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**IN THE  
HO-CHUNK NATION TRIAL COURT**

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**In the Interest of Minor Child:**

**C.T.L., DOB 01/16/84,  
by Katherine R. Littlejohn,**  
Plaintiff,

v.

**Ho-Chunk Nation Office of Tribal Enrollment,**  
Defendant.

Case No.: **CV 01-81**

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**ORDER  
(Petition Granted)**

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**INTRODUCTION**

This case concerns whether a parent can access monies on behalf of the minor child, C.T.L., DOB 01/16/84, from the Children=s Trust Fund [hereinafter CTF] to pay for documented costs associated with the retainer of a public defender in accordance with Wis. Stat. 9 977.075. The Court employs the standard enunciated in the AMENDED AND RESTATED PERCAPITA DISTRIBUTION ORDINANCE [hereinafter PER CAPITA ORDINANCE] 9 6.01(b) to assess the merit of the parent=s request. The Court grants the release of funds based upon the below reasoning.

**PROCEDURAL HISTORY**

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The plaintiff, Katherine R. Littlejohn, initiated the current action by filing a *Petition for the Release of Per Capita Distribution* with the Court on July 13, 2001. Consequently, the Court issued a *Summons* accompanied by the above-mentioned *Petition* on July 13, 2001, and delivered the documents to the defendant, Ho-Chunk Nation Office of Tribal Enrollment. The *Summons* informed the defendant of the right to file an *Answer* within twenty (20) days of the issuance of the *Summons* pursuant to the *Ho-Chunk Nation Rules of Civil Procedure* [hereinafter *HCNR Civ. P.*], Rule 5(B). The *Summons* also cautioned the defendant that a *default judgment* could result from failure to file within the prescribed time period. The defendant, by and through Ho-Chunk Nation Department of Justice Attorney Leslie Parker Cohan, filed a timely *Answer* on July 19, 2001, asking that the Court hold an expedited *Fact-Finding Hearing* to allow the plaintiff to bring additional documentation. The following parties appeared at the July 20, 2001 *Fact Finding Hearing*: Attorney Leslie Parker Cohan for the Ho-Chunk Nation Office of Tribal Enrollment; Sue Thompson, legal secretary; and Katherine R. Littlejohn, plaintiff.

**APPLICABLE LAW**

**HO-CHUNK RULES OF CIVIL PROCEDURE**

**Rule 5. Notice of Service of Process**

(B) *Summons*. The *Summons* is the official notice to the party informing him/her that he/she is identified as a party to an action or is being sued, that an *Answer* is due in twenty (20) calendar days (*See, HCN. R. Civ. P. 6*) and that a *Default Judgement* may be entered against them if they do not file an *Answer* in the limited time. It shall also include the name and location of the Court, the case number, and the names of the parties. The *Summons* shall be issued by the Clerk of Court and shall be served with a copy of the filed complaint attached.

1 Rule 58. Amendment to or Relief from Judgement or Order

2 (A) Relief from Judgement. A *Motion to Amend* or for relief from judgement, including a request for a  
3 new trial shall be made within ten (10) calendar days of the filing of judgement. The *Motion* must be  
4 based on an error or irregularity which prevented a party from receiving a fair trial or a substantial legal  
error which affected the outcome of the action.

5 (B) Motion for Reconsideration. Upon motion of the Court or by motion of a party made not later than  
6 ten (10) calendar days after entry of judgement, the Court may amend its findings or conclusions or  
7 make additional findings or conclusions, amending the judgement accordingly. The motion may be  
8 made with a motion for a new trial. If the Court amends the judgement, the time for initiating an appeal  
9 commences upon entry of the amended judgement. If the Court denies a motion filed under this rule, the  
10 time for initiating an appeal from the judgement commences when the Court denies the motion on the  
11 record or when an order denying the motion is entered, whichever occurs first. If within thirty (30) days  
after the entry of judgement, the Court does not decide a motion under this Rule or the judge does not  
sign an order denying the motion, the motion is considered denied. The time for initiating an appeal  
from judgement commences in accordance with the Rules of Appellate Procedure.

