

MICHIGAN STATE
UNIVERSITY
COLLEGE OF LAW

Wednesday March 15, 2017

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

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

Dear Mr. Johnson,

As I will not be present for the public hearing, please accept these written comments in support of the proposed changes to Rule 10.01 and Rule 10.02 on behalf of the Indigenous Law and Policy Center at Michigan State University College of Law. The amendments to Rule 10.01 provide the court with a clear list of federal and state laws that require the court to adhere to a tribal court judgments. The amendments to Rule 10.02 creates the presumption that comity must be extended to tribal court orders and judgments. These changes will promote clarity in your court system and foster cooperation between tribal and state courts.

A rule of comity in Minnesota will strengthen the integrity of both state and tribal court systems by ensuring consistent application of the law in both courts. Michigan adopted a similar rule of comity in the early 1990's. A report issued in Michigan in support of a rule of comity highlighted a few hypothetical issues without the rule:

1. A child support order is entered in a state trial court. The parent who has the duty to pay support subsequently moves on to a reservation. The order is unenforceable unless the tribal court chooses to honor the state order. The reverse is also true . . . 2. A state court enters a garnishment order. The garnishee subsequently moves onto tribe's reservation and obtains employment on the reservation. The garnishment order can now only be enforced through tribal court. As before, the reverse is equally true. 3. A party in a tribal court proceeding needs to subpoena a witness who resides off of the reservation. The state court must honor the subpoena for it to be effective. Similarly, a state court may not be able to subpoena a reservation resident without the tribal court honoring the subpoena. MICH. INDIAN TRIBAL COURT/STATE TRIAL COURT FORUM, *Report of the State Court and Trial Court Forum*, 4 (1992))
<https://turtletalk.files.wordpress.com/2007/11/indiantribalcourtstateforum.pdf>

The report concluded that in order to resolve these issues there needed to be "consistent application of full faith and credit between the tribal and state courts." *Id.*



Matthew L.M. Fletcher

**Professor of Law
Director, Indigenous
Law & Policy Center**

405B Law College Building
East Lansing, MI 48824-1300

517-432-6909

Fax: 517-432-6879

matthew.fletcher@law.msu.edu

www.law.msu.edu

The Michigan court rule, M.C.R. 2.615, made the garnishment orders vastly more efficient. We include reports published by the Pokagon Band of Potawatomi Indians Tribal Court that details the hundreds of thousands of dollars *yearly* transmitted by the tribe to comply with child support and other garnishment orders. Pokagon Band's Indian country crosses the border between Indiana and Michigan, and the tribal court regularly receives motions to enforce foreign court orders.

The proposed amendments to 10.01 and 10.02 would give Minnesota a similar rule of comity as Michigan. Minnesota would avoid the problems discussed above and strengthen the integrity of both state and tribal courts.

The proposed rule of comity would be less complicated than your current rule. The current rule lists a complex and non-exhaustive list of consideration that may lead to confusion and an inconsistent application. *See* 10.02. In contrast, a presumption of comity for tribal court judgments is a bright line rule, resulting in less confusion and a more uniform application. However, this presumption can be overcome by showing the tribal court lacked personal or subject matter jurisdiction, did not grant due process rights, obtained the conviction by fraud or duress, and the tribal court's order contravenes the public policy of this state. *See In Re Petition to Amend Rule 10*, File No. ADM 09-8009 at Appendix A 2 (filed Nov. 30, 2016). Thus, courts will still maintain the authority to reject a tribal court's judgment.

Tribal courts have become increasingly sophisticated and are similar to state courts. Most tribes have trial and appellate courts and operate with similar state court divisions, such as criminal, probate, juvenile, and civil courts. *See Cohen's Handbook of Federal Indian Law* § 4.04[3][c], at 267. Numerous tribes have enacted their own civil rights protections copied from the United States Constitution based on the Indian Civil Rights Act, 25 U.S.C. §1301. Moreover, state courts will retain discretion not to honor a tribal court's judgment if there are procedural violations, such as lack of due process. State and tribal courts have more similarities than differences, so the state court should not hesitate passing a rule of comity.

