

## **Comment on to Petition to Amend Rule 10**

Please find below factual considerations for the Supreme Court to consider in making its decision regarding the proposed Amendment to Rule 10. As my experience as the County Attorney and citizen of Mille Lacs County is limited to the Mille Lacs Band of Ojibwe, my comments are necessarily limited to issues related to the Mille Lacs Band of Ojibwe, not other tribal governments.

The Mille Lacs Band's Court of Central Jurisdiction is empowered to exercise its jurisdiction in civil litigation, criminal litigation, and "unwritten cultural law litigation." 24 Mille Lacs Band Statutes Annotated ("MLBSA") § 1001. A stated purpose of enforcing the Band's laws are to "enhanc[e] the customs and sovereign right of the people of the Non-Removable Mille Lacs Band of Chippewa Indians." 24 MLBSA § 1001(d). "The judicial philosophy of the Non-Removable Mille Lacs Band of Chippewa Indians is a product of the terms and conditions of our customs of life since time immemorial." 24 MLBSA § 2002. It is concerning that an order from tribal court addressing unwritten tribal laws and customs, with a directive to enforce the law to enhance those customs, would be presumed to be valid in Minnesota state courts.

The Mille Lacs Band of Ojibwe does not require that its Justices or Judges pass the bar exam or be licensed attorneys pursuant to Minnesota law. *See* Minn. Stat. § 481.02. The only requirements of a Mille Lacs Band Judge is that they (1) graduate from an accredited law school, (2) be a member of a state bar association, and (3) not have any felony or gross misdemeanor convictions. 5 MLBSA § 11. Notably, the Minnesota State Bar Association is a voluntary professional organization open to non-attorneys. The Minnesota Supreme Court manages licensure in Minnesota through the Lawyer Registration Office. A search of the

Minnesota Attorney Registration System indicates that the current Mille Lacs Band judge does not appear to be a licensed attorney in the State of Minnesota.

Mille Lacs Band's Appellate Justices do not even have to meet the requirements of a judge, but merely be: (1) an enrolled Mille Lacs Band member, (2) over the age of 21, (3) have the equivalent of a high school diploma OR be over the age of 55, (4) be knowledgeable of the Band's laws including its unwritten customs and traditions, and (5) be a person of honor, integrity and good moral character. 5 MLBSA § 9. A prior felony or gross misdemeanor conviction more than seven (7) years old would not prevent a Band member from being appointed as a Justice on the Court of Appeals. A search of the Minnesota Attorney Registration System indicates that none of the Justices listed on the Mille Lacs Band's website are licensed attorneys in the State of Minnesota.

The hallmarks of an effective and respected judiciary are an adherence to ethical standards and independence from governmental pressure that allow judges to do their job with integrity. In Minnesota, Judges are bound by the Code of Judicial Conduct by the Board of Judicial Standards. There is no known tribal analogue of the Minnesota Board of Judicial Standards that applies to the Mille Lacs Band of Ojibwe. The Board of Judicial Standards is an independent state agency that responds to complaints about Minnesota state court judges for violations of the Code of Judicial Conduct. In Minnesota, judges are generally appointed, but then must stand for election. Within the last few years, the Mille Lacs Band's executive branch dismissed a judge (Richard Osburn) for reasons that were not made public. It is not clear which branch of the Mille Lacs Band's government removed Judge Osburn. This is a disturbing sign for the independence of the Mille Lacs Band's judiciary.

With the limited exception of certain child support orders provided to the Mille Lacs Band and/or tribal court, there does not appear to be comity provided to the laws of the State of Minnesota or Minnesota court orders in the Mille Lacs Band's tribal court. Mille Lacs Band has passed statutes appearing to mimic the Bill of Rights and other important constitutional rights, but different in important respects. *See, e.g.*, 1 MLBSA § 8 (“All persons within the territorial jurisdiction of Non-Removable Mille Lacs Bands of Chippewa Indians shall be accorded the *equal protection of the Band's laws.*”) (emphasis added). No protections are provided to support and uphold either the laws or the Constitution of the State of Minnesota.

