

**STATE BAR OF MICHIGAN
2007-2008 ANNUAL REPORT
STANDING COMMITTEE
May 2008**

Committee Name: Standing Committee on American Indian Law

Jurisdictional Statement:

Review issues of American Indian law, focusing on the relationship between tribal courts, state courts, and federal courts, and on the promotion of positive relationships between the lawyers of Michigan and the American Indian Community.

Officers and Membership:

Sheila Hackett Gaskell, Chair

Members:

William J. Brooks

Jeff Davis

Dawn Duncan

William S. Gregory

Shaun Matthew Johnson

James A. Keedy

James M. Kinney

Charles H. Koop

Meredith Mullins (non-voting law student)

Joseph P. O'Leary

Michael D. Petoskey

Michael G. Phelan

Patrick M. Shannon

Kathryn Tierney

Anne-Marie H. Voice (Supreme Court
Representative)

R. John Wernet, Jr.

Commissioner Liaison:

Bernhardt D. Christenson III

Staff Liaison:

Candace Crowley

2007-08 Meeting Schedule:

October 26, 2007 Telephone

December 14, 2007 Telephone

February 22, 2008 Telephone

April 25, 2008 Telephone

June 14, 2008 Mackinac Island

August 22, 2008 Telephone

Resources Provided by the State Bar of Michigan in Support of Committee Work:

Staff liaison, telephone and in-person meeting support.

Committee Activities:

1. Child support, custody & guardianship issues – As part of ongoing initiative to review issues of American Indian law, focusing on the relationship between tribal courts, state courts, and federal courts, the Committee continues efforts to achieve a better understanding within the bench and bar on the distinction between rules of comity versus the federal full faith and credit laws as it relates to child support, custody and guardianship

issues. *See* MCR 2.615 and the Federal Full Faith and Credit for Child Support Act, 25 U.S.C. § 1738B. The Committee is collaborating with state agencies, the Michigan State University College of Law Indigenous Law & Policy Center, the University of Detroit Mercy School of Law Indian Law Center, the Michigan Indian Judicial Association (MIJA), and has undertaken a project involving review of the 2006 edition of the Michigan Family Law Bench book. ICLE staff (Legal Editor Ann Sanderson) provided the Bench book to the committee, and a subcommittee formed to review it and prepare recommendations on the incorporation of references to Indian law and procedures. These recommendations will be passed on to ICLE. With the assistance of MSU's College of Law Indigenous Law & Policy Center and UDM's Indian Law Center, draft comments have been provided to Committee members, and the Committee is working to finalize this project.

2. Tribal/State/Federal Judges Forum: The Committee seeks to assist in the planning of a meeting involving tribal, state, and federal judges that will provide an opportunity to explore cross-jurisdictional issues, further positive relations, and provide state and federal judges with information about tribal courts. Follow-up efforts are ongoing with the MIJA, the MJI, and the Michigan Supreme Court about training events and judges. An October 2008 Indian Child Welfare Act training sponsored by the State Court Administrative Office is in planning stages, and AIL Committee members have been invited to contact SCAO planners to help plan the training in furtherance of this goal.

3. Michigan Court Rule 3.980 involves transfers of Indian children to tribal court in protective proceedings. A subcommittee formed to gather information and make recommendations to the Committee that may include endorsing a proposed amendment to MCR 3.980. The amendment will focus on the standard for emergency removal of an Indian child not living on a reservation, to make it consistent with removal standards contained in the ICWA. Clear guidance on the meaning of "emergency" will be included.

4. HB 4650, Uniform Foreign-Country Money Judgment Recognition Act - <http://legislative.mi.gov/doc.aspx?2007-HB-4650> . The Committee assisted in advocating for an amendment to this legislation that avoided possible conflict with MCR 2.615 by including in the "foreign country" definitional section of the uniform law language that excludes those tribes that have enacted a reciprocal rule and transmitted it to the state, while allowing those tribes that have not adopted a reciprocal rule to receive the benefits the uniform act seeks to create.

5. Michigan Supreme Court Justice Michael Cavanagh and AIL Committee member Kathryn Tierney, Tribal Attorney for Bay Mills Indian Community spoke at the Oct. 29, 2007 MIJA meeting on the history of the Tribal / State Court Forum and MCR 2.615. Other AIL Committee members, including Michael Petoskey and Sheila Gaskell, also attended this meeting.

6. Michigan Indian Legal Services, which has two former tribal prosecutors on staff, has invited Michigan tribes to participate in a pilot project to provide criminal defense services in tribal courts. The Grand Traverse Bay Band of Ottawa and Chippewa Indians is working with MILS on the project, and other Michigan tribes may also become involved. The AIL Committee was advised of this development and asked for input as it moves forward.

7. MCL 551.7 (Persons authorized to solemnize marriage) – The Committee discussed this statute and the absence of tribal chairs and judges from list of persons

authorized to solemnize marriage under this state law. Members pointed out under Michigan case law, a marriage in Indian country under the laws or customs of a tribe is valid. *Kobogum v. Jackson Iron Co.*, 76 Mich. 498 (1889). Further inquiry will be made regarding why tribal chairs were removed from a previous version of the statute and whether there is support for a proposal to amend the law to include tribal officials authorized under tribal laws and customs as persons authorized to solemnize marriage

Future Goals and Activities:

The Committee will work to finalize the Bench book project and will continue to look for opportunities to carry out its mission.

Chair/Co-Chair Contact Information:

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