

Exhibit A



February 23, 2026

Sent via email to
RulesCommittee_Secretary@ao.uscourts.gov

Hon. Jesse Furman
Chair, Advisory Committee on the Rules of Evidence
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Washington, D.C. 20544

Re: Federal Rule of Evidence 902

Dear Judge Furman:

We write to support an amendment to Federal Rule of Evidence 902(1) that would add federally recognized Tribes to the list of governmental entities whose sealed and signed documents are self-authenticating. The amendment would enhance efficiency and the administration of justice by the federal courts.

The Alaska Native Justice Center ("ANJC") was party to a cooperative agreement with the Office of Violence Against Women to implement the Alaska Special Tribal Criminal Jurisdiction Technical Assistance Project. The project helps Alaska Tribes plan, implement, and exercise Special Tribal Criminal Jurisdiction over non-Native offenders in Alaska Native villages pursuant to 25 U.S.C. § 1305(d). We appreciate the opportunity to provide a tribal government perspective on the proposed rule change.

Amending Rule 902(1) is one way to promote Congress's goal "to empower Indian Tribes to effectively respond to cases of domestic violence, dating violence, stalking, sex trafficking, sexual violence, and missing or murdered Alaska Natives through the exercise

of special Tribal criminal jurisdiction.”¹ Alaska Native Tribes have civil and criminal authority over their citizens and non-member Natives,² and jurisdiction over non-Native people for violent crimes committed in their villages.³ And Tribes rely on tribal court orders, enrollment documents, and other records to exercise their inherent jurisdiction.

Federal courts will operate more efficiently by granting the same level of deference to the public documents of tribal governments that the courts already afford to the public documents of their state and territorial counterparts. Challenges to Alaska Tribes’ jurisdiction in federal court will likely increase as Tribes begin exercising jurisdiction over non-Natives.⁴ Streamlining admission of tribal documents in the U.S. District Court for the District of Alaska could provide for quicker resolution of disputes at the district court for nearly half of the nation's federally recognized Tribes. It will also make it less burdensome for Tribes to authenticate their own records. Indeed, the State of Alaska and other jurisdictions have either adopted or are considering similar amendments.⁵

Therefore, amending Federal Evidence Rule 902 would be efficient, promote fairness, and eliminate unjustifiable expense and delay in determining the authenticity of tribal documents.

Sincerely,

Gloria O'Neill

Digitally signed by Gloria
O'Neill
Date: 2026.02.24 08:17:32
-09'00'

Gloria O'Neill
President/Chief Executive Officer

¹ Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, 136 Stat. 49, 905 § 811(b) (Mar. 15, 2022).

² 25 U.S.C. § 1305(a). The definition of non-member Natives is that used in the Major Crimes Act. Pub. L. No. 117-103, 136 Stat. 905, § 812(2).

³ 25 U.S.C. § 1305(b) & (d); Pub. L. No. 117-103, 136 Stat. 906-09.

⁴ *See, e.g.*, 25 U.S.C. § 1303.

⁵ See attachment.

Geoffrey Bacon
8967 Dry Creek Loop
Anchorage, AK 99502

Stacy Steinberg, Court Rules Attorney
Alaska Court System
820 W. 4th Ave.
Anchorage, AK 99501

Sent via email to:
ssteinberg@akcourts.gov

January 10, 2024

Dear Ms. Steinberg,

Pursuant to Rule of Administration 44(b), I write to propose a change to Alaska Rule of Evidence 902(1).

I. Proposed Rule Change (Additions in underline; deletions in brackets)

Rule 902. Self-Authentication.

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Domestic Public Documents Under Seal. A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or a federally recognized tribe, or the former Panama Canal Zone, or the former Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) -(11) No change

II. Reason for Suggested Rule Change

The suggested rule change to add federally recognized Alaska Native and American Indian Tribes or Nations (Tribes) to the list of governmental entities whose

sealed and signed documents are self-authenticating would both enhance efficiency and the administration of justice by the Alaska Court System.¹

Currently, in Alaska courts for an item of evidence to be admitted, it must be authenticated or identified “by evidence sufficient to support a finding that the matter in question is what its proponent claims.”² This standard can be met using extrinsic evidence under Rule 901, or by offering an item that is self-authenticating under Rule 902. Among the documents that are self-authenticating are those signed and sealed by a governmental entity.

