

FILED

Rhonda W. Fred
2400 Baker Drive
Carson City, Nevada 89701
Telephone 775-841-2899

Page 1

MAR 10 2011
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RHONDA WHITEROCK FRED

Plaintiff

Vs.

WASHOE TRIBE OF NEVADA &
CALIFORNIA

Defendant

CASE NO. 2:10-CV-0845 JAM
GGH PS

REBUTTAL TO DEFENDANT'S

MOTION TO DISMISS

First of all, the Defendant Washoe Tribe's Motion To Dismiss the Plaintiff's Action is void on its face, in as much as it does not comply with Rule 7 in the Federal Civil Judicial Procedure and Rules [See: Title 28 U.S.C, Rule 7(a)] Pleadings allowed; Form of Motions (a) Pleadings. "There shall be a complaint and an answer.....**No other pleading shall be allowed, ...**"

BACKGROUND

Defendant Washoe Tribe attempts to influence this court by asserting the preposterous *claim* that Plaintiff's action wants subject matter jurisdiction; wants personal jurisdiction (See: Footnote 2, p. 3); fails to exhaust Tribal remedies; and fails to State a claim upon which relief can be granted. Defendant also claims sovereign immunity.

Subject-matter jurisdiction commenced the instant the Defendant Washoe

Page 2

Tribe began committing FRAUD against Rhonda Fred and her Grandchildren. This Court acquired subject-matter jurisdiction when the Plaintiff Rhonda Fred identified it and invoked it with this Court. Washoe Tribal jurisdiction did not exist, nor will it ever exist while it employs Fraudulent practices to achieve its prosecutorial agendas. So, in that perspective, the Defendant Washoe Tribe is correct when it asserts "lack of subject-matter jurisdiction," which is exactly the item it never possessed while it moved against Rhonda Fred and her Grandchildren. The Tribe's inherent sovereignty is vested solely in the Tribal Council's power to promulgate ordinances. The Tribes corporate charter allows the corporate Tribe to sue and be sued; this (ability to sue) does not constitute a threat to the Tribal Council's sovereign power to promulgate ordinances. See Washoe Tribe's Corporate Charter, originating from a Congressional Act February 27th, 1937. - Article V, § (i). See EXHIBIT # 1 Furthermore the Defendant Washoe Tribe falsely asserts that the Plaintiff has failed to exhaust her Tribal remedies.

The Tribe's mode of operation has been to cause harm to its members with impunity, and then, claim its free to do whatever it pleases under the cloak of Sovereignty. The Inter-Tribal Court of Appeals which is comprised largely of Tribal court Judges routinely upholds the decisions of the Tribal courts, even when Fraud has been demonstrated; thus, denying the possibility of remedy. This state of affairs has lead to this U.S. District Court, and the immediate action. (Seeking Remedy)

As an example, refer to EXHIBIT # 2. Fax Cover Sheet dated OCT 06 2008 from Court Advocate, Benny Mills to: Jennifer R. Leal, Washoe Tribal Court Clerk; Subject; Notice of Hearing Case JP-WT-05-22. Please Note the pertinent questions addressed to Jennifer R. Leal under the Message portion of the Fax. This Fax was in response to a NOTICE OF HEARING for Case No.s JP-WT-05-22 & JP-WT-0519 filed on 9/30/08, See EXHIBIT # 3. After these communications were sent and received, a telephone conversation transpired between Benny Mills and Jennifer R. Leal, and it was determined that:

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A Habeas corpus Hearing was scheduled for October 29th, 2008 @ 3:00pm. This allowed Benny Mills time to subpoena witnesses for this Hearing. He Subpoenaed the following witnesses: See EXHIBITS # 4; # 5; #6; & # 7

Cheryl Douglas, Washoe Tribal Social Service Director.

Barbara Bennett^{*}, *former* Director and original complainant a.

Tom Minder, Alpine County Sheriff's Deputy.

Ray Painter^{*}, *former* Washoe Tribal Social Worker.

On the Washoe Tribal Court's initiative, Subpoenas were sent to Dr. Lisa Keating; Also Affidavit(s) of Service were sent to Cheryl Douglas; Dawn Bitz; & Alan Erb; giving each of these people Notice of the Habeas Corpus Hearing, set for October 29th, 2008. See EXHIBITS # 8; # 9; # 10 & # 11.

Recap of events occurring on October 29th, 2008. There was actually only one issue to be heard on this hearing date, namely Habeas corpus; which was quickly and arbitrarily disposed of; the entire Habeas corpus *Hearing* lasted no more than 5 minutes. Witnesses for Rhonda Fred were in court, but court advocate, Benny Mills was not given opportunity to present his case, or his witnesses or to examine them. Without any notification, the Judge, on his own initiative, then broadsided Rhonda's efforts and rolled into a new, surprise hearing¹ regarding contact and/or evidentiary hearing between the children and their Grandmother, Rhonda Fred. **Benny Mills verbally entered his objection to the manner in which these hearings were being conducted.** Two Orders issued from the above *Hearings*; one Order on 10/16/08 See EXHIBIT # 12 and the other Order on 12/11/08 (backdated, after the fact). See EXHIBIT # 13. At the conclusion of these speedy and one-sided exercises, the court determined that Rhonda Fred does not have any standing in this case.²

^{*} Both Barbara Bennett and Ray Painter were fired from their positions as a result of procedural violations in which Rhonda Fred has issued a complaint with the Washoe Tribe.

¹ See F.R.C.P. Rule 60 (b)(1) regarding remedy for "Surprise."

² See Child/Family Protection Petition filed 1/4/06, item # (b.) wherein it states as follows: "Prior to being taken into protective custody T. F., was in the legal custody of her grandmother, Rhonda Whiterock Fred, residing at 19750 Highway 89, #324, Markleeville, California, within the exterior

Page 4

The Writ for Habeas Corpus Petition (See Washoe Tribal Law & Order Code: 4-10-040(2) "...may be filed on behalf of any person..." and, "A petition may be filed by a person on his own behalf or on behalf of another person believed to be wrongfully restrained of liberty.") was again denied, based upon Rhonda Fred's *said* "lack of standing." Where? in the above code, does Rhonda Fred lose her standing? A surprise evidentiary hearing regarding Rhonda Fred's contact with the children was set for Oct. 29th, 2008 @ 3:00pm. Further contact with the children by Rhonda Fred was denied. Conclusion: there are no meaningful Tribal remedies available in Washoe Tribal court available to exhaust.

