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STATE OF WISCONSIN SUPREME COURT

In the matter of:

The petition proposing the creation of a rule governing
the discretionary transfer of cases to tribal courts

FILED

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CLERK OF SUPREME COURT
OF WISCONSIN

PETITION FOR CREATION OF A RULE GOVERNING DISCRETIONARY TRANSFER OF CASES TO TRIBAL COURTS 07-11

To: The Honorable Justices of the Supreme Court

I am the Director of the Indian Law Office of Wisconsin Judicare, Inc. and have held that position since 1991. Wisconsin Judicare is a non-profit law firm dedicated to providing free legal services to low-income individuals and groups in northern Wisconsin for the past forty years. Judicare's Indian Law Office works with all 11 federally recognized tribes in Wisconsin and their members. We assist in the development of tribal courts and jurisprudence and, as well, we represent individual Indian people in tribal, state and federal courts.

In that context our office is involved on a daily basis with Native Americans in both tribal and state courts. We experience first-hand the practical considerations affecting clients and courts with regard to venue. Although a case may be initially filed in a state court, sometimes it just makes more sense to have it proceed in tribal court for reasons such as convenience, custom, courtesy and judicial economy.

Sometimes discretionary transfers happen for these reasons, but some state court judges are uncertain of their authority to transfer cases to tribal courts, and uncertain as to the factors and procedures to consider in such an eventuality. This proposed Rule would clarify that authority and provide guidance to circuit court judges across the state and not just in districts where tribal-state court protocols exist.

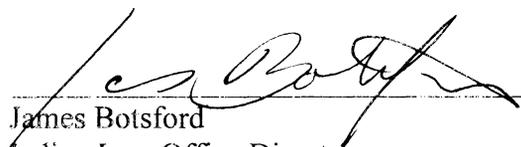
Over the years, our office has collaborated with the Wisconsin Tribal Judges Association to conduct legal seminars for state and tribal court judges and attorneys. In the course of those seminars, we have often heard expressed the need for supportive guidance in working through state-tribal jurisdictional questions of comity, courtesy and cooperation. It is extremely encouraging to see that all those years of respectful discussions have led us not only to the Teague Protocols, but now to this proposed Rule.

It is now more than half a century since Public Law 83-280 was passed by the U.S. Congress in 1953. In the decades since then there has been much case law in Wisconsin and nationally interpreting PL-280 and establishing the solid foundation of concurrent state and tribal jurisdiction in PL-280 states such as Wisconsin. This foundation creates the opportunity to establish cooperative judicial relationships that respect the interests of parties and make appropriate use of the principle of comity without compromising sovereign governmental interests.

A few years ago Chief Justice Abrahamson took the initiative to create the State-Tribal Justice Forum. I have had the distinct good fortune of being appointed to serve on that Forum representing the Indian Law Section of the State Bar. This unique Forum was charged with going beyond rhetoric and finding real-world opportunities for cooperative efforts between the state and tribal judiciaries. This Petition is a prime example of just what this Forum was created to produce. It is an innovative step in the right direction with real-world benefits that will extend into the future as part of Wisconsin's jurisprudence.

As the tribal courts continue to grow, it is very helpful and beneficial that such growth occurs in a respectful and cooperative relationship to the state court system. As I discuss tribal-state judicial relationships with my colleagues nationally in the other 24 firms constituting the National Association of Indian Legal Services, I am proud of the unique leading role of Wisconsin in these matters and honored to be providing this testimony in support of this proposed and historic Rule.

Respectfully submitted, this 6 day of December, 2007.



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