

Vicki L. Shisler

From: Naomi M. Whitehead
Sent: Friday, April 26, 2024 6:54 PM
To: Legislative Comment
Cc: Michael P. Murphy
Subject: 45-Day Comment on the Healing to Wellness Court Code
Attachments: 45-day Comment on the Healing to Wellness Court Code.pdf

Importance: High

Good evening,

Please find attached Comments on the Proposed Amendments to the Healing to Wellness Court Code.

Thank you,



Naomi M. Whitehead | Senior Staff Attorney/Law Clerk

Wa Ehi Hoci
Ho-Chunk Nation Trial Court
P.O. Box 70 | Black River Falls, WI 54615

Office: 715-299-0673
Naomi.Whitehead@ho-chunk.com

www.ho-chunknation.com

The Ho-Chunk Nation Court facility is not currently open to the public due to health and safety concerns. The Judiciary Branch and its Courts remain operational.

The hours of operation are Monday-Thursday 8 a.m. to 4:30 p.m.

Documents may be electronically filed: CourtFilings@ho-chunk.com or placed in the mailbox located near the main entry doors to the courthouse. It is checked daily Monday – Thursday.

NOTICE: This message, and any attachments, may contain confidential information that is legally privileged and protected by the attorney-client privilege and/or the work product doctrine. If you are not the intended recipient, you may not use, read, copy, forward or disclose this message or its attachments. If you have received this message in error, please notify the sender and delete all copies of the message and any attachments from your system immediately.

DISCLAIMER: The information provided in this email does not, and is not intended to, constitute legal advice.



HO-CHUNK NATION TRIAL COURT
P.O. BOX 70
BLACK RIVER FALLS, WI 54615
(715) 284-2722 OR (800) 434-4070
FAX: (715) 284-3136

Chief Judge
Jo Deen B. Lowe
Associate Judges
Wendi A. Huling
Michelle M. Greender-Rave
Administrator/Clerk of Court
Mary F. Thunder
Deputy Clerk
Margaret A. Falcon
Senior Staff Attorney
Naomi Whitehead

MEMORANDUM

TO: HCN Legislature
FROM: Naomi Whitehead, Senior Staff Attorney for HCN Trial Court
DATE: April 26, 2024
RE: 45-day Comment on the HO-CHUNK NATION HEALING TO WELLNESS COURT CODE Proposed Amendments

The comments below address the Proposed Amendments to the HO-CHUNK NATION HEALING TO WELLNESS COURT CODE (hereinafter HEALING TO WELLNESS COURT CODE) for the Legislature's review.

Disclaimer: This is not an advisory opinion. These comments are general concerns regarding this law and do not necessarily reflect the opinions of the judges, the Ho-Chunk Nation Trial Court, or the Ho-Chunk Nation Judicial Branch. As always the Court stands ready to perform its CONSTITUTIONAL duty to "interpret and apply the Constitution and laws of the Ho-Chunk Nation" should litigation become necessary. See CONSTITUTION ART. VII § 4.

Overall Notes: A complete review of the HEALING TO WELLNESS COURT CODE might be more efficient to ensure a cohesive law. This likely should be done by the Healing to Wellness Court Team and include input from all of the various stakeholders as well as expert opinions on a variety of topics. It might be a good idea to conduct significant research on any proposed changes to the HEALING TO WELLNESS COURT CODE to ensure the safety of the participants overall health and wellbeing. Even minor changes made to the HEALING TO WELLNESS COURT CODE could potentially have significant consequences on the lives of the individual participants.

The proposed amendments do not appear to consider the impact of the funding restraints currently in place on the Healing to Wellness Court. Further, the Healing to Wellness Court relies on referrals from state and county agencies, restricted by state and federal laws. The proposed amendments may limit future engagement from these agencies with the Healing to Wellness Court.

The Healing to Wellness Court is an evidence-based court that shall comply with the National Association of Drug Treatment Court Professionals 10 key components. The fifth (5th) component under this requirement is abstinence from drugs or alcohol. While drugs is not defined in the HEALING TO WELLNESS COURT CODE, the proposed amendments define "controlled substance" the same as the Nation has under its employment laws. Attempting to apply the definition from a civil, labor law without careful consideration of the possible implications could have far-reaching potentially dangerous impacts (ie: housing, criminal laws, health & safety etc...).

