

ADM-09-8009
STATE OF MINNESOTA
IN SUPREME COURT

In re:
Supreme Court Advisory Committee
on General Rules of Practice

Recommendations of Minnesota Supreme Court
Advisory Committee on General Rules of Practice

FOURTH DRAFT (Proposed Final) REPORT
(Tribal Court Rule Only)

July 31, 2017

Hon. Stephen M. Halsey, Buffalo
Chair

Hon. Margaret Chutich, Saint Paul
Liaison Justice

Kevin P. Curry, Minneapolis
Jill I. Frieders, Rochester,
Phillip Gainsley, Minneapolis
Hon. Jason T. Hutchison, Minneapolis
Sean Jones,
Heather Kendall, Shakopee
Kenneth A. Kimber, Duluth
Lisa D. Kontz, West St. Paul

Rhonda J. Magnussen, Elk River
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Henry Parkhurst, Minneapolis
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Susan C. Rhode, Minneapolis
Galen Robinson, Minneapolis
Hon. Mark M. Starr, Hibbing
Hon. Mary R. Vasaly, Minneapolis

Michael B. Johnson, Saint Paul
Patrick Busch, Saint Paul
Staff Attorneys

David F. Herr, Minneapolis
Reporter

Introduction

The advisory committee met _____times in 2017 to address various issues relating to the rules and to review the operation of the rules. The primary task confronting the committee, however, was the consideration of the Petition of the Minnesota Tribal Court/State Court Forum to replace existing Rule 10 of the Minnesota General Rules of Practice with a new proposed version.

Summary of Recommendations

This report makes essentially two recommendations. These recommendations are:

1. After careful consideration, a majority of the committee voted to recommend against adoption of the revised form of Rule 10 as sought by the Petitioners. At the same meeting, the committee discussed various changes to the rule—primarily directed to providing a clearer procedure for seeking and obtaining state court enforcement of tribal adjudications—that it would recommend to this Court. The existing rule, with those changes, is set forth at pages _____ and the committee believes would be an improved version of Rule 10. Neither the rejection of the revised rule nor the adoption of this modified version were unanimously supported, and several competing concerns accompany the committee’s report on these issues.
2. The committee unanimously recommends modifications to Rules 2.01, 14.02(a), 14.03(d), 303(a), 301.01, 308.02, 361.02, 361.05, and 379.04 to correct minor issues such as cross-references, citations to now-amended statutes, and similar “housekeeping” matters.

Effective Date

The committee believes that any rule amendments related to Rule 10 should probably be made effective on January 1, 2018. The other recommended amendments could take effect at that time, or at any earlier date if the Court deems it appropriate.

Style of Report

The specific recommendations are reprinted in traditional legislative format, with new wording underscored and deleted words ~~struck through~~. New advisory committee comments are not underscored, except where several changes are made to existing probate and general rules committee comments, and these are explained in recommendation five of this report.

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY
COMMITTEE ON GENERAL RULES OF
PRACTICE

Recommendation 1: [Tribal Court Rule Recommendation]



Specific Recommendation

If the Court determines that further amendment of Rule 10 of the Minnesota General Rules of Practice is appropriate, the committee recommends that the following amendment be made.

GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

RULE 10. TRIBAL COURT ORDERS AND JUDGMENTS

Rule 10.01. Recognition Governed by Law. When Tribal Court Orders and Judgments

(a) Recognition Mandated by Law. The courts of this state shall follow applicable state and federal statutes, regulations, and rules that either mandate or provide rules and procedures for recognition and enforcement of ~~Where mandated by state or federal statute,~~ orders, judgments, and other judicial acts of the tribal courts of any federally recognized Indian tribe. ~~shall be recognized and enforced.~~ Applicable statutes include but are not limited to:

- (1) Violence Against Women Act, 18 U.S.C. § 2265;
- (2) Indian Child Welfare Act, 25 U.S.C. § 1911;
- (3) National Indian Forest Resources Management Act, 25 U.S.C. § 3106;
- (4) American Indian Agricultural Resources Management Act, 25 U.S.C. § 3713;
- (5) Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B;
- (6) Minnesota Indian Family Preservation Act, Minn. Stat. § 260.771;
- (7) Uniform Interstate Family Support Act, Minn. Stat. §§ 518C.101-.905;

20 (8) Uniform Custody Jurisdiction and Enforcement Act, Minn. Stat. §
21 518D.104;

22 (9) Minnesota Uniform Foreign-Country Money Judgments Recognition Act,
23 Minn. Stat. §§ 548.54-.63.

