

# *Stockbridge-Munsee Community*

BAND OF MOHICAN INDIANS

TRIBAL COUNCIL OFFICES

SENT CERTIFIED MAIL/RETURN RECEIPT REQUESTED

March 8, 2017

Julie Anne Rich, Supreme Court Commissioner  
Supreme Court of Wisconsin  
Office of Court Commissioners  
110 E. Main Street, Suite 440  
Madison, WI 53703

**Re: Rule Petition 16-09, In the Matter of the Petition to Amend SCR 40.05**

Dear Ms. Rich:

On November 25, 2016, Stockbridge-Munsee Community submitted a rule petition. On February 6, 2017, you sent a letter requesting that Stockbridge-Munsee Community (hereafter "SMC") submit additional information before proceeding with SMC's rule petition. The letter sent on February 6, includes 6 bullet point questions.

Accordingly, SMC respectfully provides the answers below to the bullet point questions:

- The Petitioner, SMC, has consulted with Governor Scott Walker's administration; Marianne Higgins on behalf of Wisconsin Tribal Judges Association; Attorney Howard Bichler, a representative of the Board of Governors for the State Bar of Wisconsin; Attorney Eric Lochen, a Board member of the Indian Law Section of the State Bar of Wisconsin.
- The requested cover sheet is provided and enclosed with this response.
- In effort to provide a thorough response to the Legislative Reference Bureau drafting comments SMC separates its responses to attempt to fully answer the drafting comments:
  - a. SMC agrees with the Legislative Reference Bureau that the Proposed change is creating a rule and that the rule should be created as SCR 40.05 (6). SMC's cover sheet enclosed also reflects that the rule will be created rather than amended.

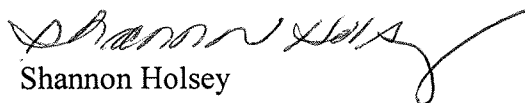
- b. “Legal services” means the performance of legal work in a legal capacity. Additionally, “services” means legal services provided to a federally recognized Indian tribe while the lawyer is licensed by the court of last resort of the state in which the federally recognized tribe is located. For example, an individual would be unable to count legal services provided to a tribe if the individual was not licensed by the court of last resort of the state in which the tribe is located during the time the legal work was performed. Counted means counting for purposes of Wisconsin proof of practice admission requirements.
  - c. Yes, Indian Tribes can be located in more than one state. To the best of our knowledge there are only 4 federally recognized Indian tribes in the United States that are located in more than one state. We suggest that if this rare example occurs, where an attorney applies for reciprocity under Wisconsin’s proof of practice rule and worked for a tribe that spans more than one state, the attorney’s requirement is met so long as the attorney has a state license in at least one of the states the tribe is located.
  - d. Yes, this language is necessary to fill a gap, provide clarification and guidance. The Legislative Reference Bureau itself cannot see on the face of this rule how it bars attorneys that work as in-house counsel for tribes. The rule is necessary because The Board of Bar Examiners has determined they will broadly interpret the ruling in In re Admission of Helgemo, 2002 WI 57, 253 Wis. 2d 82, 644 N.W.2d 912 to bar all attorneys that work as in-house counsel for tribes from counting that work towards Wisconsin’s proof of practice requirements, whether they were licensed in that state or not. To meet the requirements of proof of practice, Ms. Helgemo attempted to count 1) clerkship time for the Prairie Island Community in Minnesota while unlicensed, 2) practice as a tribal attorney for the Prairie Island Community in Minnesota while licensed in Minnesota and 3) practice for the Ho-Chunk Nation in Wisconsin while not licensed to practice law in Wisconsin. The Board of Bar Examiners *counted* (emphasis added) the period of time from the date Ms. Helgemo was admitted to the Minnesota bar and practiced as a tribal attorney for Prairie Island through the date she left Minnesota. The Supreme Court affirmed that decision in Helgemo of the Board of Bar Examiners to count that time Ms. Helgemo was licensed to practice law in Minnesota. SMC argues that the Supreme court of Wisconsin never intended to expand the Helgemo ruling beyond the facts of that case. While the Supreme Court limited the ruling in Helgemo to the facts of that case, The Board of Bar Examiners, is wrongly interpreting the holding in Helgemo to apply to any attorney that worked as in-house counsel for a Tribe, whether licensed in that state or not. Therefore, this rule is necessary to provide clarification and guidance to the Board of Bar Examiner’s overly broad interpretation of Helgemo.
- No, the change proposed in this rule petition would not result in a different outcome than in In re Admission of Helgemo. Ms. Helgemo was not licensed by the court of last resort of either the state of Minnesota or Wisconsin for the full time she needed to meet the

requirements in SCR 40.05. To meet the requirements of proof of practice, Ms. Helgemo attempted to count 1) clerkship time for the Prairie Island Community in Minnesota while unlicensed, 2) practice as a tribal attorney for the Prairie Island Community in Minnesota while licensed in Minnesota and 3) practice as a tribal attorney for the Ho-Chunk Nation in Wisconsin while not licensed to practice law in Wisconsin. In Helgemo, The Board of Bar Examiners *counted* (emphasis added) the period of time from the date Ms. Helgemo was admitted to the Minnesota bar and practiced as a tribal attorney for Prairie Island through the date she left Minnesota. The rule petition would not change the outcome in Helgemo because she would still be unable to count the time unlicensed in the state of Minnesota as a clerk and the time unlicensed in the state of Wisconsin as a tribal attorney for Ho-Chunk Nation.

- The current Wisconsin proof of practice rule on its face is the same or very similar to most states rules of practice but the rule is being wrongly interpreted by the Board of Bar Examiners based on their reading of the Helgemo ruling. It is important to note that language from other jurisdictions does not exist specific to this issue as Wisconsin's precedent on the issue comes from In re Admission of Helgemo, not a rule of practice of the state of Wisconsin.
- The rule petition is solely focusing on those who serve Indian Tribes as in-house counsel because that is the only group of attorneys that are being unfairly effected by the overly broad interpretation of the Helgemo ruling. The customs and practices of federally recognized Indian tribes is irrelevant to the rule petition as the individual attorney applying for proof of practice has to meet all of the requirements of that state's jurisdiction. The Board of Bar Examiners is already familiar with working with respective state's licensing rules under the proof of practice rule currently.

SMC respectfully submits the above responses. Please let us know if there is additional follow-up questions or information requested. Thank you for your time and attention.

Respectfully submitted,



Shannon Holsey  
President, Stockbridge-Munsee Community