.

**MAY 10, 2005**

*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 (Review of Dispositional Order)* (HCN Tr. Ct., May 10, 2005). (Bossman, W).

The Court determined that pursuant to the recommendations of the CFS and the GAL, physical placement of the minor children should be with the minors' aunt, and that the change in placement be made immediately.

**MAY 11, 2005**

*In the Interest of Minor Child: D.D.F., DOB 07/08/94, JV 04-28 Order (Submission of Traditional Relatives List)* (HCN Tr. Ct., May 11, 2005). (Bossman, W).

The Court ordered CFS to prepare and submit a list of the minor children's traditional relatives to the Court.

*In the Interest of Minor Child: D.D.F., DOB 07/08/94, JV 04-28 Order (Submission of Guardianship Report and Home Study)* (HCN Tr. Ct., May 11, 2005). (Bossman, W).

The Court ordered CFS to prepare and submit a guardianship report and home study to the Court.

**MAY 12, 2005**

*In the Interest of Minor Children: W.O.B., DOB 04/08/98; R.L.B. DOB 03/31/97; D.D.F., DOB 07/08/94, JV 04-06-07-28 Order (Review Hearing)* (HCN Tr. Ct., May 12, 2005). (Bossman, W).

The Court conducted a *Child Protection Review Hearing*. The Court had to assess the requirements and recommendations proposed by CFS and the GAL. The Court determined that the previously ordered dispositional recommendations are necessary for the protection of the children.

**MAY 18, 2005**

*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 (Denying Motion for Reconsideration)* (HCN Tr. Ct., May 18, 2005). (Bossman, W).

The Court denies the *Motion for Reconsideration* and orders that the previous *Order (Review of Dispositional Order)* be followed, and the physical placement of the minor children should be with the minors' Aunt, and the change in placement be made immediately.

**MAY 26, 2005**

*In the Interest of Minor Children: P.R.F., DOB 04/22/02; C.H.F. DOB 12/24/03, JV 05-19-20 Order (Granting Postponement)* (HCN Tr. Ct., May 26, 2005). (Bossman, W).

The Court postponed the matter because one of the parents had not been served with *Summons* and had

not received a copy of the *Child/Family Protection Petition*.

**MAY 27, 2005**

*In the Interest of Minor Children: M.L.D., DOB 05/23/91; M.L.H., DOB 08/18/97; M.H., DOB 02/19/99; M.L.D., DOB 02/09/00, JV 05-15-16-17-18 Order (Granting Postponement)* (HCN Tr. Ct., May 27, 2005). (Bossman, W).

The Court postponed the matter because the parents had not been served with *Summons* and had not received a copy of the *Child/Family Protection Petition*.

*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 (Appointment of Guardian ad litem)* (HCN Tr. Ct., May 27, 2005). (Matha, T).

The Court appointed a GAL in this matter.

**MAY 31, 2005**

*In the Interest of Minor Child: D.P.S., DOB 12/12/88, JV 02-14 Order (Rescheduling Review Hearing)* (HCN Tr. Ct., May 31, 2005). (Bossman, W).

The Court rescheduled the *Hearing* upon the request of CFS.

## Supreme Court

**MAY 29, 2005**

*Dennis M. Funmaker, Sr. v. Ho-Chunk Nation Election Board and Mary Ellen Dumas and Jo Deen B. Lowe, SU05-06 Scheduling Order* (HCN S. Ct., May 27, 2005).

The Ho-Chunk Nation Election Board, Mary Ellen Dumas, and Jo Deen B. Lowe appealed the Trial Court's decision. On appeal, the Ho-Chunk Nation Supreme Court stayed the Trial Court's decision. The Associate Justices and the Chief Justice are recusing themselves from further consideration of this matter as it involves Associate Justice Jo Deen B. Lowe. Although both Associate Justice Butterfield and Chief Justice Hunter believe that they could be fair and impartial, both Justices wish to avoid the appearance of impropriety. Justice Lowe obviously must recuse herself from this case. The HCN Legislature appointed three Justices *Pro*

Tempore, and any further matters on this case will be presented to the *Pro Tempore* panel.

---

## Recent Filings

### Trial Court

#### Child Support

##### MAY 3, 2005

*State of Nebraska v. Shane .A Oknewski*, CS 05-39. (Matha, T).

##### MAY 12, 2005

*April S. Kaiser v. Ryan P. Storch*, CS 05-40. (Bossman, W).

##### MAY 13, 2005

*Twilah Sherven v. Christopher Kapayou*, CS 05-41. (Bossman, W).

*State of Wisconsin, Mardell Barrett v. Colin Cloud*, CS 05-42. (Bossman, W).

##### MAY 20, 2005

*State of Wisconsin v. Kric Pettibone*, CS 05-44. (Matha, T).

*State of Wisconsin, Jennifer M. Mair v. Randal Cloud*, CS 05-43. (Matha, T).

*State of Wisconsin v. Kric Pettibone*, CS 05-44. (Matha, T).

*Blue Earth County v. Joshua Raymond Armendariz*, CS 05-45. (Matha, T).

*Christine Armendariz v. Dana Armendariz*, CS 05-46. (Matha, T).

#### Civil Garnishment

May 12, 2005

*Capital One v. Jeanette Severson*, CG 05-42. (Matha, T).

*Capital One v. Mark Houghton*, CG 05-43. (Matha, T).

*Augusta Housing Management Company v. Stacey Whitegull*, CG 05-45. (Matha, T).

*Gary W. Prescott & Carolyn J. Prescott v. Ryan P. Storch*, CG 05-46. (Matha, T).

May 19, 2005

*Amy Hunter v. Courtney White*, CG 05-47. (Matha, T).

*Greater La Crosse Radiological v. David R. Youngthunder*, CG 05-48. (Matha, T).

May 20, 2005

*Alliance Collection Agencies, Inc. v. John P. McKeel*, CG 05-49. (Matha, T).

*Alliance Collection Agencies, Inc. v. Lanette R. Walker*, CG 05-50. (Bossman, W).

*Alliance Collection Agencies, Inc. v. Jason W. Frost*, CG 05-51. (Matha, T).

*Alliance Collection Agencies, Inc. v. Charles E. Smith, Sr.*, CG 05-52. (Matha, T).

*Alliance Collection Agencies, Inc. v. Bryan J. Ringer*, CG 05-53. (Matha, T).

*Alliance Collection Agencies, Inc. v. Julia L. Krause*, CG 05-54. (Matha, T).

*Hess Memorial Hospital v. Deana L. & Howard Decora*, CG 05-55. (Matha, T).

#### Civil Cases

##### MAY 03, 2005

*Isaac Greyhair v. Ho-Chunk Nation & Ho-Chunk Nation Election Board*, CV 05-39. (Matha, T).

##### MAY 04, 2005

*Dennis Funmaker v. Ho-Chunk Nation Election Board & Mary Ellen Dumas et al.*, CV 05-40. (Matha, T).

##### MAY 06, 2005

*Decedent George Peter Mike*, CV 05-41. (Matha, T).

*In the Interest of: J.M. DOB 11-12-91 v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-42. (Matha, T).*

**MAY 17, 2005**

*Sherry Wilson v. Ho-Chunk Nation Department of Personnel, CV 05-43. (Matha, T).*

**MAY 19, 2005**

*Stephanie Hughes v. Ho-Chunk Nation Gaming Commission, Commissioners, et al., Ho-Chunk Nation, Tammie Modica, CV 05-44. (Matha, T).*

*Stephanie Hughes v. Ho-Chunk Nation Gaming Commission, Commissioners, et al., Ho-Chunk Nation, Tammie Modica, CV 05-45. (Matha, T).*

**MAY 25, 2005**

*Ho-Chunk Nation Social Services v. Kim & Sandra Whitewing, CV 05-45. (Bossman, W).*

**Juvenile**

**MAY 07, 2005**

*In the Interest of Minor Child: T.L.E., DOB 05/07/94, JV 05-14. (Matha, T).*

**MAY 24, 2005**

*In the Interest of Minor Child: M.L.D., DOB 05/23/91, JV 05-15. (Bossman, W).*

*In the Interest of Minor Child: M.L.H., DOB 08/18/97, JV 05-16. (Bossman, W).*

*In the Interest of Minor Child: M.H., DOB 02/19/99, JV 05-17. (Bossman, W).*

*In the Interest of Minor Child: M.H., DOB 02/09/00, JV 05-18. (Bossman, W).*

*In the Interest of Minor Child: P.R.F., DOB 04/22/03, JV 05-19. (Bossman, W).*

*In the Interest of Minor Child: C.H.F., DOB 12/24/03, JV 05-20. (Bossman, W).*

## Supreme Court

**MAY 24, 2005**

*Kenneth Lee Twin v. Ho-Chunk Nation et al., SU 05-05.*

**MAY 26, 2005**

*Dennis M. Funmaker, Sr., v. Ho-Chunk Nation Election Board and Jo Deen Lowe, SU 05-06.*

**MAY 27, 2005**

*Dennis M. Funmaker, Sr., v. Ho-Chunk Nation Election Board and Jo Deen Lowe, SU 05-07.*

## Upcoming National Events

**June 13 - 15, 2005** - National American Indian Housing Council 31<sup>st</sup> Anniversary Convention & Trade Show to be held at Mohegan Sun; Uncasville, CT  
21

**June 13 - 16, 2005** - National Congress of American Indians Mid-Year Session to be held at the Radisson Hotel & Conference Center; Oneida, WI

**June 27-30, 2005.** United South and Eastern Tribes Semi-Annual Board Meeting, Foxwoods Resort, CT.

**August 12-14, 2005.** NMAI National Pow-Wow. MCI Center, Washington, D.C. For more information visit [www.AmericanIndian.si.edu](http://www.AmericanIndian.si.edu) or call 877-830-3224.

**September 23, 2005.** 38<sup>th</sup> Annual California Indian Day Celebration to be held at the California State Capitol; Sacramento, CA

**October 30 – November 4, 2005.** National Congress of American Indians 62<sup>nd</sup> Annual Convention in Tulsa, OK



**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 – Earl Blackdeer

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

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

Clerk of Court, Trial Court – Marcella Cloud  
Assistant Clerk of Court, Trial Court – Selina Joshua  
Bailiff/Process Server – Albert Carrimon  
Administrative Assistant – Jessi Cleveland  
Staff Attorney – Amanda R. Cornelius  
Supreme Court Clerk – Mary Endthoff

\* 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 Judiciary Fee Schedule**

Filing Fees

- *Complaint*.....\$50.00
- *Petition for Release of Per Capita Distribution (Children’s Trust Fund)* .....\$50.00
- *Motion to Appear Pro Hac Vice*.....\$35.00
- Appellate Filing Fee.....\$35.00
- *Petition to Register and Enforce Foreign Judgment/Order* .....\$20.00

Court Fees

- Copying .....\$0.10/page
- Faxing .....\$0.25/page (sending & receiving)
- CD of Hearings .....\$10.00/CD
- Deposition Videotape .....\$12.50/tape
- Certified Copies.....\$0.50/page
- Equipment Rental .....\$5.00/hour
- Admission to Practice .....\$50.00

Legal Citation Forms

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

Ho-Chunk Nation Constitution

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

Ho-Chunk Nation Code

Ordinance/Act Name Title Number HCC Section.  
ELDER PROTECTION ACT, 4 HCC § 1.  
EMPLOYMENT RELATIONS ACT, 6 HCC § 5.  
(for detailed citation information consult LEGISLATIVE ORGANIZATION ACT, 2 HCC § 11.36)

HCN Supreme Court Case Law

Case Name, Case Number (HCN S. Ct., month, day, year).  
*Johnson v. Department Inc.*, SU 96-21 (HCN S. Ct., Aug. 14, 1996).

HCN Trial Court Case Law

Case Name, Case Number (HCN Tr. Ct., month, day, year)  
*Jane Doe v. Bob Smith*, CV 99-01 (HCN Tr. Ct., Nov. 1, 1999).

Ho-Chunk Nation Rules of Civil Procedure

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



**HO-CHUNK NATION CODE (HCC)  
TITLE 8 – HOUSING, REAL ESTATE AND PROPERTY CODE  
SECTION 8 – PROBATE CODE**

*ENACTED BY LEGISLATURE: (TBP)*

**CITE AS: 8 HCC § 8**

**TABLE OF CONTENTS**

**Chapter I - General Provisions**

1. Authority .....	3
2. Findings, Purpose and Objectives .....	4
3. Definitions .....	4
4. Jurisdiction .....	9
5. Custom and Traditional Distribution of Native American Finery and Artifacts .....	10
6. Evidence as to Passing or Status .....	10
7. Court Procedures, Rules and Powers .....	10
8. Effect of Fraud and Evasion .....	11
9. Notice .....	11
10. Renunciation of Succession .....	12
11. Effect of Divorce, Annulment and Decree of Separation .....	12
12. Heirship By Killing .....	12
13. Simultaneous Passing Provisions .....	14

**Chapter II - Wills**

14. Who May Make a Will .....	14
15. Execution .....	14
16. Holographic Will .....	15
17. Oral Will .....	15
18. Self-Proved Will .....	15
19. Who May Witness .....	16
20. Choice of Law as to Execution .....	16
21. Revocation by Writing or by Act .....	16
22. Revocation by Divorce; No Revocation by Other Changes of Circumstance .....	16
23. Revival of Revoked Will .....	17
24. Incorporation by Reference .....	17
25. Events of Independent Significance .....	17
26. Rules of Construction and Intention .....	17

**Chapter III - Intestate Succession**

27. Intestate Succession .....	18
28. Share of the Spouse .....	19
29. Share of Heirs Other Than Surviving Spouse .....	19
30. No Taker .....	19
31. Representation .....	19
32. Posthumous Persons .....	19
33. Kindred of Half Blood; Stepchildren; Foster Children ..	20
34. Divorce .....	20
35. Determination of Relationship of Parent and Child .....	20

#### **Chapter IV - Family Rights/Protection**

36. Spouse's Right to Elective Share .....	20
37. Right of Election Personal to Surviving Spouse .....	20
38. Waiver of Right to Elect and of Other Rights .....	20
39. Duty of Court to Advise .....	21
40. Proceeding for Elective Share; Time Limit .....	21
41. Effect of Election on Benefits by Will .....	22
42. Omitted Spouse .....	22
43. Pretermitted Children .....	22
44. Exempt Property .....	23
45. Family Allowance .....	23
46. Source, Determination and Documentation .....	24
47. Dwelling Exemption .....	24
48. Summary Probate of Exempt Estates .....	25

#### **Chapter V - Inheritance by Non-Indians/Fractioned Heirship**

49. Restrictions on Inheritance of Individual Trust/Restriction Lands by Non-Indians .....	25
50. Escheat of Certain Fractionated Interests .....	26

#### **Chapter VI - Administration of Intestate Estates**

51. Petition .....	27
52. Administration of Intestate Estate .....	27
53. Appointment of Administrator .....	28
54. Oath of Administrator; Letters of Administration .....	29
55. Notice of Creditors .....	29
56. Payment of Creditors .....	29
57. Accounting .....	29
58. No Taker/Escheat to Nation .....	30
59. Advancements .....	30
60. Debts to Decedent .....	30
61. Distribution and Closing Estate .....	30

#### **Chapter VII - Probate of Wills**

62. Duty to Present Will for Probate .....	30
63. Proving, Contesting and Admitting Will .....	30
64. Petition for Letters Testamentary .....	31
65. Qualifications of Executor .....	31
66. Appointment of Administrator .....	31
67. Duties of Administrator; Bond .....	32
68. Creditors .....	32
69. Accounting .....	32
70. Distribution and Closing Estate .....	32
71. Distribution: Order in Which Assets Appropriated; Abatement .....	32
72. Property Discovered After Estate Closed .....	33

### **Chapter VIII - Guardianship**

73. Purpose .....	33
74. Incompetent Persons .....	33
75. Order and Guardianship Preferences .....	34
76. Types of Guardianship .....	35
77. Guardianship Procedures .....	35
78. Termination of Guardianship .....	38

## **CHAPTER I GENERAL PROVISIONS**

### **1. Authority.**

a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution (“Constitution”) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(l) of the Constitution grants the Legislature the power to enact laws to manage, lease, permit, or otherwise deal with the Nation’s lands, interests in lands or other assets.

c. Article V, Section 2(p) of the Constitution grants the Legislature the power to create and regulate a system of property including but not limited to use, title, deed, estate, inheritance, transfer, conveyance, and devise.

d. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

e. Article V, Section 2(u) of the Constitution grants the Legislature the power to enact laws to regulate domestic relations of persons within the jurisdiction of the Nation.

f. 25 U.S.C. § 2205 provides that any Indian tribe may adopt a tribal probate code, subject to the approval of the Secretary of the Interior.

### **2. Findings, Purpose and Objectives.**

#### a. Findings.

(1) The Ho-Chunk Nation Legislature finds that probate procedure in the Ho-Chunk Nation Court is in the best interest of Tribal members in that probate may be concluded more economically and more expeditiously in the Court of the Ho-Chunk Nation than by other jurisdictions.