CONCLUSION

Due Process of Law has proved to be a complete farce in the Washoe Tribal Court system, even extending to the Inter-Tribal Court of Appeals. Plaintiff wishes that the conditions complained of in her action could be attributed to mere judicial error; which could then be easily corrected at the Tribal court itself or at the Inter-Tribal Court of Appeals. Plaintiff Rhonda Fred can see no other remedy available, other than the instant U.S. District Court and the Federal Rules of Civil Procedure. She desperately relies on Title 28 U.S.C. and all applicable Rules and sections. In particular, she relies on Rule 60(b)(3) as the last resort to obtain relief from the intentional Frauds committed against her by the intensely corrupt Washoe Tribal Court system and the equally corrupt administration of Tribal government. In sum, the Children in question were

boundaries of the Washoe Tribe of Nevada and California." This statement admits Rhonda Fred DOES have standing; and fraudulently states the address is within the exterior boundaries of the Washoe Tribe. See EXHIBIT # 14

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summarily removed from Rhonda Fred's custody on fraudulent pretenses, two of the Tribe's officers lost their jobs as a result; The Tribal Court has embraced and perpetuated this fraud; the Inter-Tribal Court of Appeals is in accord with the lower courts actions.

The Tribe's position is, "we can do whatever we want (including the exercise of lawlessness), because we are sovereign." The only true sovereign in the universe will not bless or long tolerate such willful corruption, which is an immutable fact of life.

Disclaimer. The bulk of this case has been handled by Benny Mills, machinist by trade. This case was his first experience with family law W.T.L. & O.C., Title 8. he is untrained in both law and procedures, mistakes on his part have been made and have been costly as far as being able to achieve remedies for Plaintiff, Rhonda Fred. However, the violations of due process of law against the Plaintiff, Rhonda Fred are not legitimate obstacles that even the most highly trained legal minds should have to contend with.

Respectfully submitted on the 7th day of March, 2011,

By Rhonda Whiterock Fred

Rhonda Whiterock Fred, the Plaintiff
2400 Baker Drive
Carson City, Nevada 89701
Telephone (775) 841-2899

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS



CORPORATE CHARTER
OF THE
WASHOE TRIBE OF THE STATES OF
NEVADA AND CALIFORNIA

RATIFIED FEBRUARY 27, 1937

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1937

**CORPORATE CHARTER OF THE WASHOE TRIBE OF THE
STATES OF NEVADA AND CALIFORNIA**

**A FEDERAL CORPORATION CHARTERED UNDER THE
ACT OF JUNE 18, 1934**

Whereas, the Washoe Tribe in the States of Nevada and California constitutes a recognized Indian Tribe organized under a Constitution and By-laws ratified by the members of the Washoe Tribe on December 16, 1935, and approved by the Secretary of the Interior on January 24, 1936, pursuant to Section 16 of the Act of June 18, 1934, (48 Stat. 984), as amended by the Act of June 15, 1935, (49 Stat. 378) ; and

Whereas, more than one-third of the adult members of the Tribe have petitioned that a charter of incorporation be granted to such Tribe, subject to ratification by a vote of the adult Indians living within the territory of the Tribe;

Now, therefore, I, Charles West, Acting Secretary of the Interior, by virtue of the authority conferred upon me by the said Act of June 18, 1934, (48 Stat. 984), do hereby issue and submit this charter of incorporation to the Washoe Tribe of Nevada and California to be effective from and after such time as it may be ratified by a majority vote of the adult Indians living within the Dresslerville Indian Colony, comprising the territory of the Tribe, at an election in which at least 30 per cent of the eligible voters vote.

*Corporate
Existence.*

1. In order to further the economic development of the Washoe Tribe in the States of Nevada and California by conferring upon the said Tribe certain corporate rights, powers, privileges, and immunities; to secure for the members of the Tribe an assured economic independence; and to provide for the proper exercise by the Tribe of various functions heretofore performed by the Department of the Interior, the aforesaid Tribe is hereby chartered as a body politic and corporate of the United States of America, under the corporate name "The Washoe Tribe."

*Perpetual
Succession.*

2. The Washoe Tribe shall, as a Federal Corporation, have perpetual succession.

Membership.

3. The Washoe Tribe shall be a membership corporation. Its members shall consist of all persons now or hereafter members of the Tribe, as provided by its duly ratified and approved Constitution and By-laws.

Management.

4. The Washoe Tribal Council established in accordance with the said Constitution and By-laws of the Tribe, shall exercise all the corporate powers hereafter enumerated.

Corporate Powers.

5. The Tribe, subject to any restrictions contained in the Constitution and laws of the United States, or in the Constitution and By-laws of the said Tribe, shall have the following corporate powers, in addition to all powers already conferred or guaranteed by the Tribal Constitution and By-laws:

(a) To adopt, use, and alter at its pleasure a corporate seal.

(b) To purchase, take by gift, bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, subject to the following limitations:

(1) No sale or mortgage may be made by the Tribe of any land or interests in land, including mineral rights, now or hereafter held by the Tribe.

(2) No leases or permits (which terms shall not include land assignments to members of the Tribe) covering any land or interests in land now or hereafter held by the Tribe shall be made by the Tribe for a longer term than five years, and all such leases, permits or contracts must be approved by the Secretary of the Interior or by his duly authorized representative; but mineral leases or any leases requiring substantial improvements of the land may be made for longer periods when authorized by law.

(3) No action shall be taken by or in behalf of the Tribe which in any way operates to destroy or injure the tribal grazing lands or other natural resources of the Tribe. All leases or permits relating to the use of tribal grazing lands shall conform to regulations of the Secretary of the Interior authorized by Section 6 of the Act of June 18, 1934, with respect to range carrying capacity and other matters therein specified. Conformity to such regulations shall be made a condition of any such lease or permit whether or not such agreement requires the approval of the Secretary of the Interior, and violation of such condition shall render the agreement revocable, in the discretion of the Secretary of the Interior.

(c) To issue interests in corporate property in exchange for restricted Indian lands, the forms for such interests to be approved by the Secretary of the Interior.

(d) To borrow money from the Indian Credit Fund in accordance with the terms of Section 10 of the Act of

June 18, 1934 (48 Stat. 984), or from any other Governmental agency, or from any member or association of members of the Tribe, and to use such funds directly for productive tribal enterprises, or to loan money thus borrowed to individual members or associations of members of the Tribe: *Provided*, That the amount of indebtedness to which the Tribe may subject itself, aside from loans from the Indian Credit Fund, shall not exceed \$2,000, except with the express approval of the Secretary of the Interior.

(e) To engage in any business that will further the economic well-being of the members of the Tribe or to undertake any activity of any nature whatever, not inconsistent with law or with any provisions of this charter.

