

STENZEL LAW OFFICE LLC
ATTORNEY PAUL W. STENZEL

October 4, 2010

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CLERK OF SUPREME COURT
OF WISCONSIN

Clerk of the Supreme Court of Wisconsin
ATTN: Carrie Janto, Deputy Clerk
PO Box 1688
Madison, WI 53701-1688
VIA U.S. MAIL AND EMAIL (carrie.janto@wicourts.gov)

RE: Review of Supreme Court Rule Petition 07-11

Dear Clerk of the Supreme Court:

I am writing in to share my views as part of the review of Wis. Stat. § 801.54 currently being conducted by the Supreme Court. I am a solo practitioner in private practice. I have worked with and represented Indian tribes in the upper Midwest for over 15 years. In addition to advising several tribal courts in Wisconsin, I also regularly appear and litigate in tribal courts on a wide range of matters. I recently authored an article on state-tribal cooperation in the *Journal of Court Innovation* entitled *Full Faith and Credit and Cooperation Between State and Tribal Courts: Catching Up to the Law*, JOCI, Vol. 2, No. 2 (Fall 2009).

Wis. Stat. § 801.54 serves parties, circuit courts and tribal courts well. The rule facilitates cases being heard in the appropriate forum. As I have discussed the upcoming rule review with state and tribal colleagues, the emerging theme is that use of the rule has been infrequent (save for a large number post-judgment child support and child custody cases in Brown County) and when used the results have been positive.

At the time Wis. Stat. § 801.54 was enacted, the dissent cited several reasons why it disagreed with the enactment of the rule. In the ensuing two years, those fears have proven unfounded both legally and factually. The dissent's concerns about limited tribal court jurisdiction and litigants' rights are puzzling because the rule simply creates a mechanism for transfers from state to tribal court. Litigants' rights and jurisdictional claims remain unaltered. In fact the rule expressly does not alter either court's jurisdiction. Wis. Stat. § 801.54(6).

While it may be true that a person has slightly different rights in tribal court than in state court, this is not new. Wisconsin citizens have been appearing in tribal courts for decades without calamity. Whatever the contours of tribal law and tribal court jurisprudence, this rule

does nothing to alter them and state judges have the ability to deny a transfer if they have concerns. I am not aware of any pending litigation challenging the validity of the rule on its face or in application.

My experience with the Indian tribal judiciary has been similar to my experience in state and federal jurisdictions: there are all types of judges with various strengths and weaknesses. By and large, tribal judges, like their state and federal colleagues, are working very hard to make the right decision under the law.

On the other side of the bench, the views of litigants do not reflect the dissents' concerns. Non-member parties in tribal court may be concerned about being in an unfamiliar forum but it is almost always for all types of reasons other than any perceived loss of constitutional or statutory rights: convenience, money, chances of winning, etc. These types of concerns are not unique to tribal courts; they are ones expressed by any litigant who may have a venue or forum issue.

Wis. Stat. § 801.54 is a positive development in the law. I encourage you to leave the rule undisturbed.

Sincerely,

STENZEL LAW OFFICE, LLC

A handwritten signature in black ink, appearing to read "Paul Stenzel", with a long horizontal flourish extending to the right.

Paul Stenzel