The Alaska Rule of Evidence 902 Commentary “heavily relied upon” the Advisory Committee’s Note to the Federal Rule. In that Note, the Advisory Committee explained that:

Case law and statutes have, over the years, developed a substantial body of instances in which authenticity is taken as sufficiently established for purposes of admissibility without extrinsic evidence to that effect, sometimes for reasons of policy but perhaps more often because practical considerations reduce the possibility of unauthenticity to a very small dimension.^[3]

¹ Adding “former” in reference to both the Panama Canal Zone and Trust Territory of the Pacific Islands is a minor edit to reflect the fact that both entities have ceased to exist. 22 U.S.C. § 3602(d)(1) (transfer date of Panama Canal from United States to Panama December 31, 1999); U.N. S.C. Res. 956 (Nov. 10, 1994) (ending trusteeship).

² Alaska R. Evid. 901.

³ Fed. R. Evid. 902, Notes of Advisory Committee on Proposed Rules.

The Wright and Miller treatise also counsels that extrinsic evidence is not needed to authenticate public documents because “the type of writings described by Rule 902 are almost always exactly what they seem to be.”⁴

Currently public documents from the following governmental entities, including their political subdivisions, departments, agencies, or officers, can be self-authenticating under Rule 902(1):

- The United States;
- Any state, district, commonwealth, territory, or insular possession of the United States;
- The former Panama Canal Zone; and
- The former Trust Territory of the Pacific Islands.^[5]

Tribes are presently omitted from this list.

Two-hundred twenty-seven Tribes are located within Alaska. I am a Tribal citizen of one of them, the Native Village of Tanana.⁶ As a tribal citizen I can use my Tribal Identification (ID) Card bearing my Tribe’s seal to fly on an airplane⁷ and verify

⁴ 31 FED. PRAC. & P. EVID. § 7132 (2d ed.).

⁵ Alaska R. Evid. 902(1).

⁶ U.S. Dep’t of Interior, Bureau of Indian Affs. (BIA), *Indian Entities Recognized by and Eligible to Receive Servs. from the United States Bureau of Indian Affs.*, 87 Fed. Reg. 4636 (Jan. 12, 2023). The BIA must publish a list of federally recognized Alaska Native and American Indian Tribes and Nations annually. 25 C.F.R. § 83.6(a).

⁷ U.S. Dep’t of Homeland Sec., Transp. Sec. Admin., *Identification*, <https://www.tsa.gov/travel/security-screening/identification> (accessed on Nov. 25, 2023).

my employment eligibility.⁸ Indeed, if I lived in the village of Tanana, the State of Alaska would accept my tribal ID card as proof of my residential address to receive an Alaska ID card.⁹ But I would still need an affidavit or in-court testimony for an Alaska court to consider my Tribal ID to be authentic.

This year marks 25 years since the Alaska Supreme Court announced its path-marking decision *John v. Baker* that held Alaska courts must respect Tribal court decisions under the principles of comity.¹⁰ Comity would also generally suggest that Alaska courts should recognize Tribal documents as self-authenticating too.

For decades now Alaska courts have routinely been tasked with receiving Tribal documents in court proceedings. This occurs primarily in Child in Need of Aid (CINA) proceedings subject to the Indian Child Welfare Act (ICWA).¹¹ Under ICWA only the Tribe of an Indian child in a CINA proceeding can determine that child's eligibility for citizenship (membership) or their parent's citizenship in that Tribe.¹²

⁸ U.S. Dep't of Homeland Sec., Citizenship and Immigration Servs., *Form I-9 Acceptable Documents*, (Jul. 28, 2023) <https://www.uscis.gov/i-9-central/form-i-9-acceptable-documents> (accessed on Nov. 25, 2023).

⁹ State of Alaska, Dep't of Admin., Div. of Motor Vehicles, *Alaska Identification (ID) Card*, <https://doa.alaska.gov/dmv/akol/stateid.htm>, (accessed on Nov. 25, 2023).

¹⁰ 982 P.2d 738, 763 (Alaska 1999) ("courts should strive to respect the cultural differences that influence tribal jurisprudence").

