NEW YORK STATE BAR ASSOCIATION
NYSBA One Elk Street, Albany, New York 12207 • PH 518.463.3200 • www.nysba.org

COMMITTEE ON CIVIL PRACTICE LAW AND RULES

ROBERT P. KNAPP III
Chair
Mulholland and Knapp, LLP
110 E. 42nd Street
Suite 1302
New York, NY 10017
212/702-9027
FAX 212/702-9092
robknapp@mklex.com

September 12, 2014

VIA E-MAIL (rulecomments@nycourts.gov)

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

Re: Proposed Adoption of 22 NYCRR §202.71

Dear Mr. McConnell:

I am Chair of the Committee on Civil Practice Law and Rules of the New York State Bar Association ("Committee"). In response to your memorandum of July 15, 2014, and for the reasons below, the Committee *opposes* the proposed rule, 22 NYCRR §202.71, on recognition of tribal-court judgments ("Proposed Rule"). While the Committee believes that recognition of tribal-court judgments is adequately addressed by existing law and that no new rule is necessary, if the OCA feels it must enact some rule, the Committee proposes an alternate formulation below.

CPLR Article 53 Does Not Apply to Tribal-Court Judgments

The Proposed Rule would apply to any tribal-court "judgment ... entitled to recognition under the provisions of Article 53 of the CPLR or under principles of the common law of comity ...." The Committee doubts the applicability of CPLR Article 53, the Uniform Foreign Country Money-Judgments Recognition Act, to tribal-court judgments. As the title indicates, Article 53 applies to *foreign country money* judgments, defined as "any judgment of a foreign state granting or denying recovery of a sum of money." CPLR 5301(b). A "foreign state" is defined as "any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone or the Trust Territory of the Pacific Islands." CPLR 5301(a).

The Supreme Court long ago held that Indian tribes were not "foreign states" for the purposes of Article III, § 2, cl. 1 of the Constitution, but were rather "domestic dependent nations." *Cherokee Nation v. Georgia*, 5 Pet. 1, 16, 17, 20 (1831). The Supreme Court has "repeatedly relied on that characterization in subsequent cases. [Citations omitted.] Two

centuries of jurisprudence therefore weigh against treating Tribes like foreign visitors in American courts." *Michigan v. Bay Mills Indian Community*, 134 S.Ct. 2024, 2041 (2014) (Sotomayor, J. concurring.)

Consistently with *Cherokee Nation v. Georgia*, in affirming the dismissal of a New York criminal complaint on grounds of double jeopardy, where the defendant already had been tried and acquitted of the same charge in the Oneida Nation tribal court, the Appellate Division, Third Department held that "tribal courts clearly qualify as courts of any jurisdiction within the United States" for the purposes of Criminal Procedure Law §40.30(1). *Hill v. Eppolito*, 5 A.D.3d 854 (2004). An Indian tribe cannot be considered a "foreign state" under CPLR 5301 while at the same time being a "jurisdiction within the United States" under CPL §40.30(1) and a "domestic dependent nation" under Article III, § 2, cl. 1.

The Ninth Circuit and the Montana Supreme Court both mentioned the Uniform Foreign Country Money-Judgments Recognition Act (CPLR Article 53) in considering whether to enforce a tribal judgment; but neither court decided whether the Act applied. *Wilson v. Marchington*, 127 F.3d 805 (1997); *Anderson v. Engelke*, 1998 MT 24, 954 P.2d 1106 (1998). Both courts instead relied on the doctrine of comity, and held that recognition of tribal judgments, whether in state or federal court, is matter of federal, not state law. "Indian law is uniquely federal in nature, having been drawn from the Constitution, treaties, legislation, and an 'intricate web of judicially made Indian law.'" *Wilson v. Marchington*, 127 F.3d 805, quoting *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 206 (1978). Accordingly, recognition of tribal judgments, by necessity, requires that the ultimate decision governing the recognition and enforcement of a tribal judgment be founded upon federal law. *Wilson*, 127 F.3d at 813." *Anderson v. Engelke*, 1998 MT 24, ¶15, 954 P.2d 1106.

