

# HO-CHUNK NATION COURT BULLETIN

February – December 2013

Issue



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## Catching up with the Ho-Chunk Nation Judiciary



The Judiciary staff prepares these bulletins to keep everyone informed about the cases that are heard before the Ho-Chunk Nation Trial Court, and the Ho-Chunk Nation Supreme Court. The Court would like to update the community on what occurred in the Judiciary for the year 2013 in this case digest. Once current we will be adding a few other sections to the new format.





## RECENT TRIAL COURT DECISIONS

Decisions are separated between Trial Court and Supreme Court decisions and categorized by subject matter. The following is a case digest that summarizes the number of cases that the Courts issued orders for. 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), Domestic Violence (DV), Family (FM), or Juvenile (JV).

The following civil case summaries includes decisions in which the Court discussed substantive legal issues, and excludes purely procedural and repetitive orders that retain little persuasive authority. The case summaries also excludes a majority of child support and civil garnishment decisions. The public may access all non-confidential orders through direct access to the case file. The syllabus constitutes no opinion, judgment or order of the Court, but has been prepared by the Staff Attorneys and Paralegal of the Trial Court for the purposes of facilitating research on various topics. Individuals should not rely upon the below summaries, but rather utilize the summaries as starting point for further research.

### CHILD SUPPORT CASES

#### THE TRIAL COURT ISSUED 119 ORDERS FROM FEBRUARY 2013 – DECEMBER 2013

The Court issued 54 *Orders (Motion to Modify)*. Included in the Motions are Motions to amend, reinstate, cease or suspend child support and/or arrears, adding or removing equitable adjustment, consolidate cases, update, release of impounded funds and granting of attorney fees.

36 *Orders (Enforcing Child Support Against Per Capita)*. The Court enforced a standing foreign child support order against per capita.

12 *Notice (Child Turning 18 – Requiring Proof of Enrollment)*. The Court required proof a child who turned 18 years of age is enrolled in high school or in an institution of higher learning or the Court accepted proof of high school enrollment or in an institution of higher learning.

11 *Orders (Enforcing Child Support against Wages)*. The Court enforced a standing foreign child support order against wages.

5 *Procedural Orders* which include Scheduling, Closing Cases, Granting Telephonic Appearances and Reissue Orders.

2 *Orders (Registration of a Foreign Judgment or Order for Child Support)* which a newly filed foreign Order for support is registered with the Court for recognition and enforcement.

1 *Order (Motion for Reconsideration Denied)*. The Court denied a request to reconsider its decision.

*In re: Minnesota State Child Support Payments*, CS 99-41, 00-28, 01-33, 02-12, 03-26, 04-23, 05-06, 05-14, 05-46, 07-52, 08-79, 05-83, 07-09, 07-24, 07-81, 08-26, 08-79, 09-10, 09-14, 09-65, 10-05, 10-09, 10-57, 11-02, 11-55, 12-06, 12-11, 12-38 *Order (Requesting Attorney General Opinion)* (HCN Tr. Ct., Feb. 20, 2013) (Lowe, J).

Based upon the Court’s adopted federal definition of child support, the Court refrains from withholding auxiliary costs from members’ per capita distributions, including accumulated interest, administrative fees, or spousal maintenance. The Court received several correspondences concerning the manner by which the State of Minnesota has elected to apply funds, which is inconsistent with the Court’s enforcement orders. Therefore, given the potential severe consequences of either ceasing all withholdings in the above-captioned cases, or allowing a foreign jurisdiction to misapply garnished per capita funds in violation of the Nation’s laws, the Court sought an Attorney General Opinion concerning the appropriate recourse for those cases affected by the State of Minnesota’s actions.

### CIVIL GARNISHMENT CASES

#### THE TRIAL COURT ISSUED 162 ORDERS FROM FEBRUARY 2013 – DECEMBER 2013

The Court issued 107 *Orders (Default Judgment)*. The Court granted full faith and credit and/or comity to a foreign judgment.

28 *Orders (Granting Motion to Modify)* where petitioner indicated respondent owed additional interest on recognized judgment, extension of full faith and credit and/or comity to a foreign judgment, requesting Court to reinstatement withholding due to failure to pay as agreed upon, bankruptcy initiated, or requesting Court to suspend case.

15 *Orders (Satisfaction of Judgment)* which upon filing a Satisfaction of Judgment, the Court recognized that the debt in these matters had been paid in full and informed the parties of its intent to close the file, absent a timely objection.

6 *Procedural Orders* which included Erratum Orders, and Granting Telephonic Appearance.

4 *Orders for Dismissal*. The Court indicated its intent to release the current garnishment in the case and dismiss without prejudice.

3 *Orders (Petition Granted)*. Parties stipulated to payment and the Court granted the stipulation as proposed.

3 *Orders (Closing Case)*. The Court became aware of the untimely passing of the respondent.

1 *Order (Status Update)*. The Court requested an update concerning the case upon an agreement.

*Sauk County Clerk of Courts v. Joseph D. Gist*, CG 12-75 *Order (Recognizing and Enforcing Remaining J.)* (HCN Tr. Ct., Apr. 29, 2013) ((Rockman) WhiteEagle, A).

