

On March 31, 2017, the Minnesota Supreme Court Advisory Committee on General Rules of Practice held a public hearing regarding the recognition of tribal court orders and judgments as set forth in the [Petition of Minnesota Tribal Court/State Court Forum to Amend Rule 10](#), filed November 30, 2016, and its accompanying Appendix.

The advisory committee is requesting additional information from any speakers or submitters in regard to the following issues:

1. Is the proposed change making tribal court orders and judgments presumptively enforceable substantive or procedural, and does it encroach on federal or state legislative authority?
2. Do tribal court civil monetary judgments immediately become liens on real property when filed in MN? (e.g., Wisconsin requires a court to approve it; Iowa says must wait until any filed objections are resolved)?
3. How would the proposed change making tribal court orders and judgments presumptively enforceable, address the problem of law enforcement not honoring lawful tribal court orders when people would still need to get “cover orders” from the state courts?
4. To what extent would there be reciprocal recognition for state court orders in tribal court?
5. What model does the current proposal follow and what has been the experience in those jurisdictions?
6. How can a tribal court ordering a civil commitment do so without making the commitment facility a party to the proceedings?
7. How are tribal court judges selected?
8. What meets the burden to “demonstrate” one of the veto items, such as lack of jurisdiction? I was never there, I was never served, you have the wrong Mike Johnson?
9. Are tribal court records public so that litigants can verify what is and is not there?

Those who spoke at the hearing or submitted comments to the advisory committee on the subject may submit supplemental written materials **not exceeding ten pages, double spaced, without attachments, no later than Monday, April 17, 2017.** Please submit this by mail or email (email preferred) to the location below. The committee reserves the right to limit all comments appropriately.



***Bedonahkwaad***

The Minnesota Chippewa Tribe has the right to make and enforce tribal laws. The right to make and enforce tribal law is exercised by elected tribal officials with consultation and input from the Tribal Members. This right to make and enforce tribal law does not extend to the State of Minnesota.

Boozhoo, Mr. Michael B. Johnson, Senior Legal Counsel, Legal Counsel Division, State Court Administration, Minnesota Judicial Branch:

Miigwetch for the opportunity to provide additional information to supplement my testimony of March 31, 2017. I will attempt to be concise in my comments, but remind you of your duty under the United Nations Declaration of Rights of Indigenous People (Attached in the Appendix to this letter) to participate in meaningful consultation with the affected Indians prior to making a decision.

Many bodies engaging in such consultation have found it helpful to visit Indian Country on several occasions where they host open forums. These open forums, where people are not limited to the amount of time they may speak is a traditionally respectful manner of providing consultation as we do not generally limit or interrupt each others opportunity to speak when we discuss important matters in Indian Country. Truly engaging in meaningful consultation requires that you are respectful of our practices and traditions when consulting with us.

I also want to make sure that you understand that I bring these comments as an Anishinaabe Ojibwe and a member of the Minnesota Chippewa Tribe, Leech Lake Reservation. While my comments may be relevant to other tribes and/or reservations within Minnesota, I cannot speak for them. I in no way intend my comments to supplant



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the positions and comments of other tribes or reservations. Meaningful consultation with other tribes and reservations should be actively sought out before you make a final decision.

In addition to the need for meaningful consultation, below are some issues I wish to bring to your attention regarding the proposed amendments to Rule 10.

**1) The Proposed Rule 10 as written describes substantive rights, not procedures, and as such, encroaches upon the authority of the State and Federal Legislatures.**

The proposed Rule 10 describes the right of the Tribal Court and its participants to have a tribal court order recognized by the Minnesota State Court, but it does not describe how one goes about doing that. The grant of rights is something that is reserved for the legislative process, while procedural rules are within the purvey of the Court System.

Procedural rules generally describe procedural issues; for example; what has to be in the petition, how service should be affected, how long the opposing party has to respond, and whether a hearing will be held. None of that is described in the Proposed Rule 10. It appears that there may have been discussion between the Proponents and the Rule Committee about how that process will work, but the Proposed Rule itself does not adequately address procedural issues in a manner that would allow a tribal member to figure out what they need to do in order to get the order recognized or to oppose recognition. This lack of description unfairly burdens the tribal members because they will be forced to hire attorneys in order to figure



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out what to do. Even then, the lack of description of procedural processes will make it difficult for anyone to navigate the process of recognition.

In contrast, Tribal Court Judges, Tribal Attorneys, and MAIBA Attorneys, will have an advantage if any Tribal Court order is filed in county court that concerns their employer, themselves, or their family members because they have the legal knowledge and connections to find out how to proceed with recognition or opposition to recognition of the order. This unfairly disadvantages tribal members.

