



Seeking Rules Comments

The Civil Practice & Procedure Committee of the State Bar of Arizona, as part of its ongoing work, examines and takes efforts to attempt to improve the rules of procedure for civil litigation. The Committee welcomes comments, anecdotes or submissions of any kind to aid that endeavor and asks that they be directed to the Committee Chair, Samuel A. Thumma, Brown & Bain PA, 2901 N. Central Ave., P.O. Box 400, Phoenix, AZ 85001-0400; 602-351-8338; fax 602-648-7138; e-mail thumma@brownbain.com.

Currently, a Subcommittee is examining ARIZ.R.CIV.P. 68 (offers of judgment). The Subcommittee began work last fall and expects to continue its work through much of the year. The Subcommittee welcomes comments, anecdotes or submissions of any kind in aid of that endeavor and asks that they be directed to the Subcommittee Chair, Shawn K. Aiken, Hebert Schenk PC,

1440 E. Missouri Ave., Suite 125, Phoenix, AZ 85014; 602-248-8203; fax 602-248-8840; e-mail ska@hs-law.com.

—**Samuel A. Thumma**

AZ Leads in Respecting Indian Courts

Gabriel S. Galanda's article on Indian law was a welcome sight (ARIZ. ATTORNEY, Jan. 2003). Although Indian law is a complex and ever-changing area of law, the importance of, at least, a minimum understanding of the basic concepts for all attorneys and judges cannot be understated. As an attorney who practices almost exclusively Indian law and has represented Indian tribes in Arizona, North Dakota, South Dakota, Minnesota and Iowa, one of the most difficult and time-consuming aspects of that practice is the requirement of almost always having to educate judges and fellow practitioners about Indian tribes and Indian law in nearly every matter.

Nonetheless, I did note an error in Mr. Galanda's article. He states, "Although Arizona's state courts do not extend full faith and credit to valid tribal court orders, both state and federal courts in Arizona grant comity to tribal court rulings," citing several Arizona opinions and a Ninth Circuit decision. While his statement is not entirely false, federal law mandates that states give full faith and credit—as opposed to comity—to certain tribal court orders in several cases. First, under the Indian Child Welfare Act, states must give full faith and credit to tribal court orders in child custody proceedings other than related to juvenile crimes or divorce proceedings. 25 U.S.C. § 1911(d). Similarly, the Violence Against Women Act of 1994 provides for full faith and credit to tribal court protection orders. 18 U.S.C. § 2265(a). Federal law also mandates full faith and credit for tribal court child support orders. 28 U.S.C. § 1738B(a).

In Arizona, the Supreme Court has

promulgated two groups of rules governing the recognition and enforcement of tribal court orders and judgments. First, at the urging of the Supreme Court, the legislature enacted a statute providing for state court enforcement of tribal court involuntary commitment orders under the same rules governing the enforcement of commitment orders issued by Arizona courts. ARIZ. REV. STAT. § 12-136(A). This is essentially full faith and credit. The Supreme Court promulgated Rules of Procedure for the Enforcement of Tribal Court Involuntary Commitment Orders to execute the requirements of the statute.

On a broader level, the Arizona Supreme Court promulgated Rules of Procedure for the Recognition of Tribal Court Civil Judgments. These rules govern the recognition and enforcement of any final written judgment, decree or order from a tribal court of any federally recognized Indian tribe. This is a remarkable and

admirable approach in terms of breadth and not discriminating on the basis of tribal location, as many states have done. Thus, any tribal court judgment or order that is not governed by a federal statute or other Arizona rule can be recognized and enforced under these rules, leaving no vacancy in recognition and enforcement of tribal court orders and judgments in the civil context. Under the rules, a tribal court judgment or order comes to the court with a presumption of validity and is to be recognized as a state court judgment or order unless a party objecting to enforcement can demonstrate that the judgment or order is *not* entitled to enforcement and recognition under the common law comity standard announced by the Ninth Circuit in *Wilson v. Marchington*, 127 F.3d 805 (9th Cir. 1997).

Furthermore, evidence that the tribal court would recognize and enforce Arizona's court orders—i.e., reciprocity—

is not necessary. These rules provide tribal court litigants with confidence that, if necessary, they can enforce any order or judgment they obtain from the tribal court in Arizona courts and a reliable and consistent means of obtaining that enforcement and recognition. I assisted the Arizona Tribal, State, and Federal Court Forum in drafting the rule and this was one of the key objectives we desired to obtain. Although several states have adopted rules governing the recognition and enforcement of tribal court judgments, the approach of Arizona is among the best rules that has thus far been developed and is a model for other states to emulate. The Arizona rules are excellent for demonstrating respect for tribal courts and tribal sovereignty and fostering positive relationships between the state and Indian tribes.

—**Brad S. Jolly**
Minneapolis, MN