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Wisconsin Supreme Court
16 E. State Capitol
P.O. Box 1688
Madison, WI 53701-1688

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OF WISCONSIN

Dear Justices:

I write to request an amendment to S.801.54 Wis. Stats. governing the discretionary transfer of civil actions to tribal court to allow an exception for the child support program under Title IV-D of the Social Security Act (42 USC 654 et al.).

The federal government provides direct funding to tribal programs to create and operate tribal child support programs which meet the objectives of Title IV-D. These programs are operated in accordance with federal regulations at 45 CFR 309. The Oneida Nation recently received federal approval to operate a tribal child support program. They have enacted tribal ordinances authorizing the establishment and enforcement of paternity and child support orders.

The Department of Children and Families is working together with Brown County and the Oneida Nation to facilitate the transfer of nearly 4000 state court cases to the tribe. These cases are all post-judgment and only the child support, custody and placement provisions of the orders are being transferred. The DCF has facilitated similar transfers to the Forest County Potawatomi Community, the Lac du Flambeau Band of Lake Superior Chippewa Indians and the Menominee tribe. I have consulted with the Brown County judges and am authorized to say that they support this request.

Wis. Stat. s. 801.54 became effective January 1, 2009. It appears that the provisions of s.801.54 now apply to these transfers. While we fully intend to see that the litigants are afforded due process as a part of these transfers, the state child support program does not have the funding or resources to provide a full hearing in each and every one of these cases.

The federal government has encouraged states to work with their tribal governments to assist them in establishing and operating their own child support programs. The application of s. 801.54 to these cases will significantly impede our ability to transfer a large volume of cases to the tribes. This, in turn, will impede the tribe's ability to provide child support services to its members and would likely result in the loss of their federal funding.

We therefore request this court create a narrow exception to s. 801.54 to provide for a more efficient procedural mechanism to accomplish the transfer of cases encompassed by this federal program. This seems consistent with the federal regulations governing State IV-D plans that

require States to cooperate with Tribal IV-D programs. Such an exception could provide as follows:

The circuit court may, on its own motion or the motion of any party, after notice to the parties of their right to object, 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 USC 654 et al.). The transfer will occur unless a party objects in a timely manner or it is proven that there is good cause to prevent the transfer. Upon the filing of a timely objection to the transfer and a showing of cause to prevent the transfer, the circuit court shall conduct a hearing on the record considering all the relevant factors set forth in sub (2).

Thus, if a party invokes its right to object to the proposed transfer and makes a prima facie showing that there is some reason to prevent the transfer, the party will receive a hearing with consideration, on the record, of all the factors set forth in sub. (2) of the rule. In addition, we note that Wis. Stat. 801.54(4) provides that “[t]he decision of a circuit court to transfer an action to tribal court may be appealed as a matter of right under s. 808.03(1).” We believe that this exception will afford all parties their due process rights while enabling the DCF and the County to work with their tribal governments to assist them in establishing and operating their own child support programs. Because the Oneida Nation’s funding depends on a showing that they have established and begun to operate its program, we further request the court act on this matter at its earliest possible opportunity.

Thank you for your consideration.

Sincerely,



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