HENSON EFRON

INDIAN LAW PRACTICE

HENSON EFRON

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ABOUT HENSON & EFRON, P.A.

Since 1976, clients have turned to Henson & Efron, a 30+ attorney Minneapolis, Minnesota law firm, to receive the attention and focus they deserve and the highest professional standards of quality and integrity. Henson & Efron attorneys are proven leaders in our respective fields, and we consistently provide our clients with superior and dependable service.

We champion your cause as if it was our own. We have taken principled positions against the entrenched powers on behalf of our clients. We work to preserve our clients' dignity, equality, justice and human rights, and we combat challenges to these rights.

Beyond knowing what we do well, our mission is to be the first choice, and the last law firm a client ever hires. To meet our mission, we believe that providing the best possible client service starts within our office walls.

At Henson & Efron, our attorneys, paralegals and support staff are dedicated to the following core values: Respect, Excellence, Stewardship, Intelligence, Determination, Creativity, Results

Central to our commitment to excellence is the firm's pledge to offer each and every client a core team of lawyers and staff to service their needs. This approach ensures that each matter receives the collective expertise of the team, and timely and responsive service. The culture at Henson & Efron encourages teamwork, nurtures learning and education, and motivates excellence.

Henson & Efron attorneys are nationally recognized in their industry for outstanding service:

- Alan C. Eidsness honored as a 2012 Attorney of the Year by Minnesota Lawyer.
- Ten Henson & Efron attorneys were selected to the 2012 Minnesota Super Lawyers list for the state of Minnesota by *Super Lawyers Magazine*, and five attorneys were selected in the 2012 Minnesota Rising Stars list.
- Recognized by U.S. News – Best Lawyers® for its Family Law, Family Law Mediation and Commercial Litigation practices for three consecutive years.
- Four Henson & Efron attorneys were selected for inclusion in The Best Lawyers in America® 2013.
- Fifteen Henson & Efron attorneys are *AV® Preeminent peer review rated by Martindale-Hubbell.

While we have the ability to draw on all of our attorneys' experience and skills when the need arises, Henson & Efron's Indian law practice group is led by four attorneys. Clark D. Opdahl has been a practicing corporate and transactional attorney for nearly three decades, and he currently serves as the firm's managing partner. David Bradley Olsen has been litigating cases in state and federal courts around the country for nearly 25 years. Court J. Anderson has more than ten years of experience as a litigation attorney and is a partner in the firm. Rochelle L. Hauser has been with the firm for six years as a transactional attorney.

For more information about the firm please go to our website at **www.hensonefron.com**.

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SUMMARY OF HENSON & EFRON'S INDIAN LAW PRACTICE

TRIBAL MEMBER VOTING RIGHTS

Henson & Efron has joined with Tribal Members in cases brought to establish early voting locations on Reservations in both Montana and South Dakota. In South Dakota, the State agreed to give Oglala Sioux Tribal Members the same access to early voting as other counties during the 2012 election cycle, but has not agreed to make the change permanent. It is our goal to ensure that Tribal members living on-reservation in South Dakota have the same early voting opportunities as everybody else. Discussed separately in this brochure is Henson & Efron attorney David Bradley Olsen's pro bono representation of Fort Belknap, Northern Cheyenne and Crow Indians in the Montana voting rights case.

Olsen's agreement to step into the Montana litigation comes on the heels of his recent major victory for Tribal Members in Minnesota who provide medical assistance subsidized in-home care for their elderly and physically or mentally disabled relatives. In 2011 the Minnesota legislature enacted a law that reduced the pay of individuals who care for relatives in their homes by 20%, but did not reduce the pay of those who provide identical services for non-

