

Lac Vieux Desert Band of Lake Superior Chippewa Tribal Government

P.O. Box 249, Choate Road • Watersmeet, Michigan 49969

906-358-4577 • Fax: 906-358-4785



Executive Officers:

John C. McGeshick, Sr., Tribal Chairman
Richard McGeshick, Sr., Vice Chairman
Rose Williams, Secretary
Harvey White, Treasurer

Council Members:

John C. McGeshick, Jr.
James Williams, Jr.
Michael Hazen, Sr.
Delores Williams
Helen Smith

RESOLUTION NO. 97-019

WHEREAS: The Lac Vieux Band of Lake Superior Chippewa Indian Tribe of Michigan is a federally recognized Indian Tribe organized under a Constitution and By-Laws ratified by the Tribe on September 8, 1988, pursuant to P.L. 99-346; and,

WHEREAS: Pursuant to Article IV, Section (b) of the Lac Vieux Desert Tribal Constitution, the Tribal Council is empowered "to promulgate ordinances, and adopt resolutions not inconsistent with the Constitution, and to enforce the same...."; and,

WHEREAS: In accordance with Article V of the Lac Vieux Desert Tribal Constitution, the Lac Vieux Desert Tribal Court is empowered to hear all disputes occurring on the Reservation; and

WHEREAS: That pursuant to Resolution No. 94-068, certified December 27, 1994, the Tribal Council resolved to enact the Lac Vieux Desert Tribal Court Rules II, as adopted by the Tribal Court concerning Civil, Criminal, Appellate Procedures, Rules of Evidence, and matters involving the communities children; and,

WHEREAS: That since the ratification of the Lac Vieux Desert Court Rules II, the State of Michigan, by virtue of a 1996 amendment to its Court Rules, has adopted a provision for Enforcement of Tribal Judgments (MCR 2.615), which requires as an operative, that individual Tribal Courts enact an "ordinance, court rule, or other binding measure that obligates the tribal court to enforce the judgments, decrees, warrants, subpoenas, records and judicial acts of the courts of Michigan."

WHEREAS: That the Tribal Council has been presented with a draft copy of the Lac Vieux Desert Tribal Courts proposal for the court procedure of Enforcement of Foreign Judgments (Subchapter 1.300 of Tribal Court Rules), and has found it in the best interests of the Band to adopt and enact said provision allowing for the Enforcement of Foreign Judgments.

NOW THEREFORE, BE IT RESOLVED, that the Lac Vieux Desert Tribal Council hereby enacts the Lac Vieux Desert Court Rule Provision for the Enforcement of Foreign Judgments (Subchapter 1.300 of Tribal Court Rules).

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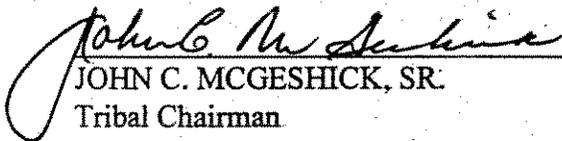
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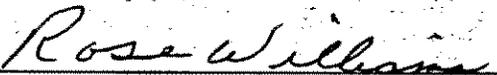
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CERTIFICATION

We do hereby certify that the above resolution was duly presented and voted upon with a vote of 6 in favor, 0 opposed, and 0 abstaining, at a meeting of the Lac Vieux Desert Tribal Council, held on this 16th day of May, 1997.



JOHN C. MCGESHICK, SR.
Tribal Chairman



ROSE WILLIAMS
Tribal Council Secretary

ENFORCEMENT OF FOREIGN COURT JUDGMENTS

SUBCHAPTER 1.300

Rule 1.301 Purpose and Effective Date.

The purpose of this chapter is to facilitate, improve and extend by reciprocal legislation or court rule the enforcement and/or recognition of judgments between the State of Michigan and the various federally recognized Indian Tribes, as well as to make uniform the law relating thereto. Pursuant to Tribal Council Resolution No. 97-019 this Subchapter of the Lac Vieux Desert Tribal Court Rules becomes effective on May 16, 1997.

Rule 1.302 Definitions.

(A) "Code" means the Tribal Code of the Lac Vieux Desert Band of Lake Superior Chippewa Indians.

(B) "Court" means the Lac Vieux Desert Band of Lake Superior Chippewa Indians Tribal Court.

(C) "Foreign Court" means all other courts including federal, state, or tribal courts of another federally recognized Indian Tribe, and courts of a foreign country.

(D) "Foreign Judgment" means any judgment, decree, or order by any United States federal court, state court, other tribal court or court of a foreign country which is final in the rendering jurisdiction, regardless of whether such judgment is for money, injunctive, declaratory or other relief.

