



History of the Tribal State Judges Forum

“THE EARLY YEARS”

1985- At the Conference of Chief Judges (all states, Washington D.C.) a committee was created to study problems relating to civil jurisdiction in Indian Country, including enforcement of civil tribal court orders.

1993- The Conference of Chief Judges committee votes to 1) continue efforts to resolve jurisdiction disputes and 2) take action to ensure cross recognition of final orders, laws and public acts between tribal, state and federal courts.

1996- Justice Sandra Gardebring (MN Supreme Court) meets with two tribal judges (Small & Jacobson) to discuss difficulties enforcing tribal child protection orders beyond reservation boundaries. More informal meetings take place following that. Justice Gardebring eventually extends an invitation to all tribes in MN to collaborate.

1996-April 1, 1997- Efforts to establish an association of Minnesota Tribal Courts are underway, partially in response to Justice Gardebring's invitation to collaborate. Issues of concern were full faith and credit of tribal court orders; legal questions arising from the two court systems, full implementation of ICWA and child support enforcement. It should be noted that many tribes at the time did not have fully operating tribal courts. Invites for these tribes (such as Leech Lake) were sent to elected leadership. Tribal Court Judges/Officials reach consensus on how to approach collaboration with MN State Judges and Justice Gardebring's invitation to do so.

July 18, 1997- The initial meeting of Minnesota Tribal Courts occurs at Prairie Island Indian Community. 35 Minnesota state judges attend the very first meeting as well as judges and officials from each MN Tribal Nations. Discussion topics include enforcing tribal OFPs, instances where parties are litigating the same cases in both State/Tribal Courts simultaneously. Until recently, the forum was open to all MN judges. Many state judges participated in the forum, especially those presiding in and near tribal communities throughout the state.

At this time only three other states had Tribal State Forums in operation: Arizona, Idaho and North Dakota.

State vs. Stone Decision

1995-1996- White Earth tribal members file motions to dismiss their traffic offenses for driving incidents that took place between August 1995-March 1996. Mahnomen County District Judge Russell Anderson granted the motions to dismiss finding that the state had no jurisdiction to enforce civil regulations against tribal members for conduct on the reservation. White Earth did not have a traffic code in effect at the time the offenses were charged.



Justice Russel Anderson

Margaret Seelye Treuer (left), Megan Treuer (center), Justice Russell Anderson (right)
At Megan Treuer's swearing in October 2005

December 17, 1996- The Court of Appeals affirmed the District Court's decision in *Stone*.

April 1996- White Earth passes the first version of the traffic code, which essentially established the White Earth Tribal Court and paved the way for other codes to be enacted. Today there are 34 Code titles listed on the Courts website governing a wide array of topics. Other tribes including Leech Lake and Fond du Lac followed suit and adopted traffic laws.

December 11, 1997- The Minnesota Supreme Court issued the State vs. Stone decision upholding the Court of Appeals finding that the state lacked jurisdiction. In the decision the Court referred to White Earth's recently enacted Traffic Code.

The Court also stated:

“Additionally, we express our confidence that members of Indian tribes around the state will demand safe driving conditions on their reservations and that the tribes will respond to these demands with basic traffic and driving regulations and reasonable enforcement mechanisms. We anticipate that tribes without the resources to sustain their own enforcement systems will enter into cooperative agreements with state and local governments to obtain these services. In light of the White Earth Band of Chippewa Indians' recent adoption of a motor vehicle code and the existence of police and fire protection agreements between tribes and governmental units, such as the one between the City of Prior Lake and the Shakopee Community, we do not believe these expectations to be unfounded. Without exceptional circumstances, we do not reach the preemption analysis.”

March 10, 1998- Leech Lake Tribal Council adopts the Leech Lake Traffic Code and allocates roughly \$6,000.00 in start up funds” for the Leech Lake Tribal Court.

March 1998- August 1998 MN Tribes and State begin work to develop a mutual aid agreement for enforcing traffic regulation.

July 22, 1998- Leech Lake RBC approves the proposed MOU with MN DPS is established for enforcing traffic offenses for tribal members driving on the reservation.

This also lead to the establishment of some tribal police departments in the state and the creation of cooperative law enforcement agreements.

May 4, 1998- Public attention to recognition of tribal court orders surfaces in the press. The star tribune publishes an article, *Judges Consider State Policy in Support of Tribal Court Orders*, which claims:

“critics, including American Indians who are at odds with tribal governments and attorneys who have practiced in tribal courts- say it endorses a system subject to political manipulation or with a history of violating civil rights.”

Star Tribune, May 1998 continued

Minnesota Court of Appeals Judge R. A. Randall expressed concern that tribal court orders deprive people of their civil rights protected by the Minnesota and United States Constitutions.

Justice Grandebring is quoted in response stating, “He and I have a fundamental disagreement about Indian Tribes. He thinks there shouldn’t be sovereignty. It is an interesting philosophical question, but the law recognizes tribes as having some level of sovereignty.”

April 11, 2002- TCSC Forum submits its Petition to adopt the draft Full Faith and Credit Rule to the MN Supreme Court. The rule was drafted after forum members diligently reviewed how 23 other states handled tribal and state orders within their jurisdictions. The MN Supreme Court sends the Petition to the Supreme Court Advisory Committee on General Rules of Practice for review and a recommendation. The Committee recommended *not* adopting the proposed rule.

October 2003- Public hearing on proposed rule is held. Numerous witnesses who felt they had been “wronged” by tribal courts testify against adoption of the rule. The MSBA, MN Sherriffs association and County Attorneys Association also opposed the rule.

December 11, 2003- MN Supreme Court adopted the first version of Rule 10, which had 2 parts: 1) 10.01 which granted full faith and credit to tribal court orders when doing so was already mandated by federal law (i.e. ICWA etc.); and 2) at the discretion of the district courts, based on the facts of the case. The first version of rule 10 was highly discretionary. It provided that District Courts *may* recognize a tribal court order, considering a number of factors:

If the tribal court provides parties due process to parties including notice and opportunity to be heard;

If a tribal court order is manifestly unjust;

If the tribal court is a court of record;

If it is contrary to state's public policy;

If evidence is “insufficient” in tribal court proceedings;

If the was issued by an independent “magistrate”;

Any other factors in the interests of justice;

September 1, 2018- The current version of Rule 10 takes effect. A provision specifically addressing civil commitments was added to the rule. The latest provision requires recognition of tribal court orders, indicating tribal court order ***shall*** be recognized unless a party subject to the Order objects and demonstrates that:

- (1) the order or judgment is invalid on its face or no longer remains in effect;
- (2) the tribal court lacked personal or subject-matter jurisdiction;
- (3) the affected party was not afforded due process rights;
- (4) the order or judgment was obtained by fraud, duress, or coercion; or
- (5) the tribal court does not reciprocally recognize and enforce orders, judgments and decrees of the courts of this state.