The Court needed to determine whether to grant full credit and faith and/or comity to the remaining foreign judgments. The petitioner contends that the Court is obligated to extend full faith and credit to those judgments issued more than five (5) years preceding the ignition of this action. The respondent failed to attend either *Fact-Finding Hearing* to contest the requested relief. Therefore, out of respect for the foreign jurisdiction, the Court granted the petitioner's request.



## CIVIL CASES

### THE TRIAL COURT ISSUED 29 ORDERS FROM FEBRUARY 2013 – DECEMBER 2013

The Court issued 8 *Orders (Granting Motion)* to satisfy remaining balance against future per capita, Imposing Stay, delay ruling or reserve question for trial, addressing

Motion in Limine, addressing Judicial Notice, Staying the Complaint and Stipulation to Judgment.

8 *Procedural Orders* included Granting Telephonic Appearance, Scheduling Order and Order to Amend Pleadings.

5 *Orders for Dismissal*, included Dismissal of a party, untimely filing of Complaint per Statutes of Limitations, and Dismissal of Claim and Counterclaim.

4 *Orders (Default Judgment)*. The defendant failed to answer Complaint. Therefore, the Court entered a default judgment in favor of the plaintiff.

2 *Orders (Denying Motion)*. The Court denied Motions for Summary Judgment.

2 *Orders (Satisfaction of Judgment)* which the Court recognized that the debt in these matters had been paid in full and informed the parties of its intent to close the file, absent a timely objection.

*Marlon C. WhiteWing v. Oren Cloud*, CV 12-59 *Order (Dismissal)* (HCN Tr. Ct., Feb. 15, 2013) ((Rockman) WhiteEagle, A).

The Court needed determined whether to award the plaintiff the relief requested in the initial pleading. The Court determined to deny the request for relief due to the absence of valid subject matter jurisdiction over the dispute.

*Ho-Chunk Nation Home Ownership Program and the Ho-Chunk Nation v. Zachary D. Thundercloud*, CV 10-17 *Order (Commencing Per Capita Withholding)* (HCN Tr. Ct., Mar. 18, 2013) ((Rockman) WhiteEagle, A).

The Court previously entered a judgment in favor of the plaintiffs in an amount which represented the defendant's liability for the purchase of a foreclosed property, taxes, care, maintenance and restoration of the property, attorney fees and Court costs. However, the Court refrained from enforcing the recognized debt against the defendant's per capita distributions until the sale of the residential property to ensure that the defendant received credit for amounts recovered during the property sale. The plaintiffs indicated that the property was sold. Therefore, the Court ordered the Ho-Chunk Nation Department of Treasury to satisfy the remaining balance against the future per capita distributions of the defendant as a debt to the Nation.

*Rita A. Gardner v. Tracy Littlejohn, Ronald Anwash, Jeremy P. Rockman, Nettie J. Kingsley, CV 10-47 Order (Requesting Traditional Court Decision)* (HCN Tr. Ct., Sept. 12, 2013) ((Rockman) WhiteEagle, A).

The Court previously made a request to the Traditional Court for finding and determinations as they related to the *Plaintiff's Question for Traditional Court or Defendants' Question for Traditional Court*. The Traditional Court had not yet articulated an oral opinion or rendered a written decision. Nevertheless, in the absence of Ho-Chunk Nation constitutional or statutory authority authorizing a claim of defamation or an affirmative defense of a warrior's right or privilege to speak. Therefore, again, the Court respectfully requested that the Traditional Court render a decision to both questions posed.

*General Council Agency v. Ho-Chunk Nation Legislature and Ho-Chunk Nation Office of the President, Individually and In Their Official Capacities, CV 12-83 Order (Denying Mot. for Temp. Restraining Order.)* (HCN Tr. Ct., Sept. 27, 2013) (Lowe, J).

The Court needed to determine whether to grant the injunctive relief requested by the Office of the President in the *Motion for Ex Parte Temporary Restraining Order and Preliminary Injunction*. The Office of the President sought a *Temporary Restraining Order* that would prohibit the GCA from: allowing Attorney John Swimmer from acting as legal counsel for the GCA or General Council; order the GCA to comply with contracting legal requirements for employing legal counsel; order the GCA to follow the APPROPRIATIONS & BUDGET PROCESS ACT; order the GCA to follow tribal law mandating the three bid process; and any other relied the Court deemed appropriate. For preliminary injunctions a party must show that (1) they have no adequate remedy at law; (2) the threatened injury to the plaintiff outweighs the harm of issuing an injunction; (3) the plaintiff has a reasonable likelihood of success on the merits; and (4) granting the injunction serves the public interest. The Court found that the respondent failed the second prong of the test due to the uncertainties of the alleged harm, as well as the General Council's ability to protect itself, and therefore denied the motion.

## ADMINISTRATIVE APPEALS

### THE TRIAL COURT ISSUED 32 ORDERS FROM FEBRUARY 2013 – DECEMBER 2013

The Court issued 12 *Procedural Orders* Granting Telephonic Appearance, Reissued Orders and Reassignment Order.

6 *Scheduling Orders* setting all relevant deadlines, Notice of Oral Arguments, and Notice of Grievance Review Board Hearing.

2 *Orders (Granting Motion)* for Pretrial Conference, Judicial Disclosure/Recusal.