(2) Furthermore, the determination of how property is disposed upon a person's passing is an exercise of self-governance crucial to the Nation's sovereignty.

b. Purpose. This Probate Code will provide for the exercise of the greatest possible Tribal jurisdiction over probate of the estate of decedents who were domiciled or owned real or personal property on the Ho-Chunk Nation Tribal Trust and Heirship Lands.

c. Objectives. This Code shall be liberally construed and applied to meet the following objectives:

- (1) To ensure that the property of decedents passes to the rightful heirs or beneficiaries.
- (2) To comply with the decedent's wishes as much as possible.
- (3) To comply with tribal custom and tradition.
- (4) To provide a simple, efficient and inexpensive method for probating decedent's property.
- (5) To prevent the transfer of land out of Tribal ownership and control.
- (6) To ensure that the rights of creditors of decedents are protected to the extent possible and fair.
- (7) To promote and further the Nation's inherent right of self-governance.

3. **Definitions.** As used in this Code, unless the context otherwise requires, the following terms shall have the meaning as indicated.

a. "Abatement" means a reduction or decrease.

b. "Administrator" means the person appointed by the Nation's Trial Court (Court) to administer the estate of a decedent according to this Probate Code and may include the Executor named in the decedent's will, appointed at the request of an interested party, appointed by the Court, or the public Administrator.

c. "Adoption" means the legal process pursuant to statute in which a child's legal rights and duties toward his or her natural parents are terminated and similar rights and duties toward his or her adoptive parents are substituted. To take into one's family the child of another and give him or her, the rights, privileges, and duties of a child and heir. An adopted person is the child of an adopting parent and of the natural parents for inheritance purposes only. The adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent. This legal definition of adoption does not include the customary adoption traditionally practiced by members of the Nation.

d. "Beneficiary" means any person nominated in a will to receive an interest in property other than in a fiduciary capacity.

e. "Bond" means an obligation to pay a sum of money upon the happening of a stated event.

f. "Class Gift" means a devise or gift to a body of people, uncertain in number at the time of the gift, to be ascertained at a future time, who are all to take in equal, or other definite proportions, the share of each being dependent for its amount upon the ultimate number of people in the class. (Example: "I leave \$10,000 to my grandchildren." In the example, the decedent's grandchildren constitute a class of people which may grow over time, but will be a certain number upon the passing of the decedent.)

g. "Codicil" means a supplement or an addition to a will; it may explain, modify, add to, subtract from, qualify, alter, restrain or revoke provisions in an existing will. A codicil does not purport to dispose of the entire estate or to contain the entire will of the testator, nor does it ordinarily expressly or by implication revoke an entire prior will.

h. "Conveyance" means the transfer of legal title to property from one person, or a class of person, to another person by deed. This term may also include assignment, lease, mortgage or encumbrance of land.

i. "Court" means the Trial Court of the Ho-Chunk Nation.

j. "Decedent" means a person who has passed leaving property that is subject to administration.

k. "Deed" means a conveyance of realty by a writing signed by a grantor, whereby title to realty is transferred from one to another.

l. "Devise" means a gift of real property by will.

m. "Devisee" means any person to whom lands or other real property are given by will.

n. "Devolution" means the passage or transfer from one person to another; the falling on or accrual to one person as the successor of another.

o. "Disinterested" means that the person hearing the oral declaration of testator's intent will not benefit in any way directly or indirectly nor will a spouse or any relative of said disinterested person benefit in any way directly or indirectly

p. "Distributee" means any person to whom property of a decedent is distributed other than in payment of a claim, or who is entitled to property of a decedent under his or her will or the laws governing intestate succession.

q. "Domicile" means the place where a person has his or her true, fixed and permanent home and principal establishment, and to which whenever he or she is absent he or she has the intention of returning.

r. "Donee" means the recipient of a gift or conveyance, in contrast to the giver or donor.

s. "Emancipation" means the surrender, from a parent or guardian, the care and custody of a child or incompetent either by law or Court order.

t. "Escheat" means reversion of property to the Nation because no valid heir or person to inherit exists.

- u. "Estate" means, when used in connection with probate proceedings, the totality of assets and liabilities of the decedent, including all manner of property, real and personal.
- v. "Executor" means a person designated by a testator to carry out the directions and requests in the testator's will and to dispose of the testator's property according to the provisions of his or her will.
- w. "Fiduciary" as a noun means that person or institution who manages money or property for another and who must exercise the highest standard of care in such management activity; as an adjective, it describes the nature of a trust, which is the highest and most scrupulous duty owed to another.
- x. "Fraud" means an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or her or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he or she shall act upon it to his or her injury.
- y. "Guardian" means a person empowered by the law to care for another who, by virtue of age or lack of mental capacity is legally unable to care for himself or herself. Guardianship may also involve the duty to manage the estate of a child or incompetent person.
- z. "Half-blood" means the degree of relationship which exists between those who have the same father or the same mother, but not both parents in common, i.e., a person who shares one parent in common with another person.
- aa. "Heir" means any person, including the surviving spouse, who is entitled under the law governing intestate succession to an interest in the property of a decedent.
- bb. "Heir by Killing" means any person who knowingly participates, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent.
- cc. "Heirship Land" means land(s) held in trust by the BIA for the benefit of an individual Tribal member or, for fractionated land, land that has been conveyed to more than one Tribal member, through inheritance.
- dd. "Holographic Will" means a will that is entirely written and signed by the testator in his or her own handwriting.
- ee. "Incompetent" means a person who is recognized by a court of law to be substantially incapable of managing his or her property or caring for himself or herself by reason of infirmities of aging, developmental disabilities, or other like incapacities. Physical disability without mental incapacity is not sufficient to establish incompetence.
- ff. "Indian" means a member of the Ho-Chunk Nation, or any other person of Indian blood who is a member of a federally recognized Indian tribe.
- gg. "Inheritance" means that which is inherited or to be inherited. Property which descends to heir on the intestate passing of another. An estate or property which a person has by descent, as heir to another, , or which he or she may transmit to another, as his or her heir.

- hh. "Insolvency" means the status of a person when his or her total assets are of insufficient value to pay his or her debts.
- ii. "Interested Witness" means any of the following:
- (1) An heir of the decedent.
  - (2) A beneficiary named in any document offered for probate as the will of the decedent.
  - (3) A beneficiary of a trust created under any document offered for probate as the will of the decedent.
  - (4) A person named as Administrator or personal representative in any document offered for probate as the will of the decedent.
  - (5) Additional persons as the Trial Court may include.
- jj. "Intestate" means one who passes without leaving a valid will, or the circumstance of dying without leaving a valid will effectively disposing of all of the estate.
- kk. "Intestate Succession" means succession to property of a decedent who passes without a will or with a will that has certain provisions which are not valid, i.e. no longer alive or available.
- ll. "Issue" when used to refer to persons who take by intestate succession, means children, grandchildren, lineal descendants of more remote degree, except those who are the lineal descendants of living descendants. The term includes legally adopted children and non-marital children and his or her issue.
- mm. "Letters Testamentary" means the formal document of authority and appointment given to an Executor or Administrator by the Court, empowering him or her to fulfill his or her duties as required by his or her position as Administrator.
- nn. "Life Estate" means an estate that exists as long as the person who owns or holds it is alive. Its duration may also be for the lifetime of another person.
- oo. "Living Will" means a document in which a person sets forth directions regarding medical treatment to be given if he or she becomes unable to participate in decisions regarding his or her medical care.
- pp. "Member" means an enrolled member of the Ho-Chunk Nation.
- qq. "Nation" means the Ho-Chunk Nation.
- rr. "Passes or Passed" means a person who has died.
- ss. "Per Capita" means the Nation's distribution of net gaming revenue to Members under the Indian Gaming Regulatory Act (25 U.S.C. § 2710(b)(3)).
- tt. "Personal Property" means all property other than real property.

uu. "Personal Representative" includes both Administrators, as appointed by the Court, and Executors, once approved by the Court to administer the decedent's estate.

vv. "Pretermitted" means a child or other descendant omitted from the will of a testator.

ww. "Property" means any interest, legal or equitable in real or personal property, without distinction as to kind, except trust property.

xx. "Real Property" means all interest in land or in buildings or improvement permanently attached to land.

yy. "Renounce" means to make an affirmative declaration of abandonment. A waiver of rights.

zz. "Residue" means the surplus or left over part of a testator's estate remaining after all the debts and distributions have been completed.

aaa. "Take by Representation" means the principle upon which the issue of a decedent takes or inherits the share of an estate which his or her immediate ancestor would have taken or inherited, if living.

bbb. "Taker" means one who takes or acquires an estate, in whole or in part, by devise.

ccc. "Testator" means a decedent who passes leaving a valid will.

ddd. "Title" means the formal rights of ownership of property. Title is the means whereby the owner of lands and property has the just possession of his or her property.

eee. "Transfer" means an act of the parties, or of the law, by which the title to property is conveyed from one person to another.

fff. "Trust Lands" or "Trust Property" mean all the land or real property under the jurisdiction of the Nation which is held for the Ho-Chunk Nation by the United States for the benefit of the Nation and the members of the Nation, and any additional lands acquired for the Nation by the United States for the benefit of the Nation or members of the Nation.

4. **Jurisdiction.** The Trial Court shall have jurisdiction to administer in probate the estate of a decedent who, at the time of his or her passing was domiciled or owned real property situated within the Ho-Chunk Nation Trust and Heirship Lands to the extent that such estate consists of property which does not come within the exclusive jurisdiction of the Secretary of the Interior of the United States.

5. **Custom and Traditional Distribution of Native American Finery and Artifacts.** Notwithstanding the provisions of this Code relating to descent and distribution, the family may distribute any artifacts and finery belonging to the decedent in accordance with the custom and traditions of the Ho-Chunk Nation prior to the initiation of the administration of the estate. Such distribution shall be in accordance with directions left by the decedent, if any. Any disputes relating to this distribution shall be resolved by the Traditional Court.

6. **Evidence as to Passing or Status.** In proceedings under this Code, the following rules relating to determination of passing and status are applicable.

a. A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the passing purportedly occurred is prima facie proof of the fact, place, date and time of passing and the identity of the decedent.

b. A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive, is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report.

c. Whereabouts Unknown. A person who is absent for a continuous period of five (5) years, during which they have not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry by the Nation is presumed to be dead. His or her passing is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that passing occurred earlier.

## 7. Court Procedures, Rules and Powers.

a. Traditional Court. The Traditional Court shall resolve disputes relating to the distribution and possession of the decedent's finery and/or artifacts.

b. Unless specifically provided to the contrary in this Code or unless inconsistent with its provisions, the Ho-Chunk Nation Court's Rules of Civil Procedure, including the rules concerning vacation of orders, govern formal proceedings under this Code. Appeals shall be taken in accordance with the Nation's Rule of Appellate Procedures.

### c. Judicial Powers and Duties.

(1) The Court may make orders for the sale of personal property at public or private sale for the compounding of debts, for the settlement of an estate as insolvent, for the approval of bonds and all other orders of an ex parte nature as may facilitate the settlement of estates. The orders shall be in writing, signed by the judge issuing the same, and shall be filed and recorded as an entry in the proper record.

(2) The Court shall examine the bonds filed by the personal representations, with a view to ascertaining his or her sufficiency and may approve the same. The Court may examine any inventory, sale, bill, account current, final account and vouchers filed therewith, or examine into the condition of an estate generally. Bond may be waived for good cause shown.

(3) The Court shall have the authority to draft orders requesting property of funds outside the exterior boundaries of Ho-Chunk Nation trust lands to be delivered for probate to the Court.

c. Records and Certified Copies. The Clerk of Court shall keep a file for each decedent of all documents filed with the Court under this Code and shall keep a numerical index of all such estates to facilitate access to such records. Upon payment of a fee, as established by the Court, the Clerk shall issue certified copies of any document or paper so filed.

d. Trials. All trials under this Code shall be by the Court.

e. Oath or Affirmation on Filed Documents. Except as specifically provided in this Code, every document filed with the Court under this Code shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and the penalties

for perjury shall follow deliberate falsification therein.

## **8. Effect of Fraud and Evasion.**

a. Whenever fraud has been perpetuated in connection with any proceeding or in any statement filed under this Code or if fraud is used to avoid or circumvent the provisions or purposes of this Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud including restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not.

b. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This Section has no bearing on remedies relating to fraud practiced on a decedent during his or her lifetime, which affect the succession of the estate.

## **9. Notice.**

a. If notice of a hearing on any petition or other matter is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his or her advocate if they have appeared by advocate or requested that notice be sent to his or her advocate. Notice shall be given by any of the following methods:

(1) By mailing a copy thereof at least 45 days before the time set for the hearing by certified or registered mail.

(2) If the address, or identity of any person is not known and cannot be ascertained by reasonable diligence, by posting a copy of the notice in at least three conspicuous public places within the Nation at least 45 days before the time set for the hearing and publishing the notice in the *Hocak Worak* for three (3) consecutive issues.

(3) The Court for good cause shown may provide for a different method or time of serving notice for any hearing.

b. Proof of the giving of notice shall be made at or before the hearing and filed in the proceeding.

c. A person, including a guardian ad litem, or other fiduciary, may waive notice by a writing signed by the person or his or her attorney and filed in the proceeding.

## **10. Renunciation of Succession.**

a. A person (or his or her personal representative) who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument or person designated to take pursuant to a power of appointment exercised by a testamentary instrument, may renounce in whole or in part the succession to any property or interest therein by filing a written instrument with the Court not later than six months after the decedent's passing or the time at which it is determined that the person is entitled to take property if such is not known at the time of passing.

b. The instrument shall conform to the following.

- (1) It shall describe the property or part thereof or interest therein renounced.
- (2) It shall be signed by the person renouncing.
- (3) It shall declare the renunciation and the extent thereof.
- (4) It shall state that the renunciation is irrevocable.

c. Upon proper renouncement, the interest renounced passes as if the renouncing person had predeceased the decedent or donee.

**11. Effect of Divorce, Annulment and Decree of Separation.** A person who is divorced from a decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent remarriage, he or she is married to the decedent at the time of passing. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this Code.

## **12. Heirship By Killing.**

a. No Acquisition of Property by Killing. Subject to any applicable Federal law relating to the devise or descent of land or property, no heir by killing in any way acquires any land or property or interest in any land or property as the result of the passing of the decedent, but such property shall pass in accordance with this Section.

b. Descent, Distribution, and Right of Survivorship. The heir by killing shall be deemed to have predeceased the decedent as to decedent's land or property or interests in land or property which would have conveyed from the decedent or his or her estate to such heir as follows:

- (1) under intestate succession under Chapter III;
- (2) as the surviving spouse;
- (3) by devise;
- (4) as a reversion or a vested remainder;
- (5) as a survivorship interest; and
- (6) as a contingent remainder or executory or other future interest.

c. Joint Tenants, Joint Owners, and Joint Obligees.

(1) Any land or property held by only the heir by killing and the decedent as joint tenants, joint owners, or joint obligees shall convey upon the passing of the decedent to his or her estate, as if the heir by killing had predeceased the decedent.

(2) As to land or property held jointly by three (3) or more persons, including both the heir by killing and the decedent, any income which would have accrued to the heir by killing as a result of the passing of the

decedent shall convey to the estate of the decedent as if the heir by killing had predeceased the decedent and any surviving joint tenants.

(3) Notwithstanding any other provision of this Section, the decedent's land or property or interest in land or property that is held in a joint tenancy with the right of survivorship shall be severed from the joint tenancy as though the land or property held in the joint tenancy were to be severed and distributed equally among the joint tenants and the decedent's interest shall convey to his or her estate; the remainder of the interests shall remain in joint tenancy with right of survivorship among the surviving joint tenants.

d. Life Estate for the Life of Another. If the estate is held by a third person whose possession expires upon the passing of the decedent, it shall remain in such person's hands for the period of time following the decedent's passing equal to the life expectancy of the decedent but for the killing.

e. Preadjudication Rule. If a person has been charged, whether by indictment, information, or otherwise by any lawful jurisdiction, with voluntary manslaughter or homicide in connection with a decedent's passing, then any and all land or property that would otherwise convey to that person from the decedent's estate shall not convey or be distributed by the Court until the

### 13. **Simultaneous Passing Provisions.**

a. Where the title to property covered under this Code or the devolution thereof depends upon priority of passing and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if they had survived except where provided otherwise in this Code.

b. Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed in the proportion that the beneficiary bears to the decedent or decedents.

c. Where there is not sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus shall be distributed in the proportion that one bears to the whole number of joint tenants.

d. Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

e. The above provisions on simultaneous passing shall not apply in cases where the decedent has made provision for a different distribution in a will, trust, deed, contract or insurance.

