

Sec. 5. Jurisdictional Dismissal.

Notwithstanding the stays issued under section 4, if either court determines after notice and hearing, *sua sponte* or by motion of a party, that it lacks jurisdiction, the court may dismiss the action. The court shall provide notice of the dismissal to the other court.

Sec. 6. Judicial Conference for Allocation of Jurisdiction.

(a) The court issuing the first temporary stay shall contact the other court for the purpose of scheduling a joint hearing on the issue of allocation of jurisdiction. The judges from both courts shall establish a briefing schedule, if any, and shall conduct a hearing at which both judges preside. The location of the hearing and the conduct of the hearing shall be determined by the judges jointly in their discretion. If the two judges cannot be present in the same courtroom, one judge may preside by telephone. The hearing shall be on the record.

(b) At the close of the hearing and applying the standards set forth in section 7 of this Protocol, the judges shall confer to decide the allocation of jurisdiction, and shall decide which case shall be dismissed or stayed. A dismissal without prejudice of one of the cases shall be ordered, except:

(1) If there is a doubt about the jurisdiction of the court in which the case is not dismissed, or if there is a concern for the expiration of a statute of limitations or if other equitable considerations exist, a stay may be issued instead of an order for dismissal, and

(2) The judges may determine that some issues or claims are more appropriately decided in one court and some issues or claims are more appropriately decided in the other court and may make orders appropriate to such circumstances.

The deliberations of the judges shall not be on the record. The judges shall thereafter state on the record their decision and the reasons therefor.

(c) If the judges are unable to allocate jurisdiction at their conference as provided for in section 6(b), above, a third judge will be selected. The judge will be selected from a standing pool of judges, composed of four circuit judges and four tribal judges. Circuit Judges shall be appointed to the pool by the Chief Judge of the Tenth Judicial Administrative District. The Chief Tribal Judge of each Tribal Court which has approved this Protocol, or his or her designee, shall serve on the pool. If fewer than four Tribal Courts approve this Protocol, then the Chief Judges of the Tribal Courts which do approve this Protocol shall jointly select a sufficient number of judges to bring the number of Tribal Judges in the pool up to four. All judges appointed to the standing pool shall remain in the pool until replaced. In the event a case is referred to the pool, any judge who is a member of the pool and who is a judge of the Tribal Court or Circuit Court from which the referral arises shall be

removed from the pool for purposes of that referral. The parties shall then be given the opportunity to mutually decide on the judge. If the parties cannot agree on a judge, each party shall be allowed to peremptorily strike one judge from the pool, and of those remaining one judge shall be drawn at random. That judge shall join the two judges from the courts where the actions are pending, and a hearing de novo before all three judges will be scheduled. At the close of the hearing, the judges shall deliberate and decide as set forth in section 6(b), above.

7. Standards for allocation of jurisdiction.

The following factors shall be considered in determining which court shall exercise jurisdiction in the matter:

- (1) Whether issues are present in the case which directly touch on or require interpretation of a Tribe's Constitution, By-Laws, Ordinances or Resolutions;
- (2) Whether the nature of the case involves traditional or cultural matters of the Tribe;
- (3) Whether the action is one in which the Tribe is a party, or where tribal sovereignty, jurisdiction, or territory is an issue in the case;
- (4) The tribal membership status of the parties.
- (5) Where the case arises.
- (6) If the parties have by contract chosen a forum or the law to be applied in the event of a dispute.
- (7) The timing of the motion to dismiss or stay, taking into account the parties' and courts' expenditures of time and resources, and compliance with any applicable provisions of either court's scheduling orders.
- (8) The court in which the action can be decided most expeditiously.
- (9) Such other factors as may be appropriate in the particular case.

Sec. 8. Powers, Rights, and Obligations Unaffected.

Nothing in this protocol is intended to alter, diminish, or expand the jurisdiction of state or tribal courts, the sovereignty of state or tribes, or the rights or obligations of parties under state, tribal, or federal law.

Before all present on this the Seventh Day of December, in the year two-thousand-and one, each signatory below acknowledges the adoption of the preceding State /Tribal Protocols for the Allocation of Jurisdiction in their respective jurisdiction.

Chief Judge 10th Judicial District

Chief Judge Bad River Band of the Lake Superior Tribe of Chippewa Indians

Chief Judge Red Cliff Band of the Lake Superior Tribe of Chippewa Indians

Representing The St. Croix Chippewa Indians of Wisconsin

Representing the Lac Courte Oreilles Band of Chippewa Indians
