

State of New York
Unified Court System
Tribal Courts Committee
serving the
New York Federal-State-Tribal Courts
and Indian Nations Justice Forum

100 Centre Street, Room 1730
New York, New York 10013
(646) 386-3986
Fax (212) 748-5095

Hon. Marcy L. Kahn, Chair
Hon. Edward M. Davidowitz, Co-Chair, 2002-2014*
Hon. Sharon S. Townsend, Vice Chair
Hon. Mark Montour, Vice Chair
Joy Beane, Esquire, Counsel

Executive Committee Members
Hon. Hugh A. Gilbert, Forum Co-Facilitator
Hon. Lizbeth Gonzalez
Hon. Patricia A. Maxwell
Todd Weber, Esquire

*Deceased

June 15, 2015

BY EMAIL AND U.S. MAIL

Honorable Timothy B. Lennon
Deputy Commissioner For Operations and
Customer Service
New York State Department of Motor Vehicles
6 Empire State Plaza
Albany, NY 12223

Re: Recognition of Indian Tribal Court
Orders, Decrees and Judgments by the
Department of Motor Vehicles

Dear Commissioner Lennon:

As Chair of the New York State Unified Court System's Tribal Courts Committee and on behalf of the New York Federal-State-Tribal Courts and Indian Nations Justice Forum (the Forum),¹ created under the auspices of the Conference of Chief Justices and now in its twelfth year of operation, I write about a matter of great concern to the Forum and its participants from the state, federal and tribal nation justice systems resident in New York. Specifically, we have received numerous reports from state and tribal court judges, tribal nation officials and litigants in tribal courts in New York that the Department of Motor Vehicles (DMV) is refusing, in some instances, to recognize the duly issued orders and decrees of tribal courts, while in others, is granting recognition pursuant to a policy which appears to have no legal grounding. These disparate results lack predictability, and are extremely, and we believe, unnecessarily,

¹ The Forum was established in 2003 on the initiative of former Chief Judge Judith Kaye to promote understanding and reduce jurisdictional conflicts among New York's state and federal courts and the courts and justice systems of the nine Indian Tribal Nations recognized by the State of New York.

Honorable Timothy B. Lennon
June 15, 2015
Page: Two

burdensome to both the tribal courts and to the litigants involved.

Of New York's nine state-recognized tribal nations, three (the Oneida Indian Nation, the Seneca Nation of Indians and the St. Regis Mohawk Tribe) operate their own court systems. Each of the three nations has reported a lack of uniformity among New York state courts and executive branch agencies in the recognition of their judgments, orders and decrees, resulting in unpredictability and costly, duplicative relitigation of controversies which had been previously settled in their courts.

Accompanying this letter is a letter from the Honorable Esther Maybee, Surrogate Judge of the Allegheny Territory of the Seneca Nation of Indians. Judge Maybee describes quite graphically the problems that arise in her court in the administration of decedents' estates owing to the refusal of the Cattaraugus County DMV Office to recognize the tribal courts' orders and decrees.² Her letter also reports the problems experienced by women who have obtained divorce decrees in the Seneca Peacemakers' Court, along with name-change orders, in renewing their driver's licenses due to the refusal of the local DMV office to honor those orders. These problems have existed for years in their locality, and have created major difficulties for both tribal courts and residents.

The St. Regis Mohawk Tribal Court reports that its local DMV office in Franklin County, by contrast, after initially refusing to do so, will now honor the tribal court's divorce decrees and name-change orders to permit license renewals, provided that the applicant is a member of the St. Regis Mohawk Tribe. (See email attached from an Assistant Counsel of the DMV to the agency's Franklin County office.) No legal basis has been advanced by the state for this particular policy of requiring proof of tribal enrollment as a precondition to renewal of one's driver's license. Further, no reason appears for denying the same relief to a non-Native who has obtained a similar tribal court order. In any case, this is not the policy of the DMV throughout the state.

² We are informed that the Cattaraugus DMV Office has been directed not to recognize tribal court orders by the DMV Executive Office in Albany.

Honorable Timothy B. Lennon
June 15, 2015
Page: Three

Due to the lack of a uniform, predictable policy by the DMV, as these reports demonstrate, lives are disrupted and businesses are burdened by having to commence a second proceeding in state court after there has been a full and fair litigation resulting in a final determination in tribal court. Apart from the unnecessary delay and expense of having to re-litigate the previously resolved controversy in state court, the prospect always looms of a possible inconsistent outcome in the second action.

On May 26, 2015, the Chief Administrative Judge, with the advice and consent of the Administrative Board of the Courts, issued a new court rule on the Recognition of Tribal Court Judgments, Decrees and Orders (22 NYCRR §202.71), a copy of which accompanies this letter. This rule reminds Supreme Court Justices to apply the same common law comity standards to tribal court judgments, orders and decrees as they would apply to determine issues of recognition pertaining to foreign nation rulings. While governing the state's general jurisdiction trial courts, and not purporting to dictate executive branch policy, this comity rule demonstrates that New York accords government-to-government recognition of tribal nation governments and their courts, using a uniform and predictable standard, and, we would suggest, should prompt your agency to do the same.

I would be glad to discuss the matter further with you. We would appreciate hearing from you at your earliest convenience.

Thank you very much.

Very truly yours,



Marcy L. Kahn
Chair
New York Tribal Courts Committee

MLK:ob
Enclosures