## CHAPTER II WILLS

14. **Who May Make a Will.** Any person 18 or more years of age and who is of sound mind may make a will.

15. **Execution.** Except as otherwise provided for oral wills (Section 17) or holographic wills (Section 16) every will shall be put in writing and signed by the testator, or in the testator's presence and at the testator's direction signed by another person, and shall be signed by at least two persons each of whom either witnessed the signing by the testator of the will or the testator's acknowledgment of the signature and direction to do so.

16. **Holographic Will.** A will which does not comply with Section 15 of this Code is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

17. **Oral Will.** A will which does not comply with Section 15 of this Code is valid as an oral will under custom if all children, whether residing in testator's home or not, and testator's spouse, if alive, are present at the announcement of the oral will and agree that the testator orally made known the testator's last will before them.

a. An oral will is also valid under custom if made in the presence of a competent disinterested adult person by a testator who declares at the time that it is his or her wish that his or her property descend in a specific manner upon the event of the testator's passing.

b. The Court shall hear testimony from the disinterested person who heard such declaration and the Court shall decide the following: (1) whether such testimony is credible; and (2) whether the manner of disposition of testator's property is reasonable and customary. If the Court finds that both of the foregoing conditions prevail, the testator's expressed intent shall be carried out as a valid will.

18. **Self-Proved Will.** An attested will may, at the time of its existence or at any subsequent date, be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before a notary public or a judge, under official seal, attached or annexed to the will in form and content and substantially as follows:

State of \_\_\_\_\_  
County of \_\_\_\_\_

We, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, the testator and the witnesses, respectively, whose names are signed to the attached and foregoing instrument, being first duly sworn, do hereby declare to the foregoing authority that the testator signed and executed the instrument as the testator's last will and that the testator signed willingly or directed another to sign for the testator, and that the testator executed the instrument as his or her free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his or her knowledge the testator was at the time 18 years or more of age, of sound mind and under no constraint or undue influence.

\_\_\_\_\_  
TESTATOR

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

Subscribed, sworn to and acknowledged before me by the testator, and subscribed and sworn to before me by \_\_\_\_\_ and \_\_\_\_\_ witnesses, this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

\_\_\_\_\_  
SIGNED BY JUDGE OR NOTARY

**19. Who May Witness.**

a. Any person who, at the time of execution of the will, would be competent to testify as a witness in Court to the facts relating to execution may act as a witness to the will. Subsequent incompetency of a witness is not a ground for denial of probate if the execution of the will is otherwise satisfactorily proved.

b. A will is not invalidated because signed by an interested witness; but, unless the will is also signed by two (2) disinterested witnesses, any beneficial provisions of the will for a witness or the witness' spouse are invalid to the extent that such provisions in the aggregate exceed in value what the witness or spouse would have received had the testator died intestate. Valuation is to be made as of testator's passing.

**20. Choice of Law as to Execution.** A written will is valid if executed in compliance with this Code or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of passing of the testator is domiciled, has a place of abode or was a national.

**21. Revocation by Writing or by Act.** A will or any part thereof is revoked by either of the following.

a. By a subsequent valid will, codicil, or other instrument which revokes the prior will in whole or in part expressly or by inconsistency.

b. By being burned, torn, canceled, obliterated, or destroyed with the intent and for the purpose of revoking it by the testator or by another person in the testator's presence and at the testator's direction.

**22. Revocation by Divorce; No Revocation by Other Changes of Circumstances.**

a. If, after executing a will, the testator is divorced or the testator's marriage is annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse and any nomination of the former spouse as Executor, trustee, conservator, or guardian, unless the will expressly provides otherwise.

b. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent. If provisions are revoked solely by this Section, they are revived by testator's remarriage to the former spouse. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this Section. No change of circumstances other than as described in this Section revokes a will.

**23. Revival of Revoked Will.**

a. If a subsequent will that partly revoked a previous will is itself revoked by a revocatory act under Section 21, the revoked part of the previous will is revived. This Section does not apply if it is evident from the

circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part of the previous will to take effect as executed.

b. If a subsequent will that wholly revoked a previous will is itself revoked by a revocatory act under Section 21, the previous will remains unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declaration that the testator intended the previous will to take effect as executed.

c. If a subsequent will that wholly or partly revoked a previous will is itself revoked by another later will, the previous will or its revoked part remains revoked, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent that it appears from the terms of the later will, or from the testator's contemporary or subsequent declarations, that the testator intended the previous will to take effect.

**24. Incorporation by Reference.** Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

**25. Events of Independent Significance.** A will may dispose of property by reference to acts and events which have significance apart from his or her effect upon the disposition made by the will, whether they occur before or after the execution of the will or before or after the testator's passing. The execution or revocation of a will of another person is such an event.

**26. Rules of Construction and Intention.**

a. The intention of a testator as expressed in the testator's will controls the legal effect of the testator's dispositions.

b. The following rules of construction apply unless a contrary intent is clear in the will.

(1) All Property and After-acquired Property. A will is construed to pass all property which the testator owns at his or her passing including property acquired after the execution of his or her will.

(2) Devisee Must Survive Testator by 120 Hours. A devisee who does not survive the testator by 120 hours is treated as if they predeceased the testator, unless the will of the decedent contains such language dealing explicitly with simultaneous passings, including common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.

(3) Failure of Testamentary Provision. If a devise other than a residuary devise fails for any reason, it becomes part of the residual estate. If the residual estate is devised to two or more persons and the share of one of the residuary devisees fails for any reason, his or her share passes to the other residuary devisees, or to other residuary devisees in proportion to his or her interests in the residue.

(4) Class Gifts. One who would have been a devisee under a class gift if they had survived the testator is treated as a devisee for purposes of this Section whether his or her passing occurred before or after the execution of the will.

(5) Exercise of Power of Appointment. A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment unless specific reference is made to that power.

(6) Generic Terms. Half-bloods, adopted persons and persons born out of wedlock are included in class gifts terminology and terms of relationships in accordance with rules for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father or unless paternity has been judicially determined during the life of the father or in some other manner which satisfies the court by clear and convincing evidence that paternity has been conclusively established.

(7) Ademption by Satisfaction. Property which a testator gave in his or her lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction. For the purpose of partial satisfaction, property given during the lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of passing of the testator, whichever occurs first.

### **CHAPTER III INTESTATE SUCCESSION**

27. **Intestate Succession**. Any part of the estate of a decedent not effectively disposed of by the decedent's will passes to the decedent's heirs as prescribed in the following sections of this Chapter.

28. **Share of the Spouse**. The intestate share of the surviving spouse is as follows.

a. If there is no surviving issue or parent of the decedent, the entire intestate estate; if there is no surviving issue but the decedent is survived by a parent or parents, the first \$20,000, plus one-half of the balance of the intestate estate.

b. If there are surviving issue all of whom are issue of the survived spouse also, the first \$20,000, plus one-half of the balance of the intestate estate.

c. If there are surviving issue one or more of whom are not issue of the surviving spouse, one-half of the intestate estate.

29. **Share of Heirs Other Than Surviving Spouse**. The part of the intestate estate not passing to the surviving spouse under Section 28 of this Code, or the entire intestate estate if there is no surviving spouse, passes as follows.

a. To the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation.

b. If there is no surviving issue, to the decedent's parent or parents equally; if there is no surviving issue or parent, to the issue of the parents or either of them by representation.

c. If there is no surviving issue, parent or issue of a parent, and the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to

the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

30. **No Taker.** If there is no taker under the provisions of this Chapter, the intestate estate passes to the Nation.

31. **Representation.** If representation is called for by this Code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent. Each surviving heir in the nearest degree receives one share and the share of each deceased person in the same degree is divided among his or her issue in the same manner.

32. **Posthumous Persons.** Person conceived before the decedent's passing but born thereafter inherit as if they had been born in the lifetime of the decedent.

33. **Kindred of Half-Blood; Stepchildren; Foster Children.** Persons of the half-blood inherit the same share they would inherit if they were of the whole blood, but stepchildren and foster children and his or her descendants do not inherit, unless they are adopted Tribal members.

34. **Divorce.** Divorces of husband and wife do not affect the right of children to inherit his or her property.

35. **Determination of Relationship of Parent and Child.** If for purpose of intestate succession a relationship of parent and child shall be established to determine succession by, through or from a person as follows.

a. An adopted person shall inherit from all other relatives of an adoptive parent as though the adopted person was the natural child of the adoptive parent and the relatives shall inherit from the adoptive parent's estate as if they were the adoptive parent's relatives.

b. A person born out of wedlock is a child of the mother and is a child of the father, if the relationship of parent and child has been established in accordance with the *Hocak Nation Children and Family Code* (4 HCC § 3).

#### **CHAPTER IV FAMILY RIGHTS\PROTECTION**

36. **Spouse's Right to Elective Share.** If a married person domiciled on the Nation's trust or heirship land passes, the surviving spouse has a right to elect to take an elective share of one-third of the estate of the decedent, less funeral and administration expenses, family allowance and enforceable claims against the estate, plus the value of all property in excess of \$1,000 transferred by the decedent to any person other than the surviving spouse in the three (3) years preceding the decedent's passing, to which the surviving spouse has not joined by written consent.

37. **Right of Election Personal to Surviving Spouse.** The right of election of the surviving spouse may be exercised only during the surviving spouse's lifetime and only by the surviving spouse. In the case of an incompetent person, the right of election may be exercised only by order of the Court in which protective proceedings as to the surviving spouse's property are pending, after finding that exercise is necessary to provide adequate support for the protected person during his or her probable life expectancy.

**38. Waiver of Right to Elect and of Other Rights .** The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance, or any of them, may be waived, wholly or partially, before (pre-nuptial agreement) or after marriage, by a written contract, agreement or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property and family allowance by each spouse in the property of the other and a renunciation of each of all benefits which would otherwise pass to them from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

**39. Duty of Court to Advise.**

a. If a surviving spouse has a right to election under Section 36, then at any time after the filing of an inventory and not more than three months after admission to probate, the Court shall advise the surviving spouse of his or her right to election and shall explain fully the right and that in the event of the failure to exercise the right of election the will shall govern and control the distribution of the estate.

b. If the surviving spouse passes or becomes incompetent before being advised of the right of election under Section 36 and has not filed a waiver or renunciation of the right of election, the Court shall advise the personal representative or guardian of the estate of the deceased or incompetent surviving spouse of the right of election as provided in paragraph a, above.

**40. Proceeding for Elective Share; Time Limit.**

a. The surviving spouse may elect to take his or her elective share in the estate by filing in the Court and mailing or delivering to the personal representative a petition for the elective share within three (3) months after the publication of notice to creditors for filing claims which arose before the passing of the decedent. The Court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

b. The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the estate whose interests will be adversely affected by the taking of the elective share.

The surviving spouse may withdraw his or her demand for an elective share at any time before entry of a final determination by the Court.

c. After notice and hearing, the Court shall determine the amount of the elective share and shall order its payment from the assets of the estate or by contribution as appears appropriate under Section 41.

d. If it appears that a fund or property included in the estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the Court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than there would have been if relief had been secured against all persons subject to contribution.

e. The order or judgment of the Court may be enforced as necessary in a suit for contribution or payment.

#### **41. Effect of Election on Benefits by Will.**

a. An election by a surviving spouse does not affect the right of such spouse to participate in a family allowance but the value of any part of the estate passing to the surviving spouse by testate or intestate succession shall, unless renounced by the spouse in his or her petition, be counted against his or her elective share.

b. When an election to take an elective share has been made and there is insufficient property in the estate which is not specifically disposed of to pay the elective share, liability for payment of the elective share shall be equitably apportioned among the other recipients of the estate in proportion to the value of his or her interests therein.

c. Only original transferees from, or appointees of, the decedent and his or her donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to them or to pay its value as of the time transferred.

#### **42. Omitted Spouse.**

a. Notwithstanding the provisions of Section 36 if a testator fails to provide by will for his or her surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate they would have received if the decedent left no will, unless it appears from the will that the omission was intentional or the testator had provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

b. In satisfying a share provided in this Section, the devises made by the will abate as provided in Section 71 which concerns "abatement".

#### **43. Pretermitted Children.**

a. If a testator fails to provide in his or her will for any of his or her children living or born or adopted after the execution of the will, the omitted child receives a share in the estate equal in value to that which they would have received if the testator had died intestate unless:

(1) It appears from the will that the omission was intentional; or

(2) When the will was executed the testator had one or more children and devised substantially all his or her estate to the other parent of the omitted child; or

(3) The testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

b. If at the time of execution of the will, the testator fails to provide in his or her will for a living child solely because they believe the child to be dead, the child receives a share in the estate equal in value to that which they would have received if the testator had died intestate.

c. In satisfying a share provided by this Section, the devises made by the will abate as provided in Section 71, below, which concerns "abatement."

#### **44. Exempt Property.**

a. The surviving spouse of a decedent who was domiciled on the trust or heirship land is entitled from the estate to value not exceeding \$3,500 therein in household furniture, automobiles, furnishings, appliances and personal effects. The \$3,500 in value of the aforementioned items shall be over and above any security interest in said items. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than \$3,500, or if there is not \$3,500 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$3,500 value.

b. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

#### **45. Family Allowance.**

a. In addition to the right to exempt property, if the decedent was domiciled on trust or heirship land, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for his or her maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments.

b. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having his or her care and custody; but in case of any minor child or dependent child that is not living with the surviving spouse, the allowance may be made partially to the child or his or her guardian or other person having his or her care and custody, and partially to the spouse, as his or her needs may appear. The family allowance is exempt from and has priority over all claims.

c. The family allowance is not chargeable against any benefit or share conveying to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The passing of any person entitled to family allowance terminates his or her right to allowances not yet paid.

#### **46. Source, Determination and Documentation.**

a. If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property.

b. The personal representative may determine the family allowance in a lump sum not exceeding \$6,000 or periodic installments not exceeding \$500 per month for one year, and may disburse funds of the estate in payment of the family allowance. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this Section may petition the Court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

47. **Dwelling Exemption.** Upon the appraisal of an estate and it appearing that a dwelling is personal property in which other heirs and/or creditors have an interest, and the dwelling is occupied by the surviving spouse and/or the dwelling is necessary for the welfare and protection of such surviving spouse and/or children, the Court may, by order, set aside such dwelling for the benefit of said surviving spouse and/or children as a homestead for a period not to exceed ten (10) years, provided that in case of special hardship or emergency, the Court may extend such term from year to year thereafter, provided that any heir or heirs or creditors of the deceased shall have the opportunity to appear before the Court and protest the extension of the original terms setting aside said homestead. The Court may also set aside such sums from the estate as the Court may deem necessary for maintenance and upkeep of the home. The Court shall hear evidence on any contest before making any order of extension.

48. **Summary Probate of Exempt Estates.**

a. Exempt Estates. An estate having an appraised value which does not exceed \$5,000 and which is to be inherited by a surviving spouse and/or minor children of the deceased shall be exempt from the claims of all general creditors and the probate thereof may be summarily concluded as provided in this Section.

b. Notice of Hearing to Determine Whether the Estate is an Exempt Estate. Upon petition of the Administrator, the Court shall enter an order stating that it appears, from the appraised value that the whole estate does not exceed \$5,000 and that such estate is to be inherited by the surviving spouse and/or minor children of the decedent and shall set a date and hour for hearing objections of any interested persons, if any there be, why the whole estate should not be declared to be exempt from the claims of all general creditors and distributed to the surviving spouse and/or minor children of the decedent. Notice of such hearing shall be in accordance with Section 9. On or before the time set for such hearing, the Administrator shall file his affidavit with the Court indicating compliance with this requirement of giving notice.

c. Hearing to Determine Whether the Estate is an Exempt Estate. If, upon such hearing, the Court finds that such estate is an exempt estate, the Court shall enter an order directing the Administrator to distribute such estate to the surviving spouse and/or the minor children of the deceased as set forth in the order and provide that no further proceedings are necessary and that, upon distributing the distributive share(s) of such estate to those entitled thereto and filing receipts therefore, the estate shall be closed.

**CHAPTER V**  
**INHERITANCE BY NON-INDIANS/FRACTIONATED HEIRSHIP**

49. **Restrictions on Inheritance of Individual Trust/Restriction Lands by Non- Tribal Members.**

a. Non-Tribal members shall not be entitled to receive by devise or descent any interest in individual trust or heirship lands within Ho-Chunk Nation or otherwise subject to the jurisdiction of the Nation provided the following:

(1) If a person passes intestate, the surviving non-Tribal member spouse and/or children may elect to receive a life estate in as much of the trust or heirship lands as such person or persons would have been entitled to take in the absence of such restriction on eligibility for inheritance and the remainder shall vest in the Tribal members who would have been heirs in the absence of a qualified person taking a life estate.

(2) If an intestate Tribal member decedent has no heir to whom interests in trust or heirship lands may pass, such interests shall escheat to the Nation, subject to any non- Tribal member spouse and/or children's rights as described in paragraph (1), above.