The Healing to Wellness Court is a completely voluntary program and there may be some individuals whose intrinsic values do not align with the practices and protocols of the Court. It is up to an individual how they choose to engage both in the Healing to Wellness Program and their respective ideology.

Vicki L. Shisler

From: {Full Name:1} <no-reply@ho-chunknation.com>
Sent: Thursday, April 25, 2024 7:56 AM
To: Legislative Comment
Subject: New 45 Day Comment Submission

[This email originated outside of the Ho-Chunk Nation]

Name

Chester Dick

Email Address

navachunk@yahoo.com

Legislation for Comment

Healing to Wellness Court

Message

42 U.S. Code § 1996a - Traditional Indian religious use of peyote. "Notwithstanding any other provision of law, the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful, and shall not be prohibited by the United States or any State. No Indian shall be penalized or discriminated against on the basis of such use, possession or transportation, including, but not limited to, denial of otherwise applicable benefits under public assistance programs."

Please read entire federal law pertaining to the use of peyote by tribal members (Indians, Native Americans) within the boundaries of the United States. Our tribal members being restricted to utilize peyote is in direct violation of federal law. The last time I checked, the United States Constitution was the supreme law of land, although we are considered "sovereign", federal laws still supersedes our laws and mandates. Legislative branch needs to either have Drug Court administrators educated on peyote law and peyote restrictions done away with, or peyote needs to be defined in the policies and procedures in drug court. If restrictions are imposed in drug court currently, I feel that's in direct violation of an individual's U.S. constitutional right, and that needs to be reversed.

Vicki L. Shisler

From: Naomi M. Whitehead
Sent: Tuesday, April 23, 2024 4:11 PM
To: Legislative Comment
Cc: Michael P. Murphy; Robert J. Mann; Michelle Greendeer-Rave; Nicholas M. Layland
Subject: 45-Day Public Comments on the Healing to Wellness Court Code from the Healing to Wellness Court Team
Attachments: Comments for the proposed HTWC Code amendments.pdf

Good afternoon,

Please find attached Comments from the Ho-Chunk Nation Healing to Wellness Court Team regarding the Proposed Amendments to the Ho-Chunk Nation Healing to Wellness Court Code 4 HCC § 15.

Thank you,



Naomi M. Whitehead | Senior Staff Attorney/Law Clerk

Wa Ehi Hoci
Ho-Chunk Nation Trial Court
P.O. Box 70 | Black River Falls, WI 54615

Office: 715-299-0673
Naomi.Whitehead@ho-chunk.com

www.ho-chunknation.com

The Ho-Chunk Nation Court facility is not currently open to the public due to health and safety concerns. The Judiciary Branch and its Courts remain operational.

The hours of operation are Monday-Thursday 8 a.m. to 4:30 p.m.

Documents may be electronically filed: CourtFilings@ho-chunk.com or placed in the mailbox located near the main entry doors to the courthouse. It is checked daily Monday – Thursday.

NOTICE: This message, and any attachments, may contain confidential information that is legally privileged and protected by the attorney-client privilege and/or the work product doctrine. If you are not the intended recipient, you may not use, read, copy, forward or disclose this message or its attachments. If you have received this message in error, please notify the sender and delete all copies of the message and any attachments from your system immediately.

DISCLAIMER: The information provided in this email does not, and is not intended to, constitute legal advice.

The Healing to Wellness Court (“HTWC”) Team has a duty to safeguard participants through the rules and responsibilities it enforces. This is especially important during the initial phases of the program where participants are often newly sober and at their most vulnerable.

The following comments have been prepared in response to the 45-day comment period for the Healing to Wellness Court Code (“HTWC Code”):