In light of the "uniquely federal" nature of Indian law; the Supreme Court's holding in *Cherokee Nation v. Georgia* that an Indian tribe is not a "foreign state"; and the comity required to be accorded to tribal judgments by federal law, a tribal judgment cannot be considered a "foreign country judgment" pursuant to CPLR 5301(c), and Article 53 should not be cited in the Proposed Rule. If Article 53 were to be made applicable to tribal-court judgments, it would have to be amended by act of the Legislature, not by OCA rule. See *Harbolic v. Berger*, 43 N.Y.2d 102, 109 (1977); *Sciara v Surgical Assoc. of W. N.Y., P.C.*, 104 A.D.3d 1256, 1257 (4th Dep't 2013); *City of New York v. Stone*, 11 A.D.3d 236, 237 (1st Dep't 2004); *Motor Vehicle Mfrs. Asso. v. State*, 146 A.D.2d 212, 220 (3d Dep't 1989). But any attempt to legislate in this area arguably would be preempted inasmuch as "the ultimate decision governing the recognition and enforcement of a tribal judgment [is] founded upon federal law." *Anderson v. Engelke*, 1998 MT 24, ¶15, 954 P.2d 1106. Moreover, any such amendment would detract from the Uniform Law nature of Article 53.

Tribal-Court Judgments Are Entitled to Comity and Sometimes, to Full Faith and Credit

Nor would any such amendment to Article 53 be necessary. Under present law, "[t]ribal court judgments are treated with the same deference shown decisions of foreign nations as a matter of comity." *Wippert v. Blackfeet Tribe*, 201 Mont. 299, 654 P.2d 512 (1982); *Wilson v. Marchington*, 127 F.3d 805 (9th Cir. 1997). "'Comity' in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or

judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." *Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895). Unlike sister-state judgments, and except as otherwise provided by federal law, tribal judgments are not entitled to full faith and credit, *Wilson v. Marchington*, 127 F.3d at 807-08, and a court asked to enforce such a judgment may look behind it and refuse to give it effect where, for example, it was procured in violation of due process. *Bird v. Glacier Electric Cooperative*, 255 F.3d 1136 (9th Cir. 2001); *cf.* CPLR 5304(a)(1), providing for non-recognition where "the judgment was rendered under a *system* which does not provide impartial tribunals or procedures compatible with the requirements of due process of law" (emphasis added).

Some types of tribal-court judgments are entitled to full faith and credit by federal law. 18 USCA §2265 (full faith and credit to "a protection order issued by a State, tribal, or territorial court"); 25 USCA §1911(d) (according full faith and credit "to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity"); 25 USCA §2207 (full faith and credit to tribal actions under tribal ordinances limiting descent and distribution of trust, restricted or controlled lands); 25 USCA §3106 (full faith and credit to tribal court judgments regarding forest trespass). Such judgments may be filed in accordance with CPLR Article 54, although sometimes even that may be unnecessary. *See* 18 USCA §2265(d)(2). ("Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.")

The Seneca Nation presents a special case in that its Peacemakers' Court is already recognized by New York Indian Law §46. The procedures to be followed by such court are defined in some detail in the succeeding sections, including records of proceedings (§47), costs and fees (§48), disqualification of peacemakers (§49), appeals to the Council of the Seneca Nation (§50), appeals from the Peacemakers' Court of the Tonawanda Nation (§51) and execution by the marshal (§53).

Indian Law §52, Enforcement of Judgments, explicitly provides for the judgments of the Peacemakers' Courts to be given effect by the New York courts:

> If any party shall fail to comply with, or fulfil the directions or finding of the peacemakers in any matter heard or determined by them in pursuance of law, within the time fixed by such determination, the party in whose favor such determination may be, shall be entitled to recover the amount awarded to him, by such determination with costs, in an action in justice's court before any justice of the peace of the county in which such reservation or a part thereof is situated, in which action, a copy of the record of such determination, certified to by said clerk, shall be conclusive evidence of the right of recovery, and of the amount of such recovery, and executions shall be awarded to enforce the collection of the judgment obtained thereon in the same manner and with the like effect as against white persons, and the property and person of the defendant in such action shall be liable to seizure and sale or imprisonment, as in like cases against white persons. In case the action or proceeding is one not within the jurisdiction of justice's

courts, the application may be made to a court having jurisdiction of actions of the same nature.

