TRIBAL COURT DECISIONS
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Child Custody

In re the Guardianship of K.W.B., 33 INDIAN L. REP. 6043 (Colville Reservation Tribal Court, 2006).

After the unexpected death of their daughter, Petitioners filed a guardianship petition for their minor granddaughter. The order was granted and at a show cause hearing in June of 2003 the court determined that it was in the best interest of the child to remain with her grandparents. On appeal of whether the maternal grandparents are guardians of the child the court stated "[t]his issue raises sub-issues of jurisdiction, best interest of the minor including fitness of her father, Colville Culture and Tradition and removal of [minor child] from the Colville Reservation."

The Tribal Court, Abbott, J., held that: (1) the respondent had substantial ties to the Colville Reservation and thus there is proper personal jurisdiction and subject matter jurisdiction; (2) "According to the [applicable tribal code], best interest of the child is the proper and correct standard in determining this case." Additionally the court determined that while the guardianship provision of the CTC do not explicitly state that parental fitness should be considered, "lack of parental fitness would make a party 'unable to serve' within the meaning of [the CTC]." Therefore, "the Court finds that one of the central issues in determining best interests of a child is parental fitness."(3) The Court finds that Colville traditions and cultures have the same weight as state law and are given preferences over state law and federal law. (4) Colville culture and tradition can, in some circumstances, overrule a parent's desire for relocation of a child. Based on the above findings the Court dismissed the guardianship petition and awarded custody of the child to her father.

In re the Welfare of D.H., 33 INDIAN L. REP. 6072 (Colville Reservation Children's Ct., 2006).

At issue in this case was whether the Court should grant the Tribal Children and Family Services' (CFS) petition for temporary custody of D.H. The Tribal Code required a hearing, upon such petition, to determine if "continued detention or shelter care is necessary pending further proceedings." At the time of the petition, D.H. was missing and not in the physical custody of CFS. The Court held that the Code's use of the word "continued" implied that the child must already be in the care of CFS at the time such a petition is made, in order for the petition to be granted. Since D.H. was not in the

custody of CFS at the time the petition was made, the Court dismissed the case without prejudice.

***Zuni v. Chinle Family Court,* SC-CV-63-06 (Supreme Court of the Navajo Nation, Jan. 12, 2007)(available at www.navajocourts.org).**

The Court vacated all orders from the Chinle Family Court (Family Court) in a child custody suit arising under ICWA, when the Family court did not adhere to relevant provisions of the Navajo Children's Code Rules of Procedure (Rules). The Court explains that before a custody proceeding may be transferred from state court to tribal court under ICWA, the Family Court, according to the Rules, must take several steps before accepting jurisdiction, including providing "notice of [the] jurisdictional hearing ad opportunity for a foster parent to be heard at that hearing." Moreover, notice and participation must be afforded regardless of whether the foster parent it is appointed by the state court or by a Navajo Court; failure to do so, is not mere 'harmless error' as the Family Court alleges, as the foster parent is a party to the proceeding under the Rules.

Child Support

***Haukaas v. Nakai*,CS 99-66 (Ho-Chunk Nation Trial Court, Oct. 12, 2006)(available at www.ho-chunknation.com).**

The Court granted petitioners request and so ordered the department of Treasury cease withholding child support payments from Respondent's per capita disbursements, when the minor children in question now live with Respondent.

***Breit v. White,* CS 98-02 (Ho-Chunk Nation Supreme Court ,Dec. 15, 2006)(available at www.ho-chunknation.com).**

The Court ordered the cessation of child support withholdings from the respondent's per capita disbursements when the minor child had reached the age of eighteen.

***Cramer v. Greene*, No. CV-05-0135, 33 INDIAN L. REP. 6021 (Mohegan Tribal Court, Nov. 1, 2005).**

The Court ordered the Tribe to withhold child support arrearage in the amount of $791.35 from the respondent's per capita distribution benefits and to distribute this amount to the Plaintiff.

***Two Crow v. Harrison*, No. CV 97-153 (Ho-Chunk Nation Trial Court 2006) (available at www.ho-chunknation.com).**

Order notifying parties that respondent's obligation for child support will cease when that child turns 18, unless the child is enrolled in High School or its equivalent. Proof of

enrollment is required. If the Court does not receive such proof, the Court will no longer withhold the child support for the child.

***Seidel v. Mohegan Tribe of Indians of Connecticut,* 33 INDIAN L. REP. 6028 (Mohegan Tribal Court, 2006).**

The Court denied a petition for distribution of funds from a minor child's trust account, as established with per capita payments pursuant to the Gaming Avenue Allocation plain. "An Indian tribe which makes per capita payments to its members from class II net gaming revenues is required to have an approved tribal revenue allocation plan." 25 U.S.C. § 2710(b). The Court found that M.T.O. 2001-08, "providing for the future welfare of minor tribal members, while encouraging tribal members to pay for the immediate living needs of their children," is such a plan, requiring that trust funds may be disbursed prior to the child reaching the age of majority, but only when extraordinary circumstances and necessity is established by a preponderance of the evidence. The Court decided that where the two-income household's resources were ample and necessity beyond a reasonable doubt had not been shown, a distribution to pay private school tuition would not be ordered.

***In re Taylor and Topanga Tantaquidegon,* 33 INDIAN L. REP. 6090 (Mohegan Tribal Court, 2006).**

The Court denied petitioner's request for a loan totaling $38,785 from the trust finds of his two minor children. Petitioner claimed that the money would be repaid and was needed to ensure the childrens' overall welfare, which he alleged should be assessed in terms of the financial needs of the entire household. Uses for the money included purchasing a family vehicle, paying for the repair of another vehicle, repaying numerous debts and bills associated with the household and its members, and paying pre-school tuition for the two mentioned minor children. The Court ordered that only $1,785 be distributed from the trust, to be applied to the preschool tuition, as this is the only expense "being incurred for the education and welfare of the two minor children and because their parents have limited financial resources."

***In re Ariana Cloutier,* 33 INDIAN L. REP. 6104 (Mohegan Tribal Court, 2006).**

The Court ordered distribution of per capita funds from Tribal member/minor child's, trust when the Tribe, a party, filed an Answer in support. Though generally not allowed, as per capita benefits, provided by the Gaming Revenue Allocation Plan, MTC §§ 2-181-2-187, and paid into trust accounts for safekeeping, are expressly designated to "provi[de] for the future welfare of [the Tribe's] minor members," the Court granted an exception, pursuant to M.T.C. § 2-181, which allows for distributions from a minor child's trust, before the age of 18, where there is an "exceptional limited extraordinary circumstance." Such a circumstance is one where it is necessary that the funds be provided when "necessary to defray expenses for health, education or welfare." Petitioner, the child's mother, seeks a distribution in the amount of $45,000 to pay for modifications to the

family home to accommodate the child's disabilities resulting from a neuromuscular disorder. Petition granted in the amount of $35,000.

Contracts

***Mashantucket Pequot Tribal Nation v. Daniel Koury Construction, Inc.*, No. MPTC-CV-GC-2004-148, 34 Indian L. Rep. 6009 (Mashantucket Pequot Tribal Court, Nov. 15, 2006).**

The Court found there was an issue of material fact in an action on a construction contract.

***Mashantucket Pequot Tribal Nation v. Daniel Koury Construction, Inc.*, No. MPTC-CV-GC-2004-148, 34 Indian L. Rep. 6009 (Mashantucket Pequot Tribal Court, Nov. 15, 2006).**

The Court adopted the procedures of Connecticut's General Statutes as tribal law. It directed the court's clerk to schedule a probable cause hearing on the Nation's application for prejudgment remedy in an action arising out of a construction contract.

Civil Procedure

***The Loyal Shawnee Cultural Center, Inc. v. Peace Pipe, Inc*., No. 2006-06 (Supreme Court of the Cherokee Nation, 2006)(available at www.cherokeecourts.org).**

Review of trial court's denial of Defendant/Appellant's motion requesting the Court to issue an order compelling Plaintiff/Appellee to join the Shawnee Tribe of Indians as a necessary party pursuant to Rule 19 of the Federal Rules of Civil Procedure. Acknowledging the two-tier test of rule 19, the Court upholded the trial court's exercise of discretion in determining that the Tribe was a necessary, but not an indispensable party under the rule. Denial of motion affirmed.

***Ho-Chunk Nation v. Bank of America,* No. CV 02-93 (Ho-Chunk Tribal Court, 2006)(available at www.ho-chunknation.com).**

After being granted a continuance, Plaintiff did not maintain adequate and regular correspondence with the court. The court reiterated "the principal that a plaintiff maintains the burden to prosecute its case." Subsequently, the present order issued requiring Plaintiff to file status updates at six-month intervals pursuant to Ho-Chunk Nation Rules of Civil Procedure 56(c).

