

Oneida Tribal Judicial System

Onayote ʔ a·ka Tsiʔ Shakotiyaʔ Tolé hte

October 4, 2010

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CLERK OF SUPREME COURT
OF WISCONSIN

Clerk of the Supreme Court of Wisconsin
PO Box 1688
Madison, WI 53701-1688

To the Honorable:

Shirley S. Abrahamson, Chief Justice
N. Patrick Crooks, Justice
Patience Drake Roggensack, Justice

Ann Walsh Bradley, Justice
David T. Prosser, Jr., Justice
Annette Kingland Ziegler, Justice
Michael J. Gableman, Justice

RE: Review of Supreme Court Rule Petition 07-11

Greetings from the Sovereign Oneida Nation of Wisconsin and its Judiciary:

We appreciate the opportunity to relate the substantial and positive experience the Oneida Nation has witnessed in regard to Wis. Stat. §801.54, *Discretionary transfer of civil actions to tribal court*, effective January 1, 2009. The Oneida Judiciary also wishes to take this opportunity to recognize all those who implemented the rule and coordinated a smooth transfer of jurisdiction thus far. Included in those who deserve recognition are: The Honorable Donald R. Zuidmulder, Chief Judge, Brown County Circuit Court; Lisa Schwartz, Director, Oneida Child Support Enforcement Agency; Connie Chesnik, Attorney-Wisconsin Department of Children and Families; Jackie Scharping, Administrator, Brown County Child Support Agency; and Lisa Wilson, Brown County Circuit Court Clerk.

Since the inception of the rule the Oneida Tribal Judicial System has played a key role in a process that has worked efficiently while recognizing the sovereignty of two great jurisdictions. Most importantly, the efficient transfer of concurrent jurisdiction asserts the best interest of children within the culture and tradition of the Oneida Nation while ensuring fair and impartial due process to parents of those children.

To date the majority of transfers of concurrent jurisdiction cases have involved paternity and/or child support matters. The Oneida Child Support Enforcement Agency provides the following case transfer statistics: ¹

- 644 cases in which a Motion to Transfer was made
- 81 cases in which the motion was withdrawn by the Oneida Nation
- 21 cases in which an objection was made
- 5 cases not transferred

All of the transferred cases have proceeded smoothly and expeditiously through the Oneida Child Support Enforcement Agency and the Oneida Court. Often, the Tribe has access to information and resources beyond usual case management practices. Following are examples of case scenarios in which transfer of jurisdiction to the Tribe assisted parents and children:

- The Oneida Child Support Enforcement Agency worked with a non-custodial parent on forgiveness of arrears. He is a disabled veteran who has been on disability for over ten years with numerous health issues that prohibit him from obtaining meaningful employment.
- The Oneida Child Support Enforcement Agency reunited a child with his paternal family when his father passed away before his birth. Paternity had not been established until the case was transferred to the Oneida Child Support Enforcement Agency.

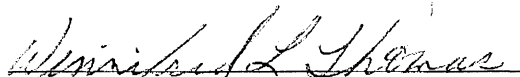
Pursuant to law the Oneida Tribal Judicial System and the Oneida Child Support Enforcement Agency have the authority and capability to fully and fairly address cases transferred from the State circuit court. Wis. Stat. §801.54 recognizes the great importance of tribal self-governance, tribal sovereignty and the application of tribal laws, traditions and culture. However, the efficient transfer of concurrent jurisdiction cases serves more practical purposes.

An Oneida judge and the Oneida child support agency have distinct advantages that a State circuit court judge does not have when hearing and administering a family court matter. The Oneida judge is able to impart to young parents the important role of a parent (and of a child) in tribal culture. The Oneida judge is in a position to appoint a *guardian ad litem* that serves in the cultural milieu and can talk to the grandmothers. The Oneida judge is able to construct “in-kind” support orders. Finally, the Oneida child support agency is able to build a positive trust relationship with Oneida family members and is able to offer creative case management services – some of which may not be known to other child support agencies.

¹Source is Brown County Child Support Agency. There is a variance from cases actually accepted by the Oneida Tribal Judicial System due to the time needed by the county CSA and circuit court to copy files and make them available for transport.

The foregoing clearly states and supports the continuation of Wis. Stat. §801.54. The rule works as intended and it is a positive tool for state and tribal courts. Most importantly, it benefits families who have substantial contacts with the Oneida Nation of Wisconsin.

Respectfully,


Winnifred L. Thomas, Chief Judge
Oneida Tribal Judicial System

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