3 *Orders (Motion/Petition Denied)*, include Petition for Administrative Review, To Strike, and Denial of Emergency Motion.

1 *Order for Dismissal*, for failure to appear.

*Tracy L. Littlejohn and Powell G. Littlejohn v. HCN Enrollment Committee and Rita Gardner, Enrollment Officer, Gerald Cleveland, Sr., 2012 General Council Chairperson, HCN General Council Agency, CV 12-72 Order (Granting Mot. to Dismiss)* (HCN Tr. Ct., Apr. 15, 2013) (Lowe, J).

The Court needed to determine whether to grant the respondents' *Motion to Dismiss*. The petitioners failed to submit the required filing fee within the prescribed ten (10) day time frame to retain the final filing date before the statute of limitations elapsed. Therefore, the Court recognized the petitioners' filing as untimely and dismissed the instant case for failure to abide by statutory deadlines.

*Michelle Rave v. Ho-Chunk Nation Insurance Dept., CV 12-68 Order (Dismissal)* (HCN Tr. Ct., May 7, 2013) (Lowe, J). The Court needed to determine whether it could proceed with this matter which was filed in the previous year. The defendant filed a timely answer. The Court afforded the plaintiff and defendant the opportunity to confirm all attachments to the *Complaint* and *Answer* were correct, and reviewed whether the parties had reached any stipulations in the matter at a *Status Hearing*. The Court determined that there was no need for further hearings in this matter and dismissed the case for plaintiff's failure to exhaust administrative remedies.

*Tracy Littlejohn v. HCN Enrollment Committee and Rita Gardner, Enrollment Officer, CV 12-55 Order (Granting Mot. to Dismiss.)* (HCN Tr. Ct., Aug. 9, 2013) ((Rockman) WhiteEagle, A).

The Court needed to determine whether to grant the defendant's *Motion to Dismiss*. A review of STATUTE OF LIMITATIONS AND COMMENCEMENT OF CLAIMS ACT revealed that the plaintiff had ten calendar days of the final decision to file a review of an administrative decision or be forever barred from filing. Alternatively, all civil actions must be filed within ninety days if not otherwise specified by statute. The suit was filed two years after

the denial by the Enrollment Committee. For these reasons, the *Motion to Dismiss* was granted.

*Theresa Day v. Amy Kirby, Table Games Division: Ho-Chunk Gaming – Wisconsin Dells and Grievance Review Board, CV 12-39 Order (Affirming)* (HCN Tr. Ct., Aug. 29, 2013) ((Rockman) WhiteEagle, A).

The Court needed to determine whether to uphold the decision of the GRB. The GRB framed the central issue in dispute as “whether or not the grievant can meet her burden though a preponderance of the evidence, to show that she had been subject to improper disciplinary action.” The GRB found termination appropriate in this instance. The Court affirmed the agency decision due to the presence of substantial evidence to support the decision.

*Mary Ellen Blackdeer-Anwash v. Ho-Chunk Nation Enrollment Committee, CV 12-73 Order (Final Judgment)* (HCN Tr. Ct., Sept. 4, 2013) ((Rockman) WhiteEagle, A).

The Court needed to determine whether to grant the petitioner’s *Petition for Administrative Review*. The TRIBAL ENROLLMENT AND MEMBERSHIP CODE defines the procedures governing removal of members from the Ho-Chunk Nation Membership Roll and establishes the Enrollment Committee. The Enrollment Committee presiding over removal proceedings is required to examine whether an enrolled member lacks sufficient Ho-Chunk Nation blood quantum, has provided insufficient proof of Ho-Chunk Nation ancestry, or is either a current or former member of another Indian tribe. Here, following presentation of evidence at the scheduled removal hearing, the Enrollment Committee ultimately issued its decision requiring the petitioner and her siblings to submit to DNA analysis to quantify Ho-Chunk Nation blood quantum and lineage. Upon review of the administrative record, the submitted briefs, and oral arguments, the Court concluded the agency’s decision did not constitute an abuse of discretion. Accordingly, the Court affirmed the recommendation of the Committee of Tribal Enrollment requiring the Petitioner to submit to DNA analysis.

*Brent Funmaker v. Bob Pulley, Property Manager Ho-Chunk Nation Department of Housing, CV 13-10 Order (Dismissal Due to Failure to Present Justiciable Cause of Action)* (HCN Tr. Ct., Oct. 2, 2013) ((Rockman) WhiteEagle, A).

The Court held a *Status Hearing* regarding the filed *Petition for Administrative Review*. The Court needed to determine whether the matter was justiciable, *i.e.*, whether the pleadings presented a case or controversy. The Court, along with the parties, determined that the petitioner did not present a proper case or controversy under any

appropriate or applicable or law. Accordingly, the Court dismissed the case.

*Horst Josellis v. Jennifer Field and Ho-Chunk Nation Grievance Review Board, CV 13-02 Order (Remanding to the Grievance Review Board)* (HCN Tr. Ct., Oct. 11, 2013) ((Rockman) WhiteEagle, A).

