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Governor Scott Walker
Secretary Eloise Anderson
Office of Legal Counsel

September 30, 2015

Clerk of Supreme Court
Attention: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688

RECEIVED

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**CLERK OF SUPREME COURT
OF WISCONSIN**

Re: Supreme Court Rule Petition 07-11C: In the matter of the review of the discretionary transfer of cases to tribal court

Dear Chief Justice Roggensack and Associate Justices:

Thank you for the opportunity to provide comments on Wis. Stat. § 801.54, authorizing the discretionary transfer of civil cases from circuit court to tribal court, which became effective January 1, 2009.

On July 1, 2009, the Supreme Court granted the request of the Wisconsin Department of Children and Families to amend Wis. Stat. § 801.54 to create an exception to the rule to facilitate transfer of post-judgment child support cases to tribes under certain circumstances. S. Ct. Order 07-11A, 2009 WI 63 (issued July 1, 2009, eff. July 1, 2009) (Roggensack, J., dissenting.) Wis. Stat. §801.54(2m) authorizes the court, on its own motion or the motion of any party, after notice to the parties of their right to object, to transfer a post-judgment child support, custody or placement provision of an action in which the state is a real party in interest pursuant to s. 767.205 (2) to a tribal court located in Wisconsin that is receiving funding from the federal government to operate a child support program under Title IV-D of the federal Social Security Act (42 U.S.C. 654 et al.). The circuit court must first make a threshold determination that concurrent jurisdiction exists.

§ 801.54 has had a positive impact on the transfer of child support cases. It has resulted in a uniform approach statewide for dealing with case transfers including the use of uniform notices and procedures. While each case is still reviewed individually and the parties have the ability to challenge the transfer, there are protocols in place that ensure that all parties receive the same information and have the same factors taken into consideration in determining whether or not to transfer a case.

Since the enactment of Wis. Stat. §801.54, 6 Wisconsin tribes have received federal funding to operate child support programs under Title IV-D of the Federal Social Security Act. Over 2000 cases have been transferred to these tribes since 2009. The breakdown of those cases by tribe is as follows:

- Ho-Chunk 88 cases
- Lac Courte Oreilles (LCO) 279 cases
- Oneida 1551 cases
- Potawatomi 28 cases
- Red Cliff 80 cases
- Stockbridge Munsee 88 cases

The process for case transfer is agreed to in a memorandum of understanding between the tribe, the state and the county from which the tribe will be receiving cases. Cases eligible for transfer are identified through a data match of the tribal enrollment information data with the information in the Kids Information Data System (KIDS), the state's automated child support information system. The tribes identify cases they would like transferred and initiate the transfer process by sending a letter to the parties involved informing them that they are operating a federally approved child support program and have asked the state to transfer the child support, custody and placement provisions of their case to the tribe.

The tribe's letter is followed 30 days later by the filing of a motion by the county child support agency in the county where the court order was entered seeking the transfer of the case from the state to the tribe. The motion is accompanied by an affidavit from the tribe establishing the grounds for concurrent jurisdiction. The parties are provided 10 business days to object to the transfer using a form which was approved by the Records Management Committee at the direction of the Supreme Court and is substantially similar to the form attached as an appendix to the court's 2009 ruling granting the Department's petition. A copy of that form and the materials provided to the parties is attached to this letter.

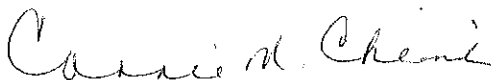
In Red Cliff Tribal transfer requests, hearings are held in Bayfield County Circuit Court for each of the cases identified for transfer. Since the tribe began receiving federal funding to operate a comprehensive child support program in July of 2014, objections have been filed in only 4 of the cases the tribe requested to be transferred from Bayfield County. Of those 4 cases, 2 remained in state court. In one case, the youngest child was close to the age of 18 and it was determined that given the duration of the case in state court, it should remain there. In the other case, both parties objected to the transfer at the hearing and the motion was withdrawn by the county with the approval of the tribe.