12 (C) Erratum Order or Reissuance of Judgement. Clerical errors in a court record, including the  
13 *Judgement* or *Order*, may be corrected by the Court at any time.

14 (D) Grounds for Relief. The Court may grant relief from judgements or orders on motion of a party  
15 made within a reasonable time for the following reasons: (1) newly discovered evidence which could not  
16 reasonably have been discovered in time to request a new trial; or (2) fraud, misrepresentation or serious  
17 misconduct of another party to the action; or (3) good cause if the requesting party was not personally  
served in accordance with Rule 5(c)(1)(a) or (b); did not have proper service and did not appear in the  
action; or (4) the judgement has been satisfied, released, discharged or is without effect due to a  
judgement earlier in time.

18 Rule 61. Appeals.

19 Any *final Judgement* or *Order* of the Trial Court may be appealed to the Ho-Chunk Nation Supreme  
20 Court. The *Appeal* must comply with the Ho-Chunk Nation *Rules of Appellate Procedure*, specifically  
*Rules of Appellate Procedure*, Rule 7, Right of Appeal. All subsequent actions of a *final Judgement* or  
21 Trial Court *Order* must follow the HCN *Rules of Appellate Procedure*.

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25 HCN AMENDED AND RESTATED PER CAPITA DISTRIBUTION ORDINANCE

26 Section 6.01. Minors and Other Legal Incompetents

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- 1 (a) The interests of minors and other legally incompetent Members, otherwise entitled to receive per  
2 capita payments, shall, in lieu of payment to such minor or incompetent Member, be disbursed to a  
3 Children's Trust Fund which shall establish a formal irrevocable legal structure for such CTF's  
4 approved by the Nation's Legislature as soon after passage of this Ordinance as shall be practical,  
5 with any amounts currently held by the Nation for passage for the benefit of minor or legally  
6 incompetent Members, and all additions thereto pending approval and establishment of such formal  
7 irrevocable structure, to be held in an account for the benefit of each such Member-beneficiary  
8 under the supervision of the Trial Court of the Nation. Trust assets of such CTF's shall be invested  
9 in a reasonable and prudent manner which protects the principal and seeks reasonable return. The  
10 trust assets of each such account maintained for a minor shall be disbursed to the Member-  
11 beneficiary thereof upon the earlier of (i) said Member-beneficiary meeting the dual criteria of (a)  
12 reaching the age of eighteen (18) and (b) producing evidence of personal acquisition of a high  
13 school diploma [to the] department (HSED, GED or any similar substitute shall not be acceptable),  
14 or (ii) the Member reaches the age of twenty-five (25); provided that this provision shall not operate  
15 to compel disbursement of funds to Members legally determined to be incompetent. In the event a  
16 Member, upon reaching the age of eighteen (18) does not produce proof of personal acquisition of a  
17 high school diploma, such Member's per capita funds shall be retained in the CTF account , any and  
18 all per capita distributions payable to said Member after reaching age 18 will be added to such fund  
19 and not paid to the Member and the CTF account and shall be held on the same terms and conditions  
20 applied during the Member-beneficiary's minority until the earliest to occur of (x) the Member  
21 produces the required diploma; (y) the Member reaches the age of twenty-five (25); or, (z) the  
22 Member is deceased.
- 23 (b) Funds in the CTF of a minor or legally incompetent member may be available for the benefit of a  
24 beneficiary's health, education and welfare when the needs of such person are not being met from  
25 other Tribal funds or other state or federal public entitlement program, and upon a finding of special  
26 need by the Ho-Chunk Nation Trial Court. In order to request such funds, (1) a written request must  
27 be submitted to the Nation's Trial Court by the beneficiary's parent or legal guardian detailing the  
28 purpose and needs for such funds; and, (2) the parent or legal guardian shall maintain records and  
account to the Trial Court in sufficient detail to demonstrate that the funds disbursed were expended  
as required by this Ordinance and any applicable federal law; and, (3) any other standards,  
procedures and conditions that may be subsequently adopted by the Legislature consistent with any  
applicable federal law shall be met.

