

NOV 25 1996

Passamaquoddy Tribal Court

Exclusive jurisdiction and in those cases the Tribe may have concurrent jurisdiction.

November 20, 1996

Fred Moores, Tribal Representative
P.O. Box 343
Perry, Maine 04667

RE: Tribal Court Orders

Dear Fred:

As the Chief Judge of the Passamaquoddy Indian Tribe several issues have arisen recently which cause me concern. Both issues surround the refusal of State businesses to honor Tribal Court Orders in the following circumstances:

1. Tribal Court has exclusive jurisdiction over tribal members residing on the reservation in matters involving child custody. Recently a business outside of the reservation refused to honor an immediate income withholding order issued by the Tribal Court with respect to child support issues in just such a situation.

2. Tribal Court also has concurrent jurisdiction over all probate matters involving Tribal Members residing on the reservation. Recently a probate matter was brought before the Tribal Court and as a result a personal representative was appointed in connection with the estate of the deceased (also a tribal member). In attempting to act in his capacity as personal representative of the estate the personal representative approached a bank located in Calais, Maine who refused to recognize the Tribal Court Order appointing the tribal member as personal representative and indicated that they would continue to refuse until the member brought an identical proceeding in the Washington County Probate Court. Since it was necessary to move forward on the estate the tribal member was forced to incur additional expenses, inconvenience and time delays in bringing such an action in the Washington County Probate Court.

What is most troublesome to me as the Chief Judge is that it appears that the Tribe's jurisdiction is being undermined by a refusal of non-member businesses located off the reservation to acknowledge valid Tribal Court Orders both in situations where the Tribe has

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Passamaquoddy
Tribal Court

exclusive jurisdiction and in those where the Tribe may have concurrent jurisdiction.

The above situation further undermines the Court's authority with respect to those tribal members who may profit from non-members refusals to honor Tribal Court Orders. It certainly affects the enthusiasm of tribal members to use Tribal Court to address their various actions when they have no guarantee that any resulting Tribal Court Order will in fact be honored.

It is my feeling that absent legislative mandates requiring non-members to honor Tribal Court Orders, especially in cases involving exclusive and concurrent jurisdiction, the above scenario will continue to grow. In your capacity as Tribal Representative I would very much appreciate your presenting this to whatever committee you feel may best address the issues. I am available to speak with anyone in connection with these problems so if you feel my comments may be helpful don't hesitate to let me know.

I would appreciate being updated with respect to the above matters and thank you for your time and consideration.

Sincerely,

Rebecca A. Irving, Chief
Judge, Passamaquoddy
Tribal Court

RAI/tw

cc: Governor Dore
Governor Stevens
Greg Sample, Esq.

What is most troublesome to me as the Chief Judge is that it appears that the Tribe's jurisdiction is being undermined by a number of non-member businesses located off the reservation who are ignoring valid Tribal Court Orders both in situations where the Tribe has



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Testimony in Support of LD 426

April 6, 1999

An Act to Implement Recommendations of the Maine Indian Tribal State Commission to Ensure Enforcement of Subpoenas by Tribal Courts

The Maine Indian Land Claims Settlement Act provides that the Passamaquoddy Tribe and the State of Maine, shall give full faith and credit to the judicial proceedings of each other. The act recognizes that the Tribe is a separate and sovereign court.

Relying solely on a policy of full faith and credit is poor policy, and harmful to the Tribal court and tribal members. The Tribal court is the only court for tribal members on the reservation, the Settlement act recognizes the tribal court=s exclusive jurisdiction over broad areas of law including domestic relations, child welfare, lesser crimes, and civil claims between tribal members. The Maine Legislature through the Settlement act makes tribal court the only court with jurisdiction to address these matters involving tribal members.

This Bill addresses only those areas of exclusive tribal court jurisdiction as already defined in the Settlement act. The fact is that the Passamaquoddy reservation is a small community and is like a small island where tribal law enforcement officers can enforce tribal court orders, but many tribal members move on and off tribal land making enforcement a problem.

This Bill is designed to make the Tribal court=s exclusive jurisdiction effective off the reservation, throughout Maine, as well as on the reservation. The Tribal court system will then have a chance to work just as smoothly and effectively as the state court system, rather creating more problems.

I recommend a vote in favor of the amended MITSC Bill to ensure enforcement of tribal subpoenas throughout the State of Maine.

MAINE INDIAN TRIBAL-STATE COMMISSION

Testimony in Support of LD 426

An Act to Implement Recommendations
of the Maine Indian Tribal-State Commission
to Ensure Enforcement of Subpoenas by Tribal Courts

April 6, 1999

Introduction. Good afternoon, Senator Longley, Representative Thompson, and other members of the Joint Standing Committee on Judiciary. I am Cushman Anthony, the Chair of the Maine Indian Tribal-State Commission (MITSC) and a former member of your Committee. I am here today to testify in support of LD 426, a bill proposed by MITSC to ensure the enforcement of Passamaquoddy and Penobscot Tribal Court orders.