¹¹ 25 U.S.C. §§ 1901-1923.

¹² See 25 C.F.R. § 23.108(b) ("The State court may not substitute its own determination regarding a child's membership in a Tribe, a child's eligibility for membership in a Tribe, or a parent's membership in a Tribe.").

Adopting the proposed rule change would alleviate the need for a Tribe to verify its determination with an affidavit or in-court testimony.

In the past 25 years the State of Alaska’s relationship with Tribes has dramatically improved. In 2022 the Alaska Legislature passed, and the governor signed, HB 123, which provided for the state recognition of federally recognized tribes.¹³ The legislative findings and intent of HB 123 observed, “Indigenous people have inhabited land in the state for multiple millennia, since time immemorial or before mankind marked the passage of time.”¹⁴ Such language supports the conclusion that Tribe are inherently authentic and so too are their records.

The need for Tribal documents to be easily received by Alaska courts is likely to increase now that Congress has affirmed Alaska Native Tribes have inherent civil and criminal authority over their citizens and non-member Natives in their village.¹⁵ Federal law also affirms that Tribes can issue protective orders against non-Natives, and some Alaska Tribes are starting to move forward with the Pilot Project made available in the Violence Against Women Act Reauthorization Act of 2022 that will recognize their ability to criminally prosecute non-Native people for violent crimes committed within the village.¹⁶

¹³ Ch. 42, § 2, SLA 2022.

¹⁴ *Id.* at § 1.

¹⁵ 25 U.S.C. § 1305(a).

¹⁶ 25 U.S.C. § 1305(b) & (d); Pub. L. No. 117-103, 136 Stat. 906-09.

Other jurisdictions have similarly recognized the sovereignty of Tribes and made corresponding changes to their state’s rules recognizing Tribal documents as self-authenticating. For over a decade the New Mexico Supreme Court has included Alaska Native and American Indian Tribes and Nations among government entities whose records are self-authenticating.¹⁷ Recently Arizona adopted the same approach.¹⁸ Oregon’s court rule requires an attestation or execution.¹⁹ Washington enacted its rule statutorily in 2019.²⁰ When the Arizona Advisory Committee commented in support of amending Rule 902 it noted, “[i]ndeed, a neighboring state has had this particular change in its rules for more than a decade without any noted ill effects.”²¹

Yet Federal Rule of Evidence 902(1)(A) the analogue to Alaska Evidence Rule 902(1), does not include Tribes.²² Back in 2013 the federal Advisory Committee on Evidence Rules considered a proposal to add Tribes. “Following a wide-ranging discussion,” the federal Advisory Committee on Evidence Rules “concluded that it should

¹⁷ N.M. R. Evid. Rule 11-902.

¹⁸ *In re Rule 901(1)(A), Rules of Evid.*, No. R-23-0015, *Order Amending Rule 902 of the Ariz. Rules of Evid.* (Ariz. Aug. 24, 2023).

¹⁹ Or. Rev. Stat. § 40.510.

²⁰ Wash. Rev. Code § 05.44.010 (court records and proceedings); *Id.* § 05.44.040 (records with seal); *Id.* § 05.44.050 (foreign statutes).

²¹ *Comment by the Advisory Committee on the Ariz. Rules of Evid. In Support of Petition R-23-0015 to Amend Rule 902 of the Ariz. Rules of Evid.*, at 5 (Apr. 30, 2023).

²² *United States v. Alvarez*, 831 F.3d 1115, 1122-23 (9th Cir. 2016). The prior 2013 opinion was withdrawn for other reasons. 2013 WL 1503702 (9th Cir. Apr. 15, 2013).

not proceed . . . to consider an amendment to Rule 902.”²³ A list of the Committee’s concerns included the need for consultation with Tribes, rigor by Tribes of maintaining public documents, opening the list to other public entities, Confrontation clause issues in criminal proceedings, the existence of other procedural workarounds, and the need for a holistic review of all rules.²⁴ All the reasons listed are the same issues that had to be considered when the Advisory Committee originally drafted Rule 902. Such concerns did not stop the inclusion of every small town and county in the United States and remote isolated communities in the former Trust Territories of the Pacific Islands.²⁵ The Advisory Committee concluded that “it would await the direction of the Standing Committee.”²⁶ It has been waiting for over 10 years without any further consideration.