The Court needed to determine whether to grant the petitioner’s *Petition for Administrative Review*. Six days after being notified of the GRB hearing, the petitioner informed the GRB via fax that the scheduled date was a date wherein he was not scheduled to work. Therefore the petitioner requested a postponement. The GRB replied that only the board can agree to a postponement. The GRB declined to postpone the hearing, citing the general difficulty of working around grievants work schedules and the notice given to the petitioner. The Court considered the provision of adequate notice as an integral aspect of procedural due process, and that this Court had specifically instructed the GRB to hold a hearing in this particular case in a previous order. Furthermore, the petitioner was not informed that the hearing would unquestionably occur with or without his attendance. Thus, given the lack of proper, unambiguous notice for the GRB hearing, the Court remanded the instant case to the GRB.

*Mary Thunder, Jo Deen Lowe, and the Ho-Chunk Nation Judiciary Branch v. William Collins and Ho-Chunk Nation Grievance Review Board, CV 13-12 Order (Allowing Intervention)* (HCN Tr. Ct., Oct. 14, 2013) (Wabaunsee).

The Court, hearing no objection from the parties, granted the Ho-Chunk Nation Grievance Review Board’s request to intervene in this matter.

## CHILDREN’S TRUST FUND (CTF)

### THE TRIAL COURT ISSUED 104 ORDERS FROM FEBRUARY 2013 – DECEMBER 2013

The Court issued 44 *Orders (Motion/Petition Granted)* for costs associated with orthodontic/dental care.

13 *Orders (Accepting Accounting)*. The Court previously released money from the minor child’s CTF account. The Court accepted the accounting.

11 *Orders (Motion/Petition Granted)*. The Court granted requests for further release of CTF monies for unmet costs and obligations.

8 *Procedural Orders* included Erratum Order, Scheduling, Granting Telephonic Appearance, Minute Order and Recusal.

7 *Orders (Demanding Accounting)*. The petitioner failed to submit accounting to demonstrate that the funds were expended as required. Therefore, the Court demanded accounting.

6 *Orders for Dismissal Conditional Dismissal and Dismissal without Prejudice*.

6 *Orders (Requesting Accounting)*. The petitioner failed to submit the required accounting. Therefore, the Court requested that the petitioner submit accounting.

4 *Orders (Requesting Additional Accounting)*. The Court accepted accounting, but still required additional accounting.

2 *Orders (Releasing Trust Fund to Estate)*. The Court released monies from a decedent tribal member's CTF account to the estate.

2 *Orders (Status Report)*. The Court previously released money from CTF account, the Court's file remains open. Therefore, the Court ordered a written Status Report from HCN Department of Justice.

2 *Order (Petition Granted in Part and Denied in Part)*. The Court granted the beneficiary's release of CTF funds in part but denied release because petitioner failed to provide sufficient information.

1 *Order (Accepting Accounting & Partial Release of Contempt Fines)* where the Court accepted the untimely accounting and partial release of Contempt Fine.

1 *Order (Show Cause Hearing)*. The petitioner failed to submit the required accounting despite a series of requests and demand to do so. Therefore, the Court scheduled a Show Cause Hearing to afford petitioner an opportunity to explain why the Court should not hold her in contempt.

1 *Order for Contempt* for failure to appear at Show Cause Hearing which afford petitioner an opportunity to explain why the Court should not hold her in contempt.

*In the Interest of Adult CTF Beneficiary: CiCi BigJohn, DOB 03/05/1988 v. Ho-Chunk Nation Office of Tribal Enrollment, CV 11-61 Order (Maintaining Contempt Sanction)* (HCN Tr. Ct., Mar. 14, 2013) ((Rockman) WhiteEagle, A).

The Court previously released money from the adult CTF account for costs associated with orthodontic procedures. The petitioner failed to submit accounting to demonstrate that the funds were expended as required. The Court therefore, formerly held the petitioner in contempt and imposed a reasonable remedial sanction. A *Ledger Copy* was submitted for the beneficiary. However, the filed documentation confirmed only the Court's initial release and failed to indicate receipt of a subsequent release. Therefore, the Court ordered the Ho-Chunk Nation Department of Treasury to continue to withhold from the petitioner's per capita payments as previously ordered.

*In the Interest of Adult CTF Beneficiary: Curtis John Crow, DOB 12/14/1988, CF 13-02 Order (Suspending Release)* (HCN Tr. Ct., Dec. 6, 2013) ((Rockman) WhiteEagle, A). The petitioner had failed to comply with a clearly articulated judicial condition, namely, the submission of an educational update. The Court had not received an educational update since the release of funds. Therefore, the Court suspended all future releases of the CTF monies until further notice.

## **Incompetent's Trust Fund (ITF)**

### **THE TRIAL COURT ISSUED 27 ORDERS FROM FEBRUARY 2013 – DECEMBER 2013**

The Court issued 9 *Orders (Motion Granted)*. The Court needed to determine whether the legal guardian could access monies from the adult incompetent ITF account, and the Court granted the requests.

6 *Orders (Accepting Accounting)*. The Court previously released money from wards ITF. The Court accepted accounting.

4 *Orders (Requesting Accounting)*. The petitioner failed to submit the required accounting. Therefore, the Court requested that the petitioner submit accounting.

3 *Procedural Orders* which include Recusal, Scheduling Order and Granting Telephonic Appearance.

2 *Orders (Suspending Release)* as the Court previously established monthly payments for the ward. Upon request of the parties the Court suspended all future releases of ITF monies until further notice from the Court.

