

State Bar of Michigan
American Indian Law Committee
Minutes of April 28, 2006 10:00a Teleconference Meeting

Jurisdiction: Shall 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.

1. Call to Order, Welcome & Introductions -- Present: S. Gaskell (Chair); members D. Duncan, J. Keedy, J. Kinney, M. Mansfield, J. O'Leary, M. Petoskey, K. Scotta, Supreme Court Representative A. Voice; State Bar Liaison Janet Welch (J. Davis advised he was unable to attend due to work-related scheduling conflict).

2. Agenda Adoption

3. Approval of Minutes of Mar. 24, 2006 teleconference

4. Reports

a. State Bar of Mich Leadership Forum, June 9 & 10 – S. Gaskell will attend.

b. 2005-2006 Annual Report of the American Indian Law Section – due May 1, 2006. Draft prepared by S. Gaskell sent to members for review/discussion. Report will be timely filed by S. Gaskell and includes a recommendation that the American Indian Law Committee continue to function as a part of the State Bar of Michigan consistent with its existing jurisdictional statement.

c. Child support, custody & guardianship issues: Included in the topic is the delivery of foster care services to Indian children in Michigan as well as the cross-jurisdictional enforcement of orders of support and custody. J. O'Leary shared his past experiences in Houghton County where he was successful in enforcement of a tribal order seeking garnishment in state court after filing a brief and attending a hearing to explain the law of both the tribe (KBIC) and MCR 2.615. J. Kinney also discussed his practice experience in this area. M. Petoskey, K. Scotta, and D. Duncan advised that their respective Tribal Courts (Pokagon & LTB, GTB, & Hannahville) have procedures in place to process state court orders, but state courts within their jurisdictions do not have similar procedures – hearings/separate state actions to enforce orders have been required. Questions were raised as to whether the existing MCR 2.615 is adequate and whether other considerations such as comity and training are implicated. Other difficulties encountered by tribal staff relate to the format for Title 4E orders – some state courts require specific language. A subcommittee has formed to gather information and further define issues and possible solutions related to these issues (M. Mansfield, S. Gaskell, D. Duncan, A. Voice, J. Kinney, K. Scotta). M. Mansfield has been conducting research on the status of implementation of the federal full faith and credit for child support orders in Michigan. See the Federal Full Faith & Credit for Child Support Orders Act of 1994, as amended, 28 U.S.C. § 1738B, which requires states and tribal courts to

treat each other's child support orders as if the order was its own. See also 45 C.F.R. § 310.1 et seq (regulations governing tribal child support enforcement programs (CSE programs)). S. Gaskell has been in contact with Gary Goddard, DHS Services Legal Liaison, Paul Cloutier, DHS Native American Affairs Specialist, & John Wernet, Deputy Legal Counsel, Office of the Governor. DHS is attempting to standardize Friend of the Court procedures to petition tribal courts to enforce child support orders from state courts and DHS plans to include the issue on its agenda at an upcoming meeting with Tribal representatives. S. Gaskell & M. Mansfield will attend the DHS hosted meeting in Lansing on May 9, 2006. DHS indicates it will extend an invitation to representatives of all Michigan tribes to attend the meeting. A. Voice has also assisted in the subcommittee in communications with the Michigan Judicial Institute and learned from Tobin Miller, MJI's Judicial Ed/Publications Manager, that his initial review indicates that no MJI seminar materials or benchbooks include information about FFC of child support orders. The subcommittee continues to gather information to further define these issues and possible solutions and welcomes the participation of all interested members in this effort.

d. Tribal/State/Federal Judges Forum: The Committee has discussed the possibility of assisting in the planning of a meeting involving Tribal, State, and Federal Judges; the meeting would provide judges with an opportunity to explore cross-jurisdictional issues, and for state and federal Judges to learn about tribal courts. S. Gaskell spoke with Dawn McCarty, Director of the Michigan Judicial Institute, about training events and judges conferences MJI organizes; S. Gaskell will contact the Michigan Indian Judicial Institute to further explore the possibility of arranging such a meeting in conjunction with the MJI.

e. Michigan Court Rule 3.980, involving transfers of Indian children to tribal court in situations involving protective proceedings or certain offenses. The Committee is reviewing the application of this Rule and whether amendments are needed due to problems associated with changes in federal laws and/or procedures for emergency removals. Michigan Indian Legal Services staff wrote a memo explaining the problem with the Rule and has been working with the Tribal/State Partnership to identify possible solutions. One problem is that the MCR 3.980 standard for emergency removal of an Indian child not living on a reservation does not comply with removal standards contained in the ICWA. A subcommittee has formed (J. Keedy, S. Gaskell, and L. Ollgaard). The subcommittee continues to gather information and make recommendations to the AIL Committee that may include proposing an amendment to MCR 3.980 along with draft language of the rule change proposed, and welcomes the participation of all interested persons. J. Keedy will distribute via group email to all members a copy of the MILS memo for review and discussion at next month's meeting.

5. Other -- Monthly teleconferences will start at 9:30 a.m.--future teleconferences are: May 26, June 23, July 28 & August 25. To participate dial 1.800.270.1153 & when prompted enter 134891#. If you were unable to participate & would like your opinions heard, please contact Sheila at gaskellk@msn.com or 248.421.4691.

6. Adjournment.