

Rule 10. Tribal Court Orders and Judgments**Rule 10.01 Recognition Governed by Statute or Regulations.**

The courts of this state shall follow applicable state and federal statutes, regulations, and rules that either mandate or provide procedures for recognition and enforcement of orders, judgments, and other judicial acts of the tribal courts of any federally recognized Indian tribe. Applicable statutes include but are not limited to:

- (1) Violence Against Women Act, United States Code, title 18, section 2265;
- (2) Indian Child Welfare Act, United States Code, title 25, section 1911;
- (3) National Indian Forest Resources Management Act, United States Code, title 25, section 3106;
- (4) American Indian Agricultural Resources Management Act, United States Code, title 25, section 3713;
- (5) Full Faith and Credit for Child Support Orders Act, United States Code, title 28, section 1738B;
- (6) Minnesota Indian Family Preservation Act, Minnesota Statutes, section 260.771;
- (7) Uniform Interstate Family Support Act, Minnesota Statutes, sections 518C.101 to 518C.905;
- (8) Uniform Custody Jurisdiction and Enforcement Act, Minnesota Statutes, section 518D.104;
- (9) Minnesota Uniform Foreign-Country Money Judgments Recognition Act, Minnesota Statutes, sections 548.54 to 548.63.

(Amended effective September 1, 2018.)

Rule 10.02 Enforcement of Civil Commitment Orders.

The enforcement of orders for civil commitment issued by tribal courts is governed by Minnesota Statutes, section 253B.212. The district court may enter an order enforcing a tribal court order in accordance with this rule.

(a) Civil commitment orders entered by the tribal courts of the Red Lake Band of Chippewa Indians and the White Earth Band of Ojibwe Indians shall be enforced in accordance with Minnesota Statutes, section 253B.212, subdivision 1 or 1a.

(b) Civil commitment orders entered by the tribal courts that are subject to a contract for the care and treatment between a tribe (or the Indian Health Service of the United States Department of Health and Human Services for the benefit of members of a tribe) and the commissioner of human services shall be enforced in accordance with Minnesota Statutes, section 253B.212, subdivision 1b.

(c) For all other civil commitment orders entered by a tribal court, or in any case where directed by the court, the party seeking to enforce the order must proceed by petition to the Minnesota District Court under Rule 10.03, and in addition must serve a copy of that petition on each of the parties to the tribal court proceedings as well as the Minnesota Commissioner of Human Services and the director of the facility where the person is proposed to be committed. The court may determine when a response to that petition is due and whether a hearing is required or permitted if

requested, but shall not hear the matter without notice to all other interested parties except as allowed under Rule 3 of these Rules.

(Amended effective September 1, 2018.)

Rule 10.03 Enforceability of Other Tribal Court Orders and Judgments.

(a) Applicability. Rule 10.03 applies to tribal court orders and judgments that are not subject to Rules 10.01 or 10.02(a) or (b).

(b) Procedure. A party seeking enforcement of an order or judgment of the tribal court of any federally recognized Indian tribe that is not governed by Rules 10.01 or 10.02 shall proceed by petition, or in a pending action by motion. That party must serve a copy of the petition or motion on each of the parties to the tribal court proceeding in which the judgment or order was entered. The court may determine how soon after service of the petition any response is due. The court may determine whether to hold a hearing on the petition. The court shall not determine the matter without notice to all other interested parties except as allowed under Rule 3 of these rules.

(c) Enforceability and Exceptions. Courts of this state shall recognize and enforce an order or judgment of a tribal court of record of a federally recognized Indian tribe, unless a party subject to the order or judgment demonstrates any of the following:

- (1) the order or judgment is invalid on its face or no longer remains in effect;
- (2) the tribal court lacked personal or subject-matter jurisdiction;
- (3) the affected party was not afforded due process rights;
- (4) the order or judgment was obtained by fraud, duress, or coercion; or

(5) the tribal court does not reciprocally recognize and enforce orders, judgments and decrees of the courts of this state.

(Added effective January 1, 2004; amended effective September 1, 2018.)

