

TRIBAL COURT  
OF THE  
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

---

JUDGES:

John E. Jacobson  
Henry M. Buffalo, Jr.  
Vanya S. Hogen  
*Pro Tem Judge* Terry Mason Moore  
*Pro Tem Judge* Jill Tompkins

MAILING ADDRESS:

SMSC Community Center  
2330 Sioux Trail NW  
Prior Lake MN 55372

CLERK OF COURT:

Lynn K. McDonald  
Direct: 952-233-4246

Telephone: 952-233-4245  
Facsimile: 952-233-4259  
E-mail: Lynn@smsccourt.org

March 16, 2017

**By Email**

Michael Johnson,  
Senior Legal Counsel  
State Court Administration  
125H Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King, Jr. Blvd.  
Saint Paul, MN 55155  
LegalCounselRules@courts.state.mn.us

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

Dear Mr. Johnson:

The Shakopee Mdewakanton Sioux Community Tribal Court is a court of record that was established in 1988 by the Shakopee Mdewakanton Sioux Community. The court is comprised of the undersigned three full-time judges, all members of the Minnesota Bar, and two *pro tem* judges, also licensed attorneys, who serve the court as they are needed. Two of us signing this letter have served the court since 1988, and the third joined the bench in 2007. The judges share duties on both the trial and appellate levels. Our court hears civil matters, including but not limited to family law, contracts disputes, probate, and guardianships.

We submit this letter in full support of the Petition to Amend Rule 10.

The need for Rule 10 arose from inconsistent enforcement of tribal court orders by Minnesota law-enforcement and other agencies. The Tribal Court/State Court Forum embraced this issue as one of its first joint projects after the Forum's creation, and in 2003 petitioned the Minnesota Supreme Court to adopt what became the current version of Rule 10.

While the original Rule 10 was an important step toward recognition of Tribal Court judgments and orders, the original Rule 10, which gives state courts great latitude to decline enforcement of tribal court orders, was adopted in part due to concerns expressed about the quality of justice in the Tribal Courts in Minnesota at the time. Those concerns, if they were ever

valid, are certainly not today. As noted above, our court's judges are all law-trained, and have been on the bench for many years. We have a digest and reporter system for our caselaw, and our rules and opinions are available to the public. We have a full-time court clerk who responds to questions by email and phone. Our orders and judgments deserve greater deference than current Rule 10 provides; the proposed Rule 10 affords that deference.

Granting additional deference to tribal court orders and judgments will improve the efficiency of enforcing tribal court orders and create greater certainty regarding their enforcement, which is particularly necessary for us to protect the welfare of children, families, and vulnerable adults who are subject to our orders. The current process obliges parties to seek a state court order that would "back up" a tribal court order, and is markedly inefficient.

Further, adopting the proposed Rule 10 will support tribal sovereignty and self-government, which have been reaffirmed repeatedly by both Congress and the Supreme Court, by removing the unbridled discretion currently afforded to state court judges to decline enforcement of tribal court judgment and orders.

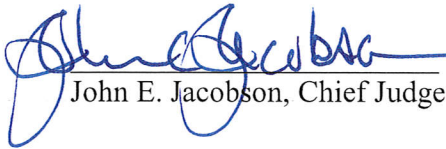
The Petition to Amend Rule 10 addresses several other issues that would improve its guidance to the state bench:

1. The proposed amendments to Rule 10.0 provide a comprehensive list of state and federal laws that govern the recognition of tribal court orders and judgments—a list that includes the most commonly applicable and most important state and federal laws, such as the Indian Child Welfare Act and the Violence Against Women Act.
2. The proposed rule adopts the Minnesota Court of Appeals decision in *Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, 779 N.W.2d 320 (Minn. App. 2010). That matter involved a money judgment from our court; under the current Rule 10, it was not clear whether the state court should apply the considerations and procedures in the Uniform Foreign-Country Money Judgments Recognition Act, Minn. Stat. §§ 548.54 *et seq.* (2016) or Rule 10.02. To the extent that this question may arise again, in different contexts, clarification on this point would be vital to judges, advocates, and parties who must apply Rule 10.01. Proposed Rule 10.01 provides that clarification by expressly encompassing all state and federal laws that govern the recognition of tribal court orders and judgments, regardless of whether those laws mandate recognition.
3. Rule 10.02 provides no guidance when a state court is presented with a tribal court judgment, on where the presumption should lie, nor does it establish a burden of proof. Proposed Rule 10.02 remedies these problems by providing a clear presumption that a party opposed to recognition must rebut, and it places the initial burden of proof on a party opposing recognition. Both clarifications are necessary to provide guidance to the judge, the advocates and the parties.
4. Lastly, the Proposed Rule 10.02 uses broader language (including all of the considerations now present in Rule 10.02, together with others) that support a

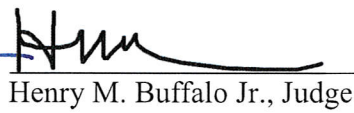
recognition analysis based on the principle of comity, while omitting language that could be interpreted to incorporate other considerations that undermine that principle.

It has been 14 years since the adoption of Rule 10. We believe that the Proposed Amended Rule incorporates changes that are necessary to address the experience that the state and tribal benches have gained in that time. The goal is to provide appropriate deference to tribal courts and sufficient guidance to judges, advocates, and parties to ensure the efficient and effective administration of justice.

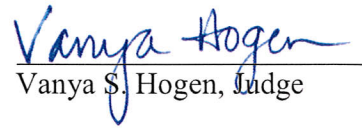
Sincerely,



John E. Jacobson, Chief Judge



Henry M. Buffalo Jr., Judge



Vanya S. Hogen, Judge