

STATE OF MICHIGAN
DISTRICT COURT FOR THE 94th JUDICIAL DISTRICT
DELTA COUNTY

STATE OF MICHIGAN,
Plaintiff,

v

JOHN HALVERSON,
Defendant,
TROY JENSEN,
Defendant,
WADE JENSEN,
Defendant.

CASE NO: 10-738-SM

CASE NO: 10-737-SM

CASE NO: 10-736-SM

DELTA COUNTY PROSECUTOR'S OFFICE
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**THE JENSEN DEFENDANTS' MOTION FOR LEAVE TO FILE A SUPPLEMENTAL
BRIEF IN SUPPORT OF THEIR PENDING MOTION TO DISMISS, AND TO MODIFY
THE RELIEF SOUGHT UNDER THEIR ORIGINAL MOTION**

COMES NOW, Wade W. Jensen and Troy Jensen, by and through their attorney, John F. Petoskey, Fredericks Peebles & Morgan LLP, and respectfully requests leave from this Court to file a Supplemental Brief in support of their Motion to Dismiss and to modify the relief sought under their original motion. As grounds, the Jensen defendants state that:

1. On March 18, 2011 Fredericks Peebles & Morgan LLP telephoned the 94th District Court and was advised to send a letter request and a check in the amount of \$10.00 to

obtain the records for the above-entitled case. The Court Clerk called the office of FPM, and informed them they had no records for this case. The letter was stamped received MAR 21 2011 by the 94th District Court, and returned with the check un-cashed. I then contacted Wade Jensen, who informed me he had entered a plea on not guilty and insisted the case did exist. My office then sent a second letter dated March 24, 2011, relating the message from Wade Jensen, and again requesting the records in this case with a check for \$10.00 for the records search. My office was sent the cover page of the Complaint, a one-page document, along with a document entitled 94th District Court Record Request, with a handwritten note that said "I can't furnish anything else on this pending case- any other questions should be directed to our court administrator Tammy George." The check was cashed, and no reason was given for the Court Clerk's refusal to furnish the records in this case. Ultimately, I decided to accept the case without any documents, police reports, or pleadings to assist my decision, and filed a Notice of Appearance and 3rd request for Court documents, along with another check for \$10.00 on April 14th. The Court Administrator called my office on April 18th, 2011 and advised me her Clerk had made a mistake, and finally agreed to send me the Court records, which were faxed to my office.

2. After some limited correspondence in early April with Elizabeth LaCosse, Counsel for Case No. 10-738SM, and informing her of my intention to file a Motion to Dismiss based on the exclusive jurisdiction of the Sault Ste. Marie Tribe, on April 12, 2011, I received an email from Elizabeth LaCosse, who informed me that she reviewed the court's pre trial order and "your motion has to be filed and heard by April 26, 2011". Subsequent clarification that the language in the order "filed and heard by April 26th" meant that the Brief had to be filed by April 19th; however, a hearing date was not available until April 21st at 1:00 p.m., requiring the brief be

filed by April 14th. Jensen filed his Motion and Brief on April 14th in anticipation that the Court would allow supplemental filings, given the exigent timelines.

3. Based on my receipt of the Prosecutor's pleading dated April 15, 2011, received by me on April 18th, I first learned that the Jensen's had filed a Motion to Dismiss dated February 24, 2011, based on the exclusive jurisdiction of the Sault Tribe. Their original motion to dismiss sought dismissal of the criminal charges against them based on this Court's lack of subject matter jurisdiction under the binding precedent of *United States v. Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979), known as the "Fox opinion" (after the presiding judge in that case, the Honorable Noel P. Fox), and the consent decrees that were entered into in 1985 and 2000 to effectuate the Fox opinion. Jensen's *in pro per* motion consisted of a one page handwritten reference to the Consent Decree as contained in the record received by my office on April 18th from the District Court. The record provided by the Court Clerk does not contain a copy of any Order entered by this Court disposing of Jensen's February 24, 2011 Motion to Dismiss. Upon information and belief, present counsel asserts that the Motion and this Court's Order may be still pending, and therefore, Jensen requests that the Court consider his additional filings on April 14th and 15th, and this additional Motion prepared by undersigned Counsel. In the event that the record does contain an Order denying the February 24th Motion to Dismiss, Jensen requests a reconsideration of that Order based on pleadings filed subsequent to the February 24th Motion.

4. Whether this Court has subject matter jurisdiction over the criminal charges against the Jensen defendants hinges upon application of the Fox opinion and judicial construction of the consent decrees that were entered in *United States v. Michigan*.

6. On April 14, 2011, at approximately 7:00 p.m. the Sault Ste. Marie Tribe of Chippewa Indians ("Sault Tribe" or "Tribe") filed a motion in *United States v. Michigan*, Case No. 2:73 CV 26, Western District of Michigan, Southern Division. The Tribe's motion seeks the federal court's ruling on the same jurisdictional issues that the Jensen defendants have raised in their motion to dismiss filed in this Court. The Jensen defendants are members of the Sault Tribe and the Sault Tribe has requested an expedited ruling on its motion for relief in *United States v. Michigan*.

7. On April 15, 2011, Jensen filed a Motion for the District Court to take Judicial Notice of Pending Federal Motion by the Sault Ste. Marie Tribe of Chippewa Indians Asserting that the Tribe has Exclusive Jurisdiction under the Consent Decree entered in U.S. v. Michigan, Case No. 2:73 CV 26, along with the Motion and Exhibits filed by the Sault Ste. Marie Tribe on April 14, 2011.

8. In light of the pending proceeding in *United States v. Michigan*, the Jensen defendants seek leave of the Court to modify the relief sought in their original motion to dismiss and to supplement their briefing to the Court on these issues.

RESPECTFULLY SUBMITTED,



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Date: April 18, 2011