Applying an earlier version of this statute, the Appellate Division, Fourth Department enforced a decree of partition from the Peacemaker's Court, finding that the "questions suggested by appellant here were settled by the decree made by the Peacemaker's Court, and confirmed by the Council of the Seneca Nation on appeal, and cannot be reviewed or reconsidered by the court in this action." *Jemison v. Pierce*, 102 A.D. 618 (4th Dep't 1905); *Jimeson* [sic] *v. Pierce*, 78 A.D. 9 (4th Dep't 1902).

Tribal-Court Judgments May Be Enforced by Action on the Judgment or by Motion for Summary Judgment in lieu of Complaint

Apart from Indian Law §52, New York law provides two other mechanisms by which a judgment entitled to comity, including a tribal judgment, can be converted into a New York judgment: an action on the judgment (*Dunstan v. Higgins*, 93 Sickels 70, 138 N.Y. 70 (1893); *von Engelbrecten v. Galvanon & Nevy Bros., Inc.*, 59 Misc.2d 271 (NYC Civ. Ct. 1969); *see* CPLR 5014) or a motion for summary judgment in lieu of a complaint, pursuant to CPLR 3213, which may be based "upon any judgment." *Mashantucket Pequot Gaming Enterprise v. Ping Lin*, 31 Misc.3d 1218(A) (Sup. Ct. Kings Co. 2011). Given these existing remedies, the Committee sees neither the need nor the authority for a new "special proceeding in Supreme Court pursuant to Article 4 of the CPLR [brought] by filing a notice of petition and a petition with a copy of the tribal court judgment appended thereto in any county of the state," as set forth in the Proposed Rule.

Moreover, the statement in the Proposed Rule that the notice of petition may be filed "in any county of the state" might be interpreted to override ordinary venue rules for such special proceeding. But absent an act of the Legislature, any action or proceeding to enforce a tribal judgment must be filed in accordance with the venue rules of CPLR Article 5. Even if such amendment could be effected by mere rule, allowing a tribal-judgment recognition action to be filed "in any county of the state," without regard to the residence of the parties or other applicable venue requirements, would invite forum shopping and could compel the judgment debtor to defend the recognition action in a distant county unrelated to the parties or the dispute.

Finally, because it would apply to any "judgment rendered by a court duly established under tribal or federal law by any Indian tribe or nation recognized by the State of New York or by the United States," the Proposed Rule would include tribal judgments from anywhere in the United States, and not just from New York's eight federally-recognized tribes. By contrast, Wis. Stat. § 806.245 affords full faith and credit only to "[t]he judicial records, orders and judgments of an Indian tribal court *in Wisconsin*" (emphasis added) and Wyo. Stat. Ann. § 5-1-111 extends full faith and credit only to "judicial records, orders and judgments of the courts of the Eastern Shoshone and Northern Arapaho Tribes of the Wind River Reservation." As noted above, New York Indian Law §52 is limited to the Seneca Peacemakers' Court. *But see* Okla. Stat. tit. 12, § 728 "affirm[ing] the power of the Supreme Court of the State of Oklahoma to issue standards for extending full faith and credit to the records and judicial proceedings of any court of any federally recognized Indian nation, tribe, band or political subdivision thereof, including courts

of Indian offenses," provided such "tribal courts agree to grant reciprocity of judgments of the courts of the State of Oklahoma in such tribal courts."

Because judgment enforcement proceedings may be brought wherever the judgment debtor has property, *Shaffer v. Heitner*, 433 U.S. 186, 210 n. 36 (1977), and because a judgment debtor may be considered to have "property" wherever its garnishee (obligor) is subject to suit, *see Koehler v. Bank of Bermuda, Ltd.*, 12 NY3d 533, 538 (2009), a rule providing for New York recognition of any "judgment rendered by a court duly established under tribal or federal law by any Indian tribe or nation recognized ... by the United States" could make New York a nationwide clearinghouse for conversion of tribal judgments into full faith and credit judgments. A judgment creditor on a tribal judgment obtained, say, in Montana, against a judgment debtor who also lives in Montana but who has a securities account with Merrill Lynch, could seek recognition of the tribal judgment in New York, based only on the notional "presence" of the judgment debtor's securities account here. The Montana tribal judgment would now be a New York state judgment, entitled to full faith and credit throughout the United States, and could be brought back to Montana for enforcement, immune from the due-process review it would have received had recognition originally been sought in Montana. *See Bird v. Glacier Electric Cooperative*, 255 F.3d 1136 (9th Cir. 2001).