Advisory Committee Comment - 2007 Amendment

Introduction. Rule 10 is a new rule intended to provide a starting point for enforcing tribal court orders and judgments where recognition is mandated by state or federal law (Rule 10.01), and to establish factors for determining the effect of these adjudications where federal or state statutory law does not do so (Rule 10.02).

The rule applies to all tribal court orders and judgments and does not distinguish between tribal courts located in Minnesota and those sitting in other states. The only limitation on the universe of determinations is that they be from tribal courts of a federally-recognized Indian tribe. These courts are defined in 25 U.S.C. section 450b(e), and a list is published by the Department of the Interior, Bureau of Indian Affairs. See, e.g., 70 FED. REG. 71194 (Nov. 25, 2005).

*Tribal court adjudications are not entitled to full faith and credit under the United States Constitution, which provides only for full faith and credit for "public acts, records, and judicial proceedings of every other state." U.S. CONST. Art IV, section 1. But state and federal statutes have conferred the equivalent of full faith and credit status on some tribal adjudications by mandating that they be enforced in state court. Where such full faith and credit is mandatory, a state does not exercise discretion in giving effect to the proper judgments of a sister state. *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 233 (1998) ("A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for*

recognition throughout the land.") Through full faith and credit, a sister state's judgment is given res judicata effect in all other states. See, e.g., id.; Hansberry v. Lee, 311 U.S. 32, 42 (1940).

The enforcement in state court of tribal court adjudications that are not entitled to the equivalent of full faith and credit under a specific state or federal statute, is governed by the doctrine of comity. Comity is fundamentally a discretionary doctrine. It is rooted in the court's inherent powers, as was early recognized in United States jurisprudence in Hilton v. Guyot, 159 U.S. 113, 163-164 (1895), where the court said: "No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent to which the law of one nation, as put in force within its territory, whether by executive order, by legislative act, or by judicial decree, shall be allowed to operate within the dominion of another nation, depends upon what our greatest jurists have been content to call 'the comity of nations.'"

This inherent power was recognized in Minnesota in Traders' Trust Co. v. Davidson, 146 Minn. 224, 227, 178 N.W. 735, 736 (1920) (citing Hilton, 159 U.S. at 227) where the court said: "Effect is given to foreign judgments as a matter of comity and reciprocity, and it has become the rule to give no other or greater effect to the judgment of a foreign court than the country or state whose court rendered it gives to a like judgment of our courts." In Nicol v. Tanner, 310 Minn. 68, 75-79, 256 N.W.2d 796, 800-02 (1976) (citing the Restatement (Second) of Conflicts of Laws section 98 (1971)), the court further developed the doctrine of comity when it held that the statement in Traders' Trust Co. that enforcement required a showing of reciprocity was dictum; that "reciprocity is not a prerequisite to enforcement of a foreign judgment in Minnesota;" and that the default status of a foreign judgment "should not affect the force of the judgment."

Statutory Mandates. Rule 10.01 reflects the normal presumption that courts will adhere to statutory mandates for enforcement of specific tribal court orders or judgments where such a statutory mandate applies. Federal statutes that do provide such mandates include:

1. *Violence Against Women Act of 2000, 18 U.S.C. section 2265 (2003) (full faith and credit for certain protection orders).*
2. *Indian Child Welfare Act, 25 U.S.C. section 1911(d) (2003) ("full faith and credit" for certain custody determinations).*
3. *Full Faith and Credit for Child Support Orders Act, 28 U.S.C. section 1738B(a) (2003) ("shall enforce" certain child support orders and "shall not seek or make modifications ... except in accordance with [certain limitations]").*