In addition, the Supreme Court, following the United States Sentencing Commission and Congress, has endorsed using tribal court judgments in federal courts. In *United States v. Bryant*, 136 S.Ct. 1954, 1958 (2016), federal prosecutors charged Bryant as a repeat domestic violence offender enacted as part of the Violence Against Women Act of 2005, 18 U.S.C. § 117(a). Under § 117(a), it is a federal crime to "commit a domestic assault within . . . Indian country if the person has at least two prior final convictions for domestic violence rendered." Prosecutors charged Bryant based on his numerous prior convictions in the Northern Cheyenne tribal court, which does not guarantee paid counsel to indigent defendants. The Supreme Court affirmed the federal conviction, holding that the predicate tribal court convictions did comply with the Indian Civil Rights Act, 25 U.S.C. § 1302. *Id.* at 1959. *Cf. Dollar General Corp. v. Mississippi Band of Choctaw Indians*, 136 S.Ct. 2159 (2016) (affirming by an equally divided court tribal court jurisdiction over nonmembers).

Nationally, the clear trend in Public Law 280-type states is toward greater respect and acknowledgment of tribal courts. New York, governed by a PL 280 precursor called the New York Indian Act, 25 U.S.C. § 233, recently adopted a comity rule. Uniform Civil Rules of the Supreme and County Courts § 202.71 (N.Y., May 26, 2015). Alaska, a mandatory PL 280 state, grants full faith and credit to Alaska tribal courts in Indian child welfare matters even in the absence of Indian country. E.g., *Simmonds v. Parks*, 329 P.3d 995 (Alaska 2014). Wisconsin's

Teague protocol has seemingly been controversial (and certainly far more expansive and complex than the proposed rule here), but numerous cases have been transferred between state and tribal courts without controversy, further supporting the need for a rule enhance tribal and state court cooperation. See Larry Nesper, *What's the Extent of Jurisdictional Geography*, 89 Wis. Law. 28 (Jan. 2016).

The Indigenous Law and Policy Center was established to provide competent, experienced, and inexpensive legal services to tribal governments in an effort to assist tribes in attaining their judicial and governmental goals. The Center does this through the Indian Law Clinic, where the Clinic Director supervises the legal work of second and third year law students. By offering the highest quality legal services and policy advice at minimal cost, the Center aids in empowering tribal governments to improve their communities and address the particular needs of their citizens.

Sincerely,
/s/ Matthew L.M. Fletcher
Matthew L.M. Fletcher,
Professor of Law

Pokagon Band of Potawatomi
Tribal Court Report
(Updated 12-31-2016)

I. "Full Faith and Credit" Enforcement of Foreign Court Child Support Orders

Indiana

Since Inception of Court (11/04/2004 to 12/31/2016)

Cases by County	12 Counties
Allen County	1
Benton County	1
Elkhart County	4
Howard County	1
LaPorte County	104
Lake County	48
Marion County	2
Marshall County	3
Porter County	30
St. Joseph County	52
Stark County	2
Tippecanoe County	1
Indiana State Collection Unit	13
TOTAL	262

**Foreign Court Child Support
Orders Recognized and Enforced
for Employees of the Four Winds
Casino Resorts
(From 08/01/2007 to 12/31/2016)**

	Amount
AZ	2,652.00
CA	8,070.32
FL	14,605.62
IA	50,400.53
IL	247,660.93
IN	\$2,055,543.69
MI	\$1,785,949.04
MO	52,269.70
MS	19,561.41
MN	650.32
NC	1,350.00
NJ	64,014.00
NV	11,914.61
OH	18,502.55
PA	1,000.00
SC	36,8432.40
TN	15,799.80
TX	7,996.39
WI	3,122.95
Grand Total	\$4,397,896.26

List of Types of Notice and Orders Used for Recognizing Child Support

1. Order to Withhold Income for Child Support
2. Order to Withhold Income for Health Care Coverage
3. Order to Withhold Income for Child Support and Health Care Coverage
4. Amended Order to Withhold Income for Child Support
4. Notice of employment status disclosure and employer's disclosure of income and health insurance information
5. Order Compelling Disclosure of Income and Health Insurance Information
7. Order Terminating Income Withholding for Child Support
8. Order Terminating Income Withholding for Health Care Coverage

II. "Comity" Recognition and Enforcement of Foreign Court (Indiana) Judgments and Subpoenas

Since Inception of the Court to December 31, 2016 (8 Counties)

	Foreign Judgment	Garnishment	Foreign Subpoena
Delaware County Juvenile Court			4
Elkhart County Circuit Court	2	2	0
Kosciusko Superior Court 1	1	1	
La Porte County Circuit Court	1	2	4
La Porte Superior Court	21	19	1
Lake County Circuit Court	1	1	1
Lake County Child Support Division	1	0	7
Lake Superior Court	2	1	0
Marshall Superior Court No. 1	1	2	0
Porter County Circuit Court	1	3	0
Porter County Superior Court #2	1	0	0
Porter County Superior Court #3	3	2	0
Porter County Superior Court #4	1	0	0
Porter County Superior Court #6	1	1	0
St. Joseph County Circuit	2	2	1
St. Joseph County Superior Court	11	9	2
TOTAL = 115	50	45	20