To avoid such potential abuse, the New York courts should require that the judgment debtor be subject to personal jurisdiction in New York for any action seeking recognition of an out-of-state tribal judgment to be brought here. *See Livingston v. Naylor*, 173 Md. App. 488, 920 A.2d 34, 42 (2007) (holding that wages of Tennessee judgment debtor, who was employed by Marriott, could not be garnished in Maryland, based solely on Marriott's presence in that state.) Furthermore, since a tribal judgment recognized by New York may end up being satisfied in another jurisdiction (such as the tribal court itself) the judgment creditor should be required to file a satisfaction-piece in New York, no matter where execution or payment ultimately takes place.

Conclusion

According to the OCA cover memorandum for the Proposed Rule, "at least some courts are uncertain as to how, to, or whether to, recognize these [tribal] judgments." But as set forth above there is no legal basis for any such uncertainty. By federal law, tribal court judgments are entitled to comity, and sometimes to full faith and credit; by Indian Law §52, Seneca Peacemakers' Court judgments constitute "conclusive evidence of the right of recovery"; and by CPLR 3213 and New York case law, tribal judgments may be converted into New York judgment either by motion for summary judgment in lieu of a complaint, or by action on the judgment. Full faith and credit tribal judgments may be filed in accordance with CPLR Article 54. No new special proceeding is required.

During the course of its deliberations on this matter, the Committee received communications from various persons favoring the Proposed Rule about what apparently is the real genesis of this Proposed Rule: a request from the New York Tribal Courts Committee and/or the New York Federal-State-Tribal Courts Forum (collectively, "Tribal Courts Committees").[1] We were informed that in 2013, the Tribal Courts Committees met with the Advisory Committee

[1] It is our understanding that neither committee is affiliated with the New York State Bar Association.

and informed it that those bringing tribal court judgments to the state courts for enforcement often have encountered a general pattern of indifference and informal discouragement from clerks and judges. According to the Tribal Committees, while in some cases this response of the state courts may have been couched as accurate advice that the judgment in question could not simply be filed but required the commencement of an action, the overall impression left with the Tribal Nations is that their tribunal judgments are not welcome in New York State courts.

If there is "indifference and informal discouragement by clerks and judges," it is undesirable and unacceptable. The logical response, we respectfully submit, is for OCA to educate and sensitize the clerks and judges about the existence of the problem and how to eliminate it.

We also were informed that what emerged from the 2013 committees' discussions was an overarching concern of the New York Tribal Nations that unspecified "cultural and procedural barriers," both on and off the Tribal Nations' reservations, were preventing conversion of Tribal Nation tribunal judgments into judgments enforceable in New York.

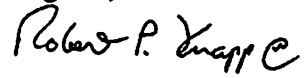
Court rules ought not be enacted on such vague grounds. Court rules are for the operation of the courts, not for addressing cultural differences between different nations. With proper education and sensitization of clerks and judges, any cultural differences can be addressed.

A test case, including an appeal if necessary, might be the best way to establish that tribal-court judgments are entitled to recognition under present law. No new rule is necessary. But if the OCA feels it must enact a rule, the CPLR Committee would recommend a rule simply summarizing present law, along the following lines:

> Section 202.71. Recognition of Tribal Court Judgments. Any person seeking recognition of a judgment rendered by a court duly established under tribal or federal law by any Indian tribe or nation recognized by the State of New York or by the United States may commence an action on the judgment or an action pursuant to CPLR 3213, and may also interpose such judgment in any pending action by counterclaim, cross-claim or affirmative defense. Any action seeking recognition of a tribal-court judgment shall be predicated on personal jurisdiction over the defendant/judgment debtor and shall be venued in accordance with Article 5 of the CPLR. If the court finds that the judgment is entitled to recognition under Indian Law §52, under principles of the common law of comity or under any other applicable law, it shall direct entry of the tribal judgment as a judgment of the Supreme Court of the State of New York. A satisfaction-piece shall be filed in the Supreme Court in accordance with CPLR 5020, even if the satisfaction is made in another jurisdiction. Tribal-court judgments entitled to full faith and credit under federal law may be filed in accordance with CPLR Article 54, or enforced as otherwise provided by law.

Thank you for this opportunity to offer our comments.

Regards,



Robert P. Knapp III

ONEIDA INDIAN NATION

MEGHAN MURPHY BEAKMAN
GENERAL COUNSEL

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

ONEIDA NATION HOMELANDS

September 11, 2014

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 Unites 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.