(3) If a Tribal member decedent has devised interests in trust or heirship lands to persons who are ineligible for such an inheritance by reason of this Code the devise shall be voided only if, while the estate is pending before the Secretary of the Interior for probate, the Nation acquires such interests by paying to the Secretary, on behalf of the devisees, the fair market value of such interests as determined by the Secretary as of the date of the decedent's passing: Provided, That any non-Indian and/or children of such decedent who have been devised such interests may retain, at his or her option, a life estate in such interests.

b. Any ineligible devisee shall also have the right to renounce his or her devise in favor of a person or persons who are eligible to inherit in accordance with Section 10.

c. The right to receive a life estate under this Section shall be limited to either of the following:

(1) A spouse and/or children who, if they had been eligible, would have inherited an ownership interest of ten per cent (10%) or more in the tract of land.

(2) A spouse and/or children who occupied the tract as a home at the time of the decedent's passing may occupy the tract as a home more no more than four (4) years or in accordance with Tribal religious or traditional practices.

**50. Escheat of Certain Fractionated Interests.** This Section is enacted under Section 2206(c) of Title 25 (The Indian Land Consolidation Act) of the United States Code to take precedence over the escheat provisions of Section 2206 of Title 25 of the United States Code.

a. No undivided interest in any tract of trust or heirship land within the Ho-Chunk Nation or otherwise subject to the Nation's jurisdiction shall descend by intestacy or devise but shall escheat to the Nation if such interests represents two (2) per cent or less of the total acreage in such tract and is incapable of earning to the respective heirs \$100 in any one of the five years from the date of decedent's passing, and is otherwise without significantly greater future potential value, provided that:

(1) in determining the future earning capacity of such interest the hearing examiner shall consider the presence of known or probable minerals and timber;

(2) in determining whether such interest is otherwise without significantly greater future potential value the hearing examiner shall consider, among other things, the geographic location of such property and its potential for commercial or other exploitation; and

(3) where the fractional interest has earned to its owner less than \$100 in any one of the five (5) years before it is due to escheat, in absence of previously unexploited known or probable mineral reserves or standing

timber, there shall be a rebuttable presumption that such interest is incapable of earning to the respective heirs \$100 in any one of the five years from the date of decedent's passing, and that the property is otherwise without significantly greater future potential value.

b. Nothing in this Section shall prohibit the devise of such a fractional interest to any other owner of an undivided fractional interest in such parcel or tract of trust or heirship land.

c. Any beneficiary who, but for the provisions of this Section, would have inherited such fractional interest, may assign such interest to any other owner of an undivided fractional interest in such trust or heirship land, such assignment to be made and filed with the hearing examiner within 60 days of the issuance of notice of intent to escheat the interest to the Nation. The hearing examiner shall formally notify the beneficiary of his or her rights under this paragraph at the time of the notice of intent to escheat and shall assist with the assignment process as needed.

d. The Court and the Federal Administrative Law Judge shall have the discretion to order any appropriate distribution of the decedent's estate as needed to reduce further fractionation so long as the distribution is fair and equitable.

## **CHAPTER VI ADMINISTRATION OF INTESTATE ESTATES**

### **51. Petition.**

a. When any person passes leaving an intestate estate subject to the jurisdiction of the Ho-Chunk Nation Trial Court under this Code, any person claiming to be an heir of the decedent, or the Nation, may petition the Court for a determination of the heirs of the decedent and for the distribution of such property. The petition shall contain the names and addresses of all persons known to the petitioners who may be entitled to share in the distribution of the estate.

b. Whenever there is a valid will probated by the Court, which does not dispose of all the decedent's property, a determination of the heirs entitled to such property and its distribution shall be made by the Court at or before the time the remainder of the estate is distributed without the necessity of a separate petition and proceeding.

c. The following persons, if legally competent, shall be afforded the priority in order of his or her listing for appointment as Administrator: the surviving spouse, any child over 18 years of age, other blood relatives, any adult tribal member, or any adult person.

d. The appointed Administrator shall take constructive or physical possession of all property of the decedent subject to this Code as the Court shall order, taking into consideration the interests of the person who may have occupied the homestead of the decedent at the time of his or her passing.

### **52. Administration of Intestate Estate.**

a. If an Administrator is appointed over a decedent's property, which is disposed of by a valid will, such person shall likewise assume authority over the decedent's intestate estate and administer it with the rest of the decedent's estate.

b. Whenever it reasonably appears that such is necessary to the preservation, administration and/or distribution of a decedent's intestate estate, the Court shall appoint an Administrator over the estate. It shall not be necessary to appoint an Administrator if the value of the decedent's property appears to be less than \$5,000 in value, no problems in administering the estate are foreseen, and no one requests that one be appointed.

c. The following persons, if legally competent, shall be afforded the priority in order of his or her listing for appointment as Administrator: the surviving spouse, any child over 18 years of age, other blood relatives, any adult tribal member, or any adult person.

d. The duties of the Administrator shall be as follows:

(1) To take constructive or physical possession of all property of the decedent subject to this Code as the Court shall order, taking into consideration the interests of the person or persons who may have occupied the homestead of the decedent at the time of his or her passing.

(2) Within one (1) month of appointment make an inventory and appraisal of such property and file it with the Court.

(3) Within one (1) month of appointment, determine and file with the Court a list of all known relatives of the decedent, their ages, their relationship to the decedent, and their whereabouts if known.

(4) Subject to the approval of the Court, ascertain and pay all of the debts and legal obligations of the decedent.

(5) Prosecute and defend actions for or against the estate.

(6) Distribute the estate in accordance with the order of the Court and file receipts with the Court showing distribution of the estate.

e. The Administrator shall file a bond in an amount to be set by the Court to insure his or her faithful, honest performance of his or her duties as Administrator. Unless otherwise made to appear necessary or desirable, no bond shall be required of an Administrator who is the spouse or child of a decedent.

### **53. Appointment of Administrator.**

a. Upon receipt of a petition to administer an intestate estate, the clerk shall schedule a hearing at which an Administrator will be appointed. Said hearing shall be scheduled in accordance with Sections 7 and 9.

b. Notice of the hearing shall be made by the petitioning party or by the clerk if the Nation is the petitioning party and such notice shall be in accordance with Section 9.

c. The Court shall determine who is the proper person to appoint as Administrator, and if such person manifests his or her willingness to serve, order his or her appointment as Administrator.

### **54. Oath of Administrator; Letters of Administration.**

a. Upon his or her appointment as Administrator, the person appointed shall take an oath to be prescribed by the Court to the effect that he or she will faithfully and honestly administer the estate.

b. Upon taking the oath and filing the bond, if any is required, the Administrator shall be granted letters of administration as proof of his or her appointment.

c. The Court may waive the requirement that the Administrator file a bond if the Court finds good cause to do so.

**55. Notice to Creditors.** The Administrator of the estate or the clerk if no Administrator is appointed, shall cause notice to creditors to be posted in at least three conspicuous places within the Nation and published for three consecutive issues in the Hocak Worak. - Said notice shall state that creditors have 90 days from the date of the first publication of the noticed to present their claims to the Administrator or clerk and that only those claims so presented may be paid to the estate.

**56. Payment of Creditors.**

a. Payment to creditors of the decedent shall be made by the Administrator, or by the clerk if no Administrator is appointed, only upon the order of the Court after determining the validity of the claims by affidavit or personal testimony of the claimant.

b. All just claims of creditors allowed by the Court shall be paid before distribution of the estate but shall be paid only after payment of the family allowance as provided herein.

**57. Accounting.** Prior to the distribution of the estate for which an Administrator has been appointed, such Administrator shall render an accounting to the Court, for its approval, of all receipts and disbursements from the estate, showing the present status of the estate and distribution of the estate can commence and also showing the computation of any attorney's and/or Administrator's fees involved for which approval for payment is sought. In estates in which no Administrator is appointed, the clerk shall account to the Court for all transactions relating to the estate.

**58. No Taker/Escheat To Nation.** If there is no taker of the intestate estate, the intestate estate passes or escheats to the Nation.

**59. Advancements.** If a person passes intestate, property which they gave in his or her lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose, the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of passing of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.

**60. Debts to Decedent.** A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate or other share of the debtor's issue.

**61. Distribution and Closing Estate.**

a. When it is made to appear to the Court that an estate is ready to be distributed, the Court shall order such according to the rules of intestate succession and this Code.

b. The estate shall be closed and the Administrator dismissed and his or her bond released upon the filing of receipts and an affidavit showing the estate is fully distributed, and after being fully administered, is now ready to be closed.

## **CHAPTER VII PROBATE OF WILLS**

**62. Duty to Present Will for Probate.** Every custodian of a will shall deliver the will to the Trial Court within 30 days after receipt of information that the testator has passed. Any will custodian who fails or neglects to do so shall be liable for damages sustained by any person injured thereby.

**63. Proving, Contesting and Admitting Will.**

a. Proof of Will.

(1) Upon initiating the probate of an estate, the will of the decedent shall be filed with the Court. The will may be proven and admitted to probate by filing the affidavit of an attesting witness, which identifies such will as being the will which the decedent executed and declared to be his or her last will.

(2) If the evidence of none of the attesting witnesses is available, the Court may allow proof of the will by testimony or other evidence that the signature of the testator or at least one of the witnesses is genuine.

b. Contest of Will.

(1) At any time within 90 days after a will has been admitted to probate, or within such time as the Court shall establish in the case of an exempt estate, any person having an interest in the decedent's estate may contest the validity of the will. Notice of such contest shall be made directly to the Court. In the event of a will contest, the Court shall take no further action with respect to the probate of the estate, but shall set a day and hour for hearing on the will contest.

(2) Relevant evidence shall be presented at the will hearing concerning the decedent's capacity to execute a valid will and the circumstances surrounding its execution. Every reasonable effort shall be made to procure the testimony of the attesting witnesses to the will, or if their testimony is not reasonably available, an effort shall be made to identify signatures to the will through other evidence.

c. Admission of Contested Will to Probate. Upon considering all relevant evidence concerning the will, the Court shall enter an order affirming the admission of the will to probate or rejecting such will and ordering that the probate of the decedent's estate proceed as if the decedent had died without executing the will.

**64. Petition for Letters Testamentary.** A petition for letters testamentary may be made by any person having possession of a decedent's will. The petition must be in writing, signed by the petitioner, and shall state the basis for the Court's jurisdiction, the names of the heirs of the decedent, if known, and the name or names of any person specified in the will as Executor and the address of such person, if known. The original copy of the will shall be submitted to the Court with the petition.

**65. Qualification of Executor.** The Court shall appoint the Executor as Administrator of the decedent's estate if found qualified and competent by the Court. If the Executor is not found by the Court to be competent, it

shall appoint an Administrator who shall be a competent adult and preference shall be given to the surviving spouse, child of the decedent over 18 years of age with preference given in descending order of age, other blood relatives in order of their closeness of relationship, any adult Tribal member, or any adult person.

**66. Appointment of Administrator.**

a. Upon receipt of a petition for letters testamentary, the clerk shall schedule a hearing at which an Administrator will be appointed and letters testamentary authorized. The hearing shall be scheduled and notice provided to interested parties in accordance with Section 9. Notice of hearing shall be made by the petitioning party to all persons named as takers under the will, and to all known heirs of the decedent if different from the named beneficiaries and also posted in a conspicuous place in the Court building.

b. At the hearing, the Court shall first determine the validity of the decedent's will and then appoint an Administrator to administer the estate according to the terms of this Code and the decedent's will.

c. Letters testamentary shall be granted to the person appointed as Administrator upon his or her taking an oath, to be prescribed by the Court, to the effect that the Administrator will faithfully and honestly administer the estate, and upon the Administrator filing of bond, if required.

**67. Duties of Administrator; Bond.** The duties of the Administrator shall be the same as those prescribed in paragraph 52d for the Administrator of an intestate estate and the Administrator shall file a bond in a like manner and subject to the same exceptions.

**68. Creditors.** Notice to creditors, determination of the validity of claims, and payment of claims shall be handled as prescribed for intestate estates (Chapter VI).

**69. Accounting.** Prior to the distribution of the estate remaining after payment of all just claims and priority payments, the Administrator shall submit to the Court for approval an accounting of all receipts and disbursements from the estate, showing the present status of the estate and that distribution of the estate can commence, and also showing the computation of any attorney's and/or Administrator's fees involved for which approval for payment is sought.

**70. Distribution and Closing Estate.**

a. When it is made to appear to the Court that distribution of an estate can commence, the Court shall order such distribution according to the provisions of the decedent's will or the rules of intestate succession, whichever is applicable, and according to the rules set forth in this Code.

b. The estate shall be closed and the personal representative of the estate dismissed and his or her bond, if any, released upon filing with the Court receipts showing that the estate is fully distributed, and also upon filing the personal representative's affidavit that the estate is fully administered and ready to be closed.

**71. Distribution: Order in which Assets Appropriated; Abatement.**

a. Except as provided in paragraph b, below, and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:

- (1) Property not disposed of by the will.
- (2) Residuary devises.
- (3) General devises.
- (4) Specific devises.

b. For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

c. If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in paragraphs a and b, above, the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

d. If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

**72. Property Discovered After Estate Closed.** An estate may be reopened whenever necessary to dispose of a decedent's property discovered after his or her estate has been closed. The Court shall order distribution of the property to the person or persons entitled thereto after making whatever orders appear necessary to ensure a just distribution of the after discovered property.

## **CHAPTER VIII GUARDIANSHIP**

**73. Purpose.** When it appears to the Court to be in the best interests of a child or incompetent, the Court may appoint guardians for the persons and/or property of children and incompetents under the Court's jurisdiction who have no guardian. Such appointment may be made on the petition of a traditional relative or other interested party on behalf of the child or incompetent. Before making such an appointment, the Court must cause such notice as the Court deems reasonable to be given to any person having the care of the child or incompetent and to such other traditional relatives of the child or incompetent residing on or off trust lands as the Court may deem proper.

### **74. Incompetent Persons.**

a. In case of incompetent persons, if after a full hearing and examination upon such petition, and upon further proof by the certificates of at least two qualified physicians showing that any person is incompetent as defined in this Code, it appears to the Court that the person in question is not capable of taking care of himself or herself and of managing his or her property, such Court must appoint a guardian of the person and estate within the powers and duties specified in this Chapter.

b. Every guardian of an incompetent person appointed as provided herein has the care and custody of the person of his or her ward and the management of his or her estate until such guardian is legally discharged; the guardian must give bond to such ward in like manner and with like conditions as before specified with respect to the guardianship of a child.

c. A person who has been declared insane or incompetent or the guardian, or any relative of such person within the third degree or any friend, may apply by petition to the Court in which they were declared insane, to have the fact of his or her restoration to capacity judicially determined. The petition shall be verified and shall

state that such person is then sane or competent. The Court shall require notice to be given of a hearing upon said petition at some date after said petition has been filed; and at the hearing upon said petition, witnesses shall be examined and a determination made by the Court as to whether the petition should be granted and the insane or incompetent person be declared of sound mind and capable of taking care of himself or herself and his or her property, his or her restoration to capacity shall be adjudged and the guardianship of such person, if such person shall not be a child, shall cease.

#### 75. **Order and Guardianship Preferences.**

a. Any appointment under this Chapter shall require the guardian to have the child or incompetent maintain cultural ties with the Nation, be informed of the traditional ways of the Nation and be a participant in Hocak Nation language classes.

b. The Court shall consider the appointment of a guardian for a child or incompetent from the following persons in the following order:

(1) Paternal traditional relatives, provided these relatives are Hocak Tribal members, with priority to paternal grandparents.

(2) Other maternal traditional relatives, with priority to the *dega* and maternal grandparents, if the father is not a member of the Hocak Nation, or is not known.

(3) Another Hocak family.

(4) Another American Indian family that is a relative of one of the child or incompetent's parents.

(5) A suitable American Indian family.

(6) Another family which can provide a suitable home for Hocak children.

c. When a guardian has been appointed by the Court for a child or incompetent, the Court may grant legal custody and care of the child or incompetent and management of his or her property until a child arrives at the age of eighteen (18) or marries, or the child or incompetent is emancipated by the Court, or until the guardian is legally discharged; provided, however, that said guardian shall not have the authority without express written consent of the Court to dispose of any real or personal property of the child or incompetent in any manner.

d. The Court may order monthly reimbursement payments to the person or agency to whom custody is granted under this Chapter from the per capita monies of the parents of the child or incompetent pursuant to a child support order or other valid order of similar intention, or by Legislative appropriation. Said person or agency with custody of the child or incompetent must use disbursements for the sole purpose of covering expenses incurred in the care and custody of said child or incompetent and shall not be used for any other purpose. The use of said funds for any purposes other than that described in this Chapter shall subject said person or agency to contempt of court and to criminal and civil penalties or remedies provided by the Nation's law.