In the remaining 5 tribes, we estimate that approximately 88 hearings have been requested, resulting in 32 cases remaining in state court. Additionally, we estimate that the motion for transfer was withdrawn in approximately 60 cases, either because both parties objected to the transfer, it was determined that the child support case was scheduled to close soon due to the emancipation of the youngest child or it was determined that the tribe did not have jurisdiction to proceed against a non-tribal member. The Oneida Tribe has a provision in their tribal ordinance prohibiting the exercise of jurisdiction over non-tribal members without their consent, unless they live on the reservation. If an objection is received from a non-tribal member who does not live on the reservation, the county will withdraw their motion.

The process of transferring post-judgment child support cases to the tribes in each of the federally approved tribal child support programs has worked smoothly. Issues that have arisen have been dealt with and the department has worked together with the tribe to ensure a smooth transition from state to tribal court.

Thank you again for the opportunity to provide comment.

Respectfully submitted,



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STATE OF WISCONSIN

CIRCUIT COURT
FAMILY COURT BRANCH

_____ COUNTY

In re _____:

**NOTICE OF MOTION AND MOTION FOR
MODIFICATION AND FOR DISCRETIONARY
TRANSFER TO TRIBAL COURT**

Petitioner,

vs.

Case No.

Respondent.

To:

NOTICE OF MOTION

PLEASE TAKE NOTICE that that a Motion for Modification and for Discretionary Transfer to _____ Tribal Court in the above captioned matter has been filed by the State of Wisconsin. If you want to dispute this transfer, you must send the attached Request for Hearing within ten (10) business days of the date of this notice to the _____ County Child Support Agency, _____ Street, _____, WI. If you return the request within the appropriate time period, a hearing will be scheduled in Forest County Court, and all parties will be sent a notice of the hearing date, time and location.

MOTION

Now comes the _____ County Child Support, by _____ and moves the Court for an order as follows:

1. Discretionary transfer of the post-judgment child support, medical support, custody and placement provisions of this action pursuant to Wis. Stat. §801.54 to the Tribal Court of the _____ Tribe;
2. A finding, pursuant to Wis. Stat. §822.27 that this court is an inconvenient forum and that the _____ Tribal Court is a more appropriate forum to determine modifications to the existing child custody determination.;
3. A finding pursuant to the standards in P.L. 83-208 and after consideration of the factors in *Montana v. United States*, 450 U.S. 544 (1981), that the circuit court and the _____ Tribe have concurrent jurisdiction over this matter.;
4. A finding pursuant to Wis. Stat. §769.205 and §769.103 that this court does not have

continuing exclusive jurisdiction over the child support in this matter.

The basis for this motion is as follows:

1. The _____ Tribe is receiving funding from the federal government to operate a child support program under Title IV-D of the federal Social Security Act (42 USC 654 et al.);
2. Both parties are members and reside within the boundaries of the _____ Tribe (Wis. Stat. §801.54(2)(d));
3. The minor child(ren) is/are enrolled or are eligible members of the _____ Tribe;
4. The court recognizes the Tribe's inherent power to regulate domestic relations among its members;
5. Future matters can be decided more expeditiously in the Tribal Court (Wis. Stat. §801.54(2)(h));
6. The _____ Tribe has a greater institutional and administrative interest in the matter (Wis. Stat. §801.54(2)(i)).
7. Proceeding in the _____ Tribal Court will pose a lesser burden in terms of evidence, process, practice, and procedure on the parties. (Wis. Stat. §801.54(2)(j)).
8. Based upon the factors set forth above, the court should transfer the child support, medical support, custody and placement provisions of this action to the _____ Tribal Court.;

Dated this ____ day of _____, 201__.

_____ COUNTY CHILD SUPPORT AGENCY

RED CLIFF CHILD SUPPORT SERVICES

**Affidavit of Concurrent
Jurisdiction**

Click here to enter text.,
Petitioner

vs.

Click here to enter text.,
Respondent

Case No. Click here to enter text.
IVD Case No. Click here to enter text.

