



# Lower Sioux Indian Community in the State of Minnesota

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*Cansayapi Otunwe*

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

Mr. Johnson:

Our Lower Sioux Indian Community in the State of Minnesota (“Community”) is one of four Mni Sota Dakota Communities in southern Minnesota. Our tribal government has had a tribal court since the 1990s. Our judges are and have been law trained and practicing attorneys who have forged collegial relationships with the local State District Court Judge and County Attorneys over the years. We are proud of and appreciate that our independent court has provided a forum for disputes for both tribal citizens and non-tribal citizens for years. Our Community is in full support of the petition to amend Rule 10 of the Minnesota General Rules of Practice for District Courts. We do not request an opportunity to testify.

We believe Rule 10 should be revisited for three reasons. First, in 2002 and 2003, the Minnesota Supreme Court adopted current Rule 10 in part due to testimony and written submissions concerning the quality of justice administered in tribal courts. As tribal leaders whose courts have had 14 years of experience with Rule 10, we can attest that those concerns have no merit today. Our judges hold law degrees from some of the finest schools in the country. Others have demonstrated success in academia and practice. Our judges have continued to practice law outside of our courts’ jurisdictions, allowing us to stay up-to-date on technologies and the law, making our courtrooms more effective and efficient forums for the administration of justice.

In addition, our court has and is receiving significant upgrades in facilities and staffing, funded by our tribe or the federal government. These upgrades are enhancing the experience of those who come before us and are ensuring that we can manage our growing dockets. In addition, our Court has significant independence from other branches of tribal government as set out in our judicial code which empowers our judges to make independent, and unbiased

decisions as well as providing access to justice for litigants who are tribal members and non-tribal members pursuant to principles of law and equity. Finally, our codified laws, rules, and decisions are very accessible to the public. These circumstances make tribal courts exceptional forums for dispute resolution: forums where the quality of justice cannot be questioned. As such, our orders and judgments deserve greater deference than current Rule 10 provides. Proposed Rule 10 does exactly that.

Second, our court requires a more robust rule for recognition of tribal court orders and judgments to ensure that we can administer justice effectively in our courts and parties have access to justice or services promptly especially when in crisis. Without such a rule and the greater certainty that it provides, we often cannot sufficiently safeguard the welfare of the children, vulnerable adults, families, and other civil and criminal litigants that appear in our Court. Unfortunately, current Rule 10 provides far too much deference to state court judges to provide the type of certainty that our families, tribal members, and other parties need. Even were we to assume that most state court judges ultimately favor recognition of tribal court orders and judgments, current Rule 10 creates the strong possibility of delay in the recognition process, a consequence that we have seen all too often. We have had a pregnant tribal member with an involuntary civil commitment tribal court order not able to promptly access a locked treatment facility because the substitute District Court Judge was unfamiliar with our Court and court procedures and sought additional information under the current Rule 10. This type of delay in the recognition process can not only cause additional harm but also at times undermine the administration of justice just as much as denial of recognition altogether.

Third, Indian tribes are sovereign nations, vested with inherent authority to regulate both their members and their territories. The United States Supreme Court has made clear that tribal courts play a vital role in each Indian tribe's exercise of self-government, so much so that the federal government has made it a policy to encourage their development. Current Rule 10 undermines both this policy and our judicial system. Rather than review our court's orders and judgments through an objective, reasonable, and consistent process, the current Rule 10 allows state court judges to arbitrarily second guess or disregard tribal court orders and judgments. This has lead litigants and sometimes District Court Judges to not see our tribal court or its orders and judgments as having the same degree of authority as state courts or their orders and judgments and therefore do not treat them with the same degree of respect. Proposed Rule 10 manifests a far greater degree of respect for and trust of tribal courts and is likely to improve the public perception of and respect for tribal courts and their orders and judgments.

In conclusion, the Lower Sioux Indian Community in the State of Minnesota supports the petition to amend Rule 10. Current Rule 10 is the product of outdated concerns about the quality of justice administered in tribal courts. The current Rule 10 undermines our efforts to effectively, efficiently, properly, and promptly administer justice in our Community. Proposed Rule 10 addresses our major concerns in a meaningful way.

Sincerely,



By: Gary Prescott  
Its: Lower Sioux Council Secretary