Recently the Ninth Circuit has not foreclosed a federal court’s ability to admit tribal records without extrinsic evidence. In an unpublished opinion, that court took judicial notice of a Tribe’s constitution and bylaws, and the enrollment certificate it issued one if its citizens.²⁷ The Alaska Rules of Evidence Commentary notes that judicial notice likely is the legal foundation for self-authenticating records from government

²³ Report of the Advisory Committee on Evidence Rules, May 7, 2013, at 5, available at https://www.uscourts.gov/sites/default/files/fr_import/EV05-2013.pdf.

²⁴ Minutes of the Advisory Committee on Evidence Rules, May 7, 2023, at 11-12, available at https://www.uscourts.gov/sites/default/files/fr_import/2013-05-Evidence-Minutes.pdf.

²⁵ Fed. R. Evid. 902(1)(A); Alaska R. Evid. 902(1).

²⁶ Advisory Committee Minutes, *supra* note 24, at 12.

²⁷ *United States v. Mancha*, 773 F. App’x 447, 448 n.1 (9th Cir. 2019)

entities.²⁸ It is also worth highlighting that Alaska Evidence Rule 902 does not strictly adhere to its federal counterpart as Alaska includes documents “purporting . . . [t]o bear the seal of state of a nation recognized by the executive power of the United States” without an accompanying certification by a United States embassy secretary or consular officer.²⁹

Amending Alaska Evidence Rule 902(1) as proposed would be efficient, promote fairness, and eliminate unjustifiable expense and delay in determining the authenticity of Tribal documents. Parties would still be free to dispute a record’s authenticity. But “[w]hen evidence is introduced to dispute the authenticity of an official seal or signature, the jury will determine its validity unless the trial judge finds that reasonable minds could not differ on the question, in which case a directed verdict or peremptory instruction should result in a civil case.”³⁰

Under Rule 44, the proposed change will be categorized as either major or minor.³¹ This is a minor change because it is technical in nature. After all, Tribes, like other entities excluded from the authentication requirement, are governments that provide services to their citizenship, many of which are larger than towns that would currently

²⁸ Alaska R. Evid. cmt. 902(1).

²⁹ Alaska R. Evid. 902(3); Federal R. Evid. 902(3). Alaska’s Evidence Rule 902(3) follows California Evidence Code § 1452 and “some common law authority.” Alaska R. Evid. 902(3) cmt. (citing 7 Wigmore, Evid. § 2163, at 645).

³⁰ Alaska R. Evid. 902(1) cmt. For criminal cases it would be left to the jury. *Id.*

³¹ Alaska Admin. R. 44.

benefit from Alaska’s self-authentication rule.³² In addition Tribes already routinely interact with Alaska courts,³³ and Alaska courts routinely receive Tribal records.³⁴

I thank you in advance for your consideration of this proposal.

Sincerely,

/s/ _____
Geoffrey Bacon
ABA 2311117

³² Peter Salter, *Monowi, Nebraska, is still a one-person town, despite what 2020 Census says*, LINCOLN JOURNAL STAR, May, 24, 2023, https://omaha.com/news/state-and-regional/monowi-nebraska-is-still-a-one-person-town-despite-what-2020-census-says/article_06850f37-9c28-543b-8240-fc9274f363e7.html (accessed Nov. 25, 2023).

³³ CINA Rule 26 (Intervention by Tribe).

³⁴ CINA Rule 24 (Registration of Tribal court order).

Exhibit B



February 27, 2026

Hon. Jesse M. Furman
Chair, Advisory Committee on the Rules of Evidence
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, DC 20544

Re: Proposed Amendment to Federal Rule of Evidence 902

Dear Judge Furman,

On behalf of the Catawba Nation a.k.a. the Catawba Indian Tribe of South Carolina (the "Nation"), and as an attorney for the Nation, I write to express support for the proposed amendment to Rule 902 of the Federal Rules of Evidence that would recognize documents sealed and signed by federally recognized tribes as self-authenticating in federal court.

This change would affirm the dignity and sovereignty of tribal governments by placing their official documents on equal footing with those of states and other recognized entities. It would also reflect the reality that tribes are longstanding governments with reliable established processes for issuing and maintaining official records.