Tribal court orders will affect the substantive rights of non-Native litigants, perhaps more so in Mille Lacs County than anywhere else in the state due to the disputed nature of the Mille Lacs Band's reservation and the large number of non-natives living within the disputed areas. The Mille Lacs Band's Statutes claim to have personal jurisdiction over “any person, corporation, business organization or other private entity that:

- (a) Transacts business with any member of the Band within the territorial jurisdiction of the Band;
- (b) Engages in any activity which results in injury or property damage within the territorial jurisdiction of the Mille Lacs Band;
- (c) Engages in any activity which results in a dispute over the ownership, use, possession or interest in any property within the territorial jurisdiction of the Band;
- (d) Contracts to insure any person, property, corporation, business organization or risk located within the territorial jurisdiction of the Band;
- (e) Enters into a written or verbal sales or service agreement within the territorial jurisdiction of the Mille Lacs Band or where performance of the agreement is to be within the territorial jurisdiction of the Mille Lacs Band;
- (f) Engages in conduct that may affect the environment or territories under the jurisdiction of the Band or affects the natural resources of the Band or threatens the health, safety, peace or welfare of Mille Lacs Band or inhabitants thereof.

5 MLBSA § 113.

The Mille Lacs Band of Ojibwe has passed specific laws designed to prevent any creditors from receiving funds that originate with the Band, such as wages or “per capita” payments. 24 MLBSA §§ 3352–53. “Except as specifically provided in this Section or controlling Federal law, the Court shall not order any withholding from the earnings or any person to satisfy any judgment or other claim.” 24 MLBSA § 3352; *see also* 24 MLBSA § 3353 (stating a similar rule for per capita payments). The exceptions for garnishing per capita payments are limited to federal taxes, child support, debts to the Band, debts to Band members, and criminal restitution for violations of Band laws or their equivalent state and federal counterparts.

There has been no confusion regarding the enforcement of tribal orders that are required by law in Mille Lacs County. We routinely defer to tribal courts regarding ICWA cases where tribes possess appropriate jurisdiction. We routinely respect orders related to tribal child support in related state cases. We routinely enforce tribal orders for protection to protect victims of domestic assault. While a housekeeping clean-up of this rule to explain the enforceable orders could be harmless, it is not necessary to avoid the “needless delays” referenced in paragraph 42 of the Petition because they do not exist in Mille Lacs County. Even with the change to Rule 10, tribal court orders will still need to be formally presented to district courts<sup>1</sup> in order for Rule 10 to apply, so any amelioration of the delay would be minimal.

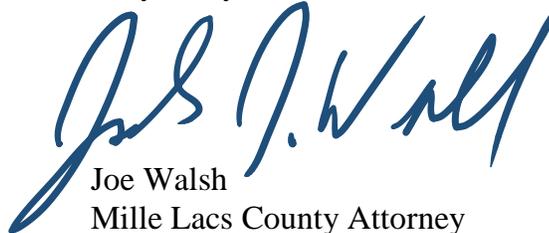
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<sup>1</sup> Notably, the Amendment to Rule 10 would give all tribal court orders issued by judges whom are not licensed attorneys greater deference than conciliation court rulings issued by Minnesota District Court Judges, which are subject to trial de novo. Minn. Stat. § 491A.02(6).

One of the exceptions to the new rule is that the tribal court does not reciprocally provide for recognition and enforcement of Minnesota orders and judgments. As the above citations to Band statutes indicate, the Mille Lacs Band does not reciprocally enforce Minnesota orders and judgments. Thus, the exception would swallow the rule. The only thing the new rule would accomplish in Mille Lacs County is placing an unnecessary burden on Mille Lacs County citizens to affirmatively oppose the presumed enforcement of the tribal court order and engender distrust and animosity in an area that doesn't need any more of either.

I understand, appreciate, and agree with the desire to continue to foster positive relationships between state courts and tribal courts as stated in paragraphs 30–32. We do not need to presumptively enforce tribal court orders to do this. The current rule providing factors for district courts to consider provides adequate protections for Mille Lacs County citizens who do not wish to be bound by tribal court orders that are not affirmatively recognized by Minnesota Statutes.

Very Truly Yours,



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