***Dallas White Wing v. Wade Blackdeer, in his official capacity as its Vice President, and Mary Ellen Dumas, in her official capacity as Chair of the Election Board* (Ho-Chunk Nation Tribal Court, 2006) (available at www.ho-chunknation.com).**

Default judgment for Declaratory Relief awarded in favor of Plaintiffs where Defendants failed to file an Answer to the initial Complaint.

***Garvin v. Ho-Chunk Nation Election Board*, SU 05-11 (Ho-Chunk Nation Supreme Court, 2006) (available at www.ho-chunknation.com).**

Appellant requests the Court to dismiss the appeal based on the fact that the lower court granted her request for a preliminary injunction in the underlying case. *Garvin v. Ho-Chunk Nation Election Board*, CV 05-90.

The Supreme Court granted appellants request for a dismissal on the basis that the appeal was an interlocutory appeal and the appellant obtained the relief that was requested.

***Tso v. Navajo Housing Authority*, No. SC-CV-20-06 (Supreme Court of the Navajo Nation, 2006) (available at www.NavajoCourts.org.**

This case concerned the Navajo Rules of Civil Appellate Procedure and whether an appellant has an affirmative duty to notify the Navajo Nation Supreme Court that it does not intend to file a transcript of lower court proceedings because it believes that the transcript is not necessary to resolve the appeal. The Navajo Nation Supreme Court answered the question in the affirmative, holding that such notice is necessary to avoid confusion and to ensure that appellants fulfill their responsibilities. The court added that, absent the filing of such notice, it will dismiss the appeal.

***Thompson v. Yazzie*, No. SC-CV-21-06 (Supreme Court of the Navajo Nation, 2006)(available at www.NavajoCourts.org)**.

At issue in this case was whether an appellant is required to file a request for an extension of time to file a transcript with the Supreme Court when the lower tribunal does not rule on his extension request within the thirty day time period set forth in Rule 9(a)(2) of the Navajo Rules of Civil Appellate Procedure. The Court held that, since the rule was silent as to such a situation, the failure of a trial court to respond to a request for an extension will be treated as an automatic grant of a fifteen day extension.

***Green Tree Servicing, L.L.C. v. Duncan*, No. SC-CV-46-05 (Supreme Court of the Navajo Nation, 2006) (available at www.versuslaw.com)**.

An order from the Court requesting the parties file supplements briefs, and inviting interested parties to file amicus briefs, on the issue of whether the arbitration clause of the contract being disputed is valid under Navajo Public policy. The Court, after considering all the briefs will then issue an opinion on the matter.

***Yazzie v. Tooh Dineh Industries*, No. SC-CV-67-05 (Supreme Court of the Navajo Nation, 2006) (available at www.NavajoCourts.org)**.

The issue in this case was whether the doctrine of equitable tolling should prevent an employee from filing a complaint against his employer beyond the time set out in the Navajo Preference in Employment Act (NPEA). The Court held that the Navajo Labor Commission did not conduct a thorough analysis to determine that equitable tolling should not apply to Yazzie's failure to satisfy the NPEA's statute of limitations. As part of its holding, the Court determined that the Commission abused its discretion by failing to conduct a proper equitable tolling analysis, as previously instructed by the Court.

***Pearsall v. Tribal Council for the Confederated Tribes of the Grand Rhonde Community of Oregon,* et al., No. A-04-07-002, 33 INDIAN L. REP. 6023 (Confederated Tribes of the Grand Ronde Community of Oregon Court of Appeals, Dec. 5, 2005).**

The Court affirmed the trial court's dismissal of a claim as an unauthorized appeal under tribal law finding that the complainant had no right to judicial review of the hearing officer's decision. The Court further held the question of whether the Tribal Ethical Standards Ordinance was violated, in the Tribal Council's repeal of an ordinance, was an issue that the tribal court should abstain from hearing.

***CTEC Gaming Comm'n v. Mosqeuda,* 33 INDIAN L. REP. 6101 (Colville Reservation Court of Appeals 2006).**

The Court granted an interlocutory appeal reversing the trial judge's decision to deny an Affidavit of Prejudice and remanded for a more extensive inquiry into the facts and allegations surrounding the affidavit. Plaintiff filled a motion to recuse the trial judge, Judge Aycock, from an employee termination proceeding where the he previously heard an employment dispute between the same parties emanating from the same transactions and occurrences, based on the fact that "[i]nformation from the prior proceeding [would] come up in the fact-finding hearing in this case." The instant Court determined that the trial judge did not consider all of the evidence supporting the motion.

***High Elk v. Veit,* 05-008-A, 33 INDIAN L. REP. 6033 (Cheyenne River Sioux Tribal Court of Appeals, Jan. 5, 2006).**

The Court of Appeals granted an Order vacating the trial court's order that money owed to the present interlocutory appellants be paid into an escrow account. An upcoming trial on the merits creates "a substantial risk that resulting decision…will effectively moot the decision on the interlocutory issue before this Court."

***Garvin v. Ho-Chunk Election Board,* SU 05-11 (Ho-Chunk Nation Supreme Court, Mar. 8, 2006)(available at www.ho-chunknation.com).**

Te Court granted an order dismissing an interlocutory appeal where the appellant won a preliminary injunction granting the relief requested. However, the right to renew this appeal in the case of an unfavorable ruling at trial is preserved.

***Zacherle v. Colvillle Confederated Tribes*, AP06-0060, 33 INDIAN L. REP. 6071 (Confederated Tribes of the Colville Reservation Tribal Court, Jul. 31, 2006).**

The issue here is whether the Colville Court of Appeals Court Rules (COACR) violate the laws of the tribe and are thus invalid. Reversing a decision by the trial court, this Court held that they are both in compliance and valid. Moreover, the Colville Tribal Code establishes the Court of Appeals authority to make recommendations to the legislature for the "enactment or amendment of …Rules of Court…in the interests of improved judicial procedures." (CTC § 1-1-142). Here it is asserted that the Court Tribal Council, Judge, Colville Business Council and other officials were given copies of the proposed COACR with the "understanding that they would be adopted…unless there were objections or further comments by any of those given notice" (from the opinion). As with the U.S. federal court system, court rules that are properly submitted may be passively accepted where the Legislature does not object. Moreover, it is also within the Courts' authority to establish procedural rules concerning the "(1) time (2) place and (3) all other details of judicial procedure not prescribed by the regulations." (*Id.)*. Thus, it is further held that: (1) that the COACR are determinative in the calculation of 'time' by which an Appeal is timely filed; and (2) that "the trial court exceeded it jurisdiction in deciding whether an appeal below had been perfected" as this is an issue for the Court of Appeals to decide. Reversed and remanded.

***Ho-Chunk Nation Legislature v. Lewis*, CV 04-73 (Ho-Chunk Nation Trial Court, Nov. 6, 2006)(available at www.ho-chunknation.com).**

The parties previously resolved a legal conflict, leaving only the issue of legal fees to be determined by the Court; the terms of the agreement, as accepted by the Court in a *Stipulation and Order*, requires that a *Motion for Attorney's Fees (Motion)* be filed with the Court within two weeks. Defense counsel submitted the *Motion* within the two-week deadline, but "the faxed *Motion* lacked proof of service upon the other party, as required by the Ho-Chunk Nation Rules of Civil Procedure Rule 5b." (from the opinion). Court administration informed defense counsel of the oversight via a *Notice of Deficiency;* the error was corrected; and the *Motion* was properly filed. However, the filing occurred well after the two-week deadline had passed. The Court, however, holds that it will not "deprive the defendant of what may be rightfully his due to a procedural omission. (*Id.)*.

***Wilson v. Ho-Chunk Nation Dept. of Personnel*, CV 05-43 (Ho-Chunk Nation Trial Court Dec. 21, 2006)(available at www.ho-chunknation.com).**

In employment action, Plaintiff, a pro se litigant, failed to name necessary parties, specifically her supervisor and her employer, Ho-Chunk Casino, in the pleadings. Instead Plaintiff stated several causes of action against the unnamed parties in an attachment. On remand, the trial court finds that even though the Ho-Chunk Supreme Court "suggests a liberal construction of the rules [of procedure]," and has "declined to strictly enforce technical pleading and procedural requirements due with the motion process when dealing with pro se litigants," plaintiffs, at a minimum, are expected to at least give the names of each defendant in the pleadings to provide for adequate preparation of the defense. (from the opinion). Moreover, the trial court fears that Equal Protection

implications are raised when the Court treats pro se litigants with more leniency than those represented by counsel. Thus, the trial court again dismissed the action for failure to join a necessary part.