24 ~~(b) — **Violence Against Women Act; Presumption.** An order that is subject to the~~
25 ~~Violence Against Women Act of 2000, 18 U.S.C. section 2265 (2003), that appears to be issued~~
26 ~~by a court with subject matter jurisdiction and jurisdiction over the parties, and that appears not~~
27 ~~to have expired by its own terms is presumptively enforceable, and shall be honored by~~
28 ~~Minnesota courts and law enforcement and other officials so long as it remains the judgment of~~
29 ~~the issuing court and the respondent has been given notice and an opportunity to be heard or, in~~
30 ~~the case of matters properly considered ex parte, the respondent will be given notice and an~~
31 ~~opportunity to be heard within a reasonable time. The presumptive enforceability of such a tribal~~
32 ~~court order shall continue until terminated by state court order but shall not affect the burdens of~~
33 ~~proof and persuasion in any proceeding.~~

34 **Reporter/Staff Comment to Committee: It**
35 **appears that VAWA is covered by Rule 10.01, and**
36 **that we heard that the issues with VAWA that**
37 **prompted the separate rule were resolved by**
38 **amendment**

39 **Rule 10.02. Enforcement of Civil Commitment Orders.**

40 The enforcement of orders for civil commitment issued by tribal courts is
41 governed by Minn. Stat. § 253B.212. The district court may enter an order enforcing a
42 tribal court order in accordance with this rule.

43 (a) Civil commitment orders entered by the tribal courts of the Red Lake Band
44 of Chippewa Indians and the White Earth Band of Ojibwe Indians shall be enforced in
45 accordance with subdivisions 1, or 1a, section 212, as applicable.

46 (b) Civil commitment orders entered by the tribal courts and that are subject to
47 a contract for the care and treatment between a tribe (or the Indian Health Service of
48 the United States Department of Health and Human Services for the benefit of
49 members of the tribe) and the commissioner of human services shall be enforced in
50 accordance with subdivision 1b of section 212, as applicable.

51 (c) For all other civil commitment orders entered by a tribal court, or in any
52 case where directed by the court, the party seeking to enforce the order must proceed
53 by petition to the Minnesota District Court and must serve a copy of that petition on
54 each of the parties to the tribal court proceedings as well as the Minnesota
55 Commissioner of Human Services and the director of facility where the person is
56 proposed to be committed. The court may determine when a response to that petition is
57 due.

58 **Rule 10.023. Discretionary ~~When~~ Recognition of Tribal Court Orders and**
59 **Judgments. Is Discretionary**

60 (a) Applicability. This section of the rule applies to tribal court orders and
61 judgments that are not subject to Rules 10.01 and 10.02.

62 (b) Procedure. A party seeking discretionary enforcement of an order or
63 judgment of the tribal court of any federally registered Indian tribe that is not governed by
64 Rules 10.01 or 10.02 shall proceed either by petition or motion in a pending action. That
65 party must serve a copy of that petition or motion on each of the parties to the tribal
66 court proceedings or existing state court action as well as any non-parties to either
67 proceeding that would be subject to the court's order, if issued. The court may
68 determine how soon after service of the petition or motion any response is due and
69 may then decide the motion or petition. The court can determine whether a hearing is
70 required or permitted if requested, but shall not hear the matter ex parte except as
71 allowed under Rule 3 of these rules.

72 **(c) Factors Governing Exercise of Discretion.** ~~In cases other than those~~
73 ~~governed by Rule 10.01(a),~~ Where enforcement of a tribal court order or judgment is
74 discretionary with the court, ~~In exercising this discretion,~~ the court may consider
75 the following factors:

76
77 (1) whether the party against whom the order or judgment will be used
78 has been given notice and an opportunity to be heard or, in the case of matters
79 properly considered ex parte, whether the respondent will be given notice and
80 an opportunity to be heard within a reasonable time;

81 (2) whether the order or judgment appears valid on its face and, if
82 possible to determine, whether it remains in effect;

83 (3) whether the tribal court possessed subject-matter jurisdiction and
84 jurisdiction over the person of the parties;

85 (4) whether the issuing tribal court was a court of record;

86 (5) whether the order or judgment was obtained by fraud, duress, or
87 coercion;

88 (6) whether the order or judgment was obtained through a process that
89 afforded fair notice, the right to appear and compel attendance of witnesses, and
90 a fair hearing before an independent magistrate;

91 (7) whether the order or judgment contravenes the public policy of this
92 state;

93 (8) whether the order or judgment is final under the laws and procedures
94 of the rendering court, ~~unless the order is a non-criminal order for the protection~~
95 ~~or apprehension of an adult, juvenile or child, or another type of temporary,~~
96 ~~emergency order;~~

97 (9) whether the tribal court reciprocally provides for recognition and
98 implementation of orders, judgments and decrees of the courts of this state; and

99 (10) any other factors the court deems appropriate in the interests of
100 justice.

101
102 **Advisory Committee Comment—2017 Amendments**

103
104
105 Rule 10.03(b) recognizes two methods for asking a court for an order
106 enforcing a tribal court adjudication. Most often, a petition seeking an order is
107 necessary. The rule also allows a motion in a pending action. This would allow
108 use of a tribal court adjudication to establish res judicata or collateral estoppel.
109