In addition to federal law, the Minnesota Legislature has addressed custody, support, child placement, and orders for protection. The Minnesota Legislature adopted the Uniform Child Custody Jurisdiction and Enforcement Act, Minnesota Statutes 2002, sections 518D.101-518D.317, which: (1) requires recognition and enforcement of certain child custody determinations made by a tribe "under factual circumstances in substantial conformity with the jurisdictional standards of" the Act; and (2) establishes a voluntary registration process for custody determinations with a 20-day period for contesting validity. Minnesota Statutes 2002, sections 518D.103 and 518D.104 (not applicable to adoption or emergency medical care of child; not applicable to extent ICWA controls). In addition, the Minnesota Legislature has adopted the Uniform Interstate Family Support Act, Minnesota Statutes 2002, sections 518C.101 to 518C.902, which provides the procedures for enforcement of support orders from another state ["state" is defined to include an Indian tribe, Minnesota Statutes 2002, section 518C.101, paragraph (s), clause (1)] with or without registration, and enforcement and modification after registration. The Minnesota Legislature has also adopted the Minnesota Indian Family Preservation Act, Minnesota Statutes 2002, sections 260.751 to 260.835, which provides, among other things, that tribal court orders concerning child placement

(adoptive and pre-adoptive placement, involuntary foster care placement, termination of parental rights, and status offense placements) shall have the same force and effect as orders of a court of this state. Minnesota Statutes 2002, section 260.771, subdivision 4. In 2006 the Minnesota Legislature adopted Minnesota Statutes 2002, section 518B.01, subdivision 19a, which requires enforcement of certain foreign or tribal court orders for protection.

The facial validity provision in Rule 10.01(b)(2) fills in a gap in state law. Minnesota Statutes 2002, section 518B.01, subdivision 14, paragraph (e), authorizes an arrest based on probable cause of violation of tribal court order for protection; although this law includes immunity from civil suit for a peace officer acting in good faith and exercising due care, it does not address facial validity of the order. Similar laws in other jurisdictions address this issue. See, e.g., 720 ILL. COMP. STAT. 5/12-30(a)(2) (Supp. 2003); OKLA. STAT. tit. 22 section 60.9B(1) (2003); WISC. STAT. section 813.128(1) (2001-02).

*The Minnesota Legislature has also addressed enforcement of foreign money judgments. The Minnesota Uniform Foreign Country Money-Judgments Recognition Act, Minnesota Statutes 2002, section 548.35, creates a procedure for filing and enforcing judgments rendered by courts other than those of sister states. Tribal court money judgments fall within the literal scope of this statute and the statutory procedures therefore may guide Minnesota courts considering money judgments. Cf. *Anderson v. Engelke*, 954 P.2d 1106, 1110-11 (Mont. 1998) (dictum) (statute assumed to allow enforcement by state courts outside of tribal lands, but question not decided). In general, money judgments of tribal courts are not entitled to full faith and credit under the Constitution, and the court is allowed a more expansive and discretionary role in deciding what effect they have. Rule 10.02(a) is intended to facilitate that process.*

Discretionary Enforcement: Comity. *Where no statutory mandate expressly applies, tribal court orders and judgments are subject to the doctrine of comity. Rule 10.02(a) does not create any new or additional powers but only begins to describe in one convenient place the principles that apply to recognition of orders and judgments by comity.*

*Comity is also an inherently flexible doctrine. A court asked to decide whether to recognize a foreign order can consider whatever aspects of the foreign court proceedings it deems relevant. Thus Rule 10.02(a) does not dictate a single standard for determining the effect of these adjudications in state court. Instead, it identifies some of the factors a Minnesota judge may consider in determining what effect such a determination will be given. Rule 10.02(a) does not attempt to define all of the factors that may be appropriate for consideration by a court charged with determining whether a tribal court determination should be enforced. It does enumerate many of the appropriate factors. It is possible in any given case that one or more of these factors will not apply. For example, reciprocity is not a pre-condition to enforceability generally, *Nicol*, 310 Minn. at 75-79, 256 N.W.2d at 800-02, but may be relevant in some circumstances. Notice of the proceedings and an opportunity to be heard (or the prospect of notice and right to hearing in the case of ex parte matters) are fundamental parts of procedural fairness in state and federal courts and are considered basic elements of due process; it is appropriate at least to consider whether the tribal court proceedings extended these rights to the litigants. The issue of whether the tribal court is "of record" may be important to the determination of what the proceedings were in that court. A useful definition of "of record" is contained in the Wisconsin statutes. WIS. STAT. section 806.245(1)(c) (2001-02); see also WIS. STAT. section 806.245(3) (2001-02) (setting forth requirements for determining whether a court is "of record"). The rule permits the court to inquire into whether the tribal court proceedings offered similar protections to the parties, recognizing that tribal courts may not be required to adhere to the requirements of due process under the federal and state constitutions. Some of the considerations of the rule are drawn from the requirements of the Minnesota Uniform Enforcement of Foreign Judgments Act, Minnesota Statutes 2002, sections 548.26 to 548.33. For*