(E) "Judgment Creditor" means one who has had a judgment rendered in his favor; judgment creditor is synonymous with the term judgment holder.

(F) "Judgment Debtor" means the party against whom a judgment has been rendered.

(G) "Judgment Holder" means one who has had a judgment rendered in his or her favor; judgment holder is synonymous with the term judgment creditor.

(H) "Attorney" means an individual who is a current member of the State Bar of Michigan or some other State. The term "attorney" is synonymous with the term "lawyer."

(I) "Lay Advocate" means a person who is not a licensed attorney and who has been qualified by the Lac Vieux Desert Tribal Court to serve as an advocate on behalf of a party before the courts of Lac Vieux Desert.

(J) "Rendering Jurisdiction" means the jurisdiction in which the foreign judgment was entered.

(K) "Tribe" means the Lac Vieux Desert Band of Lake Superior Chippewa Indians.

Rule 1.303 State of Michigan Court Judgments.

Consistent with Michigan Court Rule 2.615, as adopted in 1996, the Judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of a Michigan State Court, shall have the same effect and are subject to the same procedures, defenses, and proceedings as judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of the courts of the Lac Vieux Desert Band of Lake Superior Chippewa Indians, provided that:

(A) The applicable State of Michigan Court and/or Legislature of Michigan have not declined reciprocal full faith and credit to judgments of the Tribe; and,

(B) The individual person seeking full faith and credit complies with the procedural requirements as set forth in Rule 1.307.

Rule 1.304 Judgments of Tribal Courts.

Judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of any other tribal court of a federally recognized Indian Tribe shall have the same effect and are subject to the same procedures, defenses, and proceedings as judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of the courts of the Lac Vieux Desert Band of Lake Superior Chippewa Indians, provided that:

(A) The applicable tribal court of a federally recognized Indian Tribe provides reciprocal full faith and credit to the judgments of the Tribe; and

(B) The individual person seeking full faith and credit complies with the conditions as set forth in Rule 1.307.

Rule 1.305 Judgments from all other Courts.

The Judgments of a U.S. Federal Court, Courts in foreign countries, or in a state other than Michigan may have, in the discretion of this court, full faith and credit in the Court of the Tribe, provided that:

(A) The foreign court in which the judgment originated has not declined or refused to accord full faith and credit to the judgments of the Court; and,

(B) the individual person seeking full faith and credit complies with the procedures set forth in Rule 1.307.

(C) The discretion of the Court is such that in granting full faith and credit it will serve the best interests of the parties and the Tribe.

Rule 1.306 Application of Full Faith and Credit and Conclusive Judgments.

In accordance with the full faith and credit provisions as set forth in Rules 1.303 through 1.305, a foreign judgment that is final and conclusive is presumed to be valid and enforceable in this court pursuant to Rule 1.307.

Rule 1.307 Registration of Foreign Judgment.

An individual person, other than a duly authorized and recognized officer of a foreign court, seeking enforcement of a foreign judgment shall file:

(A) A copy of the foreign judgment, which has been authenticated by the clerk or register of the foreign court in the following manner:

(1) The clerk or register of the foreign court must attest in writing that:

(a) He/she is the clerk or register of the subject foreign court; and,

(b) is the custodian of the records of the subject foreign court; and,

(c) has compared an annexed copy of the foreign judgment from the case with the original(s) on file and of record in the foreign court, and has found the copy of the foreign judgment to be a true copy of the whole of such original(s).

(2) Upon completing the written attestation referenced above, the clerk or

register of the foreign court must:

- (a) sign and date said attestation;
- (b) annex a true copy of the foreign judgment to said attestation.

(B) A sworn affidavit by the judgment creditor, or his/her attorney or lay advocate, shall include the following:

- (1) the name and mailing address of the judgment debtor and the judgment creditor;
- (2) that the judgment is final and that no appeal is pending;
- (3) that no subsequent orders vacating, modifying or reversing the judgment have been entered in the rendering jurisdiction;
- (4) proof that the person against whom the foreign judgment has been rendered is subject to the jurisdiction of this Court with regard to enforcement of said judgment. For the purposes of this provision, proof of such jurisdiction over the person against whom the foreign judgment has been rendered includes:

- (a) A Tribal member or any other Indian person residing on the Lac Vieux Desert Reservation;

- (b) A Tribal member, other Indian person, or any non-Indian person, or entity who is either employed, contracts with the tribe or receives annuity benefits from Lac Vieux Desert regardless of whether that person or entity is domiciled on the Lac Vieux Desert Reservation.

- (C) A filing fee for registering said foreign judgment in the amount of twenty-five (\$25.00) dollars.

Rule 1.308 Notice of Registration of Foreign Judgment.