The proposed Rule 10.02 has effectively removed the ability of a person subject to a tribal court order to challenge recognition of that order as it removed the hearing requirement and failed to describe any other procedures for challenging recognition of a Tribal Court order.

The proposed Rule 10.02 allows for automatic recognition of the tribal court order unless a party opposing recognition demonstrates specific due process violations while simultaneously removing the requirement that the court hold a hearing on the matter. By doing so, the proposed Rule 10.02 effectively removes the ability of the affected tribal member to meaningfully object to recognition of the order. There is not, for example, any procedure or required language informing the person the order is against as to how they may protect their rights or be provided with an opportunity to challenge recognition of the order as the requirement to have a hearing has been removed and no process explained to replace it.



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2) No comment.

3) No comment.

4) I don't think there could be automatic recognition of State Court orders because doing so would allow the State Court's to impermissibly legislate over intertribal matters. To the extent that State Court orders are currently recognized in Tribal Courts, it is usually limited to areas recognized by the Reservation Business Committees as consistent with the laws of the tribe.

5) No Comment.

6) No Comment.

7) For the Minnesota Chippewa Tribe, Judges are Tribal Employees who are hired or selected by the elected Reservation Business Committee Members. There are two related issues of which you should be aware.

First, I question the standing of the Minnesota Tribal Court/State Court Forum to bring forth the Rule 10 petition as many of the members of that forum do not fall within any Tribal Court jurisdiction.

Tribal Court Judges, Tribal Attorneys, and MAIBA Attorneys, many of whom are not tribal members, will not fall under the Proposed Rule 10 jurisdiction that is being affected. They have not consulted in any meaningful way with the affected Indians whose jurisdiction will be altered by this proposal. Any adjustments to the jurisdiction of tribal courts is a tribal membership property right and whether to allow or disallow such changes requires input and approval from the affected



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Indians. Lawyers and Tribal Court Judges working within the Tribal Court systems are not elected, they are hired or appointed by the Reservation Business Committees (Often incorrectly called “Tribal Counsels”). As such, they do not have the authority to advocate for changes to the jurisdiction, without approval of the affected Indians and their elected representatives.

Second, at this point in time a debate exists within the Minnesota Chippewa Tribe as to the legitimacy of the tribal courts because the Minnesota Chippewa Tribe Constitution, does not expressly authorize a tribal court system, except as an administrative body. (See Attached)

The Petition cites to Federal Statutes and Cases addressing the ability of Tribes to operate tribal courts. What is ignored in the Petition is the fact that unlike the United States Constitution, the Minnesota Chippewa Tribe (hereinafter “MCT”) Constitution does not expressly authorize the operation of Tribal Courts on MCT Reservations, except as administrative bodies. To many MCT Tribal Members – those laws and court cases are meaningless unless the Affected MCT Tribal Members consent to the jurisdiction of the Tribal Court or the membership empowers the Tribal courts through the MCT Amendment Process. The MCT recently voted to hold a Secretarial Election in 2018 where authorization could occur, but as of now it is unknown whether authorization of tribal court will be among the issues voted on.

- 8) The current proposed Rule 10 does not describe the burden, nor does it describe how that burden would be met.



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9) No comment.

Miigwetch for taking the time to hear my concerns. I hope you will reach out to other tribal members and their elected officials for input into this important issue. I have included in the Appendix, several items for your review including a brief history of the creation of the Minnesota Chippewa Tribe and development of its constitution. I have also provided a copy of the Minnesota Chippewa Tribe Constitution, and the UN Declaration on the Rights of Indigenous Peoples.

Sincerely,

Bedonahkwaad (Dale Greene)



At the March 31<sup>st</sup> 2017 Rule 10 hearing – MAIBA Attorneys, Tribal judges and petitioners provided testimony where they discussed the Constitutions created under the Wheeler Act more commonly known as the “Indian Re-Organization Act (IRA) of 1934”

- The IRA Constitutions and Federally Recognized IRA Tribes are exercising (quasi-) authority provided by the Indian Reorganization Act.
- The IRA Constitutions exercise and were created by the QUASI-Sovereignty granted through the IRA legislation of Congress many Federally Recognized Tribes exercise today.
- The BIA agents drafted many IRA Constitutions of the 1930s. The BIA agents of the Bureau of Indian Affairs (BIA) agencies created these IRA Constitutions Templates. Many are still in use today.

Old Archaic; what does that mean?

- The Bible could be considered Old and Archaic – but a large percentage of United States population would disagree?
- The Magna Carta is old and archaic.
- The Declaration of Independence and the US Constitution have been called old and archaic – but through the Amendment process the US Constitution is constantly updated and relevant?