#### 76. **Types of Guardianships.** Types of guardianship shall include:

a. Temporary Guardianship of the Person. The Court may appoint a temporary guardian under such terms and conditions as the Court sets forth in the written order. A temporary guardianship may be terminated if the Court determines that it is in the best interests of the child to change custody from the temporary guardian to a new guardian or to return the child or incompetent to the parent, guardian, or custodian. The parent(s) and the child or incompetent's traditional relatives shall be granted liberal visitation rights unless deemed inappropriate by the Court.

(2) Permanent Guardianship of the Person. The Court may appoint a permanent guardian for the child or incompetent under such terms and conditions as the Court sets forth in the written order. Permanent guardianship provides for permanent custody of the child or incompetent to someone other than the parent(s), although there is no termination of the parental rights of the parent(s). There shall be a presumption of continued permanent guardianship in order to provide stability for the child or incompetent. Permanent guardianship can only be terminated based upon the unsuitability of the permanent guardian. The parent(s) and the child or incompetent's traditional relatives and clan members shall be granted liberal visitation rights unless deemed inappropriate by the Court.

(3) Guardianship of Property. The Court may appoint a guardian of the property of a child or incompetent under such terms and conditions as the Court sets forth in the written order. The guardianship may cover all property until the child reaches eighteen (18) years of age or until an incompetent is emancipated by the Court. It may be limited to only specific property or a specific legal action as set forth in the written order. A temporary or permanent guardianship of the person may also include guardianship of the child or incompetent's property it set forth in the written order.

#### 77. **Guardianship Procedures.**

a. By Will. The last surviving parent or spouse of a minor or mental incompetent may designate in a will the guardian for the minor or mental incompetent. Upon determination by the Court that the will is valid, and that the person designated is willing to accept the responsibilities of guardianship, the Court shall appoint the person designated; provided that for good cause shown, the Court may decline to appoint the person designated

b. By Court Appointment. Where a minor or mental incompetent is in need of a guardian, and no guardian is appointed pursuant to a valid will, the Court may appoint a guardian, to promote the best interests of the minor or mental incompetent.

#### c. Petition for Guardianship.

(1) Who May File. A petition for guardianship may be filed either by the proposed guardian of a child or incompetent or by the child if at least sixteen (16) years of age.

(2) Contents of Petition. The petition for guardianship shall include the following:

(a) The full name, address, and tribal affiliation of the petitioner.

(b) The full name, sex, date and place of birth, residence, and tribal affiliation of the proposed ward.

(c) The basis for the Court's jurisdiction.

(d) The relationship of the proposed guardian to the child or incompetent.

(e) The name and address of the person or agency having legal or temporary custody of the child or incompetent.

(f) The type of guardianship requested.

(g) In the case of alleged incompetent persons, the grounds for incompetency.

(h) To the best information and belief of the petitioner, a full description and statement of value of all property owned, possessed, or in which the proposed ward has an interest (if guardianship of property is requested).

(3) All petitions must be signed and dated by the petitioner, and must be notarized or witnessed by a clerk of the Court.

b. Notice. Notice shall be provided in accordance with the notice procedures set forth in *Hocak Nation Children and Family Act* (4 HCC § 3), except that the Court may determine that it is unnecessary to give notice to specific individuals, including a parent whose parental rights have been terminated.

#### c. Guardianship Report.

(1) Upon the filing of a guardianship petition, the Court shall immediately request that Children and Family Services or other qualified agency conduct a guardianship report on the proposed guardian and report on the proposed ward. The guardianship report shall contain all pertinent information necessary to assist the Court in determining the best interests of the proposed ward.

(2) No determination can be made on a petition for guardianship until the report has been completed and submitted to and considered by the Court. The guardianship report shall be submitted to the Court no later than ten (10) days before the hearing. The Court may order additional reports as it deems necessary.

d. Management of Property.

(1) In the event that any guardian shall receive any property, money, or funds of any child or incompetent as guardian, before taking and receiving into custody such money or funds, the Court may require of such person a bond with sufficient surety to be approved by the Court and in such sum as the Court shall order, conditioned that the guardian will faithfully execute the duties of his or her trust. The following conditions shall form the part of such bond without being expressed therein.

(a) To make an inventory of all the estate of his ward what comes into his or her possession or knowledge and to return the same within such time as the Court may order.

(b) To dispose of and manage the estate according to the law and for the best interests of the ward, and faithfully to discharge his or her trust in relation thereto, and also in relation to the care, custody, and education of the ward.

(c) To render an account on oath of the property, estate, and money of the child or incompetent in his hands and all proceeds or interests derived there from, and of the management and disposition of the same, within two (2) months after his or her appointment, and at such other times as the Court directs, and at the expiration of his or her trust, to settle his accounts with the Court or if he or she be full age, or his or her legal representative, and to pay over and deliver all the estate, monies, and effects remaining in his or her hands, or due from him or her on such settlement to the person who is legally entitled thereto. The funds of any child or incompetent must be used by his or her guardian solely for the support and education of such child or incompetent, and shall be expended by the guardian in a reasonable manner according to the circumstances and station in life of such child or incompetent, and in such manner as can reasonably be afforded according to the income and estate of said child or incompetent.

(2) If determined to be appropriate by the Court, the written order may set forth that the child or incompetent's property may not be used for the child or incompetent's care, but rather to be managed for the child or incompetent until the child reaches the age of eighteen (18) or is emancipated by the Court or the incompetent is emancipated by the Court .

e. Withdrawal of Consent. Any consent given under the provisions of this Chapter may be withdrawn by the person or agency that gave consent at any time prior to the hearing of the petition. No reason need be stated and no hearing need be held on such withdrawal. All withdrawals must be in writing and notarized or witnessed by a clerk of the Court, with the original being filed with the Court.

f. Guardianship Hearing Procedures.

(1) A guardianship hearing shall be held within forty-five (45) days of filing of a guardianship petition. The Court shall conduct the hearing to determine if it is in the best interests of the child or incompetent emancipated by the Court to be placed with the petitioners.

(2) In determining the best interests of the child or incompetent for emancipation by the Court, the Court shall examine each of the following:

- (a) Validity of written consent.
- (b) Length of time of the child or incompetent's guardianship by the Court.
- (c) Special conditions of the child or incompetent.
- (d) Parent communication with the child or incompetent.
- (e) Minor's consent to guardianship dependent upon maturity.
- (f) Home studies or other reports.
- (g) Order of preference of placement.

(3) If the Court is satisfied that the guardianship will not be in the child or incompetent's best interest, or finds that all of the requirements of this Chapter have not been met, it may deny the petition and make any other order it deems necessary for the care and custody of the child or incompetent not inconsistent with the *Hocak Nation Children and Family Act* (4 HCC § 3).

## 78. Termination of Guardianship.

a. Upon motion of any person or the Nation the Court may provide notice and a hearing on whether to terminate a guardianship. Grounds for termination shall include, but not be limited to, personal use by the guardian of the assets of the ward, failure to provide a reasonable level of care for the ward, or the marriage of a minor ward.

b. Guardianship, including guardians of the property of the ward, shall terminate automatically upon a minor reaching age 18, or upon a mental incompetent being adjudged by the Court to have regained legal capacity.

---

### Legislative History:

10/14/04 Administration Committee review draft Probate Code and refers to full Legislature.  
10/19/04 Legislature places draft Probate Code out for 45-Day Public Review.  
12/11/04 45-Day Public Review period ends.  
4/7/05 Legislature reviews draft Code at Off-Site Meeting.



JULY 2005  
VOL. 11, NO. 7

## Inside this Issue

- 1** Election Challenges
  
- 5** The Nation's New Faces:  
Summer Interns
  
- 6** Updates from Outside  
Courts
  
- 8** Recent HCN Court  
Decisions
  
- 18** Recent HCN Court  
Filings
  
- 21** HCN Court System  
Judiciary and Staff
  
- HCN Judiciary 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](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

## ELECTION CHALLENGES DEFINING AND APPLYING MAJORITY VOTE

**T**he Ho-Chunk Nation Courts have over ten years of legal precedent regarding election challenges. In 1995, the Court determined that the Election Board could not administer the oath of office to the winners of the June 6, 1995 General Election since several presidential and legislative candidates did not achieve a majority vote (fifty percent plus one (50% + 1)) in the single election format. *See, e.g., Jo Ann Jones v. HCN Election Bd. et al.*, CV 95-05 (HCN Tr. Ct., July 6, 1995), *aff'd*, SU 95-05 (HCN S. Ct., Aug. 15, 1995); *see also* CONST., ARTS. V, § 6, VI, § 5. The predecessor constitutional provisions required a mere plurality of votes to elect a business committee member. CONST. & BYLAWS OF WIS. WINNEBAGO NATION, ART. V, §§ 3-6.

**T**he Court ordered the affected individuals to participate in a run-off election held on August 15, 1995. The Supreme Court approved of the Court's relief, which it found specifically contemplated by the CONSTITUTION. The *Jones* Court explained:

[b]ased upon the lower court's ruling that a run-off election is the remedy to the contested election, this Court holds that such a remedy is within the power of the judiciary. In so doing, the Trial Court ruled that the first election be considered as the primary election and ordered the run-off election to achieve the majority vote.

*Jones*, SU 95-05 at 5-6. As a result, the Legislature amended the election code prior to the 1997 General Election to reflect the judicially created bifurcated format. HCN ELECTION ORDINANCE, § 2.01(c).

The Judiciary later reasserted its constitutional authority to order a special run-off election. In 1997, the Court extended the majority vote requirement to include special elections *Robert A. Mudd v. HCN Election Bd.*, CV 97-129 (HCN Tr. Ct., Oct. 3, 1997), *aff'd*, SU 97-05 (HCN S. Ct., Oct. 28, 1997). In doing so, the Court "order[ed] that a run-off election be held pursuant to the 'majority vote' requirement of the HCN Constitution, Art. V, § 6 between the top two vote getters of the September 13, 1997 Special Election." *Mudd*, CV 97-129 at 10. Again, the Supreme Court upheld the decision below, indicating that,

the Trial Court has fashioned an equitable remedy to allow for all classes of constituents to select their elected representatives by the same mode of procedure. Here, the remedy fashioned in equity by the Trial Court to uphold the notion of fairness was to order a run-off election based upon the Constitutional powers of the Trial Court.

*Mudd*, SU 97-05 at 5.

## **HO-CHUNK NATION ELECTION ORDINANCE, 12 HCO § 2.01(c)**

The Legislature amended the Special Election subsection in an effort to codify the judicial decisions rendered in the 1995 consolidated election challenge cases. The Legislature distinguished between general and special elections by designating only the constitutionally mandated election that occurs in odd years on the first Tuesday in June as the General Election. HCN ELECTION ORDINANCE, § 2.01(c); *see also* CONST., ART. VIII, § 1. The Legislature did not elevate the judicially constructed general primary election to General Election status, presumably because it did not have the explicit constitutional foundation. Specifically, the Legislature declared that "Special Elections shall refer to all elections other than the General Election including, but no limited to, Primary Elections . . . ." HCN ELECTION ORDINANCE, § 2.01(c).

The Legislature required the holding of primary elections "prior to the General Election in order to ensure compliance with the majority vote

requirement." *Id.*, § 2.01(c)(1). The Legislature did not emphatically state the consequence of a candidate receiving a majority vote in a special primary election convened in conjunction with the General Election. Instead, the HCN ELECTION ORDINANCE noted that the two candidates with the highest vote totals from the Primary Election shall appear on the ballot in the General Election. *Id.*, § 2.01(c)(2).

## ***Debra C. Greengrass* *v. HCN Election Bd.*, SU 99-03 (HCN S. Ct., June 30, 1999)**

The Election Board declared Joan Greendeer-Lee winner of the Associate Justice race as a result of her receipt of a majority vote in the April 3, 1999 Primary Election held in anticipation of the June 1, 1999 General Election. Incumbent Associate Justice Greengrass, the second place finisher, challenged this action, arguing that the CONSTITUTION required the top two (2) vote recipients to proceed to the General Election. In resolving the dispute, the Supreme Court began by ruling that "[t]he Constitution is clear that the election of Supreme Court Justices shall take place on the first Tuesday of June in odd-numbered years." *Greengrass*, SU 99-03 at 2 (citing CONST., ART. VIII, § 1).

Consequently, the Supreme Court explained that "[n]either this Court nor the Legislature has the constitutional authority to modify that requirement." *Id.* The Supreme Court determined that the HCN ELECTION ORDINANCE definitively resolved the issue by requiring that "[t]he two candidates with the highest vote totals from the Primary Election shall appear on the ballot in the General Election." *Id.* The above provision absolutely requires the top two (2) vote recipients to appear in the General Election, regardless of whether one receives a majority vote.

The appellant persuaded the *Greengrass* Court to accept its proposition that the constitutional reference to a General Election implicitly acknowledges a process including primary and run-off components, but the Supreme Court responded by stating that "the Legislature has made it clear that the General Election process does

not include the Primary Election." *Id.* at 2-3 (citing HCN ELECTION ORDINANCE, § 2.01(c)). At this point, the Supreme Court returned to its supremacy argument, noting that "any act undertaken by any governmental branch or governmental agent contrary to the Constitution is thereby void." *Id.* at 3 (citing CONST., ART. III, § 4). The Supreme Court continued: "[f]or the Appellant to equate the Primary Election with the General Election and declare a winner upon a majority vote *is contrary to the Constitution* and a mistaken application of the Code." *Id.* (emphasis added). The Supreme Court based its decision on the application of the CONSTITUTION to the given facts, and the election code violation was a secondary concern. Therefore, the election of the Associate Justice needed to occur on the date set forth for the General Election in the CONSTITUTION.

Also, the Supreme Court provided an interpretation of the phrase, "unless otherwise provided," in non-binding, although quite strong, *dicta*. *Id.* at 4.

Article VII, § 10, of the Constitution states that "Supreme Court Justices shall be elected by a majority vote of the eligible voters of the Ho-Chunk Nation, in accordance with the General Election provisions of Article VIII, § 1, unless otherwise provided." While this section clearly delegates authority to the Legislature to establish procedures for the election of Supreme Court justices that might be distinct from the elections for the Legislative and Executive branches [...]

*Id.* at 4 (quoting CONST., ART. VII, § 10).

## **ELECTION ORDINANCE, 2 HCC § 6.3**

Presumably in response to the *Greengrass* decision, the Legislature amended the election code provisions. First, the Legislature declared that "[w]hen three (3) or more candidates run for a seat in a General or Special Election, there shall be a Primary Election and, if required, a Runoff Election ..." ELECTION ORDINANCE, § 6.3. Within this provision, the Legislature accepted the notion of the General Election as a process. Furthermore, the Legislature created the possibility of a primary election without a run-off component. As

mentioned above, this possibility does not violate the CONSTITUTION in the context of a special election. The ELECTION ORDINANCE, however, extends the scope of the exception.

The ELECTION ORDINANCE directs the Election Board to hold a Primary Election "prior to an Election with three (3) or more candidates in order to ensure compliance with the majority vote requirement." ELECTION ORDINANCE, § 6.3c(1). The ELECTION ORDINANCE then provides:

[i]f no candidate *in any* Primary Election receives more than 50% of the votes cast in such Election, the two candidates with the highest vote totals from the Primary Election (and any candidate(s) tied with the lower of such totals) shall appear on the ballot in the Runoff Election. When there are two (2) seats vacant in a district, the top two (2) vote getters for any vacant seats, if no candidate has received 50%+ 1 vote, shall be on the ballot for the General Election or Runoff Election.

*Id.*, § 6.3c(2) (emphasis added). The Legislature removed any distinction between general and special elections, and clearly approved the declaration of a winner in a general primary election, provided that the candidate satisfy the majority vote requirement. By doing so, the statute appeared to directly contravene the *Greengrass* decision, which relied principally, if not entirely, upon constitutional interpretation.

### ***Greg Littlejohn* v. HCN Election Bd. et al., SU 03-07 (HCN S. Ct., June 11, 2003)**

The Election Board could not abide by the General Election notice provisions in connection with the District V, Seat 2 legislative race due to the late entrance of a final appellate decision in a redistricting/reapportionment action. *Id.*, § 6.7a; *see also Robert A. Mudd v. HCN Legislature*, CV 03-01 (HCN Tr. Ct., Feb. 13, 2003), *rev'd in part*, SU 03-02 (HCN S. Ct., Apr. 8, 2003). The Election Board lacked sufficient time to post an official notice of election for the primary component of the June 3, 2003 General Election. *Id.* Therefore, the Election Board designated the primary component as a

special election to permit abbreviated notice, and determined to hold the run-off component in conjunction with the General Election. *Id.* The legislative seat in question was set to expire by routine operation of the CONSTITUTION, *i.e.*, conclusion of the four-year term. CONST., ART. V, § 6.

Incumbent Kathyleen V. Lonetree-Whiterabbit received a majority vote in the designated May 20, 2003 Special Primary Election, causing the Election Board to certify Legislator Lonetree-Whiterabbit as the winner of the legislative seat. Second place vote recipient, Gregory A. Littlejohn, filed an election challenge. The plaintiff argued that the Election Board could not declare a winner of a general election legislative race prior to the constitutionally mandated General Election on June 3, 2003.

