

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Mille Lacs Band of Ojibwe, a federally recognized Indian Tribe; Sara Rice, in her official capacity as the Mille Lacs Band Chief of Police; and Derrick Naumann, in his official capacity as Sergeant of the Mille Lacs Police Department,

Case No.: 0:17-cv-5155 (SRN/LIB)

Plaintiffs,

**MOTION FOR LEAVE TO FILE  
BRIEF OF AMICUS CURIAE**

vs.

County of Mille Lacs, Minnesota; Joseph Walsh, individually and in his official capacity as County Attorney for Mille Lacs County; and Don Lorge, individually and in his official capacity as Sheriff of Mille Lacs County,

Defendants.

Amicus Curiae, the State of Minnesota (“State”), respectfully moves this Court for leave to file the attached amicus curiae brief in support of Plaintiffs’ Motion for Partial Summary Judgment That The Boundaries Of The Mille Lacs Indian Reservation, As Established In 1855, Remain Intact and accompanying brief (Doc. Nos. 223 & 225). Attorneys for the State have reviewed the parties’ cross-motions for partial summary judgment and believe the State can assist the Court in resolving the question of whether congress has ever diminished the boundaries of the Mille Lacs Indian Reservation.

Participation as an amicus curiae is a matter left to the court’s sound discretion. *See Mausolf v. Babbitt*, 158 F.R.D. 143, 148 (D. Minn. 1994), *rev’d on other grounds*, 85 F.3d 1295 (8th Cir. 1996) (“The amicus privilege rests in the discretion of the court

which may grant, or refuse leave as it deems the proffered information timely, useful, or otherwise.”) (internal quotations omitted). As no local rule governs the procedure for submission of amicus filings in the District of Minnesota, Federal Rule of Appellate Procedure 29 supplies useful guidance. *See Rumble v. Fairview Health Servs.*, No. 14-CV-2037 (SRN/FLN), 2016 WL 6534407, at \*1 (D. Minn. Nov. 3, 2016) (permitting potential amicus curiae to seek leave to file briefing, consistent with the guidance of Federal Rule of Appellate Procedure 29). In an appellate proceeding, “a state may file an amicus brief without the consent of the parties or leave of court.” Fed. R. App. P. 29(a)(2). For movants other than state or federal governments, a motion seeking leave to file an amicus brief must provide the movant’s interest in the case, the reason why an amicus brief is desirable, and argument why the matters asserted are relevant to the disposition of the case. Fed. R. App. P. 29(a)(3). Courts generally grant motions for leave to file amicus briefs unless the proposed briefs clearly fall outside Rule 29’s criteria. *See Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 133 (3d Cir. 2002).

This Court’s decision on the reservation boundaries will impact the State’s sovereign interests and the activities of state agencies in the disputed area. The State’s position is the same as that of Plaintiffs—that the reservation boundaries have never been diminished or disestablished. State agencies’ operations in the reservation area rely upon acknowledgment of the boundaries as originally established. For these reasons, the State has a strong interest in the outcome of this litigation and asks for leave to participate as amicus curiae.

Accordingly, the State respectfully requests leave to file the attached amicus curiae brief. Plaintiffs have consented to the filing of this brief.

Dated: February 8, 2021

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota

/s/ Stacey W. Person

STACEY W. PERSON  
Assistant Attorney General

445 Minnesota Street, Suite 1400  
St. Paul, Minnesota 55101-2131  
(651) 757-1412 (Voice)  
(651) 297-4139 (Fax)  
stacey.person@ag.state.mn.us

ATTORNEY FOR THE STATE OF  
MINNESOTA