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Attorney for Defendant Lynn D. Becker

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UTE INDIAN TRIBE OF THE UINTAH &
OURAY RESERVATION, a federally
recognized Indian Tribe, et al.,

Plaintiffs,

vs.

HONORABLE BARRY G. LAWRENCE,
District Court Judge, Utah Third Judicial
District Court, in his Individual and Official
Capacities; and LYNN D. BECKER

**BECKER'S RESPONSE TO TRIBE'S
STATEMENT OF ATTORNEY FEES**

Civil No. 2:16-cv-579

Senior Judge Tena Campbell

Defendant Lynn Becker opposes the Tribe's request for attorney fees.

The Tribe fails to cite the Tenth Circuit authority that indisputably controls here – the recent Tenth Circuit decision on the standard for awarding attorney fees as sanctions in this very case. *Becker v. Ute Indian Tribe*, 2023 U.S. App. LEXIS 20430 (10th Cir. Aug. 8, 2023). There, the Tenth Circuit affirmed this Court's finding that the Tribe had acted vexatiously, wantonly, deliberately, abusively and in bad faith in trying to punish and intimidate a witness in this action. Order, Dkt 208. The Tenth Circuit held that an award

of attorney fees in a civil action as a contempt sanction requires clear and convincing evidence that the party's relevant actions were done in bad faith. *Id.* at *17. There is no evidence here, let alone clear and convincing evidence, that Becker acted in bad faith.

The nub of the Tribe's argument is that Becker's filing of an opposition to the Tribe's motion to dismiss the state action violated this Court's order that he not "take any action" there except to dismiss the action. It was clear that this Court had not ordered either defendant – Becker or Judge Lawrence – to take affirmative action to dismiss the state case. Becker did not understand this Court's order to prevent him from responding to the Tribe's motion to dismiss.

Becker made good faith arguments in his opposition – that dismissal of the state action, combined with potentially applicable Utah statutes of limitations, might prejudice his ability even to pursue his claims after a dizzying decade of rulings on federal, state and tribal court jurisdiction – first that this federal court lacked jurisdiction, then that the state court had jurisdiction, then that tribal remedies had to be exhausted in federal court, then the Tribe's claim in Tribal Court that Becker's claims were barred by a Tribal statute of limitations, and then that the state court lacked jurisdiction (in a 2-1 Tenth Circuit opinion) and that this Court has jurisdiction to review the properly exhausted decisions of the Tribal appellate court. Indeed, the Tribe's response – that Becker need not worry about statutes of limitations – was a significant concession that emerged from Becker's response in the state court action.

In short, there is no clear and convincing evidence that Becker acted in bad faith. Becker would never knowingly disobey a court order. Becker's filings here were done in good faith.

Becker respectfully requests that the Court deny the Tribe's Motion for Attorney Fees.

DATED: August 28, 2023.

ISOM LAW FIRM PLLC

/s/ David K. Isom
David K. Isom
Counsel for Lynn D. Becker

CERTIFICATE OF SERVICE

The undersigned certifies that on this 28th day of August 2023, the foregoing was served upon all parties by serving their counsel of record through the Court's electronic filing system.

/s/ David K. Isom