

ONEIDA INDIAN NATION



MEGHAN MURPHY BEAKMAN
GENERAL COUNSEL

DIRECT DIAL: (315) 361-7937
E-MAIL: mbeakman@oneida-nation.org

ONEIDA NATION HOMELANDS

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VIA Email (rulecomments@nycourts.gov)

John W. McConnell, Esq.
Office of Court Administration
25 Beaver Street
11th Floor
New York, New York 10004

Re: Proposed adoption of new 22 NYCRR § 202.71 relating to establishment of a procedure for recognition of judgments rendered by tribunals or courts of tribes recognized by the State of New York or the United States

Dear Mr. McConnell:

I am writing in support of the adoption of the proposed new rule (22 NYCRR § 202.71, Uniform Civil Rules for Supreme Court and County Court) recommended by the Advisory Committee on Civil Practice, establishing a procedure for the recognition of judgments rendered by courts of federally or state-recognized Indian nations.

We identified and highlighted the need for recognition of tribal judgments by the New York State courts, and the importance of establishing a clear rule for recognition and enforcement of tribal court judgments under well-established, broadly-accepted principals of comity at the first New York Federal-State-Tribal Courts and Indian Nations Justice Forum meeting in 2004. Consideration of this proposed new rule 22 NYCRR § 202.71 could never have been possible without the unwavering dedication, patience, understanding, hard work and commitment of the Honorable Marcy L. Kahn, the Honorable Edward M. Davidowitz, and the members of the Forum. The Oneida Nation is also grateful for the ongoing support and guidance from the late Honorable Stewart F. Hancock, Jr., the Honorable Richard D. Simons (and current Chief Judge of the Oneida Nation Court), the Honorable James C. Tormey, and the Honorable Samuel D. Hester.

We support the adoption of this proposed recognition rule as an important recognition of, and respect for, the Indian nations in New York as sovereign governments, which serve an important role in the administration of justice in New York. The proposed rule also (1) provides needed clarity for tribal and State court litigants that judgments and orders obtained in courts established by the federally and state-recognized Indian nations may be enforced and (2) identifies a uniform and predictable process for the enforcement of such judgments and orders in State and county courts.

“Today, in the United States, we have three types of sovereign entities – the Federal government, the States, and the Indian tribes. Each of the three sovereigns has its own judicial system and each plays an important role in the administration of justice in this country.” Sandra Day O’Connor, *Lessons from the Third Sovereign: Indian Tribal Courts*, 37 TULSA L. REV. 1, 2 (1997). The U.S. Supreme Court has long recognized that “[t]ribal courts play a vital role in tribal self-government.” *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 14 (1987). New York has its own federal statute, 25 U.S.C. § 233, generally conferring state court civil jurisdiction over disputes involving Indians whether or not the Indian party lives on reservations within the state or the dispute arises on such a reservation, and expressly preserves tribal law and custom. New York law has also long recognized and enforced certain decisions of tribal courts. *See* N.Y. Const., art. VI, § 31 (exempting certain tribal courts from provisions applicable to state courts); N.Y. Indian Law §§ 32 (Seneca Nation Peacemakers’ Courts), 52 (same). To date, however, New York law, has been silent on the general recognition and enforcement of tribal court judgments leaving litigants (and potential tribal court litigants) to question whether a particular New York court, will in fact recognize a judgment obtained in tribal court. This uncertainty creates a chilling effect and a general hesitance to utilize tribal courts on matters that are best decided or litigated in a tribal court.

New York Civil Practice Law and Rules and the current court rules are completely silent on the recognition of tribal court judgments and leave open whether and how tribal court judgments will be recognized by New York State courts. Article 53 alone does not provide sufficient clarity regarding tribal court judgments. In the absence of a predictable recognition mechanism for tribal court judgments, the concurrent tribal and state civil jurisdiction in New York allows for unnecessary conflict and judicial inefficiencies, including forum shopping, attempts to re-litigate issues already decided in a separate forum and conflicting and mutually inconsistent orders from tribal and State courts. The new rule makes clear that tribal court judgments may be recognized as judgments of the Supreme Court of the State of New York under both Article 53 of the CPLR and principals of the common law of comity. This new rule will achieve greater efficiency and consistency in the courts by creating a uniform and predictable approach that litigants and practitioners can use, and the New York courts can apply, to effect state-wide recognition of all properly rendered judgments.

The Oneida Nation established the Oneida Nation Court in 1997, and at the time, appointed the late Honorable Stewart F. Hancock, Jr. (formerly of the New York State Court of Appeals) and the Honorable Richard D. Simons (formerly Chief Judge of the New York State Court of Appeals). Justice Simons and the Honorable Robert G. Hurlbutt (formerly New York State Supreme Court Justice, 4th Department) currently serve as the justices of the Oneida Nation Court. The Nation has established Oneida Indian Nation Rules of Criminal Procedure, Rules of Evidence, Rules of Debt Collection and, most relevant here, Oneida Indian Nation Rules of Civil Procedure for its court. *See* <http://theoneidanation.com/codesandordinances>. Notably, the Oneida Nation’s Rules of Civil Procedure expressly provide for the recognition of state court judgments by the Oneida Nation Court.

Rule 35 of the Oneida Indian Nation Rules of Civil Procedure provides, in relevant part, that “comity may be given in the Oneida Nation Court to the judicial proceedings of any court of competent jurisdiction in which final judgments, orders or stays have been obtained, provided; however, that comity shall not be given to final judgments, orders and stays rendered by any court which declines or refuses to similarly recognize the final judgments, orders or stays of the Oneida Nation Court” The adoption of 22 NYCRR § 202.71 would then allow for the recognition of properly obtained New York State court judgments in Oneida Nation Court. Absent the new proposed rule expressly providing for recognition of tribal court judgments, there would be no reciprocal mechanism or incentive for the tribal courts such as the Oneida Nation Court to enforce New York State court judgments.

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This new court rule recognizes the unique legal status of tribal nations (and, hence, tribal courts) in New York and provides needed guidance to courts, practitioners and litigants not only that tribal judgments may be enforced, but also provides a clear roadmap for the enforcement of such judgments through “an expeditious and uniform procedure.” Accordingly, we support the adoption of the proposed new rule 22 NYCRR § 202.71.

Very truly yours,


Meghan Murphy Beakman