(f) To make and perform contracts and agreements of every description, not inconsistent with law or with any provisions of this charter, with any person, association, or corporation, with any municipality or any county, or with the United States or the State of Nevada, including agreements with the State of Nevada for the rendition of public services: *Provided*, That any contract involving payment of money by the corporation in excess of \$200 in any one fiscal year shall be subject to the approval of the Secretary of the Interior or his duly authorized representative.

(g) To pledge chattels or assign future tribal income due or to become due to the Tribe: *Provided*, That any such agreement assigning future income shall not extend more than two years from the date of execution and shall not amount for any one year to more than one-half of the net tribal income in the preceding year: *And provided further*, That any such agreement of pledge or assignment shall be subject to the approval of the Secretary of the Interior or his duly authorized representative.

(h) To deposit corporate funds, from whatever source derived, in any national or State bank to the extent that such funds are insured by the Federal Deposit Insurance Corporation, or secured by a surety bond, or other security, approved by the Secretary of the Interior; or to deposit such funds in the Postal Savings Bank or with a bonded disbursing officer of the United States to the credit of the Tribe.

(i) To sue and to be sued in courts of competent

jurisdiction within the United States; but the grant or exercise of such power to sue and to be sued shall not be deemed a consent by the Tribe or by the United States to the levy of any judgment, lien or attachment upon the property of the Tribe other than income or chattels specially pledged or assigned.

(j) To exercise such further incidental powers, not inconsistent with law, as may be necessary to the conduct of corporate business.

*Termination of
Supervisory
Powers.*

6. Upon request of the Washoe Tribal Council for the termination of any supervisory power reserved to the Secretary of the Interior under Sections 5 (b) (2), 5 (c), 5 (d), 5 (f), 5 (g), 5 (h), and Section 8 of this charter, the Secretary of the Interior, if he shall approve such request, shall thereupon submit the question of such termination for ratification by the Tribe. The termination shall be effective upon ratification by a majority vote of the adult members of the Tribe residing within the territory of the Tribe, at an election in which at least 30 per cent of the eligible voters vote. If, at any time after ten years from the date of approval of this charter, the Secretary shall disapprove a request for the termination of any such power, or fail to approve or disapprove it within 90 days after its receipt, the question of its termination may then be submitted by the Secretary or by the Tribal Council to popular referendum of the adult members of the Tribe actually living within the territory of the Tribe, and if the termination is approved by two-thirds of the eligible voters, it shall be effective.

*Corporate
Property.*

7. To property rights of the Washoe Tribe shall be in any way impaired by anything contained in this charter, and the tribal ownership of unallotted lands, whether or not assigned to the use of any particular individuals is hereby expressly recognized. The individually owned property of members of the Tribe shall not be subject to any corporate debts or liabilities without such owners' consent. Any existing lawful debts of the Tribe shall continue in force, except as such debts may be satisfied or canceled pursuant to law.

*Corporate
Dividends.*

8. The Tribe may issue to each of its members a non-transferable certificate of membership evidencing the equal share of each member in the assets of the Tribe and may distribute per capita among the recognized members of the Tribe, all income of the Tribe over and above sums necessary to defray corporate obligations to members of the Tribe or to other persons and over and above all sums which may be devoted to the establishment of a reserve fund, the construction of public works, the costs of public enterprises, the expenses of tribal government, the needs of charity, or other corporate purpose. Any such distribution of profits

in any one year amounting to a distribution of more than one-half of the accrued surplus, shall not be made without the approval of the Secretary of the Interior. No financial assets of the Tribe shall be distributed except as provided herein.

*Corporate
Accounts.*

9. The officers of the Tribe shall maintain accurate and complete public accounts of the financial affairs of the Tribe, which shall clearly show all credits, debts, pledges, and assignments, and shall furnish an annual balance sheet and report of the financial affairs of the Tribe to the Commissioner of Indian Affairs.

Amendments.

10. This charter shall not be revoked or surrendered except by act of Congress, but amendments may be proposed by resolutions of the Tribal Council which, if approved by the Secretary of the Interior, shall be effective when ratified by a majority vote of the adult members living within the territory of the Tribe at a popular referendum in which at least 30 per cent of the eligible voters vote.

Ratification.

11. This charter shall be effective from and after the date of its ratification by a majority vote of the adult members of the Washoe Tribe living within the Dresslerville Indian Colony, provided at least 30 per cent of the eligible voters shall vote, such ratification to be formally certified by the Superintendent of the Carson Indian Agency and the Chairman and Secretary of the Washoe Tribal Council.

Submitted by the Secretary of the Interior for ratification by the Washoe Tribe in a popular referendum to be held on February 27, 1937.

CHARLES WEST,

Acting Secretary of the Interior.

[SEAL]

WASHINGTON, D. C., *February 24, 1937.*

CERTIFICATION

Pursuant to section 17 of the Act of June 18, 1934 (48 Stat. 984) this charter, issued on February 24, 1937, by the Secretary of the Interior to the Washoe Tribe of the States of Nevada and California, was duly submitted for ratification to the adult Indians living on the Dresslerville Indian Colony and was on February 27, 1937, duly passed by a vote of 53 for, and 0 against, in an election in which over thirty per cent of those entitled to vote cast their ballots.

RAYMOND FILLMORE,

Chairman of the Tribal Council.
ROMA

JAMES,

Secretary of the Tribal Council.

R. C. BOCZKIEWICZ,

Acting Superintendent in charge of the Reservation.

**AMENDMENT I, CORPORATE CHARTER OF THE WASHOE
TRIBE OF THE STATES OF NEVADA AND CALIFORNIA**

That section 5 (g) of the Charter be amended to read as follows:

To pledge or assign chattels or future tribal income due or to become due to the Tribe;
Provided, That no such assignment of tribal income, other than an assignment to the
United States, shall extend more than 10 years from the date of execution, and shall not
amount for any one year to more than one-half of the net tribal income from anyone
source.

Pursuant to the authority vested in the Secretary of the Interior by the Act of June 18, 1934 (48
Stat. 984) and section 10 of the Corporate Charter of the Washoe Tribe, the foregoing amendment of
section 5 (g) of said Charter is hereby approved.

OSCAR L.

CHAPMAN,

Assistant Secretary of the Interior.

[SEAL]

Approval recommended.

FRED H. DAIKER,

Assistant to the Commissioner.

WASHINGTON, D. C., May 3, 1939.