The Supreme Court reviewed the *Greengrass* decision and held the reasoning inapplicable because the Legislature amended relevant election code provisions during the interim. *Littlejohn*, SU 03-07 at 2. After distinguishing *Greengrass*, the Supreme Court offered an explanation justifying the Election Board's actions.

[T]he Election Board was responding to the decision of this Court in *Robert Mudd v. HCN Legislature, et. Al.*, [*sic*] SU03-02 (HCN S. Ct., April 8, 2003). The HCN Election Board considered the election to be a Special Election in an effort to comply with the timelines of the recently revised HCN Election Ordinance. However, the District V, Seat 2 [*sic*] of the HCN Legislature was initially a vacancy that was open for election under the General Election. It is this creation of a "hybrid" open election seat that impelled the Trial Court to discern whether the election seat was a general or special election.

*Id.* at 2-3 (footnote omitted). At this juncture, the *Littlejohn* majority declined to declare the primary election either general or special in nature, deeming such an action unnecessary. The Supreme Court clarified that "the current HCN Election Ordinance does not distinguish between general and special elections for purpose of holding a primary election." *Id.* at 3 (citing ELECTION ORDINANCE, § 6.3c(2)).

Therefore, "[w]hen no one receives the 50% of the votes cast, then, and only then, is a runoff election held for the two candidates with the highest votes." *Id.* at 4.

The Supreme Court insisted that the relevant analysis had undergone a transformation since the *Greengrass* decision.

The question of whether an election is general or special is no longer a hurdle that must be met in order to have a primary and runoff election. The question at the onset is if there are three (3) or more candidates. If so, a primary election must be held. Once the primary election is held, the next question is whether or not a candidate has received more than 50% [*sic*] of the votes cast in the election. If so, that candidate is the winner. If not, the two highest vote-getters are placed in a runoff election.

*Littlejohn*, SU 03-07 at 4 (citing ELECTION ORDINANCE, § 6.3c(1-2)). The Supreme Court concluded that "[t]he Legislature has the authority to create laws to enforce the requirements of the HCN Constitution[.]" and impliedly ruled that the Election Board did not violate those requirements. *Id.*

***Dennis M. Funmaker, Sr.,  
v. HCN Election Bd. et al.;  
JoDeen B. Lowe  
v. HCN Election Bd. et al.,  
SU 05-06-07  
(HCN S. Ct., June 6, 2005)***

The Trial Court determined that a majority vote recipient at a General Primary Election, in which only two candidates compete can be certified by the Election Board as the winner. The Trial Court noted that a strict application of the Election Ordinance to the facts would result in a victory for the plaintiff, Mr. Funmaker. *See* ELECTION ORDINANCE § 6.3c(2). Yet, the *Greengrass* decision appeared to compel a different result. However, the Trial Court noted that the Supreme Court had identified a difference that separates the constitutional judicial election provisions and its presidential and legislative counterparts, namely the

addition of the phrase, “unless otherwise provided.” HCN CONST., ART. VII, § 10. The Court abided by the dictates of the Election Ordinance and enjoined the holding of a run-off election for Associate Justice, directing the Election Board to declare the plaintiff the winner of the General Election.

The Supreme Court instead found that the Election Board erred in holding a primary election. According to the Election Ordinance §2.3(c), there is a provision for a primary and general election. Primaries shall be held whenever there are three or more candidates. The Election Board certified only two candidates for Associate Justice, thus the Election Board scheduled an unnecessary primary election. The Supreme Court noted that the HCN CONSTITUTION is clear: Supreme Court Justices must be elected at a General Election. Despite an unnecessary primary election, the actions of the Election Board to certify Mr. Funmaker and Justice Lowe as candidates in the General Election were proper. The Supreme Court ordered the General Election for the Associate Justice seat to proceed on June 7, 2005 with the ballot to include both certified candidates. The Supreme Court accordingly determined the applicable election procedure when only two (2) or fewer candidates receive Election Board certification. The candidates simply proceed to the General Election, and no write-in candidates are permitted in the election. The Supreme Court left unresolved the questions concerning whether a majority vote recipient may be declared the conclusive winner at a General Election primary.



## Meet the Nation’s New Faces: Summer Interns

 Meet the following Ho-Chunk Nation summer interns: **Jasmine McNealy** (Justice Department), **Glenn Hall** (Legislative Department), **Matthew Smith** (Legislative Department) and **Anfin Jaw** (Tribal Court). Three of the summer interns are funded, in part, by the Great Lakes Indian Law Center Summer Extern Program through the University of Wisconsin Law School.

Jasmine McNealy (picture unavailable) is a third-year law student (“3L”) at the University of Florida’s Levin College of Law, working on a joint MA/JD. She is originally from Milwaukee, WI, but currently resides in Gainesville, FL. Jasmine received an undergraduate degree from the University of Wisconsin-Madison in Journalism and Afro-American Studies. She started working as a Justice Department intern in May, and reports to DOJ Attorney **Michelle Greendeer**. This summer Jasmine has been working on land issues affecting the Nation. After law school she plans on returning North, “where there’s an actual winter.”



Glenn Hall is a 3L at the University of Wisconsin Law School. He finished the MBA portion of the joint JD/MBA degree he is pursuing and will complete his JD requirements this December. Glenn received his undergraduate degree in Management Information Systems from the University of Wisconsin-Eau Claire. He is a member of the Lac Courte Oreilles Ojibwe Tribe of northwestern Wisconsin. Glenn is currently working as a Legislative Department summer intern and has done research, writing and analysis, under Legislative Attorney **Kenneth J. Artis**. Glenn plans “to continue to help tribal people” with the experience he has gained. On a personal note, this year Glenn and his wife Leah will celebrate their 34<sup>th</sup> wedding anniversary. They have three grown children and 5 grandchildren. His hobbies include community service, motorcycling, and golf.

Matthew Smith is a 2L at the University of Wisconsin Law School. He is originally from Arcadia, in western Wisconsin. Matt received an undergraduate degree in Political Science from the University of Wisconsin-Eau Claire in 2004. He started working as a Legislative Department summer intern in June, and reports to Legislative Attorney Kenneth J. Artis. Matt is interested in several areas of law in addition to tribal law, including intellectual property, energy law, tax, and land use. After law school he will ideally work at a mid-sized firm or in government somewhere in the Midwest.



Anfin Jaw is a 2L at the University of Wisconsin Law School. She is originally from Brookfield, WI, near Milwaukee. Anfin received an undergraduate degree in Political Science from the University of Wisconsin-Madison in May 2004. She started working as the summer law clerk for the Tribal Court in June, and is working with Judge **Todd R. Matha** and the Court staff attorney, **Amanda Cornelius**. Anfin is conducting legal research, drafting memos and opinions, and attending various hearings and trials. This summer Anfin spends her weekends either kayaking on the Black River or shopping in Eau Claire. †



## UPDATES FROM OUTSIDE COURTS

### **United States Supreme Court**

#### Certiorari denied

*Kahawaiolaa v. Norton*, 2005 U.S. LEXIS 4679 (2005).

*VanGuilder v. United States*, 2005 U.S. LEXIS 4691 (2005).

#### Certiorari filed

*Joan Wagnon et al., v. Prairie Band Potawatomi Nation*, No. 04-1740 (filed June 23, 2005).

### **Second Circuit Court of Appeals**

*Cayuga Indian Nation v. Pataki*, 2005 U.S. App. LEXIS 12764 (2d Cir. 2005).

The State of New York appealed from a judgment of the United States District Court for the Northern District of New York awarding tribal plaintiffs approximately \$248 million in damages and prejudgment interest against the State for the

late-eighteenth-century dispossession of their land, in violation of the Nonintercourse Act. The Cayuga Nation of New York and the Seneca-Cayuga Tribe of Oklahoma cross-appealed from the award of prejudgment interest and the denial of the remedy of ejectment. The Supreme Court recently ruled in *Sherrill v. Oneida Nation*, 125 S. Ct. 1478, that equitable doctrines, such as laches, acquiescence, and impossibility, can, in appropriate circumstances, be applied to Indian land claims.

The Second Circuit dismissed the 64,000 acre Cayuga land claim by ruling that the U.S. Supreme Court has "dramatically altered the legal landscape" of Indian land claims. The Cayuga Nation of New York and the Seneca-Cayuga Tribe of Oklahoma waited too long to reclaim their original reservation. After 25 years of litigation, the Court tossed the entire lawsuit, nullified \$248 million award to the tribes, and entered a judgment for the state of New York.

### **Ninth Circuit Court of Appeals**

*Skokomish Indian Tribe v. United States*, 2005 U.S. App. LEXIS 10160 (9th Cir. 2005).

The Skokomish Indian Tribe and its members brought suit in federal district court against the United States, Tacoma, and Tacoma Public Utilities, alleging harms caused by the Cushman Hydroelectric Project, a City-owned project comprised of two dams, two reservoirs, diversion works, two power houses and transmission lines. The Project, completed in 1930, floods over thirty acres of federal land in a total project area of 4700 acres located upstream from the Tribe's land. The Project has diverted the flow of the Skokomish River's North Fork to power-generating facilities and led to aggradation of the river. This has allegedly caused flooding of the Tribe's reservation, failure of septic systems, contamination of water wells, blocking of fish migration, damage to the Tribe's orchards and pastures and silting over of many of the Tribe's fisheries and shellfish beaches. The Tribe claims the Project has caused it nearly \$5 billion in losses.

The court held the claims were not properly brought under the FTCA since they were properly characterized not as tort claims, but as claims that

the United States violated its obligations under the treaty. Because the court lacked subject matter jurisdiction, but believed the claims might properly have been brought under the Indian Tucker Act, it transferred those claims to the United States Court of Federal Claims. The court held that there was no basis for implying a right of action for damages against the city and utility under the treaty. The court concluded that neither the tribe nor individual members could assert its treaty-based fishing rights under 42 U.S.C. § 1983. The tribe's aggradation-related state law claims were barred by time limitations.

## Tenth Circuit Court of Appeals

*First American Kickapoo Operations, L.L.C. v. Multimedia Games, Inc.*, 2005 U.S. App. LEXIS 11968 (10th Cir. 2005).

First American Kickapoo Operations, L.L.C. sought review of a summary judgment from the United States District Court for the Western District of Oklahoma granted in favor of competitor, Multimedia Games, Inc., regarding plaintiff's action for tortious interference with contractual relations related to the gaming operations of the Kickapoo Indian Tribe. First American entered into an operating lease agreement with the Tribe which provided for constructing, equipping, and operating a casino on tribal land. Subsequently, the Tribe obtained an opinion from the National Indian Gaming Commission (NIGC), which stated that the operating lease was a management contract requiring NIGC approval under 25 U.S.C. § 2711 of the Indian Gaming Regulatory Act. The Tribe then terminated its relationship with plaintiff and executed a non-exclusive agreement to rent gaming equipment from defendant.

The court affirmed the judgment, concluding that plaintiff had elected to execute a de facto management contract without the receipt of NIGC approval. The court found that the district court properly concluded that the operating lease was unambiguous and that it was an unapproved management contract. Because the unapproved management contract was void under 25 C.F.R. § 533.7, it could not be the basis for a suit against defendant for tortious interference. The court

rejected plaintiff's contention that the operating lease could be characterized as an equipment lease and a construction loan from which any invalid management provisions could be severed.

## U.S. District Court for the Western District of Michigan, S.D.

*Keweenaw Bay Indian Cmty. v. Naftaly et al.*, 2005 U.S. Dist. LEXIS 10823 (2005).

The Keweenaw Bay Indian Community was the successor-in-interest to signatories to the Treaty with the Chippewas at La Pointe, September 30, 1854, which created permanent homes for its members on reservations. Article XI of the Treaty provided that tribal members could not be removed from their homes. The government argued that the land was taxable because Congress explicitly authorized its alienability. The Tribe countered that Congress had not authorized the alienability of this land, that the unambiguous language of Article XI of the Treaty stated that the Indians could not be removed from the reservation, and that the land was not taxable.

The dispute centered on the interpretation of *Cass County v. Leech Lake Band of Ojibwe*, a Supreme Court ruling where the justices stated that a Congressional act opening up the reservation to allotment constitutes an "unmistakably clear" sign that state and local taxation is allowed. The state sought to extend this logic to the treaty between the Keweenaw Bay Community and the United States because language in the treaty did in fact refer to allotment of tribal lands. The Judge stated, "[i]t defies logic to believe that the Indians would have signed a treaty ceding over seven million acres to the United States, knowing that they could lose the land they kept as a reservation the following year, due to non-payment of taxes." He also said that the *Cass County* decision is limited to acts of Congress, not to treaties.

The court found for the Tribe. The Treaty removal language supported two inferences. Following the established rules of Indian treaty interpretation, which require courts to construe such treaties liberally, in favor of the Indians, the court found the establishment of a permanent reservation and that the signatories would not have

contemplated the future sale of their lands due to non-payment of taxes. Therefore, the land was not taxable because there was no congressional act that made this land freely alienable.

## Florida Second District Court of Appeal

*Seminole Tribe v. McCor*, 2005 Fla. App. LEXIS 9323 (2005).

The Seminole tribe sought certiorari review of a trial court's order denying the tribe's motion to dismiss or for summary judgment. The tribe's motion was based on the assertion that the tribe was, by virtue of its status as a federally recognized Indian tribe pursuant to the Indian Reorganization Act of 1934, immune from the suit for negligence brought by the injured person for injuries Ms. McCor allegedly suffered at the tribe's gaming facility when she was struck by a chair.

The trial court's denial of the tribe's motions were a clear departure from the essential requirements of law resulting in injury to the tribe that could not be remedied on appeal, the appellate court concluded that the tribe's petition for writ of certiorari should be granted. In making that conclusion, the appellate court rejected Ms. McCor's central argument that the tribe's conduct in purchasing liability insurance coverage to protect its assets showed an intent to waive its sovereign immunity, especially since the tribe attached affidavits to its motions that showed an elaborate procedure existed for it to waive sovereign immunity and that the procedure had not been invoked.



---

## 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). 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

**JUNE 28, 2005**

*Nicole L. Cook v. Harry Cholka*, CV 97-95 Order (Ceasing Child Support Withholding) (HCN Tr. Ct., June 28, 2005). (Matha, T).

The petitioner filed a motion requesting that the Court cease child support withholding from the respondent's per capita distributions due to respondent's termination of his parental rights. The Court granted the motion.

*Rachel Winneshiek v. James Beverly*, CV 97-168 Order (Ceasing Child Support Withholding) (HCN Tr. Ct., June 28, 2005). (Matha, T).

The petitioner filed a motion requesting that the Court cease child support withholding from the respondent's per capita distributions due to the

emancipation of the child and lack of arrearages. The Court granted the motion.

*Kristine H. Blackcoon v. Michael K. Blackcoon*, CS 98-25 Order (Updating Arrearage Withholding) (HCN Tr. Ct., June 28, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to amend child support arrearage withholding with a certified accounting statement. The Court granted the motion.

*Juneau County and Keith Miller v. Chasity A. Miller*, CS 99-26 Order (Updating Arrearage Withholding) (HCN Tr. Ct., June 28, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to amend child support arrearage withholding with a certified accounting statement. The Court granted the motion.

*State of Iowa, Elliot Funmaker, Jr., and Jessica Funmaker, Sr. v. Elliot Funmaker, Sr.*, CS 05-59 Judgment (Enforcing Child Support) (HCN Tr. Ct., June 28, 2005). (Matha, T).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita distributions. The Court granted the respondent's request for recognition and enforcement.

#### **JUNE 29, 2005**

*Porfiria M. Gonzalez v. Eric B. Davis; Celina Webster v. Eric B. Davis*, CS 02-28, 05-36 Order (Default Judgment – Enforcing Child Support) (HCN Tr. Ct., June 29, 2005). (Matha, T).

The Court had to determine whether to enforce a standing foreign child support order against a serial payor's per capita distributions. The respondent failed to respond within the specified time frame. The Court granted the petitioner's request for recognition and enforcement.

*Karena Day v. Kevin Day*, CV 96-57 Order (Modifying Current Child Support) (HCN Tr. Ct., June 29, 2005). (Matha, T).

The minor child turned eighteen (18) years of age. The Court is aware that K.R.D. is enrolled in

college. Therefore, the Court amended respondent's current child support obligations.

*Rose Delgado v. Edward Mendez*, CS 98-69 Order (Updating Arrearage Withholding) (HCN Tr. Ct., June 29, 2005). (Matha, T).

The Court previously recognized and enforced a foreign order for child support. The petitioner filed a motion to amend child support arrearage withholding with a certified accounting statement. The Court amended the withholding until satisfaction of arrearage obligation.