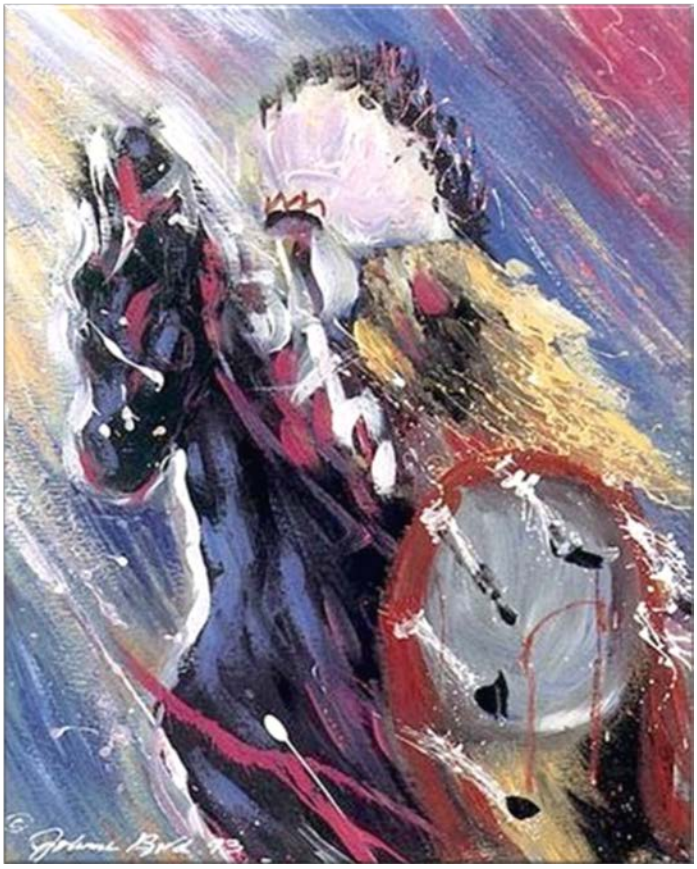
relatives. Working with lead plaintiff HealthStar Home Health, Inc., a home health care agency that primarily serves the Indian community, Olsen assembled a group of employer agencies, care assistants and care recipients to challenge the law, including Jean Rogers, an enrolled member of the White Earth Nation Chippewa tribe who cares for her mother, and Nancy Larson, an Indian woman who is cared for by her daughter. The lawsuit alleged, among other things, that the 20% pay cut disproportionately and unfairly impacts the Indian community because, due to cultural differences, approximately 80% of Indian personal care assistants provide services for their relatives, as opposed to a much lower percentage of whites. On December 17, 2012, the Minnesota Court of Appeals struck the discriminatory pay cut statute down, ruling that it violated the plaintiffs' right to equal protection of the laws. As a result of the ruling, hundreds of low income Tribal Members who may otherwise have been institutionalized can continue to receive needed care in their homes.

TREATY RIGHTS

As you know, important rights were guaranteed to the Indian Nations by Treaty, many of which are enforceable to this day. From the first Treaty with the Delawares in 1787 until the end of Treaty-making in 1871, hundreds of agreements were entered between the federal government and various bands and tribes of Indians. Indian treaties stand on essentially the same footing as treaties with foreign nations. Because they are made pursuant to the Constitution, they take precedence over any conflicting state laws by reason of the Supremacy Clause. U.S. Const., Art. VI, § 2; Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).

It is our goal to empower American Indians who have traditionally been under-represented. The federal government has a responsibility to protect and preserve Tribes, including protection of their right of self-government, which was the consideration promised by the United States upon which the tribes' land cessions were effectuated. The federal government's responsibility to protect and support Indian Tribes also stems from the government's historical course of dealing.

Henson & Efron attorneys Clark Opdahl, Rochelle Hauser and David Bradley Olsen are currently working with a South Dakota Tribe in connection with issues arising from a secured loan transaction, and which involve related treaty issues.



CLASS III GAMING COMPACT NEGOTIATIONS

Indian Tribes are increasingly being subjected to gaming compacts that provide a state with gaming revenues from a tax, fee and/or assessment, a measure which is expressly prohibited by the Indian Gaming Regulatory Act. Although each Tribe is perfectly capable of exercising their own sovereignty and determining for themselves the compact terms by which they are willing to abide, Indian tribes are prevented from negotiating as equals with their state counterparts. Equal negotiating power no longer exists, although Congress viewed this as the most critical component in 1988 when enacting the Indian Gaming Regulatory Act. We support equal negotiating power in Class III gaming compact negotiations.