Criminal Law

***Colville Confederated Tribes v. Swan*, 33 INDIAN L. REP. 6065 (Confederated Tribes of the Colville Reservation Tribal Court, 2006).**

Defendant filed a motion to suppress. The Defendant argues that the search warrant that was issued in this case was defective because there was "insufficient evidence to conclude that the informant was credible and that [the informants] evidence was not credible."

The Court denied the Defendants motion to suppress stating that in analyzing the reliability of an informant the court should examine the totality of the circumstances. In this situation, "[l]ooking at the whole circumstances, the court found that there was probable cause to believe drugs would be found in the defendant's home.

***Colville Confederated Tribes v. R.Z.* 33 INDIAN L. REP. 6037 (Colville Reservation Court of Appeals, 2006).**

The Court denied a request by Defendant, charged with Sexual Exploitation of a Minor, for release without bail. Because of: (1) the gravity of the charges, (2) the factual disputes as to the extent of the Defendants prior criminal history, which according to police reports and records available to the court, consists of up to four previous felonies - including two in the past ten years, and (3) considering concerns about community safety where the Defendant has subsequently been charged with trespass on the property where the alleged victim resides, the Court explains that a release without bail is inappropriate where it "appears reasonably certain that the Defendant will pose a serious threat to the Reservation and its residents."

***Colville Confederated Tribes v. Marchand*, 33 INDIAN L. REP. 6036 (Colville Reservation Court of Appeals, 2006).**

In several consolidated cases, the Court refrained from issuing decisions centering around whether a domestic violence defendant's rights to confront his accuser is violated when the alleged victim, pursuant to the relevant portions of the Domestic Violence Code, chooses not to testify in open court, but rather to submit a sworn, out of court, oral or written statement at trial. The Court instead requested that "a panel of elders be formed to explain any traditions or customs to the court as they relate to a right to confront accusers."

***Navajo Nation v. Kelly*, No. SC-CV-04-05 (Supreme Court of the Navajo Nation, 2006) (available at www.NavajoCourts.org)**.

This case concerned the trial court's conviction of Kelly for "reckless driving" and "homicide by vehicle" stemming from the same incident. The question was whether there was sufficient evidence to support the conviction, and whether the conviction for both crimes, stemming from the same incident, violated the Navajo Nation's prohibition against double-jeopardy. The Court answered the first question in the affirmative. With regard to double-jeopardy, the Court stated that the Navajo Nation Bill of Rights must be analyzed with an understanding of traditional Diné approaches to dispute resolution. The Court went on to hold that the Navajo Council must clearly intend for separate offenses to punish separate conduct and resolve separate disputes; accordingly, the Court vacated Kelly's conviction for "reckless driving"

***Navajo Nation v. Badonie*, No. SC-CR-06-05 (Supreme Court of the Navajo Nation, 2006)(available at www.navajocourts.org).**

The Court vacated all three criminal convictions against Defendant stemming from a fatal collision where he was initially determined to have been intoxicated and at fault. The Court concluded that where the District Court violated Defendant's right to a speedy trial where after convicting Defendant on all charges, it took "nearly a year to make findings of fact and conclusions of law after a remand by the Supreme Court to make such findings and conclusions." During the one year interval: (1) Defendant repeatedly asserted his right to a speedy trial and the necessity for the completion of the record so that he might appeal his conviction; and (2) the Nation took judicial action, in the form of a writ of mandamus and supervisory control, to compel the District Court to move forward with the case. Moreover, the Court expressed the likelihood of prejudice against Defendant by the delay, when the accuracy of the District Court's ultimate findings and conclusions was disputed by both parties and was likely the result of the court's delay.

***Marchand v. Colville Confederated Tribes*, AP05-016, 33 INDIAN L. REP. 6065 (Confederated Tribes of the Colville Reservation Court of Appeals, Apr. 6, 2006).**

An interlocutory appeal is denied. A prosecutor withdrew an initial plea agreement offer, after learning new and relevant information concerning the defendant's actions, where he was charged with Battery, Assault and Reckless Endangerment. The court reviewed de novo the defendant's assertion that the trial court erred by denying the defendant's request that an Elder's Panel determine whether the prosecutor is a tribal leader or chief, who according to Colville tradition must "follow through on what she has offered." (from the opinion). The Court reasoned that the role of Elder's Panel does not extend to deciding key facts in a case. The Court further held that a Prosecutor can withdraw the plea agreement offer before such an offer is accepted and entered on the record by the defendant and court, respectively, and where "the defendant had not detrimentally relied on the offer." *(Id.*) The appeal was dismissed, and the case remanded to the trial court.

Criminal Procedure

***Gambrell v. Colville Confederated Tribes*, No. AP-06-007, 334 INDIAN L. REP. 6004 (Confederated Tribes of the Colville Reservation Court of Appeals, Dec. 5, 2006).**

The Supreme Court of the United State's ruling in the *Miranda v. Arizona*, 384 U.S. 436 (1966), did not apply to the actions of tribal law enforcement officers while executing a search warrant.

***Buckman v. Colville Confederated Tribes*, No. AP05-004, 34 INDIAN L. REP. 6002 (Confederated Tribes of the Colville Reservation Court of Appeals, Dec. 14, 2006).**

The Court affirmed in part the judgment and sentence entered by the trial court following a jury trial in which the appellant was found guilty of aggravated assault and battery but vacated the terms of the judgment and sentence. The trial court did not err in giving a jury instruction for self-defense, which included the proper requirement that the Tribes bear the burden of proving a lack of self-defense beyond a reasonable doubt.

Election Law

***Whitewing v. Ho-Chunk Nation General Council, et al.*, No. SU-05-10 (Ho-Chunk Nation Supreme Court, Nov. 10, 2005).**

Plaintiff brought a challenge as to what procedures were applicable in a recall of a legislator by the HCN General Council and that the procedures were defective. In an appeal of an order denying a preliminary injunction, the Court remanded to the trial court to conduct a fact finding hearing on issues related to voting at the General Council on specific resolutions including whether a special recall election should be a district-only election or a tribal-wide election, and further requested that the Ho-Chunk legislature immediately appoint a Justice pro tempore to replace the Chief Justice in consideration of any appeal that may be filed after the remand.

***In re Recall Petition Challenge by Morgan*, No. SC-CV-11-06 (Navajo 2006).**

The Court determined that Morgan, an elected official, did not meet the burden of proof mandated by N.N.C. § 24(F) requiring that an official challenging a recall petition present "clear and convincing evidence that the petition was insufficient." The Court rejected the contention that the Office of Hearing and Appeals had an affirmative duty to investigate the petition for alleged frauds and improprieties where the burden of proof lies with the elected official. Thus, given that Morgan failed to present sufficient evidence supporting allegations that fraud and coercion were used to obtain fifteen signatures, the Court affirmed the lower court's decision that the petition was valid.

***Lewis v. Ho-Chunk Nation Election Board*, CV 06-109 (Ho-Chunk Nation Trial Court, Dec. 5, 2006)(available at www.ho-chunknation.com).**

The Court granted a *Preliminary Injunction* to prevent Defendants from further acting upon a resolution, whereby Plaintiff, former president of the Ho-Chunk Nation, was removed from office based on allegations of malfeasance in the negotiations of a contract on the Nation's behalf. The Court applied a four-part test that ensures that no other remedy is available, weighed the 'balance of harms,' considered the plaintiff's chance for success and considers whether public interest will be served in granting the injunction. Defendants conceded that no other remedy is available, while the Court determined that that other three factors clearly show the balance of harms tipping in the Plaintiff's favor and that there is sufficient evidence to suggest that Plaintiff would prevail on the merits.

***In the Matter of the Appeal of Vern Lee,* No. SC-CV-32-06 (Navajo 2006)(available at www.NavajoCourts.org)**.

At issue in the case was whether a candidate for Navajo Nation President, who did not reside and was not continuously present within the territorial jurisdiction of the Navajo Nation for the three years preceding 2006, was properly disqualified from appearing on the ballot. The Court held that the residency and presence requirements conflicted with the fundamental rights of voters and candidates, and that if the candidate did not meet the needs of the citizens of the Navajo Nation, those citizens could choose to not vote for such a candidate. The Court struck down the requirements.

***Jacobsen v. Eastern Band of Cherokee Indians,* No. CV-05-101 (Eastern Band of Cherokee Indians Court, Nov. 18, 2005).**

The court granted the defendant tribe's motion for summary judgment in a challenge to the absentee voting provisions of tribal law. Plaintiff challenged tribal law which required members to be physically present on the reservation to vote, absent six exceptions, which essentially were for good cause.