CERTIFICATION OF ADOPTION

Pursuant to section 10 of the Corporate Charter of the Washoe Tribe and section 17 of the Act of
June 18, 1934 (48 Stat. 984), this amendment of section 5 (g) of said Charter, approved on May 3,
1939 by the Assistant Secretary of the Interior, was duly submitted to the adult members of the tribe
living within the Dresslerville Indian Colony and was on June 25, 1939 duly ratified by a vote of 72
for, and 0 against, in an election in which over 30 per cent of those entitled to vote cast their ballots.

WILLIE SMOKEY,

Chairman of the Tribal Council.

WILLIE JIM,

Secretary of the Tribal Council.

ALIDA C. BOWLER,

Superintendent, Carson Agency.

U. S. GOVERNMENT PRINTING OFFICE : 1939

4



Fax Cover Sheet

from

Benny Mills
1656 Railroad Dr.
Carson City, Nevada, 89701
775 885-9971 phone / fax

RECEIVED

OCT 06 2008

WASHOE TRIBAL COURT

Date Oct 6, 2008

To; Jennifer R. Leal, Washoe Tribal Court Clerk

Fax number 775 265-0258

Subject; Notice of Hearing Case #IP-WT-05-22
and IP-WT-05-19 "Fred"

Pages, including cover page 1

Message

What Kind of Hearing is this? Is it going
to be a formal Hearing? if so, I will need
to subpoena witness, about 7 or 8 and the
time span should be about 4 to 6 hours.

Benny Mills
Note: if we start at 3:00pm, the hearing should end around
8:00 - 9:00 pm.

000082

Filed 9/30/08 11:38a
DATE TIME
BY [Signature]
TRIBAL COURT CLERK

IN THE JUVENILE DIVISION OF THE WASHOE TRIBAL COURT.
WASHOE TRIBAL COURT IN AND FOR THE
WASHOE TRIBE OF NEVADA AND CALIFORNIA

IN THE MATTER OF:

ALVIE FRED

D.O.B. 11/09/05

TONYA FRED

D.O.B. 6/30/95

Case No. JP-WT-05-22
JP-WT-05-19

NOTICE OF HEARING

To: Benny Mills
1656 Railroad Drive
Carson City, NV 89701

YOU ARE HEREBY NOTIFIED that a **Hearing** for the above-referenced case is
scheduled for the **15th day, of October, 2008 at the hour of 3:00 p.m.,** in the Washoe Tribal
Courtroom, 950 Highway 395 South, Gardnerville, Nevada 89410.

Dated this 30th, day of September, 2008.

[Signature]
Jennifer R. Leal
Washoe Court Clerk

000209

Filed 11/23/08 3:30p
DATE TIME
WASHOE TRIBAL COURT.
By [Signature]
TRIBAL COURT CLERK

IN THE TRIBAL COURT OF THE WASHOE TRIBE
OF NEVADA AND CALIFORNIA

Case No. JP-WT-05-19
WTPD: JP-WT-05-22

In the Matter of Fred.

Plaintiff,

vs.

Defendant.

SUBPOENA

To Produce Tonya Fred
Child,

TO: Cheryl Douglas, Washoe Tribal Social Service Dir.
919 395 South
Gardnerville, Nevada, 89410


YOU ARE HEREBY COMMANDED to appear before the Washoe Tribal Court of the
Washoe Tribe of Nevada and California, located at 950 Highway 395 South, Gardnerville, Nevada
89410 on October 29, 2008, to serve as a witness for Beony Mills, in the above
entitled case. 3:00 PM

Failure to obey this Subpoena without good cause makes you liable to prosecution.

Dated this 23rd, day of October, 2008.

[Signature]
Washoe Court Clerk

000186

filed	10/23/08	3:30p
DATE		TIME
WASHOE TRIBAL COURT.		
BY		
WASHOE TRIBAL COURT CLERK		

IN THE TRIBAL COURT OF THE WASHOE TRIBE
OF NEVADA AND CALIFORNIA

IN The Matter of Fred.

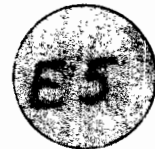
Plaintiff,

vs.

Defendant.

Case No. JP-WT-05-19
WTPD: JP-WT-05-22

SUBPOENA



TO: Barbara Bennett
Hang-A-Leh-Ti
Markleville, California

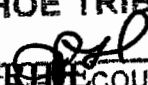
YOU ARE HEREBY COMMANDED to appear before the Washoe Tribal Court of the Washoe Tribe of Nevada and California, located at 950 Highway 395 South, Gardnerville, Nevada 89410 on October 29, 2008, to serve as a witness for Benny Mills, in the above entitled case. 3:00 pm

Failure to obey this Subpoena without good cause makes you liable to prosecution.

Dated this 23rd, day of October, 2008.


Washoe Court Clerk

000187

Filed	10/23/08	3:31p
DATE		TIME
WASHOE TRIBAL COURT.		
BY		
TRIAL COURT CLERK		

IN THE TRIBAL COURT OF THE WASHOE TRIBE
OF NEVADA AND CALIFORNIA

IN the Matter of Fred.

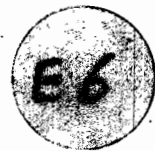
Plaintiff,

vs.

Defendant.

Case No. IP-WT-05-19
WTPD: IP-WT-05-22

SUBPOENA



TO: TIM Minder
Dressherville
Gardnerville, Nevada,

YOU ARE HEREBY COMMANDED to appear before the Washoe Tribal Court of the Washoe Tribe of Nevada and California, located at 950 Highway 395 South, Gardnerville, Nevada 89410 on October 29, 2008, to serve as a witness for Penny Mills, in the above entitled case. 3:00 pm

Failure to obey this Subpoena without good cause makes you liable to prosecution.

Dated this 23rd, day of October, 2008.


Washoe Court Clerk

000188

FILED	10/23/08	3:32p
DATE TIME		
WASHOE TRIBAL COURT.		
BY <u>[Signature]</u>		
WASHOE TRIBAL COURT CLERK		

IN THE TRIBAL COURT OF THE WASHOE TRIBE
OF NEVADA AND CALIFORNIA

Case No. JP-WT-05-19
WTPD:

JP-WT-05-22

In the Matter of Fred

Plaintiff,

vs.

Defendant.

SUBPOENA



TO: Ray Painter

Stewart, Nevada

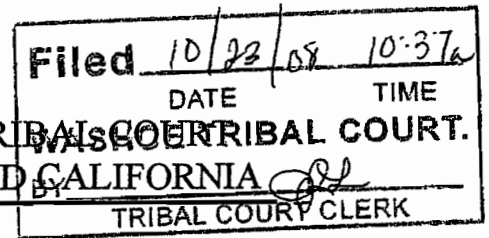
YOU ARE HEREBY COMMANDED to appear before the Washoe Tribal Court of the Washoe Tribe of Nevada and California, located at 950 Highway 395 South, Gardnerville, Nevada 89410 on October 29, 2008, to serve as a witness for Benny Mills, in the above entitled case. 3:00 pm

Failure to obey this Subpoena without good cause makes you liable to prosecution.