## FINDINGS OF FACT

1. C.T.L., DOB 01/16/84, is an enrolled member of the Ho-Chunk Nation, Tribal ID#

1 439A003967.

2 2. C.T.L., DOB 01/16/84, has been charged with intentional first degree homicide in La Crosse  
3 County, Wisconsin.

4 3. Wis. Stat. § 977.075 requires payment for legal representation through the state Public Defender.

5 4. Attorney Timothy Guth has agreed to undertake the representation of C.T.L., DOB 01/16/84, in  
6 accordance with Wis. Stat. § 977.08 (Public Defender can “delegate legal representation of any  
7 person to any member of the state bar of Wisconsin”).

9 5. Chapter PD 6 of the Administrative Code sets forth the fees for such representation. The  
10 prepayment option for first degree intentional homicide is \$5000.00. Only \$500.00 will be  
11 charged if this amount is paid within thirty (30) days of appointment of counsel. If this amount  
12 is not prepaid, the maximum fee is \$7,500.00.

14 6. The Court has previously held that the payment for legal counsel is not analogous to the inherent  
15 parental obligation to provide food, clothing, shelter, and like necessities. *See In the Interest of*  
16 *Minor Child: C.J.W., DOB 01/03/84, by Anne Johnson v. Ho-Chunk Nation Office of Tribal*  
17 *Enrollment*, CV 99-68 (HCN Tr. Ct., Oct. 8, 1999) at 7.

19 7. The parties know of no other state, federal, or tribal program that could be utilized to prepay for  
20 this legal representation.

21 8. As of June 2001, C.T.L., DOB 01/16/84, had an amount of \$49,992.41 deposited in the CTF  
22 account.

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24 **DECISION**

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26 The plaintiff presents the Court with a case concerning the purported health and welfare interests  
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1 of a minor child. The Court must analyze the presented facts and request under the standard enunciated  
2 in PER CAPITA ORDINANCE § 6.01 (b) and further elucidated in *In the Interest of Minor Child: S.D.S.,*  
3 *DOB 04/25/83, by Michelle R. DeCora v. Ho-Chunk Nation Office of Tribal Enrollment*, CV 00-35  
4 (HCN Tr. Ct., May 4, 2000) at 6. The Court is obligated to scrutinize each *Petition for the Release of*  
5 *Per Capita Distribution* as it relates to minor children under the following standard:  
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7 First, the Court may only grant a release for the benefit of a beneficiary's  
8 health, education or welfare. PER CAPITA DISTRIBUTION ORDINANCE § 6.01  
9 (b). Second, any such benefit must represent a [need], and not a want or  
10 desire. *Id.* Third, the parent(s) or guardian(s) must demonstrate special  
11 financial need. *Id.* Finally, the plaintiff must provide evidence of exhaustion  
12 of tribal funds and public entitlement programs. *Id.*

11 *DeCora v. Ho-Chunk Nation Office of Tribal Enrollment*, CV 00-35 (HCN Tr. Ct., May 4, 2000) at 6.

12 The Court dispenses with discussion of the third and fourth factors as the *Findings of Fact*  
13 clearly support affirmative responses. The Court finds that the prepayment of legal fees for a Public  
14 Defender will certainly benefit the health and welfare of the minor child given the gravity of the charge,  
15 and the fact that such prepayment will result in saving the minor child \$7,000.00. Furthermore, the  
16 Court finds that this request in no way represents a want or a desire.