Due Process

***Finley v. CTSC,* 8 CCAR 38, 33 INDIAN L. REP. 6038 (Colville Reservation Court of Appeals, 2006).**

This court held that a lower court erroneously denied Appellant Finley due process of law when it was determined that as seasonal employee on probationary status, he wasn't allowed to appeal his termination to the tribal Administrative Court. The court concluded that even though he was a seasonal employee, Appellant Finley had a "reasonable expectation of continued employment – a protected property right," where he was given increasing responsibilities, accrued benefits, positive performance evaluations and prompt recalls after lay-offs. Moreover, the court determined that the relevant Manual defining employee status was "confusing and ambiguous" and as such, must be construed against the drafter. The order denying appeal was reversed, and the case remanded to the Administrative court for a hearing.

***Seaton v. Greyeyes*, No. SC-CV-04-06 (The Supreme Court of Navajo Nation, 2006) (available at www.NavajoCourts.org).**

Plaintiff was arrested on a charge of incest. The District Court continued the case seven times and issued a temporary commitment order with the intention of keeping the Plaintiff incarcerated until the next hearing. The Plaintiff petitioned the court for a habeas corpus alleging violations of his due process rights and the right to a speedy trial.

The Supreme Court, Yazzie, J., held that (1) the District Court's order to continue the defendants detention based on the serious nature of the allegation against him is a violation of his due process, and the "mere seriousness of the alleged offense, does not, by itself, justify continued detention." (2) The District Court violated the defendant's right to a speedy trial. Plaintiffs Motion granted.

Employment

***McCallister v. Spirit Mountain Gaming, Inc*., No. C-05-07-001, 33 INDIAN L. REP. 6057 (Confederated Tribes of the Grand Ronde Community Tribal Court, 2006).**

Plaintiff was an employee of the Defendant, Spirit Mountain Gaming. After being terminated from her position she filed a claim in Tribal Court asserting eight separate claims for relief. Defendant filed a motion to dismiss based on lack of subject matter jurisdiction and failure to state a claim for which relief can be granted.

The Tribal Court, Goodman, C.J., held that: (1) the Court lacks subject matter jurisdiction to hear this claim based on precedent of this Court which held that the Plaintiff is barred by the Employment Action Review Ordinance from bringing claims under the Tribal Tort Claims Ordinance for alleged torts suffered during the course of employment; (2) the Tribal Court lacks subject matter jurisdiction to hear a tort claim between two individuals based on the alternative holding in Kimsey v. Reibach; (3) Tort claim dismissed based on the alternative holding in Kimsey v. Reibach; (4) Plaintiffs contract claim is dismissed because the allegation is related to the "terms and conditions of employment, and [] the 'exclusive' remedy for such claims is the Ordinance." (5) Plaintiff's breach of privacy claim is dismissed for the same reason that the first and fourth claims were dismissed. The Ordinance is the exclusive avenue for claims relating to the terms and conditions of her employment; (6) Plaintiff's claim that the Torts Claim Notice is unlawful is dismissed; (7) Defendant's motion to dismiss Plaintiff's claim is denied. Plaintiff's assertion that the Employment Action Ordinance notice provision is unlawful is appropriately raised under the Employment Action Review Ordinance; (8) Plaintiff's motion seeking "declaratory judgment on behalf of unnamed persons similarly situated to McCallister that the notices provided to them regarding their terminations from employment were unlawful" is dismissed.

***Garvin v. Ho-Chunk Nation*, CV 01-78 (Ho-Chunk Nation Trial Court 2006) (available at http://www.ho-chunknation.com).**

The Plaintiff filed a complaint alleging involuntary termination, unfair treatment, failure to provide timely evaluation, and loss of compensation, against the Ho-Chunk Nation and Silas Cleveland and Dennis Gager, in their individual capacities. In response the Defendants filed a motion to dismiss.

The Trial Court, Rockman, J., granted the motion to dismiss holding that: (1) the Plaintiff did not "provide any evidence to substantiate her claim that the defendants based their decision on hearsay, lies, or personal bias, or that she suffered unfair treatment. Thus, it does not appear that the defendants acted beyond the scope of their authority in [transferring her to a different position]." (2) Although the evaluation was untimely, this type of grievance is not reviewable by the Trial Court. Matter remanded to the Business Department. (3) Plaintiff failed to offer evidence to prove that she was terminated from her position.

***Leonard v. Nakai,* CV 02-45 (Ho-Chunk Nation Trial Ct. 2006) (available at http://www.ho-chunknation.com).**

Plaintiff, Morning-Star Leonard, non-member former employee of a Ho-Chunk Nation business, alleged that the defendant "improperly denied [her of] a minimum full-time employee work schedule." After following administrative procedures, plaintiff filed initial pleadings with the trial court.

Trial Court, Matha, C.J., held that the statutory language contained in the businesses personnel manual did not "represent an employer obligation" to provide the minimum full-time work schedule.

***Ostrowski v. Ho-Chunk Nation Personnel Dept. and HCN Casino*, CV 02-82 (Ho-Chunk Nation Trial Court 2006) (available at http://www.ho-chunknation.com).**

Ho-Chunk Nation Supreme Court remanded case HCN S. Ct SU 05-03 for a full explanation of the Trial Courts rationale in finding that the accommodations made to the Plaintiff, after his work related injury, "caused the cage cashier department to operate at less then peak efficiency." *Order*, Finding of fact, 9, at 4.

Upon remand the trial court stated that the basis for his termination was that he was no longer able to fulfill the requirement of his job, namely the requirement of "continuing fitness." The court upheld his termination because it found that the plaintiff was no longer qualified under the job description to perform the duties of his job. The plaintiff's inability to perform the duties of the job for which he was hired caused others to perform those duties, resulting in inefficiency and low morale.

***Begay v. Day*, CV 03-09 (Ho-Chunk Nation Trial Court 2006) (available at http://www.ho-chunknation.com).**

Plaintiff claims a violation of her due process rights and equal protection rights, under the Ho-Chunk Nation laws, in connection with her termination of employment as the Education Department Executive Director. Ms. Begay was terminated without any discussion between her supervisors and herself as to the grounds for her discharge. The termination letter which she received stated the reasons for her discharge were "infractions that occurred during [her] tenure in the position as Division Manager of Supportive Education."

The Ho-Chunk Nation Trial Court, Rockman, J., held that Plaintiff was not afforded the minimum procedural due process when she was discharged from her position. The court found that the defendant failed to give the Plaintiff a "meaningful opportunity to be heard" prior to her termination, which constitutes "well-established standards of due process."

***Twin v. McDonald*, 33 INDIAN L. REP. 6079 (Ho-Chunk Nation Supreme Court, 2006).**

At issue in this case was whether the dismissal of a tribal employee, after his failure to report to work following expiration of Family Medical Leave, violated the due process rights of that employee. The Court held that employees of the Tribe have a property interest in that employment and that supervisors must afford an opportunity to be heard prior to suspension or termination. The Court held that the notice given to Twin, ordering him to return to work within four days of the sending of the notice and only two days after the notice would have been received, was inadequate because it was sent to the wrong address and did not provide enough time for Twin to respond. The inadequate notice constituted a violation of due process, according to the Court.

***Gaudet v. Mashantucket Pequot Gaming Enterprise*, 33 INDIAN L. REP. 6067 (Mashantucket Pequot Tribal Court, 2006).**

Plaintiff was terminated from his position as a bartender at the Mashantucket Pequot Gaming Enterprise. Plaintiff mailed his appeal within the time limit proscribed by The Employee Review Code. The appeal was not received by the Tribal Court until seven days after the proscribed time limit. The Plaintiff argues that the statute of limitation should be equitably tolled in this circumstance because he timely mailed the appeal and the delay was due to the Postal Service.

The Mashantucket Pequot Tribal Court, O'Connell, J., held that: (1) the appeal was not filed within the time limitations proscribed by the Employee Review Code; and (2) the time limitation is jurisdictional in nature, therefore, equitable defenses are not available to the plaintiff. Appeal dismissed.

***Johnson v. Mashantucket Pequot Gaming Enterprise*, 33 INDIAN L. REP. 6069 (Mashantucket Pequot Tribal Court, 2006).**

Plaintiff appealed termination of employment challenging the decision of the President/CEO asserting that he failed to consider mitigating factors when he upheld her termination.

The Tribal Court, O'Connell, J., held that: (1) there was "a rational basis for the President/CEO's finding that the attendance policy was violated by the plaintiff." (2) "The President/CEO did not ignore, and properly considered, the mitigating circumstances presented by the plaintiff." (3) "The President/CEO was not arbitrary or capricious in imposing the sanction of termination of employment." Appeal dismissed.

