

§801.54 Discretionary transfer of civil cases to tribal court

(1) Purpose.

The purpose is to effectively and efficiently allocate judicial resources. In situations where a circuit court and a tribal court have concurrent jurisdiction, this provision authorizes the circuit court, in its discretion, to transfer a case to the appropriate tribal court. This rule does not apply to any case in which controlling law grants exclusive jurisdiction to either the circuit court or the tribal court.

(2) Discretionary Transfer.

(a) When an action is brought in the circuit court of any county of this state, and when, under the laws of the United States the tribal court of a federally recognized tribe has concurrent jurisdiction of the matter in controversy, the circuit court may, on its own motion or the motion of any party and after notice and hearing on the record on the issue of the transfer, cause such action to be transferred to the appropriate Indian tribal court. In making such determination the circuit court shall consider all factors as relevant:

1. Whether issues in the action require interpretation of the tribe's constitution, bylaws, ordinances or resolutions;
2. Whether the action involves traditional or cultural matters of the tribe;
3. Whether the action is one in which the tribe is a party, or whether tribal sovereignty, jurisdiction, or territory is an issue in the action;
4. The tribal membership status of the parties;
5. Where the cause of action arises;
6. Whether the parties have by contract chosen a forum or the law to be applied in the event of a dispute;
7. The timing of any motion to transfer jurisdiction, taking into account the parties' and court's expenditure of time and resources, and compliance with any applicable provisions of the circuit court's scheduling orders;
8. The court in which the action can be decided most expeditiously;
9. The institutional and administrative interests of each court;
10. The relative burdens on the parties, including cost, access to and admissibility of evidence, and matters of process, practice, procedure, including where the action will be heard and decided most promptly;
11. Whether each court has jurisdiction over the dispute;
12. Whether each court will provide an adequate forum for the litigants to assert all state and federal legal claims;
13. Whether each court will provide adequate protection of a litigant's rights under the Wisconsin constitution and the Constitution of the United States;
14. Whether the judgment of the tribal court will be entitled to full faith and credit under Wis. Stat. § 806.245; and
15. Such other factors as may be appropriate in a particular case.

(b) In the event a tribal court declines to accept a transfer of jurisdiction under this rule, within 60 days of transfer, jurisdiction shall remain with the circuit court.

(c) In the event jurisdiction in a tribal court is successfully challenged by a party (or if the merits of the case are not resolved in the tribal court), a party may petition the circuit court to assume jurisdiction and to reopen the case in the circuit court.

(d) Circuit courts are authorized to receive transfer of cases from tribal courts after considering the relevant criteria in sub.(a).

(e) The decision of a circuit court to transfer jurisdiction is appealable.

(3) Powers, Rights and Obligations Unaffected

Nothing in this rule is intended to alter, diminish, or expand the jurisdiction of the circuit courts or any tribal court, the sovereignty of the state or any federally recognized tribe, or the rights or obligations of parties under state, tribal, or federal law.