*I Order (Demanding Accounting)*. The petitioner failed to meet the accounting requirements. Therefore, the Court demanded that the petitioner submit the required accounting.

*In the Interest of Adult Incompetent: B.N.F., DOB 09/03/1986 by Darla McGaffic v. Ho-Chunk Nation Office of Tribal Enrollment, CV 05-59 Order (Requesting Guardian Recommendation)* (HCN Tr. Ct., Mar. 18, 2013) ((Rockman) WhiteEagle, A).

The Court previously entered an order requiring the petitioner to file a certified copy of a court order appointing her the legal guardian of the ward, and a correspondence indicating whether the ongoing ITF release for a quarterly stipend remained necessary for the benefit of the ward. The Court received a copy of the *Letters of Appointment*, however, the guardian failed to provide the requested recommendation concerning the living stipend. Therefore, the Court requested that the guardian submit the recommendation by April 18, 2013.

*In the Interest of L.R., DOB 03/04/1956, by Maynard Rave, Sr. v. Ho-Chunk Nation Office of Tribal Enrollment, CV 08-24 Order* (HCN Tr. Ct., Sept. 23, 2013) ((Rockman) WhiteEagle, A).

The Court took judicial notice of the *Order (Terminating Guardianship or Denying Petition)* issued by the Jackson County Circuit Court. The Court recognized and enforced the foreign judgment out of due respect to its state counterpart. Therefore, the Court released the funds previously held for L.R., DOB 03/04/1956.

*In the Interest of Adult Incompetent: L.L., DOB 12/22/1944 by Angela Lowe v. Ho-Chunk Nation Office of Tribal Enrollment, CV 10-19 Order (Requesting Accounting)* (HCN Tr. Ct., Sept. 23, 2013) (Lowe, J).

The Court previously released money from the Incompetent's Trust Fund for costs associated with delinquent personal debt. The petitioner failed to submit the required accounting. Therefore, the Court requested that the petitioner submit accounting by October 23, 2013.

*In the Interest of Adult Incompetent: O.S.R, DOB 05/14/1968 by Roxanne Mudd v. Ho-Chunk Nation Office of Tribal Enrollment, CV 97-117 Order (Requiring Action)* (HCN Tr. Ct., Dec. 24, 2013) (Lowe, J).

The petitioner had been responsible for the appropriate distribution of funds for the incompetent member since April, 2010. However, the Court had not received correspondence from the petitioner since August of 2012. The Court directed the petitioner to conscientiously reply to a request for information

## **THE TRIAL COURT ISSUED 10 ORDERS FROM FEBRUARY 2013 – DECEMBER 2013**

The Court issued 2 *Procedural Orders*, a *Scheduling Order* and *Granting Telephonic Appearance*.

*Robert Two Bears v. HCN Election Board, Judy Whitehorse Election Board Chairperson, CV 13-04 Order (Denying Continuance)* (HCN Tr. Ct., Mar. 27, 2013) (Lowe, J).

The plaintiff submitted a document requesting a continuance of the scheduled *Motion Hearing*. However the plaintiff failed to file an accompanying *Certificate of Service* or indicate within the submitted correspondence that proper service of his request was afforded to all parties. Therefore, the Court denied the plaintiff's request.

*Robert Two Bears v. HCN Election Board and Judy Whitehorse Election Board Chairperson, CV 13-04 Order (Mot. Hearing)* (HCN Tr. Ct., Mar. 29, 2013) (Lowe, J).

The Court needed to determine whether to grant the defendants' *Motion to Dismiss*. The Court determined that sovereign immunity does not act as a bar to the case against the defendants where there is a limited waiver afforded by clear constitutional and statutory authority. Further the Court held that the Election Board does not have a duty to follow the advice of the BIA or the legal advice of the Nation's attorneys. Thereby, the Court denied the *Motion to Dismiss*.

*Robert Two Bears v. HCN Election Board and Judy Whitehorse Election Board Chairperson, CV 13-04 Order (Final J.)* (HCN Tr. Ct., Apr. 4, 2013) (Lowe, J).

The Court had to determine whether to grant the relief requested by the plaintiff concerning an election challenge to the General Primary Election. The plaintiff failed to meet the statutory burden of proof. Therefore, the Court found in favor the defendants and the results of the General Primary Election were upheld.

*Kimberly Waukau and James Greendeer v. Ho-Chunk Nation Election Board, CV 13-06 Order (Notification to Interested Individual)* (HCN Tr. Ct., June 13, 2013) ((Rockman) WhiteEagle, A).

The plaintiffs filed an election challenge to the results of the June 4, 2013 General Runoff Election. In particular, the plaintiffs sought to call a general election, which provides proper notification of all polling sites. The Court, in its discretion, chose to inform the remaining legislative candidates of the filed challenge.

*Joann Earth Maney v. Ho-Chunk Nation Election Board*, CV 13-14 Order (Notification to Interested Individual) (HCN Tr. Ct., Aug. 12, 2013) ((Rockman) WhiteEagle, A).

The plaintiffs filed an election challenge to the results of the July 30, 2013 Special Election. In particular, the petitioner challenged the determination which allowed Robert Two Bears the ability to run for two (2) separate legislative seats within District V. The Court, in its discretion, chose to inform the remaining legislative candidates of the filed challenge.