***Berthelet v. Mashantucket Pequot Gaming Enterprise*, No. MPTC-CV-AA-2004-181 (Mashantucket Pequot Tribal Court, 2006).**

Plaintiff was terminated from her position at the Mashantucket Pequot Gaming Enterprise for failing to report to work and violations of the Attendance Standards Policy. After termination the Plaintiff argued that the CEO failed to consider her inability to qualify under the Family Medical Leave policy because she had been out on worker's compensation leave and unable to acquire sufficient "hours worked" to qualify under the policy. After a prolonged procedural history the issues before this court are "1) whether the hours the Plaintiff was absent from work due to a worker's compensation leave should count towards 'hours worked' for tribal Family Medical Leave eligibility; and 2) whether the President/CEO considered the relevant mitigating circumstances in his decision on remand."

The Tribal Court, Londregan, J. held that: (1) the Courts role, in reviewing appeals under the Employee Review Code, is limited to a determination of whether the President/CEO determination was arbitrary, capriciously or was an abuse of discretion; (2) the president/CEO's decision was "neither arbitrary nor capricious in not including hours the Plaintiff was out of work due to a worker's compensation leave in the 'hours worked' required for tribal Family Medical Leave eligibility." (2) "the record contains rational evidence to support the President/CEO's findings" that the Plaintiff violated the attendance policy. The decision of the President/CEO is sustained and the Plaintiff's appeal is dismissed.

***Barnes v. Mashantucket Pequot Gaming Enterprise*, 33 INDIAN L. REP. 6089 (Mashantucket Pequot Tribal Court, 2006).**

Dismissing an action for employee discrimination on the grounds that: (1) plaintiff did not file the claim in a timely manner and (2) plaintiff failed to bring action against the Tribe, as opposed to the Gaming Enterprise. The significance of the case is the application of TCR 123005-01 of 02, establishing that when Tribal Law is silent as to an issue, and it becomes necessary for the Court to look to other legal authorities for guidance, "the court shall first look to the laws, procedures and judicial decisions of other tribal nations. [Moreover,] the Judicial Committee…shall endeavor to develop laws that are truly of Mashantucket origin without emphasizing the application of Connecticut

law;" thus, the Court determines, that it may be consistent with tribal policy to resolve a suit on the merits even where formal notice of claim may have been improper.

***Moran v. Mashantucket Pequot Gaming Enterprise*, No. MPTC-CV-AA-2005-192 (Mashantucket Pequot Tribal Court 2006).**

Plaintiff appeals termination from Defendant's employee. The termination was based on alleged violation of Defendant's confidentiality policy. The court held that the termination was inconsistent with the applicable Employee Review Code because there was no factual basis to support the determination that the information disclosed, a draft of a brochure, was confidential in nature. The brochure was to be distributed to over 5,000 employees; the brochure's content was not related to the finances, sales, operations, or other such business of either the tribe or the casino, but was intended as an advertisement; the alleged disclosure was not immediately reported, and the information was obtained from a shared communal printer. Moreover, the court determined that previous informal, undocumented discipline for similar offenses is not a sufficient basis for a determination that an employee has violated company policy.

***Perry v. Navajo Nation Labor Commission*, No. SC-CV-50-05 (Supreme Court of the Navajo Nation, 2006) (available at www.NavajoCourts.org).**

The Plaintiff, Melinda Perry, filed a complaint with the Navajo Nation Labor Commission asserting that the Utah Navajo Development Council had terminated her employment without cause in violation of the Navajo Preference in Employment. In response to the Plaintiff's claims a Director of the Utah Navajo Development Council, Rebecca Benally, filed an answer to the complaint. The defendant filed a motion to strike the answer, arguing that Benally was not licensed to practice law because she was not a member of the Navajo Nation Bar Association. Prior to adjudication of the employment claim the Plaintiff settled with the Utah Navajo Development Council, however, the Plaintiff requested that the court continue to consider the pro se representation of a corporation issue.

The Supreme Court of the Navajo Nation, Yazzie, J., held that an employee of a corporation, who is not licensed by the Navajo Nation Bar Association may not represent that corporation "pro se."

***Hood v. Navajo Nation Department of Headstart*, No. SC-CV-11-05 (Supreme Court of the Navajo Nation, 2006)(available at www.NavajoCourts.org).**

Petitioner, Hood, was terminated from his position at the Navajo National Department of Headstart. Hood, ultimately filed a complaint with the Navajo Nation Labor Commission. The Commission ruled that Headstart had not terminated the Petitioner for "just cause" because he was not responsible for the damage done to the Headstart vehicle. Headstart appealed. The commission denied the appeal.

The Supreme Court, Yazzie, C.J., held the "Commission's resort to a new allegations was improper" because the "fundamental principles of due process, as implemented by the [Navajo Preference in Employment Act] dispute resolution structure, the Commission is limited to the allegations arising from the charge, and, after the [Office of Navajo Labor Relations] process is complete, those remaining allegations clearly asserted in the complaint. Consequently, the Commission cannot go beyond those allegations to establish its own reasons to uphold or deny the termination."

***Navajo Nation Department of Child Support Enforcement v. Navajo Nation Labor Commission*, No. SC-CV-22-06 (Supreme Court of the Navajo, 2006)(available at www.NavajoCourts.org)**.

This case concerned the Navajo Nation Privacy Act and whether a specific provision (§84(b)(11)) prohibits the Labor Commission from allowing public access to its records and hearings. The Court held that the Act does not regulate proceedings of the Labor Commission, and therefore does not require the closure of such proceedings. Additionally, the Court held that the provision of the Act in question does not bar access to the records of the Commission.

***Milligan v. Navajo Tribal Utility Authority*, No. SC-CV-31-05 (Supreme Court of the Navajo Nation, 2006) (available at www.NavajoCourts.org)**.

The question in the case was whether layoffs were within the jurisdiction of the Navajo Nation Labor Commission and whether the Navajo Tribal Utility Authority laid off Milligan for just cause where the Authority determined that Milligan's job could be performed by other personnel and subsequently filled a position with a similar title to that formerly held by Milligan. The Court held that the Navajo Preference in Employment Act requires "just cause" for "adverse actions," which includes employee layoffs. As such, the Court held that the layoffs were within the jurisdiction of the Navajo Nation Labor Commission. The Court also held that the Authority must provide and adhere to a policy concerning employee layoffs. Nevertheless, the Court remanded the case back to the Labor Commission to determine whether "just cause" existed to lay off Milligan.

***Rico v. Western Technologies*, No. SC-CV-29-05 (Supreme Court of the Navajo Nation, 2006)(available at www.navajocourts.org).**

The issue was whether Plaintiff received proper notice of termination, as required under the Navajo Preference in Employment Act (NEPA), from Plaintiff-Employer. NEPA requires that "an employer give written notification to the employee citing just cause…in all cases." 15 N.N.C. § 604 (B)(8) (2005). Taking the "full dealings between employee and employer into consideration," the Court held that notice was meaningful and sufficient, where Plaintiff's supervisors discussed the relevant incidents of misconduct and repercussions with Plaintiff prior to delivering notice of termination. Moreover, the mere fact that the notice made reference to 'defective and improper work' as the general reason for termination, but failed to include relevant supplementary documentation, an

attachment, providing specific reasons for termination, does not render the notice insufficient.

***Wilson v. Gilliland*, No. AP04-008, 33 INDIAN L. REP. 6122 (Confederated Tribes of the Colville Reservation Court of Appeals, July 21, 2006).**

The Court found that the appellant was afforded due process in his dismissal from employment when not given a police department manual and not oriented to the department.

***Aitchison v. Mashantucket Pequot Gaming Enterprise*, No. MPTC-CV-AA-2005-136, 33 INDIAN L. REP. 6013 (Mashantucket Pequot Tribal Court, Nov. 7, 2005).**

The Plaintiff appealed the decision of the President/CEO of the Gaming Enterprise. The Court upheld the termination decision and held that the President did not abuse his discretion for terminating the Plaintiff for failure of submitting a doctor's certification in support of a request for family medical leave.

***Smith v. Mashantucket Pequot Gaming Enterprise*, No. MPTC-CV-AA-2005-127, 33 INDIAN L. REP. 6019 (Mashantucket Pequot Tribal Court, Nov. 22, 2005).**

The Plaintiff appealed the decision of the President/CEO of the Gaming Enterprise. The Plaintiff was terminated from employment for violation of the attendance standards and the Court dismissed the appeal pursuant to the Employee Review Code.