Dated this 23rd day of October, 2008.

[Signature]
Washoe Court Clerk

000189



IN THE JUVENILE DIVISION OF THE WASHOE TRIBAL COURT
IN AND FOR THE WASHOE TRIBE OF NEVADA AND CALIFORNIA

IN THE MATTER OF:

FRED CHILDREN

SUBPOENA

CASE NO. JP-WT-05-19

CASE NO. JP-WT-05-22

THE WASHOE TRIBE OF NEVADA AND CALIFORNIA SENDS GREETINGS TO:

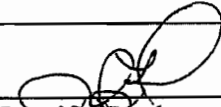
Dr. Lisa Keating

You are requested to APPEAR before the Washoe Tribal Court, Washoe Tribe of Nevada and California, at the Tribal Courtroom, Gardnerville, NV, on:

October 29th, 2008 at the hour of 3:00 p.m. YOU HAVE BEEN APPROVED TO APPEAR VIA TELEPHONE.

to serve as witness in a Civil Domestic action now pending in said Court, regarding the case above stated, and disobedience will be punished as contempt by this Court.

Given under my hand this 23rd day of October, 2008.



Jennifer Leal
COURT CLERK

000191

Filed	9/30/08
DATE	TIME
WASHOE TRIBAL COURT.	
BY <u>[Signature]</u>	
TRIBAL COURT CLERK	

IN THE TRIBAL COURT OF THE WASHOE TRIBE
OF NEVADA AND CALIFORNIA

IN THE MATTER OF:

ALVIE FRED

D.O.B. 11/09/05

TONYA FRED

D.O.B. 6/30/95

Case No. JP-WT-05-22
JP-WT-05-19

AFFIDAVIT OF SERVICE

I, being first sworn, do hereby certify and return the attached Court Process on the 30th day of September, 2008, and personally served the same upon Cheryl Douglas who is competent to receive this Process.

Service was in Person and Effected Upon:

Person To Serve: **CHERYL DOUGLAS
WASHOE TRIBE SOCIAL SERVICES
950 HWY 395 SOUTH
GARDNERVILLE, NV 89410**

Person Served: Cheryl Douglas

Location: Court Yard

Date(s) of Attempted Service: _____ I.D.# _____

_____ I.D.# _____

_____ I.D.# _____

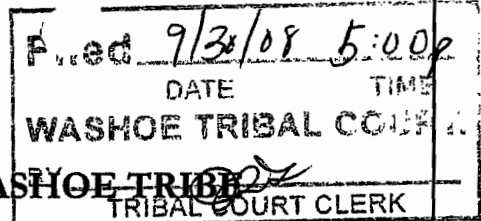
Document(s) Served: NOTICE OF HEARING 10/15/08 AT 3PM

I am a competent person over the age of eighteen years. I am not a party to this action.

SUBSCRIBED and SWORN to before me this 30th day, of September, 2008.

By: [Signature] Title: Clerk

000192



IN THE TRIBAL COURT OF THE WASHOE TRIBE
OF NEVADA AND CALIFORNIA

IN THE MATTER OF:

ALVIE FRED

D.O.B. 11/09/05

TONYA FRED

D.O.B. 6/30/95

Case No. JP-WT-05-22
JP-WT-05-19

AFFIDAVIT OF SERVICE

I, being first sworn, do hereby certify and return the attached Court Process on the 30 day
of September, 2008, and personally served the same upon Dawn Bitz,
who is competent to receive this Process.

Service was in Person and Effected Upon:

Person To Serve: **DAWN BITZ**
950 HWY 395 SOUTH
GARDNERVILLE, NV 89410

Person Served: Dawn Bitz

Location: Court Office

Date(s) of Attempted Service: _____ I.D.# _____

_____ I.D.# _____

_____ I.D.# _____

Document(s) Served: NOTICE OF HEARING 10/15/08 AT 3PM

I am a competent person over the age of eighteen years. I am not a party to this action.

SUBSCRIBED and SWORN to before me this 30th day, of September, 2008.

By: [Signature] Title: Clerk

000193

Filed	10/11/08	11:27a
DATE		TIME
WASHOE TRIBAL COURT.		
TRIBAL COURT CLERK		

IN THE TRIBAL COURT OF THE WASHOE TRIBE
OF NEVADA AND CALIFORNIA

IN THE MATTER OF:

ALVIE FRED

D.O.B. 11/09/05

TONYA FRED

D.O.B. 6/30/95

Case No. JP-WT-05-22
JP-WT-05-19

AFFIDAVIT OF SERVICE

I, being first sworn, do hereby certify and return the attached Court Process on the 1st day
of October, 2008, and personally served the same upon Alan Erb,
who is competent to receive this Process.

Service was in Person and Effected Upon:

Person To Serve: **ALAN ERB**
P.O. BOX 133
GARDNERVILLE, NV 89410

Person Served: Alan Erb

Location: Court Office

Date(s) of Attempted Service: _____ I.D.# _____

_____ I.D.# _____

_____ I.D.# _____

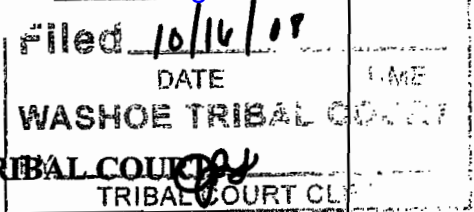
Document(s) Served: NOTICE OF HEARING 10/15/08 AT 3PM

I am a competent person over the age of eighteen years. I am not a party to this action.

SUBSCRIBED and SWORN to before me this 1st day, of October, 2008.