Civil Law Review. As we described in our December 15, 1998 report entitled *Impact of Maine Civil Laws on the Wabanaki: 1998*, it is hard to enforce orders off the Reservation where a Tribe has no territorial jurisdiction but does have exclusive subject matter jurisdiction, such as enforcement of a tribal child support order. There is a full faith and credit provision in the Maine Indian Claims Settlement Act, but this is cumbersome because the Tribes must go through State Court to get that honored. In particular, Passamaquoddy Tribal Court Judge Rebecca Irving and others have described the difficulties involved in enforcing tribal court subpoenas served on non-tribal members.

In August 1998, MITSC held a workshop on child welfare and the courts. At that time a participant from the Department of Attorney General agreed to explore what needs to happen to make sure tribal court subpoenas are enforced. His initial look led him to conclude that: there is indeed a problem with the enforcement of subpoenas outside Indian Territory; legislation is required to resolve the problem; there may or may not be constitutional issues involved; and it is doubtful that the Tribal Court can issue contempt bench warrants.

Amendment Needed to Complete LD 426. The purpose of LD 426 is to clarify that there must be enforcement of and compliance with tribal court orders off the Reservation, as well as on the Reservation. MITSC is recommending an amendment which keeps the original language and adds more to the bill. The reason for the amendment is that LD 426 was printed before MITSC had a chance to review it. As a result, LD 426 was printed in incomplete form.

Major Provisions. Section 1 of the original LD 426 makes it clear that sheriffs and deputies have the duty to serve and execute papers issued by the Passamaquoddy Tribal Court and the Penobscot Tribal Court.

The amendment recommended by MITSC provides that tribal court orders and decisions in matters over which these courts have exclusive jurisdiction are binding and enforceable throughout the State, whether those orders are temporary or permanent, final or subject to modification.

With respect to parties or persons over whom the Tribal Courts have exclusive jurisdiction, the amendment clarifies the authority of the Tribal Courts to enforce their orders directly. With respect to parties or persons over whom the Tribal Courts do not have jurisdiction, the amendment requires the courts and other authorities of the State and its political subdivisions to enforce nonfinal orders issued by the Tribal Courts, using the same procedures that would be used to enforce similar orders issued by the courts of the State.

Finally, the amendment provides that other state laws concerning the recognition or enforcement of the actions of courts of other states and foreign jurisdictions do not apply to the Tribal Courts.

Thank you for your consideration.



Angus S. King, Jr.
Governor

Kevin W. Concannon
Commissioner

STATE OF MAINE
DEPARTMENT OF HUMAN SERVICES
AUGUSTA, MAINE 04333

April 6, 1999

Senator Susan W. Longley, Esq.
Representative Richard H. Thompson, Esq.
Co-Chairs
Judiciary Committee
119th Legislature
3 State House Station
Augusta, Maine 04333-0003

Re: LD 426 An Act to Implement Recommendations of the Maine Indian Tribal-State
Commission to Ensure Enforcement of Subpoenas by Tribal Court

Dear Senator Longley and Representative Thompson:

The Department has reviewed the Committee Amendment to this Bill and would appreciate the opportunity to comment. We are concerned with only one small provision within the Bill.

In enacting welfare reform, officially known as the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Congress mandated the enactment of the Uniform Interstate Family Support Act (UIFSA) in order for a state to remain eligible for federal funding of child support enforcement. Maine has enacted UIFSA at 19A MRSA § 2801 et seq.

Under UIFSA, the order of an Indian Tribe has the same status as an order of any other foreign jurisdiction (i.e. any state other than Maine). 19A MRSA § 2802(19). Under UIFSA, therefore, an order issued by the Passamaquoddy Tribal Court or the Penobscot Tribal Court must be enforced in the same manner as an order issued by any other foreign jurisdiction. Under sections 3151 through 3252, the order of a foreign jurisdiction must be registered before it can be judicially enforced, i.e. before it "is enforceable in the same manner . . . as an order issued by a tribunal of this State." 19A MRSA § 3152(2).

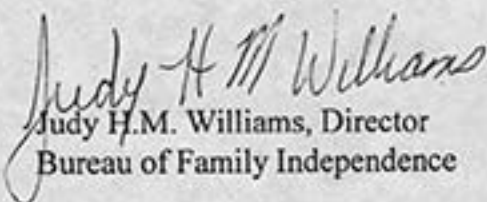
Both subsections 1 and 2 of the proposed section 2 of 30 MRSA §6209-C appear to provide that a Tribal order is to be enforced without registration. Subsection 2 seems to say that "the courts and other authorities of the State and its political subdivisions shall execute and enforce the tribal court order, subpoena, warrant, or other process in the same manner as a similar order issued by the courts of this State."

If the amendment is adopted, Maine's IV-D State Plan will not be in compliance with federal law regarding the enactment of UIFSA. If the State Plan is disapproved, there will be an immediate

suspension of all federal payments to the State's child support enforcement program, and such payments will be withheld until the State IV-D Plan is in compliance with federal law. Last year, Maine's IV-D Program received approximately \$17 million in federal funding and incentives. Loss of funding would result in our being unable to provide child support services in all critical areas of the program. Section 3 of the newly proposed 30 MRSA §6209-C amounts to an affirmative repeal of the cited portions of UIFSA, thereby subjecting our program to disapproval of the State IV-D Plan and its consequent loss of funding.

Thank you for allowing the Department to express its concerns. I would be happy to answer any questions you may have.

Sincerely,


Judy H.M. Williams, Director
Bureau of Family Independence