***Diggs v. Mashantucket Pequot Gaming Enterprise*, No. MPTC-CV-AA-2005-0121, 33 INDIAN L. REP. 6015 (Mashantucket Pequot Tribal Court, Nov. 30, 2005).**

The Plaintiff appealed the decision of the President/CEO of the Gaming Enterprise. The Plaintiff was terminated from employment under the guidelines of the Progressive Discipline Procedure and for violations of the Standards of Conduct, namely insubordination and rude and discourteous behavior. The Court upheld the termination decision.

***Ostrowski v. Ho-Chunk Nation*, SU05-03 (Ho-Chunk Nation Trial Court, Jun. 25, 2005)(available at www.ho-chunknation.com).**

Appellant Ostrowski was injured while working as a cashier at the Ho-Chunk Casino and was subsequently accommodated with a modified work schedule, as well as a less physically intensive position, for a period of two and a half years. At the end of this period, he was ordered to be examined by a physician, who determined him to be fit to work in his former, pre-injury capacity. Soon thereafter, however, he was terminated because his poor performance allegedly hindered the overall efficiency of his department; the trial court found that Appellant's termination was justified and that Apellant was unqualified to perform required job duties. This Court determined that the trial court did not sufficiently "set forth the standard and document the basis for [its] determination"

regarding Appellant's alleged inadequacies, nor was there a record of any factual evidence to support the trial court's conclusions to allow for an adequate review of the decision. Remanded.

***Toledo v. Bashas' Dine Market*, SC-CV-41-05 (Supreme Court of the Navajo Nation, Aug. 17, 2006)(available at www.navajocourts.org)**

Appellant challenged a ruling by the Native Nation Labor Commission, that his employment with Appellee, Bashas Dine Market, was terminated with just cause. Appellant Toledo alleged he never received sexual harassment training during the course of his employment, and the employee handbook gives an ambiguous explanation of the company's sexual harassment policy, there is no 'just cause' to support his termination. This Court, however, concluded that since Toledo admitted at the prior hearing that he was aware that his actions were wrong, lack of training and understanding of policy are not implicated. The Court also upheld the lower court's decision that Appellant's violations of the Navajo Preference in Employment Act, including failure to include an 'at-will' policy or affirmative action plan in the employee handbook were harmless offenses that did not entitle Appellant to damages. Affirmed.

***Barbato v. Mahantucket Pequot Gaming Enterprise*, MPTC-EA-2005-107, 33 INDIAN L. REP. 6005 (Mashantucket Pequot Tribal Court, Oct. 24, 2005).**

The Plaintiff appealed termination from job. The Court found that where there is rational evidence to support the findings that the Plaintiff was dishonest in reporting that she had been injured at work, dismissed the appellant's appeal.

Family Law

***In the Matter of the Marriage of Smith*, No. SC-CV-45-05 (Navajo 2006) (available at NavajoCourts.org).**

Upon the death of Leonard Begay, Plaintiff filed a petition in Shiprock Family Court seeking to validate her "common-law" marriage under the Navajo Nation Domestic Relations Code. The Family court rejected her petition finding that there was "very limited information" and "very little evidence" to support a finding that there was a common law marriage. The court based its findings on, (1) the violation of traditional law, (2) the lack of documentation support for a Grazing Committee Official testimony, and (3) the lack of testimony from community members who could "vouch" for the validity of the marriage (only relatives of the plaintiff and decedent testified).

The Supreme Court, Yazzie, J., held that the Family Court erred in "concluding there was insufficient evidence of common-law marriage." The court found that (1) the Family Court erred in rejecting the common-law marriage due to the alleged violation of traditional law. "As 'common-law' marriage exists only by statute, the elements to fulfill and the prohibitions that may invalidate a common-law marriage are defined exclusively

by statute." (2) "Though it is the province of the court to decide what weight to give such testimony, it may not reject or discount it for alleged lack of documentation." (3) "While there may be less weight given to the testimony of relatives if there is evidence to believe they may be biased, the mere fact that they are related to the petitioner or respondent does not negate their testimony."

***In the Matter of C.G.*, No. *Confidential* (Confederated Tribes of the Grand Ronde Community of Oregon Court of Appeals, Dec. 12, 2005).**

The trial court terminated the parental rights of a mother after she was arrested for attempting to smuggle marijuana from Mexico and for illegal drug use. The Appeals Court affirmed.

Housing

***Navajo Housing Authority v. Clark*, No. SC-CV-53-05 (Supreme Court of the Navajo Nation, 2006)(available at www.navajocourts.org).**

The issue is whether the Forcible Entry and Detainer Statute (FED), which sets up a process for landlords to pursue eviction proceedings against tenants, may be extended to permit Plaintiff, the Navajo Nation, to file an action for eviction against Defendant, participants in the Mutual Home Ownership Opportunity Program allowing prospective homebuyer's an opportunity to purchase a home once specified requirements are met.. Determining that a mutual help homebuyer has a greater possessory interest in the property than a normal 'tenant,' the Court explained matter was to be determined under applicable laws regarding breach of contract and/or foreclosure proceedings . Since Defendant was not a tenant, as contemplated by the statute, the Court held that the FED does not apply to Defendant homebuyer, and thus, the trial court lacked jurisdiction over the matter.

***Mohegan Tribal Housing Authority v. Greene*, 1 M.T.C.R. 56 (Mohegan Tribal Court 2006)(available at www.versuslaw.com).**

Motion for Costs where the court previously ordered that Defendants be evicted from property leased from the Mohegan Tribal Housing Authority (MTHA). The court applied MTC § 1-401(c), providing in part that damages, including those for waste and back-rent, may be assessed against a defaulting lessee, and that such damages may be withheld from per capita distributions made by the tribe to the lessee. Motion granted; damages assessed based on costs incurred by the plaintiff for trash removal, extermination services, carpet replacement and other repairs and cleaning needs.

***Mohegan Tribal Housing Authority v. Greene*, 1 M.T.C.R. 54 (Mohegan Tribal Court 2006)(available at www.versuslaw.com).**

Judgment and Order for Eviction. Based on findings of fact at previous hearing, the Court orders Defendants to remove themselves and their personality from Plaintiff's property on of before June 30, 2006. It is further stated that the Court shall retain jurisdiction over any damage claims arising from the matter for the next 90 days.

***Mohegan Tribal Housing Authority v. Green, Jr. et al.*, No. HA-06-0117, 33 INDIAN L. REP. 6124 (Mohegan Tribal Court, Oct. 17, 2006).**

The court found that in a housing eviction action for waste, the damages assessed should not be withheld from the next per capita distribution made by the Tribe.

Jurisdiction

***Kimsey v. Reibach*, No. C-05-02-002, 33 INDIAN L. REP. 6055 (Confederated Tribes of the Grande Ronde Community Tribal Court, 2006).**

Plaintiff filed an action alleging defamation and slander by the Defendant. In response to the charges the Defendant (1) denied the allegations, (2) asserts that the freedom of speech provisions in the tribal constitution and the Indian Civil Rights Act prohibit this action, (3) moved to dismiss the claims as non-actionable under tribal law, and (4) "asserts that the Court should refuse to hear the case under the Tribal Court Ordinance provision that authorizes the Court to decline to hear the case if it 'is of such a nature that the Court should not hear it.'"

The Tribal Court, Goodman, C.J., held that: (1) An express grant of subject matter jurisdiction, either through an ordinance or other statutory enactment of the Tribal Council, is required in order for the Court to have jurisdiction to hear such matters, (2) the Court lacked subject matter jurisdiction necessary to hear the case because no "Ordinance or other statutory enactment of the Tribal Council grant[ed] the Court specific jurisdiction to hear such matters [nor set] out the standards by which such matters should be adjudicated." (2) Regardless of whether an express grant of jurisdiction is required the court found that "[g]iven the complexity of the issues raised by the present case, and the risk of importing inappropriate norms to govern the relations between individuals within the jurisdiction of the Tribe, the Court determines that it would be appropriate to refuse to exercise jurisdiction to hear this case."

***Nellie Darlene Long v. HCN Office of Tribal* (Ho-Chunk Nation Tribal Court, 2006).**

Dismissing, with prejudice, Plaintiff's enrollment appeal, after she revealed during a scheduling conference that she did not meet minimum blood quantum requirements; thus, the matter did not meet the requisite case or controversy requirement.

***Lake and Keri Spears Masonry, Inc. v. Mashantucket Pequot Tribal Nation*, No. MPTC CV-GC-172 (Mashantucket Pequot Tribal Court 2006).**

Motion to dismiss when the tribe claimed the court lacked subject matter jurisdiction because Plaintiff failed to file suit within three-years of substantial completion of the construction project as mandated by the relevant statute of limitations; once the statute has run, the tribe's waiver of sovereign immunity from suits arising from contract disputes is no longer valid. The court rejected Plaintiff's claim that the tribe waived sovereign immunity for a period beyond that mandated by the statute, holding that a Tribal Council resolution acknowledging the legal dispute and declaring the Tribal court as a proper forum to adjudicate the matter was not a clear and unequivocal waiver of the Tribe's sovereign immunity. Motion granted.

