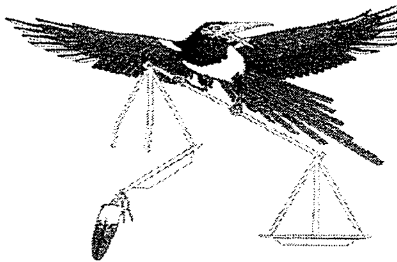

Minnesota American Indian Bar Association
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March 16, 2017

Michael Johnson
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via U.S. Mail and/or Electronic Mail:
LegalCounselRules@courts.state.mn.us

Re: Rule 10 of the Minnesota General Rules of Practice for the District Courts

Dear Mr. Johnson:

I am the President of the Minnesota American Indian Bar Association. In this capacity, I write to show my full support of the petition to amend Rule 10 of the Minnesota General Rules of Practice for the District Courts.

MAIBA comprises dozens of attorneys. We practice in tribal, state, and federal courts. We practice in a wide breadth of subject areas. We also practice on behalf of an array of clients, including federal, tribal, state and local governments, parents, children, vulnerable adults, nonprofits and major corporations. Our collective experience places us in a unique position to assess the importance and propriety of the proposed amendments to Rule 10. Bearing this in mind, we believe that the Minnesota Supreme Court should adopt the proposed amendments to Rule 10 for three reasons.

First, current Rule 10.02 has created an institution of uncertainty. As the Advisory Committee Comments clearly state, "Rule 10.02(a) *does not dictate a single standard* for determining the effect of these adjudications in state court." (Emphasis added.) Rather, Rule 10.02 provides state judges with unbounded discretion and considerably limited guidance. Consequently, litigants that come before tribal courts have no assurances about the finality of their judgments. Moreover, because Rule 10.02 grants such unfettered discretion, erroneous rulings to deny recognition of tribal court orders and judgments can be quite difficult to correct. As commentators discussed shortly after current Rule 10.02 was adopted, "The rule may well lead to arbitrariness in the enforcement of tribal judgments, and such arbitrariness will be difficult to review." Kevin K. Washburn & Chloe Thompson, *A Legacy of Public Law 280: Comparing & Contrasting Minnesota's New Rule for the Recognition of Tribal Court Judgments With the Recent Arizona Rule*, 31 Wm. Mitchell L. Rev. 479, 493 (2004). These consequences undermine the very purpose of the judicial system: justice. The proposed amendments correct this problem by instituting a much-needed presumption and then by providing clear and limited considerations for state judges to evaluate. This structure will undoubtedly increase the consistency of decisions by state judges that are asked to apply Rule 10.02.

Second, current Rule 10 can lead to delay and increased expense. While many state judges that work near Indian country are familiar with Rule 10 and the state and federal statutes that govern recognition of tribal court orders and judgments, other state judges tend not to be. These judges are unlikely to know how to quickly and efficiently proceed. They may require briefing and hearings that should be unnecessary. They may feel compelled to research or investigate issues that the parties have not raised. This is especially true, in light of Rule 10.02's catch-all provision. They may also make time-consuming mistakes, such as applying the wrong provision of Rule 10. For example, a state judge may eventually recognize a tribal court's order or judgment regarding child welfare, but he or she might do so by assessing the factors under Rule 10.02 instead of by extending full faith and credit under the Indian Child Welfare Act, as required by Rule 10.01. Like uncertainty, delay and increased expense tend to undermine justice. The proposed amendments will address these problems by more clearly directing state judges to appropriate state and federal statutes and by limiting their scope of review to matters that the parties actually raise.

Third, current Rule 10 fosters unwarranted skepticism of tribal courts. In our collective experience, tribal courts are run as well as other courts, if not better. Their resources have increased drastically, allowing for growth in staffing. Their courtrooms are typically refereed by judges with significant experience. Their judges run their courtrooms extremely fairly and extremely well. Tribal courts typically operate under procedural rules, just like state and federal courts. They rely on the codified laws of their jurisdictions and their precedent. In fact, numerous tribal courts in Minnesota have digests of their own decisions. And where their common law has not yet developed, they often look to decisions of neighboring jurisdiction as persuasive authority, just like state and federal courts.

Despite these facts, current Rule 10 manifests skepticism about the quality of justice that tribal courts administer. This skepticism bleeds into the public and undermines the legitimacy of tribal courts. Courts that Congress has said "are an essential part of tribal governments." 25 U.S.C. 3601(5). Courts that Congress has said are "important forums for ensuring public health and safety." *Id.* Courts that Congress has said are "the appropriate forums for the adjudication of disputes affecting personal and property rights." 25 U.S.C. 3601(6). The proposed amendments will correct this problem by demonstrating that Minnesota will no longer allow for unbridled challenges to tribal court orders and judgments; that Minnesota will respect tribal court orders and judgments as a matter of comity.

For these reasons, it is apparent to me that Rule 10 should be amended as proposed by the Minnesota Tribal Court/State Court Forum. I hope that you will recognize the need for the proposed amendments and recommend them to the Minnesota Supreme Court accordingly.

Very truly yours,

MINNESOTA AMERICAN INDIAN BAR ASSOCIATION

Jeanine L. Hill
President