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18 **BASED UPON THE FOREGOING**, the Court authorizes Old Kent Bank to release a check in  
19 the amount of \$500.00 from the CTF account of C.T.L., DOB 01/16/84, made payable to the Wisconsin  
20 Public Defenders Office at P.O. Box 7923, Madison, WI 53703-7923. **The above check shall**  
21 **specifically state:** “for Colin Todd Littlejohn, Social Security number 391 92 3260, DOB January 16,  
22 1984.”  
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24 The Court directs the plaintiff, Katherine R. Littlejohn, to “maintain records sufficient to  
25 demonstrate that the funds disbursed were expended as required by [the PER CAPITA DISTRIBUTION  
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1 ORDINANCE] and any applicable Federal law."” PER CAPITA DISTRIBUTION ORDINANCE   6.01(b). The  
2 plaintiff shall submit a financial report to the Court within two (2) months after receipt of the  
3 disbursement. The report shall include copies of all bills, receipts and other relevant documentation,  
4 corroborating the proper expenditure of the authorized funds. Failure to do so may subject the plaintiff  
5 to the contempt powers of the Court pursuant to the HO-CHUNK NATION CONTEMPT ORDINANCE, HCC  
6 98-004.  
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8 The parties retain the right to file a timely post judgment motion with this Court in accordance  
9 with *HCN R. Civ. P. 58, Amendment to or Relief from Judgement or Order*. Otherwise, “[a]ny *final*  
10 *Judgement or Order* of the Trial Court may be appealed to the Ho-Chunk Nation Supreme Court.<sup>1</sup> The  
11 *Appeal* must comply with the Ho-Chunk Nation *Rules of Appellate Procedure* [hereinafter *HCN R. App.*  
12 *P.*], specifically [*HCN R. App. P.*], Rule 7, Right of Appeal.” *HCN R. Civ. P. 61*. The appellant “shall  
13 within thirty (30) calendar days after the day such judgment or order was rendered, file with the  
14 [Supreme Court] Clerk of Court, a Notice of Appeal from such judgment or order, together with a filing  
15 fee of thirty-five dollars (\$35 U.S.)” *HCN R. App. P. 7(b)(1)*. “All subsequent actions of a *final*  
16 *Judgement* or Trial Court *Order* must follow the [*HCN R. App. P.*].” *HCN R. Civ. P. 61*.  
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19 **IT IS SO ORDERED** this 23rd day of July, 2001 at the Ho-Chunk Nation Trial Court in Black  
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21 <sup>1</sup> The Supreme Court earlier emphasized that it “is not bound by the federal or state laws as to standards of review.” *Louella*  
22 *A. Kelty v. Jonette Pettibone and Ann Winneshiek, in their official capacities*, SU 99-02 (HCN S. Ct., Sept. 24, 1999) at 2.  
23 The Supreme Court, therefore, has voluntarily adopted an abuse of discretion standard “to determine if an error of law was  
24 made by the lower court.” *Daniel Youngthunder, Sr. v. Jonette Pettibone, Ann Winneshiek, Ona Garvin, Rainbow Casino*  
25 *Mgmt.*, SU 00-05 (HCN S. Ct., July 28, 2000) at 2; *see also Coalition for a Fair Gov’t II v. Chloris A. Lowe, Jr. and*  
26 *Kathyleen Lone Tree-Whiterabbit*, SU 96-02 (HCN S. Ct., July 1, 1996) at 7-8; and *JoAnn Jones v. Ho-Chunk Nation*  
27 *Election Bd. and Chloris Lowe*, CV 95-05 (HCN S. Ct., Aug. 15, 1995) at 3. The Supreme Court accepted the following  
28 definition of abuse of discretion: “any unreasonable, unconscionable and arbitrary action taken without proper consideration  
of facts and law pertaining to the matter submitted.” *Youngthunder, Sr.*, SU 00-05 at 2 *quoting* BLACK’S LAW DICTIONARY  
11 (6th ed. 1990). Regarding findings of fact, the Supreme Court has required an appellant to “demonstrate[ ] clear error with  
respect to the factual findings of the trial court.” *Coalition II*, SU 96-02 at 8; *but see Anna Rae Funmaker v. Kathryn*  
*Doornbos*, SU 96-12 (HCN S. Ct., Mar. 25, 1997) at 1-2

1 River Falls, Wisconsin from within the sovereign lands of the Ho-Chunk Nation.

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Hon. Todd R. Matha  
HCN Associate Trial Judge

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