***Baker v. Sebastian*, 33 INDIAN L. REP. 6025 (Mashantucket Pequot Tribal Court, 2005).**

Plaintiff filed an action against the defendants in the Superior Court of the State of Connecticut. At the time the Plaintiff filed the lawsuit the defendants lived outside tribal lands. One of the defendants was served with writ, summons and complaint by personal service as required by the state statute. The two other individuals could not be located for personal service. The Superior Court granted Plaintiff's request to give notice by publication. Upon a finding by the Superior Court that notice of the action against the defendants had been provided to them, the Court entered judgment against the defendants in the amount of $60,000.00. All the defendants are tribal members. Plaintiff seeks recognition of the Connecticut Superior Court judgment in Tribal Court for purposes of enforcement.

The Tribal Court, Londregan, J., held that the judgment against the defendants in the Superior Court of Connecticut will be recognized by the Tribal Court. The Court determined that "[t]he textual differences and the differing mechanics of notice contained in the General Statute and practice Book of Connecticut, as compared with the Mashantucket Tribal Laws and the Rules of Civil Procedure, are not so great as to operate to preclude enforcement of the judgment on public policy grounds."

***Manygoats v. Cameron Trading Post*, No. SC-CV-50-98 (Supreme Court of the Navajo Nation, 2006).**

Motion submitted to the Court to vacate a previous opinion and final judgment on the matter in favor of a subsequent settlement arrangement agreed to by the parties several years later. The previous opinions touched on issues relating to the sovereignty of the tribe, including tribal jurisdiction over non-Indians. The Court concluded that vacating the opinions would reflect adversely on the integrity and reliability of the judiciary, where the previous opinions on the matter "stated important propositions of Navajo Nation law…and have been applied in subsequent cases as binding precedent." Motion denied.

***Begay v. Begay*, No. SC-CV-65-05 (Supreme Court of the Navajo Nation, 2006)(available at www.navajocourts.org).**

The issue is whether the Family Court's dismissal of a divorce petition for lack of jurisdiction, based on petitioner's failure to establish residency within the Navajo Nation within ninety days before filing as required by 9 N.N.C. § 402, was proper when the "parties are both Navajo, when the petitioner lives outside the Navajo nation and the respondent lives within the nation, and when the respondent filed a counterclaim for divorce." There Court did not address petitioner's contention that the Family Court's interpretation of the term 'resided' under § 402 was too restrictive, but instead looked to the counterclaim, explaining that "a counterclaim is a separate claim from the original petition, though plead in response to the petition." Thus, assuming the respondent did indeed meet the § 402 residency requirement, there was independent jurisdiction to hear the counterclaim on the same matter as the original petition. The court held that the dismissal was improper and remanded the case back to Family Court

***Marathon Oil Co. v. Johnston,* 33 INDIAN L. REP. 6095 (Wind River Reservation Court Appeals, 2006).**

The Court considered several issues on this appeal, which stemmed from a verdict rendered against Marathon Oil Co. in a personal injury trial brought by Johnston, who was neither a member nor a resident of the Wind River Reservation Tribes. On appeal, Marathon challenged the personal and subject matter jurisdiction of the Court, based upon the United States Supreme Court's decision in Montana v. United States, 450 U.S. 544 (1981). The Court held that Marathon's consensual relationship with the Tribe, via lease, and its impact on the Tribe's political integrity satisfied each of the exceptions to the rule in *Montana*. Marathon also urged that Johnston, who was an employee of an independent contractor hired by Marathon, should seek redress from his employer. The Court held that Marathon had maintained control over the independent contractor's performance so as to assume some liability. Marathon also contended that the Doctrine of Assumption of the Risk applied to the actions of Johnston. The Court also rejected this argument on the grounds that the Tribe had adopted, by statute, comparative negligence. Marathon also challenged the trial court's determination on several other grounds, including the admission of its lease with the Tribe into evidence. The Court rejected this challenge as well, holding that the lease could be used as evidence and considered as a factor in a negligence analysis. Finally, the Court held that the absence of an alternate juror from deliberations was not grounds for reversal.

***Big R Construction v. Timmentwa,* No. AP05-010, 33 INDIAN L. REP. 6121 (Confederated Tribes of the Colville Reservation Court of Appeals, Nov. 14, 2006).**

The court found that the trial in a lower court should have been started pending the Appellee's creditor claims in Federal Bankruptcy Court.

Juvenile Court Procedure

***In Re Springer Irene Smith v. Children & Family Services*, et al., No. AP05-013 (Confederated Tribes of the Colville Reservation Court of Appeals, Nov. 21. 2005).**

The Court of Appeals vacated the order of the juvenile court and remanded for another hearing directing the juvenile court to either make written or oral findings regarding the denial of the appellant's motion to dismiss the dispositional hearing with regard to the best interests of the child.

Sovereign Immunity

***High Elk v. Iron Hawk*, 33 INDIAN L. REP. 6031 (Cheyenne River Court of Appeals 2006).**

Plaintiffs filed incorporation papers directly with the Tribal Secretary. The Secretary took no action on the submissions based on the belief that that the tribal Council Election Committee and the Tribal Council were reviewing Plaintiffs' documentation. Lawsuits were filed seeking a writ of mandamus and a declaratory judgment. The Trial Court granted the Defendant's motion to dismiss on sovereign immunity grounds. Both

Plaintiffs appealed. The Appeals Court consolidated the appeals.
The Court of Appeals held that: (1) sovereign immunity is not generally available in a mandamus action brought against a Tribal officer to perform a duty created by Tribal law enacted by the Tribal Council, and (2) Council Resolution 3-03-CR does not amend Tribal Ordinance 39. Trial Court reversed and the case is remanded for legal and factual determination.

***Kelty v. Pettibone*, CV-98-49 (Ho-Chunk Nation Trial Court, Feb. 22, 2006)(available at www.ho-chunknation.com).**

The Court denies the Defendants' *Motion to Modify* where Defendants failed to assert the defense of sovereign immunity on the initial responsive pleading. Moreover, even though Plaintiff failed to name the Ho-Chunk Nation or one of its subsidiaries in the pleadings, which "typically [causes the Court to] deny requests for retroactive monetary relief," Defendants' aforementioned failure prevents the triggering of the Court's protection. (from the opinion).Thus it is ordered that monetary damages be awarded to Defendants.

***Miller v. Ho-Chunk Nation*, CV 99-22 (Ho-Chunk Nation Trial Court, Nov. 9, 2006)(available at www.ho-chunknation.com).**

Plaintiff, a District V Legislator of the Ho-Chunk Nation, was suspended without pay, pending an investigation regarding his alleged violation of the Code of Ethics Act § 3 in a sequence of events known as the 'Bigthunder Incident.' Subsequently a removal hearing was initiated against Plaintiff, by Defendants, Ho-Chunk Legislature, as well as named individual legislators; Plaintiff was not removed from office. Plaintiff alleges, and the Court agrees, that his procedural due process rights were violated where Plaintiff was

given a legislative agenda stating only that the Legislature would review the incident report. Prior to this meeting, where he was suspended from his duties, he had "neither [been] informed [that] a hearing would take place on the matter, nor [that] any disciplinary action would be taken against him." The Court explains, however, that Plaintiff is not entitled to monetary relief, where there has not been a clear an unequivocal waiver of sovereign immunity by the Legislature, and that moreover, Plaintiff did not meet the heavy burden of proving that the individual legislators were acting beyond the scope of their legislative duties, thus lifting the shield of immunity. The Court grants declaratory relief, by ordering that 'negative inferences' associated with the 'Bigthunder Incident' be removed from Plaintiff's personnel records.

Tort

***Nakashian v. Mashantucket Pequot Gaming Enterprise,* 33 INDIAN L. REP. 6083 (Mashantucket Pequot Tribal Court, 2006).**

Awarding damages pursuant to a negligence action brought against the Gaming Enterprise for Plaintiff's hand and wrist injuries incurred due to the negligence of a valet, employed by Defendant; the valet, attempting to park Plaintiff's car, drove away while Plaintiff was still unloading the vehicle, dragging Plaintiff for a short distance and causing the alleged injuries. Both parties stipulate to Defendant's liability. The court, applying relevant tribal tort law, awards actual damages, defined as "the ascertainable loss of money or property sustained as a result of an injury" (IV M.P.T.L ch. 1, § 1(g)), in the amount of $7, 959.64, taking into consideration total medical bills and lost wages suffered by Plaintiff. Non-economic damages for pain and suffering, limited to no more than 100% of actual damages, (XII M.P.T.L ch. 1, § 4(d) are awarded in the amount of $7, 959.64, for a total award of $15, 9191.28.

