STATE OF WISCONSIN **IN THE SUPREME COURT**

In re the Matter to Amend Wis. Stat. § SCR 40.05

MEMORANDUM

MEMORANDUM OF STOCKBRIDGE-MUNSEE COMMUNITY FOR AN ORDER AMENDING WIS. STAT. § 40.05 BY CREATING AND ADDING WIS. STAT. § 40.05(5)

The Petitioner, Stockbridge-Munsee Community (hereafter "SMC"), seeks to amend SCR 40.05 related to Legal competence requirement: Proof of practice. The Petitioner seeks to amend SCR 40.05 by creating and adding § SCR 40.05(5.) Subsection (5) is created to read legal services with any federally recognized Indian Tribe may be counted for purposes of sub. (1)(b) provided that the applicant shows proof of admission in good standing to practice law by the court of last resort of the state in which the federally recognized tribe is located.

SMC is advocating for a rule change because it has come to our attention that attorneys who practice law for federally recognized Indian Tribes are being denied admission to the Wisconsin Bar. They are denied admission under Wisconsin's proof of practice admission SCR 40.05 because Native American Tribes are considered "foreign nations" in Wisconsin, thus any legal work conducted for a Native American Tribe is not considered as allowable practice of law under SCR 40.05. SMC is advocating for this rule to be amended to reflect a more educated view of the practice of tribal attorneys. This rule hinders our tribe and other tribes because the bar admittance system treats tribal attorneys differently compared to any other attorney. This is not fair to those lawyers whose careers are dedicated to Federal Indian Law. Our state neighbors who have federally recognized Indian Tribes acknowledge practice in federal Indian law as legitimate practice leaving Wisconsin as a notable outlier. As SCR 40.05 stands, Wisconsin tribal governments are being held at a significant disadvantage.

In providing support for the denial of legal work for Tribes and subsequent labeling of tribes as "foreign nations" for the purposes of SCR 40.05, the Board of Bar Examiners cite to *In the Matter of the Bar Admission of Wendy Helgemo* to provide evidence as to why tribal attorneys should be denied admission based upon their work for sovereign Indian Tribes. This rule and subsequent interpretation through the Helgemo decision, significantly hinders our nation's and other tribal governments ability to retain qualified legal counsel in Wisconsin. The Helgemo case was decided almost 14 years ago. In Helgemo, Chief Justice Shirley S. Abrahamson, stated in her concurring 2002 opinion that "the court ought to reexamine its reciprocity rule and ought to adopt a rule relating to how the practice in tribal courts fits in our system for admitting lawyers". Since this time the respect and cooperation between Tribal Courts and State Court along with Tribal and State government has only grown thereby amplifying the former Chief Justice's comments. As far as we are aware, this ruling or procedure that the Chief Justice identified as a problem has not been revisited and the timing is now ripe. The job of an

in-house tribal attorney is more layered and in-depth than has been characterized and I wish to clear up those misconceptions. Tribal attorneys are constantly analyzing state, federal and tribal law in their legal roles and as the Tribe's legal representation. We also require that our tribal attorneys have a state of Wisconsin license as they do practice in state courts.

Additionally, direction on this very issue can be gleaned by how other states have handled this matter. To the best of our knowledge, Wisconsin, is the only state that specifically labels attorneys working for tribal governments as working for a foreign nation and treats them differently than other attorneys. After conducting research, it appears that similarly situated states with one or more Indian Tribes located within the state do not treat tribal attorneys differently, this includes but *is not* limited to, the State of Washington, the State of Minnesota, State of Iowa, State of North Dakota and State of Oklahoma.

There are no anticipated additional fiscal or administrative impacts if the rule were amended to reflect the proposed 40.05(5). Nor would the proposed rule affect any person's procedural or substantive rights. To the best of our knowledge there are no other related petitions pending before the court. In sum, for the above mentioned reasons, SMC respectfully requests that 40.05 is amended to create subsection (5) to read "Legal services with any federally recognized Indian tribe may be counted for purposes of Sub. (1)(b) provided that the applicant shows proof of admission in good standing to practice law by the court of last resort of the state in which the federally recognized tribe is located." This rule change will ensure that tribal governments are treated fairly and respectfully.

Dated _____, 2016

Respectfully Submitted
Stockbridge-Munsee Community

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