*Leah Kasanaha Cornelius v. Randal Cloud; State of Wisconsin and Jennifer M. Mier v. Randal Cloud*, CS 01-13, 05-43 Order (Default Judgment – Modifying & Enforcing Child Support) (HCN Tr. Ct., June 29, 2005). (Matha, T).

The Court had to determine whether to enforce another foreign child support order against a serial payor's per capita payments. The petitioner filed a motion requesting modification of current child support withholding with a certified copy of the modified foreign support order and a certified copy of a payment history. The respondent failed to respond within the specified time frame. The Court granted the motion.

*State of Wisconsin and Jackson Co. v. Kric V. Pettibone*, CS 05-44 Default Judgment (Enforcing Child Support Against Wages) (HCN Tr. Ct., June 29, 2005). (Bossman, W).

The Court had to determine whether to grant full faith and credit and/or comity to a foreign child support order against the respondent's wages. 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 Jackson Co. v. Kric V. Pettibone*, CS 05-44 Default Judgment (Enforcing Child Support Against Per Capita) (HCN Tr. Ct., June 29, 2005). (Bossman, W).

The Court had to determine whether to enforce a standing foreign child support order against the respondent's per capita payments. The respondent failed to respond within the specified time frame.

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

**JUNE 30, 2005**

*Sara Whiteeagle v. Timothy King*, CV 97-24 Notice (Child Turning 18 – Requiring Proof of Enrollment) (HCN Tr. Ct., June 30, 2005). (Bossman, W).

The minor child turned eighteen (18) years of age. In accordance with state law, the respondent's obligation ends when the child turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

*Tris Yellowcloud v. Jeffrey A. Link*, CV 97-07 Notice (Child Turning 18 – Requiring Proof of Enrollment) (HCN Tr. Ct., June 30, 2005). (Bossman, W).

The minor child turned eighteen (18) years of age. In accordance with state law, the respondent's obligation ends when the child turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.

*State of Wisconsin and Jennifer M. Mier v. Robin Stone*, CS 04-49 Default Judgment (Enforcing Child Support) (HCN Tr. Ct., June 30, 2005). (Bossman, W).

The Court had to determine whether to enforce another foreign child support order against a serial payor's per capita distributions. The respondent failed to respond within the specified time frame. The Court granted the petitioner's request for recognition and enforcement.

*Sawyer County Child Support v. Robert W. Blackdeer*, CS 05-18 Notice (Child Turning 18 – Requiring Proof of Enrollment) (HCN Tr. Ct., June 30, 2005). (Matha, T).

The minor child turned eighteen (18) years of age. In accordance with state law, the respondent's obligation ends when the child turns eighteen (18) years of age, unless the child is enrolled in high school or its equivalent. The Court ordered the parties to file proof of high school enrollment.



## Civil Garnishment

**JUNE 1, 2005**

*Roy Puttbrese v. Ralph Snake*, CG 05-29 Order (Default Judgment) (HCN Tr. Ct., June 1, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

**JUNE 2, 2005**

*Marcie Warfield v. Howard Decora*, CG 05-03 Order (Granting Motion to Modify) (HCN Tr. Ct., June 2, 2005). (Matha, T).

The petitioner informed the Court of an updated mailing address. The Court therefore amended the *Findings of Fact* to reflect the change.

**JUNE 6, 2005**

*Midland Credit Management v. Monica Cloud*, CG 05-21 Order (Default Judgment) (HCN Tr. Ct., June 6, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Westview Court v. Irene Hoffman*, CG 05-25 Order (Default Judgment) (HCN Tr. Ct., June 6, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Capital One v. Jeanette E. Severson*, CG 05-42 Order (Default Judgment) (HCN Tr. Ct., June 6, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Capital One v. Mark S. Houghton*, CG 05-43 Order (Default Judgment) (HCN Tr. Ct., June 6, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*NCO Attorney Network Service v. Jeanette E. Severson*, CG 05-44 Order (Default Judgment) (HCN Tr. Ct., June 6, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Augusta Housing Management Company v. Stacy Whitegull*, CG 05-45 Order (Default Judgment) (HCN Tr. Ct., June 6, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.



**JUNE 7, 2005**

*In the Matter of the Outstanding Obligations of: Joseph H. Coon*, CG 05-56 Order (Extension of Full Faith & Credit) (HCN Tr. Ct., June 7, 2005). (Matha, T).

The Court had to determine whether to grant full faith and credit and/or comity to a foreign judgment. Dane County Circuit Court filed a certified copy of its money judgment against the

debtor, representing an assessment of judicial fines and penalties. The Court recognized and enforced the foreign judgment out of due respect to its state counterpart.

**JUNE 14, 2005**

*Citibank Credit Services, Inc. v. Victoria A. Lowe*, CG 05-34 Order (Default Judgment) (HCN Tr. Ct., June 14, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Budgetline Cash Advance v. Mary Locey*, CG 05-35 Order (Default Judgment) (HCN Tr. Ct., June 14, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Amy Hunter v. Courtney White*, CG 05-47 Order (Default Judgment) (HCN Tr. Ct., June 14, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Greater La Crosse Radiological v. David R. Youngthunder*, CG 05-48 Order (Default Judgment) (HCN Tr. Ct., June 14, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Alliance Collection Agencies v. John P. McKeel*, CG 05-49 Order (Default Judgment) (HCN Tr. Ct., June 14, 2005). (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

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

*Alliance Collection Agencies v. Lanette R. Walker*, CG 05-50 Order (Default Judgment) (HCN Tr. Ct., June 14, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.



*Alliance Collection Agencies v. Jason W. Frost*, CG 05-51 Order (Default Judgment) (HCN Tr. Ct., June 14, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Alliance Collection Agencies v. Charles E. Smith, Sr.*, CG 05-52 Order (Default Judgment) (HCN Tr. Ct., June 14, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Alliance Collection Agencies v. Bryan J. Ringer*, CG 05-53 Order (Default Judgment) (HCN Tr. Ct., June 14, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Alliance Collection Agencies v. Julia L. Krause*, CG 05-54 Order (Default Judgment) (HCN Tr. Ct., June 14, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

*Hess Memorial Hospital v. Deana L. and Howard Decora*, CG 05-55 Order (Default Judgment) (HCN Tr. Ct., June 14, 2005). (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 timeframe. The Court granted the petitioner's request for recognition and enforcement.

#### **JUNE 21, 2005**

*Household Credit Service v. Laurie A. Dorwin*, CG 05-33 Order (Satisfaction of Judgment) (HCN Tr. Ct., June 21, 2005). (Matha, T).

The Court previously issued a default judgment against the respondent. The petitioner filed a *Full Release* indicating that the petitioner has "discharged [the respondent] from further liability." The Court recognizes that the debt has been satisfied.

*Alliance Collection Agencies v. Julia L. Krause*, CG 05-54 Order (Satisfaction of Judgment) (HCN Tr. Ct., June 21, 2005). (Matha, T).

The Court previously issued a default judgment against the respondent. The petitioner filed a *Full Release* indicating that the petitioner has "discharged [the respondent] from further liability." The Court recognizes that the debt has been satisfied.

#### **JUNE 22, 2005**

*In re: State of Wisconsin, Dep't of Veterans Affairs v. Dean C. Davis and Melinda R. Davis*, CG 05-62 Order Permitting Special Appearance (HCN Tr. Ct., June 22, 2005). (Matha, T).

Based on the motion and affidavit of Attorney Lloyd J. Blaney, the Court granted petitioner's motion to permit the special appearance of Attorney Lloyd J. Blaney.



## Civil Cases

### JUNE 23, 2005

*Wendi A. Huling v. Ho-Chunk Nation Legislature, et al.*, CV 05-47 *Stipulation and Order for Extension* (HCN Tr. Ct., June 23, 2005). (Bossman, W).

The Court granted an extension to the defendants to file an *Answer* in response to the *Complaint*.

*Christine Funmaker-Romano v. Ho-Chunk Nation Election Board, Mary Ellen Dumas Chairman, CV 05-48, Gerald Cleveland, Sr. v. Ho-Chunk Nation Election Board, CV 05-49 Order from Pre-Trial Conference* (HCN Tr. Ct., June 23, 2005). (Bossman, W).

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

## Employment Cases

### JUNE 15, 2005

*Sheryl Cook v. Tammie Modica and Steve Garvin, CV 05-21 Amended Scheduling Order* (HCN Tr. Ct., June 22, 2005). (Matha, T).

The Court amended the *Scheduling Order* to reestablish dates and deadlines for the instant case.

### JUNE 22, 2005

*Sheryl Cook v. Tammie Modica and Steve Garvin, CV 05-21 Order (Motion Hearing)* (HCN Tr. Ct., June 22, 2005). (Matha, T).

The defendants filed a motion requesting summary judgment. The Court scheduled a *Motion Hearing* in order to address this matter.



## CHILDREN'S TRUST FUND (CTF)

### JUNE 3, 2005

*In the Interest of Minor Child: M.W., DOB 07/09/95, by Melanie Whiteagle-Fintak v. Ho-Chunk Nation Office of Enrollment, CV 04-83 Order (Demanding Accounting)* (HCN Tr. Ct., June 3, 2005). (Matha, T).

The Court demanded that the petitioner submit the required accounting.

*In the Interest of Minor Child: E.T.H., DOB 12/19/91, by Karen L. Snow v. Ho-Chunk Nation Office of Enrollment, CV 04-106 Order (Demanding Accounting)* (HCN Tr. Ct., June 3, 2005). (Matha, T).

The Court demanded that the petitioner submit the required accounting.

*In the Interest of Minor Child: S.R.D., DOB 04/08/02, by Jason Decorah v. Ho-Chunk Nation Office of Enrollment, CV 05-31 Order (Petition Denied)* (HCN Tr. Ct., June 3, 2005). (Matha, T).

The Court had to determine whether a parent could access CTF monies on behalf of his minor child for costs associated with child care. The Court applied the four-part test enunciated in the PER CAPITA DISTRIBUTION ORDINANCE, 2 HCC § 12.8c to assess the merits of the parent's request. The Court determined that the petitioner failed to satisfy the second prong of the four-part test, *i.e.*, a failure to show necessity as presented at the *Fact Finding Hearing*. The Court accordingly denied the request.

### JUNE 14, 2005

*Crystal Dawn Willis v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-35 Order (Dismissal Without Prejudice)* (HCN Tr. Ct., June 14, 2005). (Bossman, W).

The petitioner failed to appear at the *Fact Finding Hearing*, and did not notify the Court of an inability to attend the proceeding. Therefore, the Court dismissed the matter without prejudice.

### JUNE 15, 2005

*In the Interest of Minor Children: K.R.M., DOB 04/21/88; D.K.M., DOB 06/07/89, by Neil Andrew v. Ho-Chunk Nation Office of Tribal Enrollment,*

CV05-37 *Order (Dismissal Without Prejudice)* (HCN Tr. Ct., June 15, 2005). (Matha, T).

The Court dismissed the matter without prejudice upon the request of the petitioner.

**JUNE 16, 2005**

*In the Interest of Adult CTF Beneficiary: Alicia Blackhawk, DOB 10/25/81 v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-29 Order (Granting Motion to Modify)* (HCN Tr. Ct., June 16, 2005). (Matha, T).

The Court previously released funds from the petitioner's CTF account for purposes of purchasing an automobile. The dealership sold the vehicle to someone else. The petitioner proposed substituting a less expensive vehicle available at the dealership. The Court granted the modification and permitted the petitioner to use the released funds to purchase the substitute vehicle.

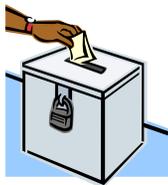
**JUNE 24, 2005**

*In the Interest of Minor Child: G.T.B.W., DOB 05/28/93, by Nicole Ward v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-05 Order (Demanding Accounting)* (HCN Tr. Ct., June 24, 2005). (Matha, T).

The Court demanded that the petitioner submit the required accounting.

*In the Interest of Adult CTF Beneficiary: Alicia Blackhawk, DOB 10/25/81 v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-29 Order (Accepting Accounting)* (HCN Tr. Ct., June 24, 2005). (Matha, T).

The Court previously released funds from the CTF account of the adult beneficiary for costs associated with an automobile purchase. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.



**ELECTION CHALLENGES**

**JUNE 3, 2005**

*Dallas WhiteWing v. Ho-Chunk Nation General Council et al., CV 04-99 Order (Amending Scheduling Order)* (HCN Tr. Ct. June 3, 2005). (Bossman, W).

The Court amended the *Scheduling Order* to reestablish dates and deadlines for the instant case.

*Dallas WhiteWing v. Ho-Chunk Nation General Council et al., CV 04-99 Order (Denying Motion to Dismiss and Denying Motion for Reconsideration)* (HCN Tr. Ct. June 3, 2005). (Bossman, W).

The Court had to determine whether to grant the defendant's *Motion to Dismiss and Motion for Reconsideration*. The Court denied both motions.

**JUNE 16, 2005**

*Christine Funmaker-Romano v. Ho-Chunk Nation Election Board, Mary Ellen Dumas, Chairman; Gerald Cleveland, Sr. v. Ho-Chunk Nation Election Board, CV 05-48-49 Scheduling Order* (HCN Tr. Ct., June 16, 2005). (Bossman, W).

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

**JUNE 29, 2005**

*Christine Funmaker-Romano v. Ho-Chunk Nation Election Board, Mary Ellen Dumas Chairman; Gerald Cleveland, Sr. v. Ho-Chunk Nation Election Board, CV 05-48-49 Judgment* (HCN Tr. Ct., June 29, 2005). (Bossman, W).

Both cases are election challenges filed by two (2) incumbent legislators who were defeated by their challengers in the June 7, 2005 General Election. The Court found clear and convincing evidence that there were two (2) violations of the Election Ordinance. First, the Final Notice and Rules of General Election gave notice of the incorrect location for the Madison polling place for the June 7, 2005 election. And second, the election officials at the Wisconsin Dells polling place exceeded the authority granted under the Election Ordinance by requiring documentary proof of identity even when the identity of the prospective voter was well known to one or more of the election officials. However, the Court also found that neither plaintiff met the statutory burden of proof by clear and convincing evidence that the outcome of the election would have been different but for the violations.

Therefore, the election challenges filed by the plaintiffs were both denied.



## **EMPLOYMENT**

### **JUNE 6, 2005**

*Adriane Walker v. Amy Kirby, Table Games Manager*, CV 05-28 *Order (Permission to Reschedule)* (HCN Tr. Ct., June 6, 2005). (Matha, T).

The plaintiff failed to appear at the *Scheduling Conference*, and did not inform the Court of an inability to attend the proceeding. The Court granted the plaintiff three (3) weeks to reschedule the *Scheduling Conference*.

### **JUNE 7, 2005**

*Tammy Temple v. Ho-Chunk Nation Table Games Dep't and Ho-Chunk Casino*, CV 04-108 *Stipulation & Order for Settlement and Dismissal* (HCN Tr. Ct., June 7, 2005). (Matha, T).

The parties agreed to settle the case pursuant to a settlement agreement and incorporated terms. The Court approved the agreement and dismissed the case.

*Erik W. Silgman v. Ho-Chunk Nation Bingo & Casino*, CV 05-10 *Order (Granting Telephonic Appearance)* (HCN Tr. Ct., June 7, 2005). (Matha, T).

The Court granted the party's request to appear by telephone at the *Status Hearing*.

### **JUNE 14, 2005**

*Charles Funk v. Ho-Chunk Casino, et al.*, CV 04-20 *Order (Motion Hearing)* (HCN Tr. Ct., June 14, 2005). (Matha, T).

The defendants filed a motion requesting summary judgment. The Court scheduled a *Motion Hearing* in order to address this matter.

### **JUNE 15, 2005**

*Elizabeth Deere v. Annette Littlewolf et al.*, CV 04-75-76 *Order (Denying Motion to Compel Discovery*

*and Postponing Pre-Trial Conference)* (HCN Tr. Ct., June 15, 2005). (Bossman, W).

The plaintiff failed to request an extension of the discovery deadline in a timely manner. The Court accordingly denied the plaintiff's *Motion to Compel Discovery*. The Court also granted plaintiff's request for a postponement of the *Pre-Trial Conference*.

### **JUNE 22, 2005**

*Erik W. Silgman v. Ho-Chunk Nation Bingo & Casino*, CV 05-10 *Stipulation & Order for Settlement and Dismissal* (HCN Tr. Ct., June 22, 2005). (Matha, T).

The parties agreed to settle the case pursuant to a settlement agreement and incorporated terms. The Court approved the agreement and dismissed the case.



## **INCOMPETENT TRUST FUND (ITF)**

### **JUNE 6, 2005**

*In the Interest of Adult Incompetent: W.E.S., DOB 12/23/36, by Frank E. Bichanich v. Ho-Chunk Nation Office of Tribal Enrollment*, CV 04-22 *Order (Accepting Accounting)* (HCN Tr. Ct., June 6, 2005). (Matha, T).