Pokagon Band of Potawatomi
Tribal Court Report
(Updated 12-31-2016)

I. "Full Faith and Credit" Enforcement of Foreign Court Child Support Orders

Michigan

Since Inception of Court (11/04/2004 to 12/31/2016)

Cases by County 24 Counties

Allegan County	5
Berrien County	420
Calhoun County	4
Cass County	105
Charlevoix County	1
Clinton County	1
Genesee County	4
Gratiot County	2
Ingham County	5
Ionia County	3
Isabella County	5
Jackson County	3
Kalamazoo County	11
Kent County	8
Macomb County	2
Manistee County	3
Mecosta County	1
Muskegon County	1
Newaygo County	3
Oakland County	3
Ottawa County	3
Saginaw County	1
St. Clair County	1
Van Buren County	81
Wayne County	2
TOTAL	678

List of Types of Notice and Orders Used for Recognizing Child Support

1. Order to Withhold Income for Child Support
2. Order to Withhold Income for Health Care Coverage
3. Order to Withhold Income for Child Support and Health Care Coverage
4. Amended Order to Withhold Income for Child Support
4. Notice of employment status disclosure and employer's disclosure of income and health insurance information
5. Order Compelling Disclosure of Income and Health Insurance Information
7. Order Terminating Income Withholding for Child Support
8. Order Terminating Income Withholding for Health Care Coverage

Foreign Court Child Support Orders Recognized and Enforced for Employees of the Four Winds Casino Resorts (From 08/01/2007 to 12/31/2016)	
	Amount
AZ	2,652.00
CA	8,070.32
FL	14,605.62
IA	50,400.53
IL	247,660.93
IN	\$2,055,543.69
MI	\$1,785,949.04
MO	52,269.70
MS	19,561.41
MN	650.32
NC	1,350.00
NJ	64,014.00
NV	11,914.61
OH	18,502.55
PA	1,000.00
SC	36,8432.40
TN	15,799.80
TX	7,996.39
WI	3,122.95
Grand Total	\$4,397,896.26

II. "Comity" Recognition and Enforcement of Foreign Court (Michigan) Judgments and Subpoenas

NOTE: Warrants are Recognized and Enforced Pursuant to Cross-Deputization Agreements.

Cases from Michigan Recognized and Enforced Pursuant to MCR 2.615 and the Pokagon Band Tribal Court Code Section 7(F).

Since Inception of the Court to December 31, 2016 (16 Counties)

	Foreign Judgment	Garnishment	Foreign Subpoena
Allegan County			
48 th Judicial Circuit Court	1	0	1
57 th District Court	1	0	0
Allegan Probate Court	2	1	0
Barry County			
5 th Judicial Circuit Court	1	1	0
Berrien County			
2 nd Judicial Circuit Court	6	6	2
Berrien County Trial Court (5 th District)	183	158	3
Calhoun County			
37 th Judicial Circuit Court	0	0	1
Cass County			
43 rd Judicial Circuit Court	3	2	5
4 th District Court	46	29	0
Cass County Probate Court	1	0	0
Genesee County			
7 th Judicial Circuit Court	1	2	0
Ingham County			
55 th District Court	1	1	0
Jackson County			
4 th Judicial Circuit Court	0	0	2
Kalamazoo County			
9 th Judicial Circuit Court	0	0	1
8 th Judicial District Court	1	1	0

Kent County			
17th Judicial Circuit Court	0	0	2
Manistee County			
85th District Court	1	1	0
Saginaw County			
70th District Court	3	1	0
St. Joseph County			
3B District Court	1	1	0
Van Buren County			
36th Judicial Circuit Court	1	0	4
7th District Court	25	24	2
Van Buren County Probate Court	0	0	3
Washtenaw County			
22 nd Judicial Circuit Court	0	0	1
Waterford County			
51 st Judicial Circuit Court	0	0	1
TOTAL = 534	278	228	28

2016 Summary of Garnishments

For the year of 2016, 31 garnishment cases were filed with the Court. 3 originated in Indiana, the remaining were from Michigan.

12 cases closed after payment in full of the garnishment in which \$13,277.44 was collected by Petitioners.

10 cases were dismissed after filing of the Petition based on not enough disposable income to garnish.

9 cases remain open with a potential to collect \$29,242.83.