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**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

**O**n 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*.

**T**he 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

**T**his 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

**T**he 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.

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## 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*.

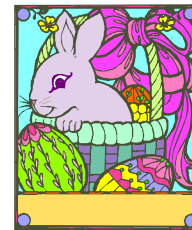
*State of Wisconsin/Jackson County v. Donald M. Cholka*, CS 05-01 *Default Judgment (Enforcing Child Support)* (HCN Tr. Ct., Feb. 2, 2005). (Bossman, W).

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; & Mollie 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.



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## 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)*



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# 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>

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- 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.

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- 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.

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- 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

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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.

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- 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.

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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.

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- 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

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Adopted this 25<sup>th</sup> day of May 1997.