



STATE OF NEW YORK
UNIFIED COURT SYSTEM
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A. GAIL PRUDENTI
Chief Administrative Judge

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MEMORANDUM

July 15, 2014

To: All Interested Persons

From: John W. McConnell

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.

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The Advisory Committee on Civil Practice has recommended adoption of a new rule (22 NYCRR § 202.71, Uniform Civil Rules for Supreme Court and County Court), relating to establishment of a procedure for the recognition of judgments rendered by tribunals or courts of federally- or state-recognized tribes (Exh. A). According to the Advisory Committee's supporting memorandum, New York is home to various Indian tribes with tribunals whose judgments may be entitled to recognition in the New York State courts under common law principles of comity and/or CPLR Article 53. The Committee has been advised that at least some courts are uncertain about whether or how to recognize tribal judgments. The proposed new rule would establish "an expeditious and uniform procedure" authorizing any person seeking recognition of a judgment rendered by a court or tribunal of a federally- or state-recognized tribe to commence a special proceeding in Supreme Court pursuant to Article 4 of the CPLR or by commencing an action pursuant to CPLR 3213. According to the Committee, the proposed new rule would not change substantive requirements for recognition of tribal judgments or amend procedures relating to their enforcement. The rule also would not apply to proceedings covered by the Indian Child Welfare Act of 1978.

Persons wishing to comment on this proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than September 12, 2014.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

Providing a Procedure Under the Standards of Comity for the Recognition of Judgments Rendered by Tribunals or Courts of Federally-Recognized Tribes (22 NYCRR 202.71 (new))

The Advisory Committee proposes a new Rule 202.71 to provide for a procedure for the recognition of judgments rendered by tribunals or courts of federally-recognized tribes.

There are several active tribunals operated by the various federally-recognized Indian tribes within the State of New York. Increasingly, the parties that appear before these tribunals seek to obtain recognition of these judgments in New York's courts. As a judgment of a sovereign nation, a tribal judgment may be entitled to comity as a matter of common law. See Bird v. Glacier Electric Cooperative, Inc., 255 F.3d 1156 (9th Cir. 2001); Wilson v. Marchington, 127 F.3d 805, 807-11 (9th Cir. 1997); see generally, Hilton v. Guyot, 159 U.S. 113, 16 S. Ct. 139 (1895); S.B. v. W.A., 2012 WL 4512894 (S.Ct. West. Co., Sept. 26, 2012). Moreover, tribal money judgments may receive recognition pursuant to Article 53 of the CPLR, which is derived from the Uniform Foreign Money-Judgments Recognition Act.

The Committee has been advised that at least some courts are uncertain as to how to, or whether to, recognize these judgments. The purpose of this rule is to establish an expeditious and uniform procedure for the recognition of appropriate tribal judgments under the substantive common law or Article 53 of the CPLR. This procedural rule is not designed to change in any way the substantive requirements for recognition or non-recognition of any tribal judgments, or any other foreign-nation judgments. Further, it does not amend the procedures required for enforcement of judgments. It is merely designed to provide a roadmap for the parties and the courts as to how to seek recognition of these judgments.

Finally, this provision does not purport to apply to proceedings coming within the scope of the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 et. seq., which requires all state courts to give full faith in credit to any judgment of an Indian tribe applicable to Indian child custody proceedings. Such proceedings would come within the scope of Article 54, which provides for enforcement of judgments entitled to full faith and credit.

Proposal

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 a special proceeding in Supreme Court pursuant to Article 4 of the CPLR by filing a notice of petition and a petition with a copy of the tribal court judgment appended thereto in the County Clerk's office in any county of the state. Alternatively, the person may commence an action pursuant to CPLR 3213. If the court finds that the judgment is entitled to recognition under the provisions of Article 53 of the CPLR or under principles of the common law of comity, it shall direct entry of the tribal judgment as a judgment of the Supreme Court of the State of New York.