

March 17, 2017

Michael Johnson,
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State Court Administration
125H Minnesota Judicial Center
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Re: Petition of Minnesota Tribal Court/State Court Forum to Amend Rule 10

Mr. Johnson:

I am an appellate judge for the White Earth Nation and Co-Director of the Indian Law Program at Mitchell Hamline School of Law. I have practiced federal Indian law for the past 16 years in tribal courts, state courts, and federal courts. During that time, I have represented Indian tribes, tribal members, and non-Indian businesses in six different tribal courts. More recently, I have served as a tribal court judge, a tribal election appeals judge, and a tribal appellate judge for three different tribes in Minnesota. I join my tribal court colleagues and submit this letter in full support of the petition to amend Rule 10 of the Minnesota General Rules of Practice for the District Courts.

We believe Rule 10 should be revisited for three reasons. First, in 2002 and 2003, the Minnesota Supreme Court adopted the current rule after considering testimony and written submissions concerning the quality of justice administered in tribal courts. But as experienced tribal court judges, we can attest that those concerns have no merit today. Today, most of our judges hold law degrees, and many are from some of the finest schools in the country. Others have demonstrated success in academia and practice. And many of us continue 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 courthouses are receiving significant upgrades in facilities and staffing, funded by tribes or federal grants. These upgrades are enhancing the experience of those who come before us and are ensuring that we can manage our growing dockets. In addition, we act with significant independence from other branches of tribal government thus empowering us to make independent, unbiased decisions that accord with principles of law and equity. 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, we need a more robust rule for recognition of tribal court orders and judgments to ensure that we can administer justice effectively in our courts. Without such a rule and the greater certainty that it provides, we often cannot safeguard the welfare of the children, vulnerable adults, families, and other civil and criminal litigants that come before us. 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. This delay in the recognition process can, at times, undermine the administration of justice just as much as denial of recognition altogether. Proposed Rule 10 remedies these problems by establishing a more streamlined and focused process that will afford us the security we need to effectively administer justice in Indian country.

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 courts themselves. Rather than impose upon our orders and judgments an objective, reasonable, and consistent vetting process, it places unbridled discretion in the hands of state court judges. Rather than embody the principles of respect and comity, it betrays a perception of inferiority and distrust of tribal courts. Because of this, litigants often do not see tribal courts or their 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, we, being judges from the tribal judiciaries within the boundaries of the State of Minnesota, support the petition to amend Rule 10. Current Rule 10 is the product of outdated concerns about the quality of justice administered in tribal courts. And it undermines our efforts to effectively and efficiently administer justice in our communities. Proposed Rule 10 addresses these major concerns in a meaningful way.

Sincerely,



Colette Routel
Appellate Judge, White Earth Nation
Co-Director, Mitchell Hamline Indian Law Program