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March 17, 2017

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Re: Petition of Minnesota Tribal Court/State Court Forum to Amend Rule 10

Mr. Johnson:

We represent the four Mni Sota Dakota Communities in southern Minnesota¹. All of our tribal governments have had tribal courts since the 1990s. Our judges are and have been law trained and practicing attorneys who have forged collegial relationships with the local State District Court judges and County Attorneys over the years. We are proud of and appreciate that our independent courts have provided a forum for disputes for both tribal citizens and non-tribal citizens for years. We jointly submit this letter in full support of the petition to amend Rule 10 of the Minnesota General Rules of Practice for the District Courts. We do not request an opportunity to testify.

We believe Rule 10 should be revisited for three reasons. First, in 2002 and 2003, the Minnesota Supreme Court adopted current Rule 10 in part due to testimony and written submissions concerning the quality of justice administered in tribal courts. As tribal leaders whose courts have had 14 years of experience with Rule 10, we can attest that those original concerns have no merit today. Today, many of our judges hold law degrees from some of the finest schools in the country. Others have demonstrated success in academia and practice. Many of them continue to practice law outside of our courts' jurisdictions, allowing them to stay current on technologies and the law, making our courtrooms more effective and efficient forums for the administration of

¹ This letter will be signed separately by each of the four Dakota Tribal Leaders.

justice. In addition, our courthouses are receiving significant upgrades in facilities and staffing, funded by our own governments or the federal government. These upgrades are enhancing the experience of litigants and are ensuring the effective and efficient management of growing dockets. In addition, our courts are separated from other branches of tribal government thus empowering the Courts to make independent, unbiased decisions that accord with principles of law and equity. Finally, we seek to make our codified laws, rules, and decisions accessible to the public. These circumstances make tribal courts exceptional forums for dispute resolution. As such, our orders and judgments deserve greater deference than current Rule 10 provides. Proposed Rule 10 does exactly that.

Second, our tribal courts need a more robust rule for recognition of tribal court orders and judgments to ensure that they can administer justice effectively. Without such a rule and the greater certainty that it provides, tribal courts simply cannot safeguard the welfare of the children, vulnerable adults, families, and other litigants. Unfortunately, current Rule 10 provides far too much deference to state court judges, and thus it lacks the type of certainty that we need. Even were we to assume that most state court judges ultimately favor recognition of tribal court orders and judgments, current Rule 10 creates the strong possibility of delay in the recognition process—a consequence that we have seen all too often. This delay in the recognition process can at times undermine the administration of justice just as much as denial of recognition altogether. By way of example of how Rule 10 can play out today, a State court judge unfamiliar with one of our courts may require briefing or a hearing to analyze the validity of a tribal court order for chemical dependency treatment in an involuntary civil commitment matter. This causes an addicted pregnant mother significant delay in getting to her placement at a secure treatment facility, which causes further complications to the baby. The proposed changes to Rule 10 remedy such a problem by establishing a more streamlined and focused process that will afford tribal governments the security we need to effectively administer justice in Indian country.

Third, Indian tribes are sovereign nations, vested with inherent authority to regulate both our members and our territories. The United States Supreme Court has made clear that tribal courts play a vital role in each Indian tribe's exercise of self-government, so much so that the federal government has made it a policy to encourage their development. Current Rule 10 undermines both this policy and our judicial systems themselves. Rather than review our orders and judgments through an objective, reasonable, and consistent process, current Rule 10 allows state court judges to arbitrarily second guess or disregard tribal court orders and judgments. Rather than embody the principles of respect and comity, it feeds the state judiciary's perception of its own superiority to, and distrust of, tribal courts. Because of this, litigants often do not see tribal courts or their orders and judgments as having the same degree of authority as orders and judgments of state courts and therefore do not treat them with the same degree of respect. Proposed Rule 10 manifests a far greater degree of respect for and trust of tribal courts and is likely to improve the public perception of and respect for tribal courts, their orders and judgments.

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In conclusion, we support the petition to amend Rule 10. Current Rule 10 is the product of outdated concerns about the quality of justice administered in tribal courts. It undermines our efforts to effectively, efficiently, and properly administer justice in our communities. Proposed Rule 10 addresses these major concerns in a meaningful way.

Sincerely,

A handwritten signature in cursive script that reads "Shelley Buck".

Shelley Buck
Tribal Council President
Prairie Island Indian Community