TRUST REFORM

It has been said that “a page of history is worth a volume of logic.” In regard to Tribal land, history demonstrates that the dominant culture’s need for land prevails, regardless of federal policy. First, the diminishment of the aboriginal and Treaty lands of tribes resulted in the Reservation system. Then the federal government unilaterally diminished the Reservations during the allotment era, a period during which tribes lost an additional 90 million acres of their treaty lands. In 1934, however, Congressional policy authorized the replenishment of land, especially reservation land. This policy, which still exists today, has been characterized by the Supreme Court on at least four occasions as a repudiation of the policies and provisions of the allotment era. Still, since 1934, Tribes have lost more land than they have re-acquired. It is our goal to support the efforts of Tribes to expand their land base via fee-to-trust acquisitions.

WANDERING MEDICINE V. MCCULLOCH

David Bradley Olsen and Henson & Efron, P.A. Volunteer to Protect Indian Voting Rights in Montana and the Western States

David Bradley Olsen and Henson & Efron, P.A. are pleased to announce that they have signed on to assist attorney Steven Sandven with an important Indian voting rights lawsuit.

In 2012, Sandven, a noted Indian rights attorney, filed suit in a Montana federal court asking that the State be ordered to open satellite voting offices at tribal headquarters in Fort Belknap, Lame Deer and Crow Agency. The suit alleges that, without the access to early, absentee and late voting that a satellite office could provide, Tribal Members are being denied equal voting opportunities as required by the United States Constitution and the Voting Rights Act. Although the lawsuit was brought on behalf of several individual Tribal Members, and against numerous Montana state and local officials, it is known by its shorthand name, *Mark Wandering Medicine et al v. McCullogh et al*.

Blackfeet Nation was the first to request a satellite voting office at their headquarters. In response to that request, the Montana Attorney General issued a Letter of Advice to the Secretary of State stating his opinion that satellite offices were allowed under Montana law. Secretary McCullogh followed up with an Election Advisory to local election officials, telling them that they had the ability to open satellite locations, and providing them with the procedures to be followed when doing so. Soon after, Crow Nation and Northern Cheyenne Reservation joined in with their requests for satellite offices.

Although Montana's Attorney General and Secretary of State had initially found no legal barrier to satellite voting, local election officials were not receptive to the idea, nor were they cooperative. The county officials either voted to deny the requests outright, or delayed taking a vote or any other action on the requests, which had the effect of a denial. It quickly became apparent that a lawsuit was the only option to secure equal voting rights for Tribal Members in Montana.

Following a hearing in October 2012, the federal district judge assigned to the case ruled that the State was not required to establish or permit satellite voting offices on the Reservations for early registration or late voting, because despite the hardships and the long-distance travel required for tribal members to register and vote at county courthouse locations, they had in the

past had some success in electing Tribal Members to office and, therefore, could not prove that they were denied the right to vote and elect representatives of their choice.

Because the legal standard applied by the district court judge was wrong, and because his decision, if upheld, would mean that Tribal Members could be required to travel as much as 100 or more miles roundtrip just to register early or vote late, while non-Indians had the convenience of voting locations near their homes, Sandven appealed to the United States Court of Appeals for the Ninth Circuit. The importance of the appeal cannot be understated, because the Ninth Circuit is the highest federal court in the Western United States, and its jurisdiction includes Indian country in Montana, Idaho, Washington, Oregon, Alaska, California, Arizona and Nevada.

As it happened, in 2012 Sandven became associated as South Dakota local counsel for Minneapolis, Minnesota attorney David Bradley Olsen and his firm, Henson & Efron, P.A. Through that association, Olsen began to follow the *Wandering Medicine* case, and in early 2013 volunteered the resources of his firm, and his personal assistance, free of charge. Olsen wrote the *Wandering Medicine* Ninth Circuit Reply Brief, and is expected to argue the appeal.

The question on appeal is straightforward, have Indians been denied equal opportunities to participate in the political process on account of their race or color? Sandven and Olsen intend to convince the Ninth Circuit court that the answer is, “yes,” and that Tribal Members should, and legally must be afforded the same voting opportunities as everyone else.

Sandven and Olsen are supported by, among others, the United States Department of Justice, the National Congress of American Indians and Four Directions. Oral argument is expected to be scheduled for late summer or early fall, 2013, and a decision is expected within a few months after the arguments.

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APPENDIX OF ATTORNEY BIOGRAPHIES