


ONEIDA JUDICIARY

Tsi nu téshakotiya?tolétha?

MEMORANDUM

TO: Chairman Jeffrey Mursau, Special Committee on State-Tribal Relations
Attorney David Moore, Wisconsin Legislative Council
Attorney Rachel Snyder, Wisconsin Legislative Council

FROM: Hon. Robert J. Collins II, Family Court 

DATE: September 13, 2018

RE: Wis. Stat. §940.203 (Battery to an Officer of a Tribal Court)

Wis. Stat. §940.203, Battery or threat to an officer of the court or law enforcement officer, provides that it is a Class H felony to intentionally cause bodily harm to the person or family member of any judge, prosecutor, or law enforcement officer under all following circumstances:

- At the time of the act or threat, the actor knows or should have known that the victim is a judge, prosecutor, or law enforcement officer or a member of the judge's, prosecutor's, or law enforcement officer's family;
- The act or threat is in response to any action taken by a judge, prosecutor, or law enforcement officer in an official capacity; and
- There is no consent by the person harmed or threatened.

Under prior law, the definitions of a judge, prosecutor, and law enforcement officer did not specifically include a tribal judge, tribal prosecutor, or tribal law enforcement officer. 2017 Wisconsin Act 352, which went into effect on April 18, 2018, amended the definitions of a judge, prosecutor, and law enforcement officer, for purposes of the battery or threat described above, to include a tribal judge, tribal prosecutor, and tribal law enforcement officer. As a tribal court judge who received a threat to cause bodily harm before the amendments were made, the legislative changes are much appreciated.

I respectfully request several amendments be made to Wis. Stat. §940.203. First, I suggest extending the Wis. Stat. §940.203(3) protections available to current or former guardians ad litem, corporation counsel, or attorneys acting in their official capacity in ch. 48, 51, 54, 55, 767, 813, or 938 actions to similarly related tribal court proceedings. This could be accomplished by amending that section as follows (emphasis added):

“The act or threat is in response to an action taken by the current or former guardian ad litem, corporation counsel, or attorney in his or her official capacity in a proceeding under ch. 48, 51, 54, 55, 767, 813, 938, **or a comparable tribal court proceeding.**”

This amendment would cover tribes that exercise jurisdiction over proceedings comparable to all the state statute chapters listed in Wis. Stat. §940.203(3) and to tribes that exercise jurisdiction over only a few.

As many tribes have a Law Office, Office of the Attorney General, or a contract with outside counsel as opposed to “corporation counsel,” the proposed amendment would cover those attorneys in tribal court proceedings that are similar in nature to proceedings related to the state statutes that currently appear in Wis. Stat. §940.203(3)(b).

The one concern that this amendment would not address is lay advocates that are admitted to practice in tribal court. These individuals are non-attorneys that provide legal representation to individuals in a variety of tribal court proceedings. Lay advocates could be covered under Wis. Stat. §940.203(3)(b) by amending the definition of “Attorney” in Wis. Stat. §940.203(ac) to:

“‘Attorney’ means a legal professional practicing law in state court, as defined in SCR 23.01, or a legal professional that has been admitted to practice in tribal court.”

The final proposed amendment would be to define “Court official” or “Court staff” and then insert that term into Wis. Stat. §940.203(2). The definition could include: court administrator, administrative assistant, court clerk, court security (non-law enforcement), register in probate, court reporter, bailiff, and representatives from state and tribal departments (e.g. caseworkers and paralegals). This class of protected individuals should be included for both state courts and tribal courts as these individuals are typically on the front line dealing with parties, many of which are involved in contentious proceedings.

If you have further questions, please contact me at (920) 496-7200.