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 /dat

Meghan Murphy Beakman

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

Co-Chairs
Hon. Marcy L. Kahn
Hon. Edward M. Davidowitz

Counsel
Joy Beane, Esquire

Executive Committee Members
Hon. Hugh A. Gilbert
Hon. Lizbeth Gonzalez
Hon. Sharon S. Townsend
Todd Weber, Esquire

September 12, 2014

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

Re: Comments on Proposed Court Rule §202.71

Dear Mr. McConnell:

Please find enclosed the comments of the New York Unified Court System Tribal Courts Committee on Proposed Rule §202.71 Recognition of Tribal Court Judgments, for consideration by the Administrative Board of the Courts.

Please feel free to address any inquiries about our position to the undersigned.

Thank you very much.

Respectfully submitted,

Marcy L. Kahn
Co-Chair, Tribal Courts Committee

Edward M. Davidowitz
Co-Chair, Tribal Courts Committee

MLK:ob
Enc.
cc: Tribal Courts Committee

Comments of the New York Unified Court System Tribal Courts Committee
on Proposed Rule §202.71
Recognition of Tribal Court Judgments

The New York Tribal Courts Committee urges the adoption of 22 NYCRR § 202.71, Uniform Civil Rules for Supreme and County Court.

There are nine state-recognized Indian Tribes and Nations in New York, several of which have established tribal courts. The Oneida Nation; the Seneca Nation of Indians; and the St. Regis Mohawk Tribe have established tribal courts. Also, since being recognized by the federal government in 2012, the Shinnecocks have begun efforts to establish a formal tribal court.

In 2002, then-Chief Judge Judith Kaye created The New York Tribal Courts Committee (Tribal Courts Committee) to study the possibility of establishing a federal-state-tribal courts forum in New York and to explore how the different justices systems might work together to foster mutual understanding and minimize conflict. In carrying out its mission, the Tribal Courts Committee established the New York Federal-State-Tribal Courts and Indian Nations Justice Forum (Forum) in 2003. The Forum brings together tribal court judges from New York Nations and Tribes and judges from New York federal and state courts, as well as others, to address issues of concern that have arisen or may arise between their respective justice systems. (For more information about the Forum, see www.nyfedstatetribalcourtsforum.org).

The Forum has identified recognition of tribal court judgments as such an issue. Despite the fact that principles of comity may provide for recognition of tribal court judgments, and that CPLR article 53 sets forth a procedure for recognition of money judgments only, state courts are uncertain about how to recognize judgments of tribal courts and even about whether to recognize them.

Rule 202.71 clarifies the procedure for recognition of tribal court judgments and promotes judicial economy, efficiency, consistency and predictability–goals embraced by all courts. The rule avoids duplicative re-litigation in state courts of matters disposed of in the tribal court judgments (and avoids the concomitant potential for conflicting results and further litigation), and enables successful litigants to enforce their judgments against non-reservation residents. By clearly setting forth in one rule the mechanism for recognizing all tribal court judgments (not just money judgments addressed by CPLR article 53), the rule guides judges and litigants and provides for uniformity and proper allocation of judicial resources for both state and tribal courts.

In addition, as the Advisory Committee points out in their comments to the proposed rule, judgments of the tribal courts of federally recognized nations are judgments of sovereign nations, and, as such, may be entitled to comity as a matter of common law. In addition to effectuating the salutary goals of judicial economy, efficiency, consistency and predictability, the rule accords the appropriate respect to the sovereign tribal nations and their justice institutions.

For the foregoing reasons, we urge adoption of Rule 202.71 (Uniform Rules for Sup and County Cts [22 NYCRR] § 202.71]).

[redacted]

From: Genna, Russell (DMV) <Russell.Genna@dmv.ny.gov>
Sent: Tuesday, August 05, 2014 10:03 AM
To: rulecomments

This should be treated like a judgment derived from binding arbitration. If both parties consent to the adjudication of their dispute by the "Indian Courts", then they should be entitled to have the adjudicating body's judgment enforced. If however, one of the parties does not consent to the adjudication, and wishes to have the case moved to a court of law, then the "Indian Court's" jurisdiction should be superseded by a federal court of law of competent jurisdiction.

RUSSELL J. GENNA
[redacted]