

On behalf of the State-Tribal Justice Forum, I again want to thank the Court for its careful consideration of Rule Petition 07-11C concerning discretionary transfer to tribal courts. The Forum stands by its previous written submissions (September 30, 2015 and February 24, 2016) and by the testimony offered to the Court on November 10, 2015. We continue to urge permanent adoption of Wis. Stat. § 801.54 without substantive revision.

I received in yesterday's mail a copy of Judge Eugene White-Fish's correspondence to Justice Gableman, in which he invites the Forum's response on several points which are apparently of concern to Justice Gableman and perhaps other justices. The Forum has **not** had the opportunity to meet and address these particular issues as a body, and therefore the following observations should be properly regarded as **mine only** at this time.

1. I have reservations about adopting a form to explain the rights of litigants under § 801.54 and the potential consequences in the event of a transfer. The language of § 801.54 itself adequately explains the process and the rights of litigants who may be party to a transfer motion. To explain more, particularly as to distinctions between the federal, state and tribal constitutions, and the laws and procedures unique to particular tribes, is to invite criticism both of what is said and what may remain unsaid in any such document.
2. As pointed out in the Forum's February 24, 2016 submission, it may be advisable to add a provision to the rule to expressly grant circuit courts the authority to accept a transfer from tribal court. As Judge White-Fish notes, the Ho-Chunk Nation already permits transfers from its tribal court to state or foreign jurisdictions, and other tribes are currently considering similar provisions in their codes. Regardless, Wisconsin's courts are in almost all cases open to litigants who wish to initiate a separate action in circuit court.
3. Because any motion to transfer under § 801.54 requires notice and an opportunity for a party to object and be heard, and because any decision on the motion requires explicit consideration of the factors set forth in the statute, whether the motion is initiated by the court or a party should have little import. The Forum believes that allowing a court to raise the issue of potential transfer on its own motion is advisable because in many cases the litigants will be *pro se* and unaware that transfer to a tribal court could be available. However, to the extent a majority of this Court finds that to be inappropriate, elimination of that provision would not significantly reduce the statute's effectiveness.

If requested, the Forum would be pleased to assist the Court in drafting any modifications the Court may direct. Once again, we urge permanent adoption of Wis. Stat. § 801.54.

Respectfully,

Neal A. Nielsen III, Chair  
Wisconsin State-Tribal Justice Forum