By: [Signature] Title: Clerk

000194



**IN THE JUVENILE DIVISION OF THE WASHOE TRIBAL COURT
IN AND FOR THE WASHOE TRIBE OF NEVADA AND CALIFORNIA**

IN THE MATTER OF:
ELVIE FRED
DOB: 11/9/2005

Case No. JP-WT-05-22
Case No. JP-WT-05-19

TONYA FRED
DOB: 6/30/1995

Children Under the Age of 18 Years

**ORDER DISMISSING WRIT
OF HABEAS CORPUS**

This matter came before the Court on a review hearing regarding "Motion for Docket" filed by Benny Mills on October 15, 2008. Present in the Court were: grandmother of children, Rhonda Whiterock-Fred; advocate for the mother, Benny Mills; Cheryl Douglas, Acting Social Services Director; Dawn Bitz, Tribal Prosecutor; and the Honorable Judge Kockenmeister, presiding. Now with the Court being fully informed, the following is issued:

FINDINGS OF FACT

1. The Prosecutor informed the Court that his hearing was set on Mr. Mill's Motion for Docket that was filed on August 1, 2008 regarding the Petition for Writ of Habeas Corpus also filed by Mr. Mills from June 18, 2007;
2. The last order noted in the case file was from a "Permanent Guardianship Hearing" on June 20, 2007 that allowed the Prosecutor to respond to the Petition for Writ of Habeas Corpus, "at his convenience."
3. The Prosecutor stated that due to change in Prosecutor and turn over of court staff since June, 2007 caused a delay in responding to the Petition for Writ of Habeas Corpus.

- 1 4. Mr. Mills presented his Motion for Docket and Writ of Habeas Corpus to the Court;
2 alleging that the removal of the children from the Rhonda Whiterock-Fred's custody was
3 wrongful and that he was requesting a jury trial in this matter.
- 4 5. The Prosecutor replied that the Petition for Habeas Corpus Petition became moot because
5 of another Habeas Corpus Petition filed by Rhonda Whiterock-Fred in another case that
6 was sent to the Inter-Tribal Court of Appeals (appealing this Court's previous rulings that
7 Rhonda Whiterock-Fred had no standing in the social service case); remanded back to
8 this court and subsequently ruled on April 29, 2008.
- 9 6. The Prosecutor stated that similar case was JP-WT-02-25; whereby the Rhonda
10 Whiterock-Fred's status is the same as this case and is requesting that her grandchildren
11 be returned to her custody.
- 12 7. The Inter-Tribal Court of Appeals Order of February 14, 2008 also stated, "[a]lthough
13 this Court agrees that the Appellant lacks standing in the Termination of Parental Rights
14 case and has no standing to appeal the final order, she has the right to avail herself of
15 other legal remedies, including the filing of a petition for Writ of Habeas Corpus."
- 16 8. The Prosecutor stated that in JP-WT-02-25 the final ruling on April 29, 2008 stated that
17 the Petition was dismissed for failure to present a case on that Petition; therefore, the
18 ruling that Rhonda Whiterock Fred had no standing in that case is currently this court's
19 order.
- 20 9. The Prosecutor argued that because of the final ruling in JP-WT-02-25, there is no
21 significant factor that would allow Rhonda Whiterock Fred to have standing in this case.
- 22 10. The Court then requested what procedure Rhonda Whiterock Fred would be able to have
23 contact with her grandchildren;
24
25

1 11. The Prosecutor stated that the file indicates substantiated abuse by the grandmother
2 against the older child in this matter; that Washoe Tribal Social Services had affirmed
3 that she would not be able to have custody of any children; and, that any contact would
4 have to be determined by a therapist that would make a recommendation.

5 12. The Prosecutor further stated that Rhonda Whiterock-Fred could also file a civil petition
6 requesting visitation.

7 13. Mr. Mills continued his argument that the allegations of abuse were not substantiated and
8 requested to put witnesses on that could counter such allegations.

9 14. The Court then offered an evidentiary hearing in this matter to consider as to whether
10 Rhonda Whiterock-Fred would be allowed contact with her grandchildren in this case.

11 From these Findings of Fact, the Court issues the following:

12 **CONCLUSIONS OF LAW**

- 13
- 14 1. From the documents and pleadings on file, the comments of the persons present in court,
15 and good cause appearing, this court finds that based upon the case precedent of JP-WT-
16 02-25, Rhonda Whiterock-Fred does not have standing in this case.
 - 17 2. However, based upon the ruling from the Inter-Tribal Court of Appeals, an evidentiary
18 hearing can be held to determine if Rhonda Whiterock-Fred can have contact with these
19 children.

20 From these Findings of Fact and Conclusions of law, the Court now issues the following:

21 **ORDER**

- 22
- 23 1. The Writ for Habeas Corpus Petition is hereby denied.
 - 24 2. An evidentiary hearing regarding Rhonda Whiterock-Fred's contact with the
25 children shall be held on October 29, 2008 at 3 p.m.

3. The parties are responsible for their own witness subpoenas.
4. Children subpoenaed shall testify via in camera.

DATED this 16 day of Oct



JUDGE KOCKENMEISTER
WASHOE TRIBAL COURT

000081

Filed	12/11/2008	1:33p
DATE		TIME
WASHOE TRIBAL COURT.		
BY <i>[Signature]</i>		
TRIBAL COURT CLERK		

IN THE JUVENILE DIVISION OF THE WASHOE TRIBAL COURT IN AND FOR THE
WASHOE TRIBE OF NEVADA AND CALIFORNIA

IN THE MATTER OF:

Case No. JP-WT-05-22
Case No. JP-WT-05-19

ELVIE FRED
DOB: 11/9/2005

TONYA FRED
DOB: 6/30/1995

ORDER

Children Under the Age of 18 Years

This matter came before the court on October 29, 2008 for a Hearing regarding contact between the children and their mother Rhonda Whiterock-Fred, Present in court were: Rhonda Whiterock-Fred and her advocate Benny Mills, Dawn Bitz, Tribal Prosecutor; Cheryl Douglas, Acting Social Services Director; and, Judge Kockenmeister presiding.

FINDINGS OF FACT

1. The Court reviewed that the Writ of Habeas Corpus was denied on October 15, 2008, denying the custody of the children to Rhonda Whiterock-Fred; and that this evidentiary hearing was set to determine whether the children could have contact or visitation with their grandmother-Rhonda Whiterock-Fred.
2. The Prosecutor requested that the Court to judicially notice that proceedings and findings be brought to the Court's attention of this Court's order of January 19, 2006. The Prosecutor reviewed the hearing was an evidentiary hearing that made the following findings:

- 1 a. That the allegations in the two Child Protection Petitions against Rhonda
2 Whiterock-Fred were found to be true, (referencing Tribe's Petition In Re: Tonya
3 Fred alleging, "that Tonya suffered burns and beatings and was deprived of food
4 and otherwise has been subjected to emotional mistreatment; and, that Tonya is
5 fearful as a result of living in the home of Rhonda Whiterock-Fred); and,
6 (referencing Tribe's Petition In Re: Elvie Fred alleging, "that the infant child is in
7 danger of substantial risk of death, permanent injury or serious emotional harm in
8 that the child has been abandoned by parents, both of whom are homeless, and left
9 in the care and custody of Rhonda Whiterock-Fred from whom other children
10 have been removed for physical and mental abuse suffered while in the care of
11 Rhonda Whiterock-Fred, the fear being that Alvie will likewise be subject to
12 abuse.");
- 13 b. That it would not be in the best interests of Tonya to have visitation with Rhonda
14 Whitrock-Fred or Lisa Fred;
- 15 c. Elvie exhibits no signs of trauma resulting from visitation with family and
16 therefore may have visitation with all family members.