We respectfully urge the Committee to move forward with this important amendment. Thank you for considering our views and for your continued efforts to strengthen the administration of justice.

Sincerely,

Dione' C. Carroll, Esq.

Exhibit C

Elk Valley Rancheria, California



2332 Howland Hill Road
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Phone: 707.464.4680
Fax: 707.465.2638
www.elk-valley.com

September 17, 2025

VIA EMAIL ONLY

RulesCommittee_Secretary@ao.uscourts.gov

Hon. Jesse M. Furman
Chair, Judicial Conference Advisory Committee on Evidence Rules
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, DC 20544

Re: Comment Supporting Amendment to Federal Rule of Evidence 902(1): Self-Authentication for Sealed Tribal Documents

Dear Judge Furman and Members of the Advisory Committee:

On behalf of Elk Valley Rancheria, California (EVR), a federally recognized Indian Tribe, we support amending Rule 902(1) to add “a federally recognized Indian Tribe or Nation” to the list of entities whose sealed and signed public documents are self-authenticating. This modest, targeted amendment promotes parity among sovereigns, preserves all existing hearsay and relevance safeguards, and reduces avoidable costs and delays associated with authenticating routine Tribal records.

The Amendment Promotes Parity and Respects Tribal Sovereignty

Rule 902(1) already treats sealed documents from the United States, states, territories, and their political subdivisions as self-authenticating. EVR and other federally recognized Tribes exercise inherent governmental authority and routinely issue sealed public documents—e.g., enrollment certificates, court judgments, ordinances, and certified copies—that serve the same authenticating function. Extending 902(1) treatment to Tribes recognizes their comparable sovereign status without altering substantive admissibility standards.

Efficiency Gains with Reliability Intact

The amendment is limited to authenticity (that an official sealed document is what it purports to be). It does not exempt such documents from hearsay, confrontation, or other





evidentiary rules. Courts will retain full authority to exclude unreliable statements or require additional foundation. In practice, 902(1) status will eliminate rote custodian declarations and witness travel where a seal and authorized signature already provide strong indicia of authenticity.

Practical Need Shown by Recent Litigation Experience

Following *McGirt*, federal prosecutions requiring proof of Indian status have increased, and recent appellate reversals have turned on authentication or notice pitfalls for Tribal records. In cases such as *Harper*¹ (2024) and *Wood*² (2024), authentication mechanics or Rule 902(11) notice issues were dispositive. A 902(1) amendment would prevent reversals based solely on authentication mechanics for sealed Tribal documents—without changing any element of proof or hearsay requirements.

Civil-Side Benefits for EVR and Other Tribes

Beyond criminal cases, federal civil litigation frequently requires authenticating Tribal ordinances, resolutions, court judgments, or certified copies. Self-authentication will streamline proceedings, reduce motion practice on undisputed authenticity questions, and conserve judicial and party resources—especially for rural Tribes whose recordkeepers would otherwise appear or prepare certifications under tight deadlines.

Addressing Concerns Raised in Opposition

Concerns about varying Tribal record systems, FOIA inapplicability, or subpoena limits do not undermine the narrow authenticity rationale of Rule 902(1). A seal and authorized signature are objective indicia of authenticity; hearsay and foundation rules still police reliability; and parties remain free to challenge authenticity upon a genuine showing of dispute. The amendment aligns Tribes with other sovereigns while preserving all existing protections.

Suggested Text and Clarifications

- Text: Amend Rule 902(1) to add: “a federally recognized Indian Tribe or Nation.”
- Committee Note (clarification): “Federally recognized” refers to Tribes listed by the Department of the Interior in the *Federal Register* pursuant to the Federally Recognized Indian Tribe List Act of 1994 or subsequent law. The amendment concerns authenticity only; other evidentiary doctrines continue to apply. As with other 902(1) documents, courts may require additional proof if authenticity is genuinely disputed.

¹ *United States v. Elga Eugene Harper*, decided by the United States Court of Appeals for the Tenth Circuit on October 3, 2024, held that the district court erred by admitting the verification letter from the Choctaw Nation of Oklahoma as it was inadmissible hearsay and did not qualify as a business record.

