

Michael C. Nelson
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Apache County Superior Court
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IN THE SUPREME COURT
OF THE STATE OF ARIZONA

)	
)	No.
IN RE: RULES OF PROCEDURE))	
FOR THE RECOGNITION OF))	PETITION FOR ADOPTION OF RULES
TRIBAL COURT JUDGMENTS))	OF PROCEDURE FOR THE
)	RECOGNITION OF TRIBAL COURT
)	JUDGMENTS
_____))	

Michael C. Nelson, Chairman of the Arizona State, Tribal and Federal Court Forum, petitions this Court, pursuant to Rule 28, Rules of the Supreme Court, to adopt the proposed Rules of Procedure for the Recognition of Tribal Court Judgments, to provide a mechanism for the recognition and enforcement of tribal court judgments by Arizona State Courts.

The proposed Rules are attached as Appendix A.

GROUND FOR ADOPTION OF THE RULES OF PROCEDURE

The Arizona Court Forum was initially appointed by former Chief Justice Frank X. Gordon, Jr. in 1989 as part of an ongoing project of the Conference of Chief Justices of the State Supreme Courts to enhance cooperation between tribal courts and state courts.

The Arizona Court Forum, which was comprised of representatives of the state and tribal courts in Arizona, held a series of public meetings to develop a consensus on an Action Agenda for Arizona for the enhancements of cooperation between state and tribal courts. That Action Agenda was finalized in a Report entitled "Building Cooperation," submitted in 1990. One of the items of the Action Agenda urged the adoption of a Uniform Enforcement of State and Tribal Courts Judgments Act by the Arizona legislature.

In the intervening years, the Arizona Court Forum was expanded by administrative order of this Court, in 1995, to include federal representatives. Other states have addressed recognition of tribal court judgments through various means. Two states, North Dakota and Washington have done so by court rule rather than statute (Appendix B).

A decision was made by the newly organized forum not to pursue legislation. The Uniform Act, as originally proposed, would have required a new statute passed by the Arizona legislature. The Uniform Act would have created a full faith and credit system, an expansion of existing law. The decision of the Forum was that such an expansion was not politically feasible nor an effective approach to recognition of tribal court judgments since each and every tribe would have to adopt the act before it would apply to all tribal court judgments. A statute is not even necessary if recognition of tribal court judgments is to occur under the principles of comity as already provided in Arizona common law.

A study entitled "Recognition of Tribal Judgments: Considerations and Proposed Rules" was prepared by Brad Jolly, an ASU law student, at the request of the Forum. That study, which presented various alternatives used in other states and a recommended solution for Arizona, was the basis for subsequent Forum discussions.

The Forum considered whether the proposed rule should provide for recognition of tribal court judgments that is more like full faith and credit between states or more like comity between nations. Members recognized that neither of these principles provided an exact fit for the regard that Arizona courts should have for the orders of tribal courts. Ultimately, the Forum looked to Arizona and federal common law to identify the standards that should be used by state judges deciding the validity of objections to recognition of tribal court judgments. The standards identified are a combination of the elements of full faith and credit and comity.

Arizona case law has established that tribal judgments and other official acts are to be recognized on the basis of comity rather than full faith and credit. Tracy v. Superior Court, 168 Ariz. 23, 810 P.2d 1030 (1991), Brown v. Babbitt Ford, 117 Ariz. 192, 571 P.2d 689 (App. 1977), Leon v. Numkena, 142 Ariz. 307, 689 P.2d 566 (App. 1984). However, in Arizona appellate cases this has been a distinction without a difference. No tribal judgment or legislation has been held by an Arizona appellate court to be contrary to Arizona public policy. This standard and the discretionary nature of comity are what distinguishes it from full faith and credit. Additionally, other Arizona cases can be cited for the proposition that tribal court judgments entered in matters where the tribal court had jurisdiction are required to be recognized by Arizona courts. Begay v. Miller, 70 Ariz. 380, 222 P.2d 624 (1950) (divorce decree valid under the laws of the jurisdiction in which it is entered is valid in other jurisdictions), Lynch v. Olsen, 92 Ariz. 354, 377 P.2d 199 (1962) (tribal probate order must be treated the same as proceedings in a court of another state or foreign country).

In the case of Wilson v. Marchington, 127 F.3d 805, a panel of the Ninth Circuit Court of Appeals held that, in the absence of congressional extension of full faith and credit, federal court recognition of tribal court judgments must be based on comity rather than full faith and credit. The court provided a useful analysis of comity and a list of grounds for nonrecognition derived from the court's review of federal case law. The court recognized that the principle of comity includes a presumption in favor of recognition. The Forum proposes a slightly modified version of the mandatory and discretionary grounds for

nonrecognition set forth in Marchington for adoption as Rule 5(c) of the proposed rules.

Both Arizona and federal common law provide a solid basis for the presumption in favor of recognition of tribal court judgments absent an objection, contained in Rules 3 and 5 of the proposed rules. Proposed Rule 3 states filing procedures quite similar to the procedures in the Uniform Enforcement of Foreign Judgments Act, A.R.S. §12-1701. Under proposed Rules 3 and 4 the respondent is given notice and an opportunity to object to the judgment. Objection must be based upon one of the mandatory or discretionary grounds for nonrecognition listed in Rule 5. If the respondent is unable to establish one or more of these grounds and convince the court of the importance of any discretionary grounds relied upon, the judgment is recognized. Proposed Rules 6 and 7 respectively provide for cooperation between state and tribal courts in staying matters pending appeal and communicating regarding issues that arise.

These rules are the result of substantial work and compromise by the various entities represented on the Arizona Court Forum. Petitioner requests that this Court circulate the proposed rules for comment and adopt them for use in Arizona courts.

RESPECTFULLY SUBMITTED this ____ day of _____, 1998.

MICHAEL C. NELSON
Chairman, Arizona State, Tribal and
Federal Court Forum