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- Plenary Power of Congress, 1871 Legislation over Indians, maybe considered “OLD AND ARCHAIC,” and has outlived its usefulness?
- The Indian Reorganization act and Public Law 280 can be defined by some as, “Old and Archaic.”

### **The MCT Constitution can-not be called old and Archaic:**

**Minnesota Chippewa Tribe (MCT) Constitution (48 STAT. 984);** Pursuant to an order approved September 12, 1963, by the Assistant Secretary of the Interior, the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe was submitted for ratification to the qualified voters of the reservations, and was on November 23, 1963, duly adopted by a vote of 1,761 for, and 1,295 against, in an election in which at least 30 percent of those entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

- In 1963 the MCT Constitution was revised.
- The Revised MCT Constitution was Duly Adopted; voted for by the qualified MCT Tribal Membership - the **MCT Tribal Membership. (Emphasis added.)**
- There are 15 Enumerated Articles, followed by Bylaws. This is the Governing document for the MCT – Tribal Executive Committee (TEC) and the 6 Reservation Business Committee’s (RBC) that comprise the MCT.



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- For this document the following Articles should be viewed – Articles V & VI articulates the Authority and Powers of the TEC & RBC's. Article VII - Highlights the Duration of The Constitution. Article XII – Amendment; it is usually understood the Amendment Process is used to Amend or add Amendments to the MCT Constitution. **(1)**. Article XIII is Rights of Members – Where there is a MCT membership right to *Due Process Of Law*.

**(1)** When the MCT Constitution was revised in 1963 – what did the MCT Tribal Membership understand about the MCT Constitution's Reserved Rights Doctrine?

- There is no Police or Judicial powers delegated or Enumerated in the MCT Constitution. Those authorities or powers are reserved to the MCT Membership.
- To gain new Police Or Judicial Powers, consent of the affected MCT Tribal Members (30% percent participation) at least 30 percent of those entitled to vote shall vote. To accept or reject an amendment – or change the MCT Constitution.
- This is the proper and correct way to gain the informed consent of the affected Indians; Any of the MCT Constitutions unwritten Reserved Property Rights belong to the MCT Membership; Reserved Rights Doctrine – construed in a manner the 1963 MCT Tribal Members understood about the revised MCT Constitution.



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- Tribal Court Orders Filed in County or State Courts. Without Proper Consent of the affected MCT Tribal Members or Affected Indians is simply wrong. And goes against the plain meaning of the MCT Constitution Rights and Protections of the MCT Tribal members. Whose Jurisdiction (Property Rights) is being petition away by Non-MCT Tribal members who are not elected by the affected MCT Tribal Membership? Those non-tribally elected, may never come under the authority or Jurisdiction being petitioned away?

### **Indian Civil Rights Act 25 USC 1321-1326**

#### **1321 (a) Consent of United States**

- **In general**

The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

- **(2) Concurrent jurisdiction**

At the request of an Indian tribe, and after consultation with and consent by the Attorney



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General, the United States shall accept concurrent jurisdiction to prosecute violations of sections [1152](#) and [1153](#) of title [18](#) within the Indian country of the Indian tribe.

### **(b) Alienation, encumbrance, taxation, and use of property; hunting, trapping, or fishing**

- Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

([Pub. L. 90-284, title IV, § 401, Apr. 11, 1968, 82 Stat. 78](#); [Pub. L. 111-211, title II, § 221\(a\), July 29, 2010, 124 Stat. 2271.](#))

- **1322 (a) Consent of United States; force and effect of civil laws**

The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall



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have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

### **(b) Alienation, encumbrance, taxation, use, and probate of property**

Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

### **(c) Force and effect of tribal ordinances or customs**

Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

(Pub. L. 90-284, title IV, § 402, Apr. 11, 1968, 82 Stat. 79.)

- **1326** State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults.

(Pub. L. 90-284, title IV, § 406, Apr. 11, 1968, 82 Stat. 80.)



**Kennerly v. District Court, 400 U.S. 423 (1971)**

- In 1967, the Blackfeet Tribal Council adopted an act providing for concurrent jurisdiction in the Tribal Court and the state courts of any suit where the defendant is a member of the Tribe. Title IV of the Civil Rights Act of 1968 repealed § 7 of the 1953 Act and provided for the assumption of state jurisdiction
- "Only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose."
- *Held:* The Tribal Council's unilateral action was insufficient to vest jurisdiction in the Montana courts under either the 1953 Act, which required affirmative state legislative action, or under the 1968 Act, which calls for a majority vote of all enrolled Indians.
- Certiorari granted; 154 Mont. 488, 466 P.2d 85, vacated and remanded.

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