example, contravention of the state's public policy is a specific factor for non-recognition of a foreign state's judgment under Minnesota Statutes 2002, section 548.35, subdivision 4, paragraph (b), clause (3); it is carried forward into Rule 10.02(a)(7). Inconsistency with state public policy is a factor for non-recognition of tribal court orders under other states' rules. See MICH. R. Civ. P. 2.615(C)(2)(c); N.D. R. CT. 7.2(b)(4).

Hearing. *Rule 10.02(b) does not require that a hearing be held on the issues relating to consideration of the effect to be given to a tribal court order or judgment. In some instances, a hearing would serve no useful purpose or would be unnecessary; in others, an evidentiary hearing might be required to resolve contested questions of fact where affidavit or documentary evidence is insufficient. The committee believes the discretion to decide when an evidentiary hearing is held should rest with the trial judge.*

Advisory Committee Comment - 2018 Amendments

Rule 10.01 moves the list of statutes out of the comments and into the rule itself to provide greater visibility. The list is non-exhaustive to allow for future enactments.

Former Rule 10.01(b) is deleted because the Violence Against Women Act is now expressly included in Rule 10.01 and the historic issues that prompted the former rule have been addressed by legislation. See Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (March 7, 2013).

Rule 10.02 is a new rule intended to provide clear procedural guidance for enforcement by state courts of tribal court orders for civil commitment. The rule is structured to implement the requirements created by statute, Minnesota Statutes, section 253B.212. The primary purpose of the rule is to provide a requirement for notice and an opportunity to be heard for all parties to the tribal court proceeding as well as the Minnesota Commissioner of Human Services and the director of a facility where the person is proposed to be committed. This requirement applies in Rule 10.02(c) to commitment orders that are not otherwise covered by Rule 10.02(a) and 10.02(b).

Rule 10.03(b) recognizes two methods for asking a court for an order enforcing a tribal court adjudication. Most often, a petition seeking recognition will be necessary. The rule also allows a motion in a pending action. This would allow use of a tribal court adjudication, for example, in an existing action to establish res judicata or collateral estoppel based on the tribal court adjudication.

Rule 10.03(c) identifies specific factors under which a state court can decline to enforce a tribal court order of judgment. These factors restate those formerly set forth in Rule 10.02. Several of the former factors are combined under the broad category of Rule 10.03(c)(3), failure to afford "due process." This is an inherently flexible standard, guided by the interests of the parties. The rule establishes that process is due, but does not define the specific process due. Courts may fairly look to what process would be due in analogous state or federal court proceedings. Common requirements of due process include notice of the proceedings, the right to be heard, the right to appear and both examine and compel the attendance of witnesses, and the right to a fair hearing before an independent judge. The rule does not include the "catch-all" provision of former rule 10.02(10). This deletion is not intended to limit the ability of courts to consider an opposing party's claim that enforcement is not in the interest of justice. See Minn. Gen. R. Prac. 1.02 ("A judge may modify the application of these rules to any case to prevent manifest injustice.")

Rule 10.03(c)(5) retains the provision of the current version of Rule 10 allowing the court to consider reciprocity as part of its comity-based standard for enforcement of tribal court orders and judgments. The Minnesota Supreme Court has declined to make reciprocity a part of the showing needed to enforce a foreign judgment for child support payments, but has not rejected it

as a proper consideration in all cases, or in the context of tribal court adjudications. See Nicol v. Tanner, 310 Minn. 68, 75-79, 256 N.W.2d 796, 800-02 (1976).