1. The proposed change focuses on testing, but does not address whether the HTWC Team may prohibit peyote use or may issue therapeutic adjustments (in the form of sanctions) for prohibited use. Because of this, the proposed amendments may not have the effect that the drafters were intending. Furthermore, it should be noted that the tests currently in use by the HTWC do not detect mescaline or peyote anyway. Again, this means the amendments will not substantively change HTWC practices.
2. Participation in cultural and spiritual activities is supported by the HTWC Team and can be helpful in recovery. These activities are usually discussed and made a part of the participants’ treatment plan with their Behavioral Health Clinician. Sometimes participation in certain cultural and spiritual activities may be limited by the HTWC Team. Reasons could include the need to travel out of the County or State in order to participate, extended time commitments of some activities, the likely presence of triggering individuals at certain activities, or other reasons. Removing all limitations on peyote use for any reason may be inconsistent with the Clinician creating a Treatment Plan that is individually tailored to the best interests of each participant.
3. The proposed change is much more permissive within the context of the HTWC Code than the corresponding change in the Drug, Alcohol, and Controlled Substances Policy (“DACS Policy”). The proposed DACS Policy amendment limits use, possession, or transportation of peyote to “Native American Church members in connection with the practice of the Native American Church (NAC) ceremony.” The HTWC Code has no such limitation. This would create a situation where participants, even those not affiliated with NAC, could use peyote at any time for recreational, non-spiritual purposes. and the HTWC Team would not be able to test for or address this.
4. The practice of the HTWC is to use evidence-based methodology. That is, the HTWC operates in a way that its actions are supported by existing evidence and best practices. The proposed change does not take into account the evidence and best practices surrounding the physiological effects of peyote or the ways in which other Tribal Healing to Wellness Courts address this issue. Withdrawing the ability of the HTWC Team to use advancing medical knowledge and best practices to support participants in their spiritual activities, including the use of peyote, puts the participants at significant risk.
5. Changes in the Ho-Chunk law, such as what has been proposed, are not binding on the State Circuit Courts or WI Department of Corrections Probation Office. Most participants will still be under Court-ordered conditions that require abstinence from all substances, including peyote. WI probation officers may still have the authority to prohibit peyote use as part of the administration of the participant’s probation. Implementing these amendments could create confusion or situations where participants are criminally responsible for Peyote use, despite what the Nation’s law would appear to authorize.

In conclusion, because peyote is considered a medicinal substance that could be abused by those not using it appropriately, we strongly recommend that a medical clearance be obtained before participants

are allowed to use it in conjunction with NAC practices. This would be consistent with the current process for obtaining medicinal treatments such as Vivitrol, Suboxone, or other Medically Assisted Treatment (“MAT”) that may be available in the future.

Vicki L. Shisler

From: (Full Name:1) <no-reply@ho-chunknation.com>
Sent: Friday, March 15, 2024 4:09 PM
To: Legislative Comment
Subject: New 45 Day Comment Submission

[This email originated outside of the Ho-Chunk Nation]

Name

Nathaniel Longtail Jr.

Email Address

nathaniel.longtail@outlook.com

Legislation for Comment

Healing to Wellness Court

Message

Page 3.

5. Definitions:

This section needs to reflect the correct statute listed in the Ho-Chunk Nation Criminal Code SECTION 961 – CONTROLLED SUBSTANCES ACT (9 HCC § 961):

961.115 Native American Church exemption.

This chapter does not apply to the nondrug use of peyote and mescaline in the bona fide religious ceremonies of the Native American Church.

Although some of the language is useful in the Ho-Chunk Nation Drug, Alcohol and Controlled Substance Code (6 HCC §10) we must realize that this Code is classified under the EMPLOYMENT LAWS. This is why the Criminal Code - CONTROLLED SUBSTANCES ACT (9 HCC § 961) is required because a participant of the Healing to Wellness Court program may not even be an employee of the HCN. This will also protect the usage of peyote as the code defines the exemption only to "the nondrug use of peyote and mescaline in the bona fide religious ceremonies of the Native American Church."

The Healing to Wellness Code should include language pertaining to honoring, abiding and enforcing the American Indian Religious Freedom Act (Public Law No. 95-341, 92 Stat. 469) 42 U.S.C. § 1996 against any individual, governmental branch, department, and division with full faith and credit.

This is needed due to the lack of adequate and clear legal protection from the Ho-Chunk Nation. Religious freedoms include the usage of eagle feathers or any other animal parts that are considered necessary for certain ceremonies, and for the religious use of peyote in the effort to decrease the risk that Ho-Chunk Nation Tribal Members will be exposed to stigmatization, marginalization, and discriminatory treatment which is in violation of their religious guarantees of the First Amendment of the United States Constitution and Article X - Bill of Rights (a) The Ho-Chunk Nation, in exercising its powers of self-government, SHALL NOT: (1) make or enforce any law prohibiting the free exercise of RELIGION, or abridging the freedom of speech, or of the press, or of the right of people peaceable to assemble and to petition for redress of grievances;