***Lin v. Mashantucket Pequot Gaming Enterprise,* 33 INDIAN L. REP. 6102 (Mashantucket Pequot Tribal Court, 2006).**

Order for a hearing on damages after a finding that the Defendant's negligence was the proximate cause of Plaintiff's injuries and that Plaintiff's contributory negligence is 25%. Plaintiff sustained injuries after slipping and falling on a wet bathroom floor that had been recently mopped by Defendant's employee; relevant considerations assessed by the Court were: (1) that Plaintiff, as shown on admitted surveillance video, was moving at a fast pace, (2) that a yellow warning cone had been placed to advise patrons of the conditions, and (3) Defendant's employee had not followed proper procedure for immediately drying the floor, instead, leaving it briefly unattended while wet and soapy.

***Camacho v. Mashantucket Pequot Gaming Enterprise*, 33 INDIAN L. REP. 6073 (Mashantucket Pequot Tribal Court 2006).**

This case concerned the Gaming Enterprise's motion for summary judgment on the Plaintiff's food poisoning claims. Gaming Enterprise argued that, since the Plaintiff did not produce expert testimony supporting its claims of food poisoning. The Court held, though, that Court Rules of Evidence pertaining to expert testimony was permissive,

rather than mandatory. The Court added that laypersons would be capable of determining the standard of care necessary to avoid food-poisoning, and that expert testimony was not necessary to survive summary judgment. Gaming Enterprise's motion for summary judgment was denied.

***Moore v. Mashantucket Pequot Gaming Enterprise*, No. MPTC-CV-2003-154 (Mashantucket Pequot Tribal Court, Sept. 28, 2005).**

The Plaintiff was injured when his chair tipped over in a casino. The Court awarded actual damages and damages for pain and suffering to the Plaintiff amounting to $66,831.36.

***Mashantucket Pequot Gaming Enterprise v. Sullivan*, No. CV-PI-2004-110, 34 INDIAN L. REP. 6005 (Mashantucket Pequot Tribe Court of Appeals, Nov. 13, 2006).**

The Court affirmed the lower court's ruling that the Plaintiff was not required to provide expert testimony, regarding MPGE employees, on the standard of care owed by the Defendant to the Plaintiff.

***Senatore v. Mashantucket Pequot Gaming Enterprise*, No. MPTC-CV-2004-0121 (Mashantucket Pequot Tribal Court, Nov. 14, 2005).**

The Plaintiff was allegedly injured from a misaligned coat hook in a bathroom stall. Judgment was entered for the Tribe because of the principle falsus in uno, falsus omnibus (untrue in one thing, untrue in everything) was applied when weighing the credibility of the Plaintiff.

Tribal Law

***High Elk v. Veit,* 33 INDIAN L. REP. 6033 (Cheyenne River Court of Appeals, 2006).**

Vacating the lower court's attachment/garnishment order. Plaintiff's filed suit to recoup losses incurred when they prepaid for rental of grazing authorization to use land owned by Defendants, assuming that their current lease would be renewed; there was no formal agreement memorializing the transaction or its terms and Defendants ultimately leased the land to someone else. The lower court issued an attachment/garnishment order against Defendants. After establishing jurisdiction pursuant to Cheyenne River Sioux Court of Appeals Rules of Civil Procedure Rule 84b, the instant Court determined that insufficient and untimely notice of the action not only violated Defendants' due process rights, but more significantly this failure "constituted a departure from Lakota Traditions of respect and honor."

***DesAutel v. Colville Business Council*, No AP06-009, 34 INDIAN L. REP. 6001 (Confederated Tribes of the Colville Reservation Court of Appeals, Dec. 13, 2006).**

The Court held that a court ordered blood correction for a family member was not substantial, credible, new evidence for reopening a tribal membership enrollment file when it is not initiated within one year of the initial denial.

Tribal Constitution

***In re: Payment of Legal Fees of the Cherokee Nation Tribal Council*, CV-06-39 (Cherokee District Court 2006)(available at www.CherokeeCourts.org).**

At issue in this case was whether members of the Cherokee Nation Tribal Council possessed the authority to utilize tribal funds to pay for independent counsel in an action brought in federal court on behalf of the Cherokee Nation. The Court held that the power to represent the Cherokee Nation in civil litigation is vested exclusively in the Executive Branch, through the Attorney General.

***Cherokee Nation v. O'Leary*, No. CV-06-42 (Cherokee District Court 2006)(available at www.cherokeecourts.org).**

Defendants, Members of the Cherokee Nation Council, filed suit in federal court as individuals, on behalf of the nation. The Article VII § 3 of the Nation's Constitution expressly provides that the Executive Branch of the Nation's government, through the Attorney General, retains "exclusive power to and authority to represent the Cherokee Nation in civil litigation." Thus, the Court holds that the Defendant council members have no authority to institute a civil action on the nation's behalf and are thus ordered to amend their complaint in the federal action, to "remove all statements that the suit is brought on behalf of the Cherokee Nation."

***In re: The Matter of the Written Protest*, SC-06-12 (Supreme Court of the Cherokee Nation, 2006) (available at www.CherokeeCourts.org).**

There were several questions at issue in the case, including whether the Principal Chief of the Cherokee Nation has the authority to call special elections concerning Initiative Petitions pursuant to Article XV, Section 4 of the Cherokee Nation Constitution of 1999; and, whether the Initiative Petition "Proposing an Amendment to Article IV, Section 1 of the Cherokee Nation Constitution of 1999, and Article III, Section 1 of the Cherokee Nation Constitution of 1975 was sufficiently signed. The Court held that the Cherokee Nation Constitution of 1999 authorizes the Principal Chief to call special elections on "measures," which include "proposed amendments" to the Cherokee Nation Constitution. The Court also stated that certification of an Initiative Petition is prima facie correct and may only be rebutted by competent evidence. The Court then held that the Petitioner failed to present competent evidence to disqualify enough signatures to render the

Initiative Petition, which requires signatures by 15% of the total number of voters in the previous election, unconstitutional.

***Jackson v. Kahgegab*, 33 INDIAN L. REP. 6105 (Saginaw Chippewa Court of Appeals, 2003).**

The question in this case was whether a suit against the Chief of the Tribe was barred by the doctrine of Sovereign Immunity and whether laches bars a claim challenging the validity of the Tribal Constitution, which had been in force and effect for 16 years. The Court held that the Indian Civil Rights Act (ICRA) does not bar actions brought against the tribe by tribal citizens for alleged violations of ICRA and that claims seeking prospective injunctive and declaratory relief are permitted. The Court also held, though, that the claimant's 16-year delay in challenging the validity of the Tribal Constitution was inequitable and barred by the doctrine of laches.

***Rosebud Sioux Tribe v. Horse Looking*, 33 INDIAN L. REP. 6092 (Rosebud Tribal Court of Appeals, 2006).**

This case involved the entrance of a "no contest" plea to the charge of simple assault by Horse Looking, who was subsequently sentenced to a 60-day term in jail. After all appeals were issued, and denied, the President of the Rosebud Sioux Tribe issued a letter to the Chief Judge indicating that he had made a pardon of Horse Looking. The question in the case was whether the President of the Rosebud Sioux Tribe possessed the authority to issue such a pardon. The Court held that nothing in the Constitution, laws, customs, or traditions of the Tribe authorized the President to issue pardons.

***Colville Confederated Tribes v. Zacherle*, 33 INDIAN L. REP. 6071 (Colville Reservation Court of Appeals, 2006)**.

The question was whether a defendant's motion for stay of execution of judgment should be granted where an appeal of the trial court's May 12, 2006 judgment was made on May 31, 2006. The Colville Tribal Code establishes a 10-day period for the filing of an appeal, which includes intervening weekends and holidays, except where the final day falls on a weekend or holiday. The Court of Appeals Court Rules (COACR), however, establish a similar 10-day period for the filing of an appeal, which does not include intervening weekends and holidays. The Trial Court resolved the conflict by holding that the Tribal Code supersedes the COACR under the Tribal Constitution, due to the fact that the Courts are required to interpret and enforce the laws, as adopted by the Colville Business Council. Under those rules, the defendant's appeal was untimely and the motion to stay execution of judgment was denied.

The Court of Appeals, however, reversed the holding of the Trial Court on two grounds. First, the Court held that the COACR comply with the laws of the Tribes because provisions of the Tribal Code authorize the Court to define the procedures to be used and to define "perfection of appeal." Second, the Court held that the Trial Court is without jurisdiction to determine whether an appeal is perfected.