*Joann Earth Maney v. Ho-Chunk Nation Election Board*, CV 13-14 Order (Election Challenge) (HCN Tr. Ct., Aug. 28, 2013) ((Rockman) WhiteEagle, A).

The Court needed to address an election challenge to the July 30, 2013 Special Runoff Election for District V Legislator Seat # 3. The Court convened a Trial to determine the merits of the petitioner's election challenge. The Election Board certified the Special Runoff Election results, thereby designating Mr. Two Bears as the elect. The petitioner alleged that Mr. Two Bears was erroneously allowed the ability to run for two separate legislative seats within District V. The petitioner urged the Court to combine the General and Special Election together. However, the Court found that the petitioner's legal arguments were not sufficient to sustain the challenge, causing the Court to enter a judgment in favor of the respondent.

*Jeremy P. Rockman v. Hocqk Wazijaci Nation Election Board*, CV 13-09 Order (Granting Mot. to Intervene) (HCN Tr. Ct., Oct. 17, 2013) (Stenzel, P).

The Court granted Justice Zunker's *Motion to Intervene*, and she holds the Associate Justice position, which the plaintiff in this case argued to be rightfully his.

*Jeremy P. Rockman v. Hocqk Wazijaci Nation Election Board*, CV 13-09 Order (Granting Resp. Mot. to Dismiss) (HCN Tr. Ct., Oct. 18, 2013) (Stenzel, P).

The Court had to determine whether to grant the respondent's *Motion to Dismiss*. This matter arose out of an election dispute for a seat on the Ho-Chunk Nation Supreme Court. The petitioner received a majority of the votes in the primary and general election for Associate Justice of the Ho-Chunk Nation Supreme Court. However, the respondent declared that Dr. Rockman did not meet the constitutional qualifications to be a Supreme Court Justice and therefore was not the winner of the election. Specifically, the petitioner was not admitted to the Ho-Chunk Nation Bar. The petitioner then filed this suit against the respondent seeking injunctive relief. A new candidate was eventually sworn in. If viewed as a mandamus action, the petitioner's claim was not against

the correct entity and requested relief the Court could not fairly or legally grant, requiring the Court to dismiss the action. If viewed as an election challenge, the petitioner's claim was not timely filed and the Court dismissed the action.

## CONTRACTS

### THE TRIAL COURT ISSUED 1 ORDER FROM FEBRUARY 2013 – DECEMBER 2013

*General Council Agency, Michael Sallaway; Robert Funmaker; Wilma Thompson; Muriel Whiteeagle-Lee; Rosetta Hunt; Francis Decorah; Roger Brinegar; Marvin Decorah, Sr.; Andi Jo Cloud; Matthew Mullen; Mary Lopez v. Ho-Chunk Nation Legislature and Ho-Chunk Office of the President, individually and in their Official Capacities*, CV 12-83 Notice of Extension (HCN Tr. Ct., Dec. 2, 2013) (Lowe, J).

At a *Status Hearing*, the Court had advised the parties that it anticipated issuance of its decision on the pending *Motion to Dismiss* filed by the Office of the President by December 2, 2013. However, the Court ordered that the decision on the matter would be issued with ten (10) business days from the date of the *Notice of Extension* due to an unexpected delay.

## FAMILY

### THE TRIAL COURT ISSUED 7 ORDERS FROM FEBRUARY 2013 – DECEMBER 2013

The Court issued 1 *Procedural Order*, Reissue Final Judgment for Divorce.

4 *Orders (Final Judgment for Divorce)*, the Court granted the parties' requested divorce.

*In re the Marriage of: Stephen P. Thorpe and Lyra M. Decora, Order (Requiring Additional Information)* FM 13-02 (HCN Tr. Ct., May 3, 2013) ((Rockman) WhiteEagle, A).

The Court requested additional information from the parties regarding the division of debts, and required that information regarding the divisible debt be submitted to the Court on or before May 24, 2013.



*In re the Marriage of: Stephen P. Thorpe and Lyra M. Decora, FM 13-02 J. for Divorce (Denying Maintenance, Reserving Debt Division) (HCN Tr. Ct., Dec. 3, 2013) ((Rockman) WhiteEagle, A).*

The Court granted the parties' requested divorce, allowing for the resumption of the petitioner's maiden name. The Court denied the petitioner's request for spousal financial support, taking into account that the parties had lived apart for many years. The Court reserved judgment on the request for division of debts, and scheduled a *Continued Divorce Hearing*.

## ADULT GUARDIANSHIP

### THE TRIAL COURT ISSUED 2 ORDERS FROM FEBRUARY 2013 – DECEMBER 2013

The Court issued 1 *Procedural Order*, Appointment of Guardian ad Litem.

*In the Interest of: C.R., DOB 11/23/1988, GU 13-05 Order (Mot. Hearing) (HCN Tr. Ct., Oct. 18, 2013) ((Rockman) WhiteEagle, A).*

Ho-Chunk Nation Children and Family Services filed a *Petition for Adult Guardianship, Petition for a Recognized Foreign Order* and a *Motion for Expedited Consideration*. The Court recognized that C.R. is an enrolled member of the Ho-Chunk Nation, but that the Confederated Salish and Kootenai Tribes of the Flathead Reservation maintained jurisdiction over the ward. The Court determined to begin processing the case as a *Petition*, as it believed that it could exercise concurrent jurisdiction over the matter. However, the Court maintained that it was unable to modify the foreign jurisdiction's Court order regarding the underlying ward and the pre-existing case. The Court did not wish to set aside a sister jurisdiction's valid order absent a transfer of jurisdiction. Therefore, the Court indicated that it would strongly prefer to accept the matter as a transfer case.

