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

Mr. Johnson:

We are a collection of judges from each judicial district in the State of Minnesota. Combined, we have decades of experience with the Minnesota General Rules of Practice for the District Courts, whether as advocates or as judges. Among us are some that have applied Rule 10 of the Minnesota General Rules of Practice for the District Courts. The rest have reviewed and are intimately familiar with its contents. We jointly submit this letter in full support of the petition to amend the Rule. While we may choose to testify independently, we do not wish to testify about the content of this letter.

The Minnesota Supreme Court possesses the inherent authority to promulgate and modify rules regarding the procedures in district courts in both civil and criminal actions. Minn. Stat. §§ 480.051, .059 (2016). These rules serve to guide judges, advocates, and parties in the effective and efficient administration of justice. Indeed, the Advisory Committee Comment to Rule 10 suggests the same. Minn. Gen. R. Prac. 10 advisory comm. cmt. (“Rule 10 is a new rule intended to provide a starting point for enforcing tribal court orders and judgments where recognition is mandated by state or federal law (Rule 10.01), and to establish factors for determining the effect of these adjudications where federal or state statutory law does not do so (Rule 10.02).”) Unfortunately, the current Rule 10 falls far short of satisfying this purpose in many respects, which proposed Rule 10 remedies.

First, Rule 10.01 merely instructs judges, advocates, and parties to follow state and federal laws mandating recognition and enforcement of tribal court orders and judgments. But what Rule 10.01 lacks is sufficient information to direct judges, advocates, and parties to the state or federal laws that are likely to govern the outcome of the recognition process in their cases. Such a list would reduce the time necessary for research, pleading, and decision-making. In addition, it would reduce the potential for judges, advocates, and parties to overlook applicable state and federal laws. Proposed amendments to Rule 10.01 rectifies this shortcoming by providing a more comprehensive list of state and federal laws that govern the recognition of tribal court orders and judgments—a list which 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.

Second, Rule 10.01 on its face instructs judges, advocates, and parties to apply state and federal laws that *mandate* recognition of tribal court orders and judgments. But it is less clear about whether judges, advocates, and parties should apply state and federal laws that merely provide *considerations or procedures* for recognizing tribal court orders and judgments. Without clarification on this point, judges, advocates, and parties may experience confusion. For instance, the Uniform Foreign-Country Money Judgments Recognition Act, Minn. Stat. § 548.54 *et seq.* (2016), an act within which tribal court money judgments should fall, provides a comprehensive

list of considerations and procedures for recognition of certain judgments—considerations and procedures that remove the Act from the scope of state and federal laws that *mandate* recognition. Were a tribal court money judgment to come before a district court, Rule 10.01 provides little clarity as to whether judges, advocates, and parties should apply Rule 10.02 or the considerations and procedures in the Act itself. The Minnesota Court of Appeals remedied this particular question in *Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, 779 N.W.2d 320 (Minn. App. 2010), by concluding that Rule 10.02 should apply. But the question may arise again in other contexts. Thus clarification on this point is essential to judges, advocates, and parties who must apply Rule 10.01. Proposed Rule 10.01 provides that needed and wanted 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.

Third, Rule 10.02 provides no guidance on where the presumption should lay. The Minnesota General Rules of Practice for the District Courts, the Minnesota Rules of Civil Procedure, and the Minnesota Rules of Criminal Procedure are saturated with presumptions—presumptions that ultimately help judges evaluate issues that come before them with an eye for consistent treatment. We believe these presumptions are imperatives when it comes to issues of importance, such as whether a district court should recognize a tribal court order or judgment. They enable judges to operate fairly, they provide advocates and parties fair notice of their obligations in the process, and they lead to greater consistency among decisions. Without an identified presumption, judges, advocates, and parties are left with insufficient guidance to ensure just and consistent outcomes. Proposes Rule 10.02 remedies this problem by providing a clear presumption that a party opposed to recognition must rebut.

Fourth, and relatedly, Rule 10.02 does not establish a burden of proof. Thus judges, advocates, and parties are without any guidance as to who must present evidence regarding whether a district court should recognize a tribal court order or judgment. Proposed Rule 10.02 remedies this omission by placing an initial burden on a party opposing recognition. Should no party assert an objection to a request for recognition, the requesting party can bypass the expense of collecting and presenting evidence. Should a party assert an objection to a request for recognition, the requesting party will know what evidence to collect. All the while, the judge will know which if any parties are responsible to present evidence.

Fifth, and perhaps most importantly, Rule 10.02 provides a catch-all provision that, on its face, renders virtually unlimited the considerations that judges, advocates, and parties may raise and assess. But the reality, as made clear by the Minnesota Court of Appeals in *Prescott*, is that the catch-all provision is not what it appears to be. In applying the conflicting-foreign-judgments provision of the Uniform Foreign-Country Money Judgments Recognition Act by way of the catch-all provision of Rule 10.02, the *Prescott* court concluded that district courts are precluded from conducting an independent review of the merits of a case, a conclusion not clear from the catch-all provision in Rule 10.02. 779 N.W.2d at 324-27. Relying on the seminal decision in *Hilton v. Guyot*, 159 U.S. 113 (1895), the court explained that comity precludes independent review of foreign judgments. *Id.* at 326-27. The decision and reasoning in *Prescott* is obviously imputed not only to the conflicting-foreign-judgments provision of the Act, but also to the catch-all provision of Rule 10.02 itself. In other words, the catch-all provision has its limits; what those limits are, remains unclear. Judges, advocates, and parties need sufficient guidance on this point to again ensure just and consistent outcomes. Proposed Rule 10.02 does exactly that. It uses

broader language that encapsulates all of the considerations now present in Rule 10.02 and others that are akin to those which should impact a recognition analysis based on the principle of comity, while omitting language that could be interpreted to incorporate other considerations that undermine that principle.

In conclusion, we, being judges from every judicial district in the State of Minnesota, and having decades of experience with the Minnesota General Rules of Practice for the District Courts, support the petition to amend Rule 10. Our experience has led us to conclude that Rule 10 provides insufficient guidance to judges, advocates, and parties. Proposed Rule 10 remedies these insufficiencies and better ensures the effective and efficient administration of justice.

Sincerely,

_____/s/ David Harrington_____
David Harrington, 9th Judicial District
Cass County, *which includes part of the Leech Lake Reservation*
20 year member, Tribal Court/State Court Forum

The following have indicated their endorsement of the above letter in writings to me on March 7 or 8 :

Judge Robert Tiffany, Hubbard and Clearwater Counties
which include parts of the Leech Lake and Red Lake Reservations

Korey Wahwassuck, Itasca County
which includes parts of the Leech Lake and Bois Forte Reservations

Anne Rassmuson, Mahnommen County
the only county in the State of Minnesota entirely within a reservation (White Earth Reservation)

Tamara Yon, “Western Rotation”
including counties containing parts of the White Earth and Red Lake Reservations

David TenEyck, Crow Wing and Cass Counties
including parts of the Leech Lake Reservation

Charles LeDuc, Koochiching County
including parts of the Bois Forte and Red Lake Reservations