The Court previously released funds from the ITF account of an adult incompetent for costs associated with an adult child's wedding expenses. The petitioner submitted a payment history statement, confirming proper use of the funds. The Court accepted this accounting.

### **JUNE 23, 2005**

*In the Interest of B.F.R., DOB 09/18/19, by Dorothy Lenard v. Ho-Chunk Nation Office of Tribal Enrollment*, CV 02-95 *Order (Accepting Accounting)* (HCN Tr. Ct., June 23, 2005). (Matha, T).

The Court previously released funds from the ITF account of an adult incompetent for costs associated with ongoing nursing home care. The petitioner submitted a payment history statement, confirming

proper use of the funds. The Court accepted this accounting.

**JUNE 27, 2005**

*In the Interest of Adult Incompetent: Oliver S. Rockman*, CV 97-117 Order (Granting Release of *Per Capita Funds*) (HCN Tr. Ct., June 27, 2005). (Bossman, W).

The Court had to determine whether a protective payee could access ITF monies on behalf of the adult incompetent member for costs associated with living expenses and protective payee services. The Court granted the requests.



**Family**

**JUNE 30, 2005**

*Carol La Mere v. Mike La Mere*, FM 05-01 Order (Granting Divorce) (HCN Tr. Ct., June 30, 2005). (Bossman, W).

The Court had to determine whether to grant dissolution of the marriage of the parties by divorce. The Court found that all jurisdictional and factual requirements were met and granted a decree of divorce.



**Juvenile**

**JUNE 2, 2005**

*In the Interest of Minor Children: P.M.S., DOB 01/14/91; P.A.S., 01/14/91*, JV 98-06-07 Review Hearing Order (HCN Tr. Ct., June 2, 2005). (Bossman, W).

The Court conducted a *Review Hearing* in order to determine whether to maintain the status quo or schedule another *Review Hearing*. The Court ordered to convene a *Child Protection Review Hearing*.

*In the Interest of Minor Children: P.R.F., DOB 04/22/02; C.H.F., DOB 12/24/03*, JV 05-19-20

*Order (Entry of Plea)* (HCN Tr. Ct., June 2, 2005). (Bossman, W).

The Court convened a *Plea Hearing* for the purpose of determining whether the parents of the minor children wished to contest the allegations contained in the *Child/Family Protection Petition*. Both the father and mother of the minor children entered pleas of not guilty. The Court accordingly scheduled a *Trial*.

**JUNE 3, 2005**

*In the Interest of Minor Child: D.R.W., DOB 08/12/04*, JV 05-07 Order (Granting Visitation) (HCN Tr. Ct., June 3, 2005). (Bossman, W).

The Court recognized the liberal visitation rights of traditional relatives set forth in the Children and Family Act. Therefore, the Court granted visitation rights from the bench.

**JUNE 6, 2005**

*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 (Child Protection Review Hearing) (HCN Tr. Ct., June 6, 2005). (Matha, T).

The Court conducted a *Child Protection Review Hearing*. The court had to assess the extent of compliance with the dispositional order. The Court modified the dispositional requirements as necessary for the protection of the children.

**JUNE 7, 2005**

*In the Interest of Minor Children: B.A.T., 09/11/94; C.A.T., DOB 07/06/95*, JV 05-12-13 Order (Appointment of Temporary Guardian) (HCN Tr. Ct., June 7, 2005). (Matha, T).

The Court had to determine whether to appoint a temporary guardian of the minor children. The Court deemed that such an appointment to be within the minor children's best interests.

**JUNE 10, 2005**

*In the Interest of Minor Children: C.L., DOB 04/25/98; C.D., DOB 09/19/01; L.R.L., DOB 11/02/02*, JV 04-30-31-20 Order (Continuation of Guardianship Hearing) (HCN Tr. Ct., June 10, 2005). (Matha, T).

The Court rescheduled the *Guardianship Hearing*, so as to provide the parties an opportunity to obtain legal representation.

**JUNE 13, 2005**

*In the Interest of Minor Children: P.R.F., DOB 04/22/02; C.H.F., DOB 12/24/03, JV 05-19-20 Order (Appointment of Guardian ad litem)* (HCN Tr. Ct., June 13, 2005). (Bossman, W).

The Court appointed a GAL in this matter.

*In the Interest of Minor Child: T.L.E., DOB 05/07/94, In the Interest of Minor Child, JV 05-14 Order (Appointment of Guardian ad litem)* (HCN Tr. Ct., June 13, 2005). (Bossman, W).

The Court appointed a GAL in this matter.

**JUNE 14, 2005**

*In the Matter of the Children: C.C.P., DOB 02/03/93; G.L.P., DOB 06/10/94, JV 03-25-26 Order (Rescheduling Guardianship Hearing)* (HCN Tr. Ct., June 14, 2005). (Bossman, W).

The Court granted the request to postpone the *Guardianship Hearing*.

*In the Matter of the Children: W.O.B., DOB 04/08/98; R.L.B., DOB 03/31/97; D.D.F., DOB 07/08/94, JV 04-06-07-28 Order (Rescheduling Guardianship Hearing)* (HCN Tr. Ct., June 14, 2005). (Bossman, W).

The Court granted the request to postpone the *Guardianship Hearing*.

*In the Interest of Minor Child: D.T.S., DOB 08/12/04, JV 05-08 Order (Voluntary Dismissal)* (HCN Tr. Ct., June 14, 2005). (Matha, T).

The petitioner filed a correspondence, indicating her intent to withdraw the guardianship petition. The Court dismissed the case without prejudice.

**JUNE 15, 2005**

*In the Interest of Minor Children: J.V., DOB 10/22/98; S.V., DOB 09/03/99, JV 02-19-20 Order Granting Leave for Lisa P. Cards to Withdraw as Attorney* (HCN Tr. Ct., June 15, 2005). (Bossman, W).

The Court granted the motion filed by the attorney for the mother of the minor children to withdraw as legal counsel.

*In the Interest of Minor Child: S.L.C., DOB 08/28/89, JV 05-09 Order (Appointment of Permanent Guardian)* (HCN Tr. Ct., June 15, 2005). (Bossman, W).

The Court had to determine whether to appoint a permanent guardian of the minor child. The Court deemed the appointment to be within the minor child's best interests.

**JUNE 16, 2005**

*In the Interest of Minor Children: R.B., DOB 06/23/95; J.V., DOB 09/03/99; S.V., DOB 10/22/98, JV 02-18-19-20 Order* (HCN Tr. Ct., June 16, 2005). (Bossman, W).

The Court issued this Order to postpone and reschedule the *Review Hearings*.

*In the Interest of Minor Child: D.R.W., DOB 08/12/04, JV 05-07 Order (Appointment of Temporary Guardian)* (HCN Tr. Ct., June 16, 2005). (Bossman, W).

The Court had to determine whether to appoint a permanent guardian of the minor child. The Court deemed the appointment to be within the minor child's best interests.

**JUNE 23, 2005**

*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 (Child Protection Review Hearing)* (HCN Tr. Ct., June 23, 2005). (Matha, T).

The Court conducted a *Child Protection Review Hearing*. The Court reaffirmed the dispositional requirements as necessary for the protection of the child.

**JUNE 30, 2005**

*In the Interest of Minor Child: L.K.B., DOB 09/27/89, JV 05-06 Order (Postponement of Guardianship Hearing)* (HCN Tr. Ct., June 30, 2005). (Bossman, W).

The mother of the minor child and the GAL failed to make an appearance and did not inform the Court of an ability to attend the hearing. Therefore, the Court postponed the *Guardianship Hearing* for the purpose of determining whether to grant a temporary guardianship of the minor child.

*In the Interest of Minor Children: P.R.F., DOB 04/22/02; C.H.F., DOB 12/24/03, JV 05-19-20 Order (From Formal Trial) (HCN Tr. Ct., June 30, 2005). (Bossman, W).*

The Court found that CFS met the burden of proof and that the minor children are in need of care and supervision. Therefore, legal custody of the minor children shall remain with CFS.



## **Supreme Court**

**JUNE 16, 2005**

*Dennis M. Funmaker, Sr., v. HCN Election Bd. et al.; JoDeen B. Lowe v. HCN Election Bd. et al., SU 05-06-07 Decision (HCN S. Ct., June 6, 2005)*  
See page 4.

**JUNE 16, 2005**

*In the Interest of Minor Children: B.E.Y., DOB 07/25/89; N.R.Y., DOB 07/06/96, SU 04-04 Decision (HCN S. Ct., June 16, 2005).*

This case involves a child/family protection matter for sisters, B.E.Y. and N.E.Y. The appellant is the alleged father of the two children. The Supreme Court held that the appellant was denied due process by the failure of the Trial Court to advise him at the commencement of the trial that he had the right to be represented by legal counsel. However, the lack of appellant's counsel did not affect his material rights. As to other issues presented on appeal, due to the case extending well beyond the norm, issues have become moot as the appellant is no longer under the Trial Court's jurisdiction. Therefore, the error was harmless and the Supreme Court affirmed the Trial Court order.

**JUNE 27, 2005**

*Casimir T. Ostrowski v. Ho-Chunk Nation et al., SU 05-03 Decision (HCN S. Ct., June 27, 2005).*

The Supreme Court found that in reviewing the appellate record, Chief Judge Bossman failed to properly set forth the standard and document the basis for his determination that the Nation's accommodations to Plaintiff-Appellant Ostrowski "caused the casino cage cashier department to operate at less than peak efficiency." There is no statement that this is a standard that an employee must meet. The Trial Court decision in this matter did not permit either the Supreme Court or the litigants to comprehend the applicable standard, identify which party bears the burden of proof, and to ascertain whether that burden was met. Therefore, the matter is remanded to the Trial Court for further action consistent with the judgment.



---

## **Recent Filings**

### **Trial Court**

#### **Child Support**

**JUNE 1, 2005**

*Deanna Bedell Awonohopay v. Jay R. Awonohopay, CS 05-47. (Matha, T).*

*Mabry D. Deal v. Jay R. Awonohopay, CS 05-48. (Matha, T).*

*Nekesha Clements v. Shannon L. Knox, CS 05-49. (Matha, T).*

*Shelly Cornelius v. Kelly Logan, CS 05-50. (Matha, T).*

**JUNE 10, 2005**

*In Re: The Paternity of A.J.C. v. Collin Cloud, CS 05-52. (Matha, T).*

**JUNE 16, 2005**

*Ericka Hawpetoss v. Brandon Cloud, Sr.*, CS 05-53.  
(Matha, T).

*Wanda S. Knipp v. Timothy P. King*, CS 05-54.  
(Matha, T).

*Jamie Decorah v. Clint Beversdorf*, CS 05-55.  
(Matha, T).

*State of Wisconsin v. Jones R. Funmaker*, CS 05-56.  
(Matha, T).

*Wendy Pospychalla v. Benjamin Bearskin*, CS 05-58.  
(Matha, T).

**JUNE 21, 2005**

*State of Wisconsin v. Tanya L. Rave*, CS 05-60.  
(Matha, T).

*Michelle Kimps v. Ira Laes*, CS 05-61. (Matha, T).

**JUNE 27, 2005**

*Crystal Teller v. Roger Snake*, CS 05-57. (Matha, T).

**JULY 1, 2005**

*Earl L. LeMieux II v. Melissa L. Snowball*, CS 05-62.  
(Matha, T).

### **Civil Garnishment**

**JUNE 16, 2005**

*State Collection Service v. Donald Lutz*, CG 05-57.  
(Matha, T).

*State Collection Service v. Marial Swan*, CG 05-58.  
(Matha, T).

*State Collection Service v. Rebecca S. Wright*, CG 05-59.  
(Matha, T).

*Creditor Recovery Service v. Ivory S. Kelly*, CG 05-60.  
(Matha, T).

*All American Plaza v. Gina S. Southwood*, CG 05-61.  
(Matha, T).

**JUNE 21, 2005**

*Drs. Delebo, Overman, Hegna, Reich & Wruck v. Rebecca Rave*, CG 05-63. (Matha, T)..

*Black River EMS v. Randy Voeller*, CG 05-64.  
(Matha, T).

*Chitwood, Nicol, Matthews, L.L.P, et al. v. Lucy Snake*, CG 05-65. (Matha, T).

**JUNE 22, 2005**

*State of Wisconsin Department of Veterans Affairs v. Dean C. Davis and Melinda R. Davis*, CG 05-62.  
(Matha, T).

*State Collection Service v. Richard Kaniewski*, CG 05-66. (Matha, T).

*Alliance Collection Agencies, Inc. v. Kevin Kniprath*, CG 05-67. (Matha, T).

*Alliance Collection Agencies, Inc. v. Paul D. Arentz*, CG 05-68. (Matha, T).

*Alliance Collection Agencies, Inc. v. Diana M. Blackhawk*, CG 05-69. (Matha, T).

### **Civil Cases**

**JUNE 1, 2005**

*In the Interest of Minor Child: M.A.C., DOB 04/09/89 v. Ho-Chunk Nation Office of Tribal Enrollment*, CV 05-46. (Matha, T).

**JUNE 20, 2005**

*Ho-Chunk Hotel & Convention Center and Ho-Chunk Nation v. Jeanette H. Decorah and Kevin Walker*, CV 05-50. (Matha, T).

*Ho-Chunk Nation Department of Labor and Ho-Chunk Nation v. Jesse L. Snowball*, CV 05-51.  
(Matha, T).

**JUNE 22, 2005**

*Marvel J. Cloud v. Ho-Chunk Nation Office of Tribal Enrollment*, CV 05-52. (Matha, T).

**JUNE 27, 2005**

*In the Interest of Minor Child: J.M.D., DOB 07/03/85 v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-53. (Matha, T).*

## **Juvenile**

No recent case filings.

## **Supreme Court**

No recent case filings.

## **Upcoming National Events**

**July 27-29, 2005.** Walking on Common Ground to be held at the Oneida Nation's Radisson Hotel and Conference Center, Green Bay, WI.

**August 12-14, 2005.** NMAI National Pow-Wow. MCI

Center, Washington, D.C. For more information visit

[www.AmericanIndian.si.edu](http://www.AmericanIndian.si.edu) or call 877-830-3224.

**September 23, 2005.** 38th Annual California Indian Day

Celebration to be held at the California State Capitol; Sacramento, CA

**October 30 – November 4, 2005.** National Congress of American Indians 62nd Annual Convention in Tulsa, OK



**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 – Earl Blackdeer  
 Donald Blackhawk  
 Dennis Funmaker  
 Jim Greendeer  
 Douglas Greengrass  
 Desmond Mike  
 Gavin Pettibone  
 Douglas Red Eagle  
 Preston Thompson, Jr.  
 Eugene Thundercloud  
 Morgan White Eagle  
 Clayton Winneshiek

Trial Court – Todd R. Matha, Chief Judge  
 Tina Gouty-Yellow, Associate Judge Pro  
 Tempore

Clerk of Court, Trial Court – Marcella Cloud  
 Assistant Clerk of Court, Trial Court – Selina Joshua  
 Bailiff/Process Server – Albert Carrimon  
 Administrative Assistant – Jessi Cleveland  
 Staff Attorney – Amanda R. Cornelius  
 Supreme Court Clerk – Mary Endthoff  
 Summer Law Clerk – Anfin Jaw

\* 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 Judiciary Fee Schedule

Filing Fees

- Complaint.....\$50.00
- Petition for Release of Per Capita Distribution (Children’s Trust Fund) .....\$50.00
- Motion to Appear Pro Hac Vice.....\$35.00
- Appellate Filing Fee.....\$50.00
- Petition to Register and Enforce Foreign Judgment/Order .....\$20.00
- Marriage License Fee.....\$50.00

Court Fees

Copying .....\$0.10/page  
 Faxing .....\$0.25/page (sending & receiving)  
 CD of Hearings .....\$10.00/CD  
 Deposition Videotape .....\$12.50/tape  
 Certified Copies.....\$0.50/page  
 Equipment Rental .....\$5.00/hour  
 Admission to Practice .....\$50.00

Legal Citation Forms

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

Ho-Chunk Nation Constitution

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

Ho-Chunk Nation Code

Ordinance/Act Name Title Number HCC Section.  
 ELDER PROTECTION ACT, 4 HCC § 1.  
 EMPLOYMENT RELATIONS ACT, 6 HCC § 5.  
 (for detailed citation information consult LEGISLATIVE ORGANIZATION ACT, 2 HCC § 11.36)

HCN Supreme Court Case Law

Case Name, Case Number (HCN S. Ct., month, day, year).  
*Johnson v. Department Inc.*, SU 96-21 (HCN S. Ct., Aug. 14, 1996).

HCN Trial Court Case Law

Case Name, Case Number (HCN Tr. Ct., month, day, year)  
*Jane Doe v. Bob Smith*, CV 99-01 (HCN Tr. Ct., Nov. 1, 1999).

Ho-Chunk Nation Rules of Civil Procedure

HCN R. Civ. P. 19(B)