## JUVENILE CASES

ALL JUVENILE CASE DECISIONS SHALL REMAIN CONFIDENTIAL. TWO-HUNDRED SIX (210) ORDERS WERE ISSUED FROM JANUARY 1, 2013 THROUGH DECEMBER 31, 2013.

## DOMESTIC VIOLENCE

ALL DOMESTIC VIOLENCE CASES SHALL REMAIN CONFIDENTIAL. NO CASES WERE FILED FROM FEBRUARY 2013 THROUGH DECEMBER 31, 2013.



## RECENT SUPREME COURT DECISIONS

### THE SUPREME COURT ISSUED 17 ORDERS FROM FEBRUARY 2013 – DECEMBER 2013

The Court issued 1 *Procedural Order*, Accepting Appeal & Scheduling Order.

*Ho-Chunk Nation v. Money Centers of America, Inc., and MCA of Wisconsin, Inc., SU 13-03 Order Denying Appeal (Interlocutory Appeal) (HCN S. Ct., May 15, 2013).*

The Court needed to determine whether to accept the interlocutory appeal. The appellant filed the appeal after work hours on the ten day deadline found in the *Ho-Chunk Nation Rules of Appellate Procedure*, and did not include a filing fee. Therefore, the appeal was denied for being untimely.

*Robert Two Bears v. Ho-Chunk Nation Election Board, et al., SU 13-02 Decision (HCN S. Ct., May 20, 2013).*

The Court needed to determine whether the Trial Court correctly granted the appellees' motion for a directed verdict. The Trial Court mistakenly required the appellant to satisfy a factual burden of proof in order to validate a proffered legal interpretation. The Court must engage in constitutional interpretation, which is detached from the factual inquiry appearing within the Election Code's challenge provision. Therefore, the Supreme Court overturned the lower Court's decision. Additionally, the Supreme Court determined that, for purposes of the applying the constitutional amendment, the Election Board shall begin counting consecutive four-year legislative terms beginning in 2005, to determine whether a legislative candidate is hereafter restricted from seeking a third consecutive term.

*Kimberly Waukau and James Greendeer v. Ho-Chunk Nation Election Board and Judy Whitehorse*, SU 13-04 Order on Recusal Request (HCN S. Ct., July 17, 2013).

The Court needed to determine whether to grant the Request for Recusal which requested recusal as a discretionary matter. The Ho-Chunk Nation Rules of Judicial Ethics did not require a mandatory recusal. The appearance of any impropriety must be balanced against the need for Ho-Chunk members as judicial officers and the reality that there would be knowledge of parties as community members and extended family relations as is the Ho-Chunk Custom. However, as an officer of the Court, the judicial officer was able to attend to the matters before her with fairness and dignity. Therefore, the Court declined to have the Chief Justice recused from the matter.

*Kimberly Waukau and James Greendeer v. Ho-Chunk Nation Election Board and Judy Whitehorse*, SU 13-04 Notice of Extension (HCN S. Ct., Aug. 22, 2013).

The Court reviewed the matter and determined that additional time was needed to complete the decision. Therefore, the Court notified the parties that the decision in this matter would be issued within seven (7) days from the date of the notice.

*Kimberly Waukau and James Greendeer v. Ho-Chunk Nation Election Board and Judy Whitehorse*, SU 13-04 Decision (HCN S. Ct., Aug. 30, 2013).

The Supreme Court stated that the Trial Court was in best position to consider testimony of witnesses when it is available. The Trial Court held that the appellants had not met their burden of proof that the election would have been different. The Supreme Court found that the analysis of the Trial Court where evidence and witnesses were insufficient to establish that the burden of proof was not arbitrary, unreasonable, or unconscionable. The Court held that the lower Court review the matter fully and objectively, and therefore affirmed the decision of the Trial Court.

*Joanne Earth Maney v. Ho-Chunk Nation Election Board*, SU 13-06 Order (Denying Motion and Appeal) (HCN S. Ct., Sept. 4, 2013).

The appealing party Maney sought as relief that the swearing in of Robert Two Bears be temporarily restrained and enjoined based on her disagreement with the Trial Court's Order (Election Challenge). The Supreme Court found that because Mr. Two Bears was sworn in prior to the requests in the pleadings, the appeal and the motion was rendered moot. The Supreme Court is unable to enjoin or delay the swearing in of someone

who has already been sworn in. Therefore, the motion was denied and the appeal was denied.

*Money Centers of America, Inc. and MCA of Wisconsin, Inc. v. Ho-Chunk Nation*, SU 13-07 Judgment (Accepting Appeal & Scheduling Order; Denying Appeal) (HCN S. Ct., Oct. 16, 2013).

The Supreme Court accepted the appeal filed by Money Centers of America, Inc. and MCA of Wisconsin, Inc., as there were no perceived appellate procedural violations. The Court then set forth a briefing deadline for the case. The Supreme Court denied the appeal filed by the Ho-Chunk Nation, as it was submitted untimely.