² *United States of America v. Craig Wallace Wood*, decided by the United States Court of Appeals for the Tenth Circuit on July 23, 2024, the appellate court addressed significant procedural errors related to the authentication of tribal records under the Federal Rules of Evidence.





Conclusion

Elk Valley Rancheria, California respectfully urges the Committee to adopt the amendment. Treating sealed Tribal public documents as self-authenticating enhances fairness, judicial economy, and sovereign parity while preserving all existing admissibility safeguards.

Respectfully submitted,



Dale A. Miller
Chairman



Exhibit D



February 18, 2026

The Honorable Jesse Furman
Chair, Advisory Committee on the Rules of Evidence
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Washington, D.C. 20544

RE: Comments on Amendments to Federal Rule of Evidence 902(1)

Dear Judge Furman:

On behalf of the Federated Indians of Graton Rancheria (the “Tribe”), a federally recognized Tribe, with our Reservation in Rohnert Park, Sonoma County, California, I submit the following comments in support of amending Federal Rule of Evidence 902(1) to add federally recognized tribes to the current list of governments and government entities from which a sealed and signed document would be self-authenticating if offered as evidence in court. Doing so will support tribal sovereignty and encourage state adoption of a similar rule to strengthen the Indian Child Welfare Act (“ICWA”) protections.

Rule 902(1): Current Impacts

Under the current rule, documents bearing a seal and signature from various federal, state, and territorial governments, including their subdivisions and agencies, are presumptively authentic. However, sealed and signed documents from tribal governments are not. The failure to include tribes under Rule 902(1) denies them the same respect that is awarded to other governments in presuming authenticity and fails to acknowledge tribes’ status as sovereign nations. Rather, the burden is on tribes, the court, and other parties to produce and review extrinsic evidence to confirm the authenticity of tribal government documents.

There are several alternatives for admitting qualifying tribal documents into evidence, but none are as direct or efficient as Rule 902(1), nor do those approaches accord appropriate respect to tribes as governments. One alternative is that tribal documents can be admitted under Rule 902(11) as a certified record of a regularly conducted activity, but the certification of a custodian

or other qualified person must be provided *and* the hearsay exception for “Records of a Regularly Conducted Activity” under Rule 803(6) must be met. This alternative can be highly inefficient and burdensome because the tribe must make a tribal custodian or qualified individual available to testify in court, imposing real costs on the tribe. Furthermore, the hearsay exception pertains to a “business, organization, occupation, or calling,”¹ but tribes as sovereigns demand more respect than being treated the same as a business or organization. Another alternative is that a court may take judicial notice of certain tribal government documents,² like a tribal constitution or bylaws, but judicial notice is not guaranteed.³ These alternatives are not sufficient, and the current rule should be amended.

Tribal Sovereignty

Tribes are distinct, independent political communities with inherent sovereignty.⁴ The current rule creates a hierarchy between the listed federal, state, and territorial governmental entities and tribes by treating tribal documents as less authoritative than those of the federal government, states, and territories. One of the most important aspects of tribal sovereignty is the ability of a tribe to determine its own citizenship, but under the current rule, enrollment certifications and other documents issued by a tribe do not qualify as self-authenticating.⁵

The proposed change would bolster tribal sovereignty by placing tribes on clear, equal footing with other types of covered governmental entities and avoid unwarranted scrutiny of qualifying tribal documents. Additionally, adopting the proposed rule supports the unique government to government relationship tribes have with the federal government. Finally, just as different states and governmental subdivisions have different types of recordkeeping practices, so too do tribes. The rule would allow for these differences in recordkeeping while still allowing appropriately signed and sealed tribal documents to be self-authenticating.

California Evidentiary Rules and ICWA

California currently has no evidentiary rule that acknowledges tribal documents bearing a seal and signature as self-authenticating, and with 109 federally recognized tribes within the state, including the Tribe, it is critically important to adopt the proposed rule as an example for California state courts. California courts have more readily granted judicial notice of certain tribal documents, but judicial notice is not guaranteed in every case.⁶ Therefore, the federal rule

¹ Fed. R. Evid. 803(6).