Upon the filing of the foreign judgment, attestation, affidavit and filing fee, the judgment creditor shall also mail a notice of the filing along with a copy of the foreign judgment, attestation, and affidavit to the judgment debtor and file said proof of mailing with the Clerk of Court. The clerk of court shall promptly mail notice of the filing of foreign judgment along with a copy of the foreign judgment, attestation, and affidavit referenced in Rule 1.307 to the judgment debtor at the

address provided by the judgment creditor and shall make a note of the mailing in the docket calendar. The notice to the judgment debtor shall include the following:

(A) the name and post office address of the judgment creditor and the judgment creditor's lawyer or lay advocate, if any, in this court; and

(B) a directive that an order entering the enforcement of the foreign judgment shall be entered by the Court within twenty-one(21) days of the same having been served on the judgment debtor unless the judgment debtor files written objection with the Court along with a request for a hearing on the same within said twenty-one (21) day period.

Rule 1.309 Hearing; Entry of Order.

If the judgment debtor files written objections and/or a request for hearing within the twenty-one (21) day period as prescribed under Rule 1.308, the Clerk of Court shall send by first-class mail a copy of said objections and/or request for hearing to the judgment hold or his/her attorney. At the same time, or as soon thereafter as practicably possible, the Clerk of Court shall also send by first-class a notice of hearing setting forth the date and time of hearing to the judgment holder and judgment debtor, or their respective attorney(s) or advocate(s). The judgment debtor at the hearing will be required to show cause why the foreign judgment shall not be enforced by this court. At the scheduled hearing, after reviewing all the relevant evidence concerning the foreign judgment, the Court shall issue an order either granting or denying enforcement of the foreign judgment.

Rule 1.310 No Objections; Entry of Order.

Should the judgment debtor elect to not file any written objections and/or requests a hearing within the twenty-one (21) day period set forth above, an order granting the enforcement of the foreign judgment shall be issued by the Court.

Rule 1.311 Not Enforceable or Non-recognizable Foreign Judgment.

A foreign court judgment which meets the applications of full faith and credit as set forth in Rules 1.303 through 1.305 is presumed to be valid. To overcome that presumption, an objecting party must demonstrate that:

- (A) the judgment was rendered by a process that does not assure the requisites of an impartial administration of justice including but not limited to due notice and a hearing;
- (B) the foreign court lacked personal or subject-matter jurisdiction;
- (C) was obtained by fraud, duress, or coercion;
- (D) the cause of action which the judgment is based is repugnant to the public policy or tribal customs of the Tribe;
- (E) the judgment involves enforcement of child custody provisions, and:
 - (1) the foreign court did not have jurisdiction over the child(ren); or
 - (2) the provisions of the Indian Child Welfare Act {25 USC 1901-1963}, if applicable, were not properly followed; or
 - (3) due process was not provided to all interested persons participating in the foreign court proceeding; or
 - (4) the foreign court proceeding violated the public policies, customs or common law of the Tribe.

Rule 1.312 Appeal; Stay of Execution; Stay of Proceedings.

If the judgment debtor satisfies the Court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the Court may stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

Rule 1.313 Postjudgment Proceedings of Enforced Foreign Judgments.

The entry of the order enforcing the foreign judgment by this court shall entitle the judgment holder to enforce its judgment against the judgment debtor in any manner currently available for judgment creditors or judgment holders.

The Court, on its own initiative, or upon request by the judgment holder of an enforced foreign judgment, may direct any of the following:

- (A) An involuntary payroll withholding of the judgment debtor's Tribal Income until said judgment is satisfied;
- (B) An involuntary withholding of judgment debtor's tribal per-capita or anyother tribal annuity to be applied in whole or part to satisfy said judgment;
- (C) Banishment from the lands of Lac Vieux Desert until said judgment is satisfied by the judgment debtor.

RULE 1.314 Sovereign Immunity.

The Tribe expressly does not waive its immunity from suit with regard to enforcement of a foreign judgment in any postjudgment proceedings when said Tribe is served as a garnishee Defendant for the wages or property of an employee who is a judgment debtor.

CERTIFICATION

We do hereby certify that the above Lac Vieux Desert Tribal Court Rule, Subchapter 1.300, containing Rules 1.301 to 1.314 conclusive, was presented before the Tribal Council, reviewed and adopted by Tribal Council at its meeting held May 16, 1997, by virtue of Resolution Number 97-019. The Tribal Court Administrator/Clerk is hereby authorized to submit the above adopted provision for Full Faith and Credit for publication to the State Court Administrator's Office of the State of Michigan.


JOHN C. MCGESHICK
Tribal Chairman


ROSE WILLIAMS
Tribal Council Secretary