*Money Centers of America, Inc. and MCA of Wisconsin, Inc. v. Ho-Chunk Nation*, SU 13-07 Order (Discretionary Recusal) (HCN S. Ct., Oct. 21, 2013).

Justice Matha excused himself as sitting justice from the appeal, as he previously served as lead counsel for a non-party movant in contemporaneous and ongoing litigation involving the appellants, which likely concerned similar factual and/or legal issues.

*Theresa Day v. Amy Kirby, Table Games Division, et al.*, SU 13-08 Order (Denying Appeal) (HCN S. Ct., Oct. 28, 2013).

The Supreme Court needed to determine whether to accept the appeal. An appellant first needs to establish the basic parameters of the appeal. An appellant then must set forth the essential contours of the appeal. The Court deemed that the appellant had not satisfied the appellate requirements. Consequently, the Court denied the appeal.

*Ho-Chunk Nation; Ho-Chunk Gaming – Black River Falls; and Greg Garvin v. Nicole Christopherson*, SU 13-05 Decision (HCN S. Ct., Nov. 21, 2013).

The Court needed to determine whether the Trial Court appropriately dismissed the appellants' administrative appeal. The Trial Court held that the appellants filed an untimely petition, rendering the appeal barred by the statute of limitation incorporated within the applicable waiver of sovereign immunity. The appellants purportedly relied upon a judicial rule concerning computation of time, which indicates that "[i]f a time limit concludes on a weekend..., then the time limit falls on the next working day." *Ho-Chunk Nation Rules of Civil Procedure*, Rule 17 (B). A later rule prescribes that "[a]ny person aggrieved by a final agency decision may request that the Ho-Chunk Nation Trial Court review such decision by filing a *Petition for Administrative Review* with the Court within thirty (30) calendar days of such decision...." *Id.*, Rule 63(A)(1)(a). The appellants filing deadline fell on a Sunday and they

proceeded to submit the appeal on the next judicial working day. The Court did not entirely disagree with the

Trial Court decision to dismiss, but regarded the matter as deriving, as least in part, from certain imprecision associated with judicial rulemaking. The Court accordingly reversed and remanded the administrative appeal to the lower Court for further proceedings.

*Money Centers of America, Inc. and MCA OF Wisconsin, Inc. v. Ho-Chunk Nation, SU 13-07 Order (Granting Joint Mot. for Continuance of Oral Argument) (HCN S. Ct., Nov. 22, 2013).*

*Oral Argument* in this matter was originally scheduled for December 23, 2013. However, due to holiday travel, counsel for both parties submitted a motion for a continuance. Therefore, the Court granted the joint motion.

*Money Centers of America, Inc. and MCA OF Wisconsin, Inc. v. Ho-Chunk Nation, SU 13-07 Judgment (Accepting Appeal & Scheduling Order; Denying Appeal) (HCN S. Ct., Oct. 16, 2013).*

The Court accepted the matter for appeal with respect to the *Notice of Appeal* filed by appellants Money Center of America and MCA. The Court denied the matter for appeal with respect to the *Notice of Appeal* filed by Appellee Ho-Chunk Nation.

*Jeremy P. Rockman v. Ho-Chunk Nation Election Board, SU 13-09 Order Denying Appeal (HCN S. Ct., Dec. 26, 2013).*

The Supreme Court denied the appeal, as it was not filed within 60 calendar days as required by the *HCN Rules of Appellate Procedure*.



## JUVENILE CASES

ALL JUVENILE CASE DECISIONS SHALL REMAIN CONFIDENTIAL. ZERO (0) ORDERS WERE ISSUED BY THE SUPREME COURT FROM FEBRUARY 1, 2013 TO DECEMBER 31, 2013





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

**Supreme Court** – Mary Jo B. Hunter, Chief Justice  
Todd R. Matha, Associate Justice  
Tricia Zunker, Associate Justice

**Traditional Court** – Earl E. Blackdeer  
Wayne Falcon  
Dennis Funmaker, Sr.  
Cecil R. Garvin  
Conroy Greendeer  
Roy C. Greengrass  
Thomas Hopinkah  
Richard Mann  
**Desmond Mike\***  
Preston L. Thompson, Jr.  
Andrew Thundercloud  
Morgan WhiteEagle  
Clayton D. Winneshiek

\*The Court notes the community lost this valuable member of the Traditional Court this year.

**Trial Court** – Jo Deen B. Lowe, Chief Judge  
Amanda L. (Rockman) WhiteEagle, Associate Judge  
Clerk of Court – Mary Thunder

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

<i>Complain t</i> .....	\$50.00
<i>Petition for Release of Per Capita Distribution (Children’s Trust Fund)</i> .....	\$50.00
<i>Motion to Appear Pro Hac Vice</i> .....	\$35.00
Appellate Filing Fee .....	\$50.00
<i>Judgment/Order</i> .....	\$20.00
Marriage License Fee.....	\$50.00

Court Fees

Copying .....	\$0.10/page
Faxing .....	\$.25/page (sending & receiving)
CD of Hearings .....	\$12.50/CD
Deposition Videotape .....	\$10.00/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).