- 17
18 3. The Prosecutor stated to the Court that the Evidentiary Hearing Order of January 19,
19 2006 was not appealed and this Court has not received any updated information from
20 Rhonda Whiterock-Fred that would change the order today.
- 21 4. The Court then discussed with both parties that based upon the removal of the children of
22 the children from Rhonda Whiterock-Fred and the subsequent findings of both Child
23 Protection Petitions being found true on January 19, 2006; this Court would take judicial
24
25

1 notice of that hearing date and that today's court hearing would only address whether the
2 children may have contact with their grandmother.

- 3 5. Dr. Lisa Keating provided testimony via teleconference that she had completed a follow-
4 up evaluation regarding Tonya Fred. Dr. Keating then testified as to what her evaluation
5 findings were; and, recommended that Tonya Fred and Rhonda Whiterock-Fred should
6 begin therapy with their own therapists; and, that visitation should not occur until both
7 therapists concur on visitation and how visitation would commence. Her testimony also
8 included that Tonya was in need of therapy due high risk of other disorders based upon
9 the fact that she had not received therapy for approximately two years. The updated
10 evaluation of October 28, 2008 was admitted into evidence.
- 11 6. Dr. Lisa Keating reviewed the evaluation of Rhonda Whiterock-Fred of December 5,
12 2005 and reviewed that the grandmother should not be able to have contact with any
13 children; and, that it was questionable as to whether she would benefit from therapy that
14 would support contact between her and her grandchildren. Dr. Keating concluded that
15 this report was not updated that could allow for current recommendations regarding any
16 therapy or progress regarding the grandmother.
- 17 7. Mr. Mills provided a cross-examination of the evaluations presented.
- 18 8. Mr. Mills discussed that he wanted to present evidence that the emergency removal from
19 November 2005 was wrongful. The Court discussed that since that issue was decided
20 and not appealed, it was not before the Court. The Court further stated that Mr. Mills
21 would need to present evidence as to how Rhonda Whiterock-Fred should be allowed
22 visitation after the Court's hearing on January 19, 2006.
23
24
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1 9. Mr. Mills presented the testimony of Tom Minder and his report regarding his child
2 welfare check of Elvie Fred on 12/15/2005, concluding that he did not observe any child
3 neglect issues in the home of Rhonda Whiterock-Fred. The Prosecutor did not cross-
4 examine the witness and his report was admitted into evidence.

5 10. Rhonda Whiterock-Fred testified that she had never abused or neglected any of her
6 grandchildren. The Prosecutor cross-examined the witness as to whether she was aware
7 of the school progress of Tonya while she had custody of her; and, the witness did not
8 verify any of the cross-examine questions.

9 From these Findings of Fact the Court then provided the following;

10 **CONCLUSIONS OF LAW**

11 11. The Court then accepted the recommendations of Dr. Keating's Report with regard to no
12 contact between the grandmother and the children until therapeutic recommendations
13 could be made by a therapist for Rhonda Whiterock-Fred; and, a therapist for Tonya
14 Fred.

15 12. That the Court recognized that Tonya Fred did express an interest in having contact with
16 her grandmother; and, therefore, should be pursued if therapeutic recommendations allow
17 for such contact.

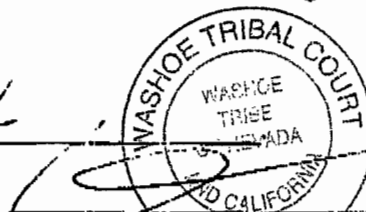
18 **THE COURT HEREBY ORDERS:**

- 19
- 20 1. TONYA AND ELVIE FRED remain within the purview of §8-20-010 §8-80-020; §8-
21 80-030 and §8-170-020 of the Washoe Tribe Law and Order Code, as minor children
22 who may be in need of assistance;
- 23 2. The minor children remain at risk of serious physical and emotional harm if they are
24 allowed visitation with their grandmother, Rhonda Whiterock-Fred without
25

1 therapeutic progress and recommendations as to how visitation should commence at
2 this time;

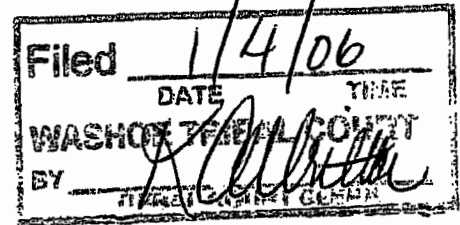
- 3 3. That it is in the best interest of the minor children to remain under custody of the
4 Department of Social Services of the Washoe Tribe of Nevada and California; with
5 physical custody to continue with Luwanda Fred;
- 6 4. That the Department of Social Services shall place Tonya Fred with a therapist of her
7 choice to begin her therapy sessions;
- 8 5. That Rhonda Whiterock Fred is encouraged to begin therapy with a therapist of her
9 choice with regards to pursuing visitation with her grandchildren;
- 10 6. That a review hearing shall be held on December 17, 2008 at 3 p.m. to review the
11 progress in this case with regards to visitation between the children and their
12 grandmother, Rhonda Whiterock-Fred.
- 13 7. Department of Social Services shall submit a report on the therapeutic progress of
14 Tonya Fred; and Mr. Mill's shall forward a similar report to the Court with regards to
15 Rhonda Whiterock-Fred, in preparation for the next hearing.

16
17
18 DATED this 11 day of December



19
20 JUDGE WILLIAM KOCKENMEISTER
21 WASHOE TRIBAL COURT
22
23
24
25

Case No. JP-WT-05-19



IN THE JUVENILE DIVISION OF THE WASHOE TRIBAL COURT
IN AND FOR THE WASHOE TRIBE OF NEVADA AND CALIFORNIA

IN THE MATTER OF:

CHILD/FAMILY PROTECTION PETITION
(A Petition Alleging Child In Need of
Protective Services)

TONYA FRED,
DOB: 6/30/95

A Child Under the Age of 18 Years.