² *Evans Energy Partners, LLC v. Seminole Tribe of Fla., Inc.*, 561 F. Supp. 3d 1171, 1173 (M.D. Fla. 2021), *aff'd*, No. 21-13493, 2022 WL 2784604 (11th Cir. July 15, 2022); *California Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1265, n.5 (D.C. Cir. 2008); *United States v. Mancha*, 773 F. App'x 447, 448, n.1 (9th Cir. 2019).

³ *See, e.g., United States v. Alvirez*, 831 F.3d 1115, 1122-23 (9th Cir. 2016).

⁴ *Worcester v. State of Ga.*, 31 U.S. 515, 559 (1832).

⁵ *Alvirez*, 831 F.3d at 1123.

⁶ *See Yavapai-Apache Nation v. Iipay Nation of Santa Ysabel*, 135 Cal. Rptr. 3d 42, 50, n.6 (2011); *Big Valley Band of Pomo Indians v. Superior Ct.*, 35 Cal. Rptr. 3d 357, 362 (2005).

change would have significant positive impacts for California tribes by encouraging the state to adopt similar changes, particularly in the context of ICWA proceedings.⁷

ICWA proceedings are normally heard in state court, but the change at the federal level can encourage states to amend their rules to minimize hurdles to invoking ICWA's protections. For ICWA to apply, the child must be an "Indian child." An "Indian child" is defined as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe."⁸ This is regularly proven through a tribe's enrollment records. When an Indian parent or relative cannot readily prove that a child is an Indian child because enrollment or membership documents are not self-authenticating, the risk that a child may be distanced from their tribe is greater because the protections of ICWA may not be invoked.

There is "no resource that is more vital to the continued existence and integrity of Indian tribes than their children," and "the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe."⁹ Furthermore, states "have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families."¹⁰ By including tribes within the list of covered governments under the federal rule, states would be encouraged to treat enrollment documentation bearing the seal and signature of the tribal government as self-authenticating without any need for extrinsic evidence. This would help ensure the greatest coverage of ICWA protections to Indian children. It would also make the ICWA dependency process more efficient by allowing tribal records into evidence without extra steps and resources to authenticate it.

Conclusion

The Tribe encourages the Committee to adopt the proposed rule to reinforce tribal sovereignty and encourage California to adopt a similar rule to support the provisions of ICWA.

Sincerely,



Greg Sarris
Chairman

⁷ 25 U.S.C. §1901 et seq.

⁸ 25 U.S.C. § 1903(5).

⁹ 25 U.S.C. § 1901(3).

¹⁰ 25 U.S.C. § 1901(5).

Exhibit E



MODOC NATION

22 N. Eight Tribes Trail
Miami, Oklahoma 74354
918-542-1190 • FAX 918-542-5415

September 17, 2025

The Honorable Jesse Furman, Chair
Advisory Committee on Rules of Evidence
One Columbus Circle, N.E.
Washington, D.C. 20544

RE: Support for Amendment to Federal Rule of Evidence 902

Dear Judge Furman,

On behalf of Modoc Nation, a federally recognized Indian tribe, we write to express strong support for the proposed amendment to the Federal Rule of Evidence 902 to add federally recognized tribes to the list of entities from which a sealed and signed document would be self-authenticating if offered as evidence in federal court. This amendment is necessary to correct an inconsistency that undermines tribal sovereignty, burdens judicial efficiency, and fails to reflect the reality of government-to-government relations between the United States and Indian tribes.

Like states and territories, federally recognized Indian tribes regularly issue official documents in the exercise of their inherent sovereign powers. These include records related to membership, governance, enrollment, land use, and governmental services. These documents are no less vital or reliable than those issued by any other sovereign government. Yet, unlike states or territories, Indian tribes are excluded from the scope of Rule 902.

Concerns once raised about variations in recordkeeping practices are outdated and unfounded. Indian tribes have equal, if not greater, reasons to maintain accurate, official records, especially given the direct impact those records have on their legal relationship with the United States and on eligibility for federal programs. Indeed, multiple states, including Arizona, New Mexico, Oregon, Washington, and Wisconsin, have already amended their evidentiary rules to recognize tribal government documents as self-authenticating without making arbitrary distinctions between Indian tribes.¹

The failure to recognize tribal documents under Rule 902 imposes real legal and symbolic consequences. It creates unnecessary evidentiary burdens, generates avoidable litigation expenses, and perpetuates a framework that inconsistently acknowledges the sovereign status of tribal governments. This outcome is contrary to the federal trust responsibility and inconsistent

¹ Ariz. R. Evid. 902(1)(A); N.M.R. Evid. 11-902(1)(A); Or. Rev. Stat. Ann. § 40.510(k)(A); Wis. Stat. Ann. § 806.245(2); Wash. Rev. Code Ann. §§ 5.44.010, 5.44.050.

with the principle that tribal sovereignty is inherent, predating the U.S. Constitution and statehood.

