

LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS  
IN THE  
TRIBAL COURT  
P.O. Box 249, Watersmeet, MI 49969 (906) 358-4577

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In the Matter of:	)	
	)	
The amendment of LVD Tribal Court	)	Administrative Order
Rule 10.004, as it pertains to foreign	)	No. 2013 - 0002
court subpoenas.	)	
	)	

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Whereas 2008 LVD Tribal Court Rule 10.004, is silent regarding the procedural requirements for the issuance of foreign court subpoenas, the LVD Tribal Court, in accordance with LVD Const. Art. V, Section 7, hereby amends LVD/2008-10.004 to establish procedures for the recognition and enforcement of foreign court subpoenas.

The procedural rules for the recognition and enforcement of foreign court subpoenas shall be as follows:

**Procedures for the Recognition and Enforcement  
of Foreign Court Subpoenas**

**(A) Recognition of Court Issued Subpoenas.** The LVD Tribal Court will only recognize subpoenas issued by foreign courts. Subpoenas issued by a party or an attorney for a party will not be recognized.

**(B) Tribal Court Order Required Before Service.** Before any foreign court subpoena can be served on any Tribal member, Tribal entity, Tribal employee or person under the jurisdiction of the Tribal Court or custodian of Tribal papers and records, the Tribal Court shall issue an order allowing recognition and enforcement of the subpoena.

**(C) Registration of Foreign Court Subpoena.** Any foreign court subpoena presented to the Tribal Court for recognition and enforcement must be registered with the Tribal Court. To register a foreign court subpoena, the person seeking recognition and enforcement of a foreign court subpoena shall:

1. File a copy of the foreign court subpoena with the Tribal Court. The foreign court subpoena must be authenticated by the clerk, registrar or administrator of the foreign court in the following manner:

a. The clerk, registrar or administrator of the foreign court must attest in writing that:

i. They are the clerk, registrar or administrator of the foreign court;

ii. They are the custodian of the records of the foreign court; and

iii. They have compared the attached copy of the foreign court subpoena with the

original case on file and of record in the foreign court and have found that the foreign court subpoena is made pursuant to a case pending or finalized on file and of record in the foreign court.

iv. The person who signed and issued the subpoena is a sitting judge of the foreign court.

b. Upon completion of the written attestation, as referenced above, the clerk, registrar or administrator must:

i. Sign and date the attestation;

ii. Affix the seal of the foreign court to the attestation; and

iii. Attach a certified copy of the caption page showing the parties' names and file or case number from the original foreign court action to the attestation.

2. Pay the filing fee for registering the foreign court subpoena.

**(D) Notification of Tribal Attorney.** The Tribal Court shall notify the attorney for the Tribe, within three (3) days, when any foreign court subpoena is received requesting papers or records of the Tribe or requesting that any Tribal member, Tribal officer or employee testify.

**(E) Notice of Registration of Foreign Court Subpoena.** Upon the filing of the foreign court subpoena and filing fee, the Tribal Court must within three (3) days mail, by first-class mail, a notice of the filing of the foreign court subpoena along with a copy of the foreign court subpoena to the subpoenaed witness, at the address provided by the party seeking the subpoena, the subpoenaed witness's attorney and Tribal attorney, and complete a proof of service. The notice of the filing of the foreign court subpoena shall include the following:

1. The name and mailing address of the party seeking the subpoena and that party's attorney, if any; and

2. A statement giving notice that an "*Order Granting Recognition of Foreign Court Subpoena*" shall be entered by the Tribal Court unless the subpoenaed witness, the subpoenaed witness's attorney or the Tribal Attorney files a written objection, based upon the grounds set forth in subsection (G) of this rule, with the Tribal Court within seven (7) days from the date of service of the notice for a subpoena of a person or fourteen (14) days from the date of service of the notice for a subpoena for papers or records.

**(F) Notice of Deadline to File Written Objection.**

1. The Tribal Court must mail a notice to the party seeking the subpoena, the subpoenaed witness, the subpoenaed witness's attorney and the Tribal attorney that states the subpoenaed witness, the subpoenaed witness's attorney or the Tribal attorney has seven (7) days from the date of service of the notice for a subpoena of a person or fourteen (14) days from the date of service of the notice for a subpoena for papers and records to file any written objection to the recognition of the foreign court subpoena.

2. Any objection filed must include a statement of the basis for the objection.

3. Entry of Order Absent Objection. In the event that the subpoenaed witness, the subpoenaed witnesses's attorney or the Tribal Attorney does not file any written objection within the seven (7) or fourteen (14) day period set forth in subsection (F) of this rule, an "*Order Granting Recognition of Foreign Court Subpoena*" shall be entered by the Tribal Court.

**(G) Objection.** Only the person subject to the subpoena, their attorney, or the Tribal Attorney may object to the subpoena under the following conditions:

1. Any objection must be filed in writing with the Court within the objection period as set forth in subsection (F).
  2. The objection must set forth the reasons for the objection to the enforcement of the subpoena and may include one or more of the following grounds:
    - a. The foreign court lacks jurisdiction over the person subject to the subpoena;
    - b. The subpoena was obtained by fraud, duress or coercion;
    - c. The subpoena is repugnant to the public policy of the Band; or
    - d. To honor the subpoena would place the person subject to it in reasonable fear of physical harm or injury.
  3. The person filing the objection shall by first-class mail notify the foreign court that issued the subpoena of the objection within seven (7) days of the receipt of the subpoena.
  4. If the subpoena is for papers or records then the Tribal Court shall, upon the receipt of an objection from the custodian of the papers or records:
    - a. Notify the attorney for the Tribe that an objection has been filed; and
    - b. Allow the Tribal attorney to appear on behalf of the custodian.
- (H) Objection Hearing.** The Tribal Court shall schedule a hearing as soon as possible but no later than fourteen (14) days after a written objection is received. The Tribal Court shall:
1. Schedule a hearing on the objection;
  2. Provide notice of the time, date and place of the hearing to the issuing foreign court, the party requesting the subpoena and the person objecting, by first-class mail.
  3. At the hearing the person objecting has the burden of persuasion that the subpoena should not be enforced.
  4. Order. The Tribal Court shall issue an order either granting or denying recognition of the subpoena. The Tribal Court shall enter an order as soon as practicable after the hearing, but no later than seven (7) days.

### **Appeal to the Court of Appeals**

**(A) Appeal of Order Granting Recognition of Foreign Court Subpoena.** The subpoenaed witness, the subpoenaed witness's attorney or the Tribal attorney may appeal an order granting recognition of a foreign court subpoena to the Court of Appeals within seven (7) days of the date of service of the order upon the subpoenaed witness, the subpoenaed witness's attorney or the Tribal Attorney.

**(B) Appeal of Denial of Recognition of Foreign Court Subpoena.** The party seeking the subpoena or the attorney of the party seeking the subpoena may appeal the denial of recognition of a foreign court subpoena to the Court of Appeals within seven (7) days of the date of service of the order denying recognition upon the subpoenaed witness and the subpoenaed witness's attorney.

**(C) Stay of Execution of Tribal Court Order.** If an appeal is filed in an action any party may request a stay of execution from the Tribal Court within seven (7) days after the date of service of an order or ruling of the Tribal Court.

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The rule, as amended, provides procedures for the registration, recognition, and enforcement of both *subpoenas ad testificandum* and *subpoenas duces tecum* from foreign courts; and for quashal of such subpoenas from foreign courts.

**WHEREFORE**, the Chief Judge of the Tribal Court adopts the above rule as an amendment to the LVD Court Rules.

12/27/13

  
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Hon. Mark A. Esqueda