COMES NOW Evan Beavers, tribal prosecutor for the Washoe Tribe of Nevada and California,
by and through its Department of Social Services and Barbara Bennett, director, and respectfully states:

1. That he is the duly appointed, qualified and acting prosecutor for the Washoe Tribe of Nevada and California and the person authorized to file this petition pursuant to § 8-110-010 of the Washoe Tribe Law and Order Code (hereinafter "WTLOC").

2. That the above-named child is under the age of eighteen (18) years and is a child in need of protective services within the meaning of Title 8 of the WTLOC in that:

- a. Tonya Fred, is an Indian child within the meaning of Title 8 of the WTLOC;
- b. Prior to being taken into protective custody Tonya Fred, was in the legal custody of her grandmother, Rhonda Whiterock Fred, residing at 19750 Highway 89, #324, Markleeville, California, within the exterior boundaries of the Washoe Tribe of Nevada and California;
- c. This child is believed to be an enrolled member of the Washoe Tribe of Nevada and California;

3. It is specifically alleged that Tonya has suffered burns and beatings and deprived of food and otherwise has been subjected to emotional mistreatment; and that Tonya is fearful as a result of

1 living in the home of Rhonda Whiterock Fred.

2 4. After an emergency removal hearing on November 18, 2005, the court found grounds
3 sufficient for removal of the child from the custody of Rhonda Whiterock Fred and the minor child was
4 made a ward of the court and custody was granted to the Department and the child remains in the
5 temporary custody of the Washoe Tribe Social Services Department. The Department has monitored
6 the care, custody and control of Tonya Fred, and the Department of Social Services believes it to be in
7 the best interest and welfare of the minor child Tonya Fred, that she be declared a child in need of
8 protective services and be made a ward of this court in accordance with Title 8 of the WTLOC.

9 5. On the same date that the minor child was removed from the physical custody of his
10 parents and grandmother, Ms. Bennett provided to the court written notice of the emergency removal
11 pursuant to WTLOC § 8-90-010.

12 6. Pursuant to WTLOC § 8-100-020, the minor child was placed in a safe place;

13 7. Pursuant to WTLOC § 8-120-010, the initial hearing regarding the removal of Tonya Fred
14 was held within 48 hours of the removal before the Honorable Judge William Kockenmeister on
15 November 18, 2005.

16 8. At the conclusion of the emergency removal hearing Judge Kockenmeister ordered that
17 Tonya Fred be treated as a ward of the court in the custody of the Washoe Tribe Department of Social
18 Services and approved the temporary placement of Tonya Fred at a place to be determined by social
19 services, and Judge Kockenmeister set a review hearing for January 4, 2006 at 3 p.m.;

20 9. Pursuant to WTLOC § 8-20-010 this court has jurisdiction over Tonya Fred in that she
21 is a minor child living within the exterior boundaries of the Washoe Tribe of Nevada and California and
22 action is necessary to ensure her safety and well-being;

23 10. Pursuant to WTLOC § 8-20-020 the court also has jurisdiction over Marsha Fred,
24 "Alberto" and Rhonda Whiterock Fred as a members of the family of Tonya Fred;

25 11. This petition is authorized under WTLOC § 8-110-010 and is filed within the time
26 limitations pursuant to WTLOC § 8-110-020;

27 12. Tonya Fred is a registered member of the Washoe Tribe of Nevada and California;

1 13. Tonya Fred may be at substantial risk of permanent injury if left unattended in the care,
2 custody and control of her parents or grandmother; and

3 14. The allegations set out above comply with WTLOC § 8-110-030 regarding the allegation
4 of specific facts necessary to allege a child to be in need of protective services.

5 WHEREFORE, PETITIONER prays that:

6 1. The court find that Tonya Fred, is in need of protective services within the meaning of
7 Title 8 of the Washoe Tribe Law and Order Code;

8 2. The court declare Tonya Fred, to be a ward of the court;

9 3. The court award temporary legal and physical custody of the minor child Tonya Fred, to
10 the Department of Social Services of the Washoe Tribe of Nevada and California;

11 4. The court make such other and further orders deemed reasonable and proper for the best
12 interest of the minor child Tonya Fred.

13 DATED this 7th day of January, 2006.

14 
15 EVAN BEAVERS

16 DATED this 4th day of January, 2006.

17 
18 BARBARA BENNETT

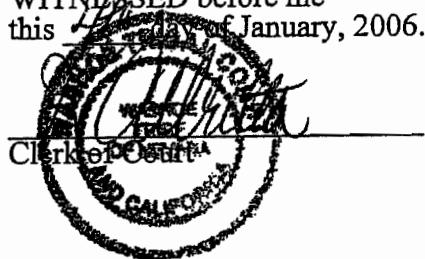
19 VERIFICATION

20 EVAN BEAVERS, being first duly sworn deposes and says that he is the petitioner in the
21 instant matter; that he has read the foregoing petition and knows the contents thereof; that the same
22 are true of his own knowledge, except as to those matters therein contained stated upon information
23 and belief, and as to those matters, he believes them to be true.

24 DATED this 4th day of January, 2006.

25 
26 EVAN BEAVERS
27 TRIBAL PROSECUTOR
28

1 WITNESSED before me
2 this 14 day of January, 2006.



Case No. 2:10-CV-00845-JAM-GGH PS

CERTIFICATE OF SERVICE OF PROCESS

I am at least eighteen (18) years of age, not a party to this action, and currently reside within Carson County, Nevada, where the mailing took place.

My mailing address is 2400 Baker Drive, Carson City, Nevada 89701.

On the 4th day of March, 2011, I mailed the following documents described hereunder, by placing a true copy thereof enclosed in a sealed envelope via United States Postal Service, fully prepaid at Carson City, Nevada 89701. U.S. of A. addressed as set forth below.

The following documents:

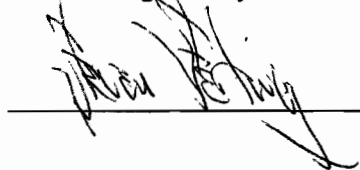
Rebuttal to Defendant's Motion To Dismiss. Contains 5 Pages
EXHIBITS # 1; # 2; # 3; # 4; # 5; # 6; # 7; # 8; # 9; # 10; # 11; # 12; # 13; & # 14. Containing 27 Pages

Grand Total 32 Pages

Have been mailed to the following parties.

Lynelle Hartway (AZ Bar #020486
General Counsel
Washoe Tribe of Nevada and California
919 Hwy 395 South
Gardnerville, Nevada 89410
775-265-8600 Ext. 1115
775-2658651 (fax)
[Lynelle Hartway@washoetribe.us](mailto:Lynelle.Hartway@washoetribe.us)

I, Steven Sterling certify that the foregoing statements are true and correct.



Steven Sterling (name of server)