Lastly, part of our ancestral homelands are located in Oregon, one of the states that has already amended its evidentiary rules to recognize tribal documents as self-authenticating. It would be inconsistent and inefficient for documents issued by the Modoc Nation to be given full evidentiary effect in Oregon state courts, yet be denied the same recognition in federal courts sitting within the same jurisdiction. Amending Rule 902 to include federally recognized Indian tribes would be a long-overdue step toward consistency, uniformity, and meaningful recognition of Tribal sovereignty.

For these reasons, Modoc Nation respectfully urges the Committee on Rules of Evidence to adopt the proposed amendment. Thank you for your consideration of this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Burkybile', written over a faint circular stamp.

Robert Burkybile
Chief, Modoc Nation

Exhibit F

FORMAN SHAPIRO & ROSENFELD LLP

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September 25, 2025

VIA E-Mail Rules Committee Staff (RulesCommittee_Secretary@ao.uscourts.gov)

Hon. Jesse Furman
Chair, Advisory Committee on the Rules of Evidence
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Washington, D.C. 20544

Re: Proposed Amendment to Federal Rule of Evidence 902

Judge Furman:

Forman Shapiro & Rosenfeld LLP serves as general counsel to the Morongo Band of Mission Indians (“Morongo” or “Tribe”), the federally recognized Indian Tribe exercising sovereign authority over the Morongo Indian Reservation in Banning, California. At Morongo’s request, we write to express the Tribe’s support of an amendment to Federal Rule of Evidence 902(1) that would add federally recognized tribes to the list of governmental entities that can provide sealed and signed documents for self-authentication.

Our firm litigates on behalf of Morongo in both federal court and the Morongo Band of Mission Indians’ own Tribal Court, which exercises jurisdiction over a variety of matters consistent with Morongo Tribal law and federal law. In addition, Morongo is occasionally asked to assist federal law enforcement in their prosecution of civil and criminal matters by providing documents and other materials generated by an arm of the Tribe.

Under current Ninth Circuit case law, otherwise properly certified Morongo documents are not self-authenticating. *See United States v. Alvarez*, 831 F.3d 1115, 1123 (9th Cir. 2016) (“Because Indian tribes are not listed among the entities that may produce self-authenticating documents, the district court abused its discretion in admitting the Certificate pursuant to Federal Rule of Evidence 902(1) as a self-authenticating document.”) As a result, Morongo, whether as a litigant or the source of documents used by the Department of Justice, must rely on extrinsic evidence to authenticate its documents. This requirement is time-consuming for all concerned: the Tribe must furnish documentation satisfying the evidentiary requirements, the Department of Justice must accommodate the evidentiary burdens into its litigation, and federal judges must engage in lengthy analyses of the sufficiency of extrinsic evidence. *See, e.g., Manzano v. S.*

Indian Health Council, Inc., No. 20-cv-02130-BAS-BGS, 2021 U.S. Dist. LEXIS 126475, at *9–14 (S.D. Cal. July 7, 2021). Moreover, the current Rule can impose significant financial costs if circumstances require the Tribe to send a custodian to court to furnish in-person authentication. The proposed amendment to Rule 902(1) allowing federally recognized tribes to provide sealed and signed documents for self-authentication would alleviate these burdens. For that reason, Morongo strongly supports the adoption of the proposed amendment.

Please feel free to contact the undersigned if you have any questions or if Morongo can be of any assistance in finalizing this important amendment to Rule 902.

Very truly yours,

FORMAN SHAPIRO & ROSENFELD LLP

A handwritten signature in cursive script that reads "Jay Shapiro".

Jay B. Shapiro

Cc: Morongo Band of Mission Indians Tribal Council