The Red Cliff Band of Lake Superior Chippewa Indians, by and through its Child Support Attorney, Tish Keahna, hereby states that concurrent jurisdiction exists for the following reasons:

1. Bayfield County Circuit Court has an existing child support and/or paternity case in which the Circuit Court exercised jurisdiction prior to Red Cliff Band of Lake Superior Chippewa Indians receiving federal approval to operate a tribal child support agency; the County has jurisdiction which is concurrent to the Tribe's jurisdiction. The Tribe has since enacted laws authorizing the establishment and enforcement of paternity and child support.
2. The Red Cliff Tribal Code, Chapter 51, Sec. 51.3, Sec. 51.6, Sec. 51.7 and Sec. 51.16 addresses child support, custody and placement, and grants authority over such matters to the Red Cliff Tribal Court.
3. The records of the Red Cliff Tribe indicate that parties to this action are either enrolled members of the Red Cliff Tribe and/or reside within the boundaries of the Red Cliff Reservation:

Mother: ENROLLED MEMBER OF RED CLIFF BAND OF CHIPPEWA INDIANS
 NOT ENROLLED
Date of Birth: ENROLLED WITH ANOTHER TRIBE:
 RESIDES ON RESERVATION LAND

Father: ENROLLED MEMBER OF RED CLIFF BAND OF CHIPPEWA INDIANS
 NOT ENROLLED
Date of Birth: ENROLLED WITH ANOTHER TRIBE:
 RESIDES ON RESERVATION LAND

Name of Child: ENROLLED MEMBER OF RED CLIFF BAND OF CHIPPEWA INDIANS
 NOT ENROLLED BUT ELIGIBLE TO BE ENROLLED
Date of Birth: ENROLLED WITH ANOTHER TRIBE:

4. Pursuant to the factors in *Montana vs United States*, 450 U.S. 544 (1981), and as the Red Cliff Tribe has a code on this matter, the ability to enforce this code, the Tribal Court has concurrent jurisdiction over this matter.

Respectfully Submitted,

Tish Keahna

Date

Notice of Transfer Letter

Use County CSA Letterhead

Date:

To:

_____ County Court Case No.: _____
IVD Case No. _____

The _____ recently received federal approval to operate a tribal child support agency. The Tribe has enacted laws authorizing the establishment and enforcement of paternity and child support.

You or the other parent in your case is a member of the _____ Tribe.
Therefore, your child support case may be transferred to the _____

Child Support Agency. If it is transferred, the issues of legal custody, physical placement and child support will be under the jurisdiction of the _____
Tribe of Indians of Wisconsin.

This is your formal notice of _____ County's intent to transfer your case to the _____ Child Support Agency. You have a right to object to this transfer. Enclosed is a copy of the statute outlining the factors the court will consider if you do object and request a hearing.

If you want to dispute the transfer, **you must** complete the enclosed Request for Hearing. Be sure to fill out the second page attached to the Request for Hearing explaining why you object to the transfer. The hearing judge will then be better able to consider your objection. Within ten (10) business days of the date of this letter, **you must** send the completed Request for Hearing to the _____
County Child Support Agency. If you return the request within the appropriate time period, a hearing will be scheduled in _____ County Circuit Court and all parties will be send a notice of the hearing date, time and location.

If you do not complete and return the Request for Hearing form within ten (10) business days, we will ask the _____ County Circuit Court to sign an order transferring your case to the _____ Child Support Agency.

This agency is an equal opportunity employer and service provider. If you have a disability and need information in an alternative format or if you need it translated to another language, please contact us at the phone number or address listed at the top of this letter.

Sincerely,

_____ County Child Support Agency

Enclosures

STATE OF WISCONSIN CIRCUIT COURT _____ COUNTY

IN RE:

Petitioner

AND

Respondent

**REQUEST FOR HEARING ON
CASE TRANSFER TO THE
_____ TRIBE**

Case No. _____

IVD No. _____

TO THE CIRCUIT JUDGE OF _____ COUNTY:

I request a hearing to contest the transfer of my case regarding the issues of legal custody, physical placement and child support to the _____ Tribe of Indians.

Signature

Name Printed or Typed

Date

For Agency Use Only

The above requested hearing is scheduled for:

Date: _____

Time: _____

Location: _____

Presiding Official: _____

Address: _____

BRIEFLY EXPLAIN THE REASON YOU OPPOSE THE TRANSFER OF THIS
CASE TO THE _____ TRIBAL COURT: