

State Bar of Michigan
American Indian Law Committee
Minutes of August 25, 2006 9:30a 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, M. Mansfield, J. Petoskey, M. Phelan, A. Voice. K. Tierney advised she was unable to attend.
2. Agenda Adoption.
3. Approval of Minutes of June 23, 2006 teleconference (scheduled teleconference of July 28 was cancelled due to S. Gaskell's unavailability).
4. Reports
 - a. Child support, custody & guardianship issues

1. On June 26, 2006, the AIL Committee review comments responding to the Michigan IV-D Action Transmittal distributed at the May 9 Tribal Meeting hosted by DHS were mailed to Marilyn F. Stephen, Director, Michigan Office of Child Support. All AIL committee members were send a copy via email and regular U.S. mail. Special thanks to SBM staff, in particular Susan McMann, for the assistance and support provided in coordinating the mailing. In a July 27, 2006 letter, Director Stephen responded to the Committee comments. A copy of the DHS letter was distributed to all AIL Committee members for review/comment during today's meeting. Discussion of the July 27, 2006 letter included an observation that there may be a misunderstanding as to the applicability of the Full Faith and Credit for Child Support Orders Act, 25 U.S.C. § 1738B, ("FFCCSOA") to child support orders, including income withholding orders. Because the FFCCSOA applies to such orders, MCR 2.615 (a rule of comity) does not. See 2.615(D) ("This rule does not apply to judgments or orders that federal law requires be given full faith and credit."). Some tribes, such as the Pokagon Band of Potawatomi Indians and the Little Traverse Bay Bands of Odawa Indians, have both a Court Rule of comity governing enforcement of foreign judgments, and an administrative order governing enforcement of foreign judgments that federal law requires be given full faith and credit. It is important to understand when rules of comity such as MCR 2.615 are in use, versus full faith and credit laws. In certain subject matters areas such as the FFCCSOA (child support orders) and the Violence Against Women Act (protection orders), federal law expressly includes Indian tribes within the full faith and credit mandate. Unlike full faith and credit, comity is a discretionary mechanism that prescribes enforcement of foreign orders only in certain circumstances as

determined by the controlling law of a tribe or state. Training and clear guidelines will be helpful in achieving a better understanding of the discretionary rules of comity versus the mandates of federal full faith and credit.

2. A. Voice has obtained copies of the tribal ordinances on file with the State Court Administrator's Office ("SCAO") of all Michigan federally recognized tribes that have transmitted, pursuant to MCR 2.615(B)(2), the ordinance, court rule, or other tribal measure that obligates the tribal court to enforce the judgment of the state court. The SCAO will be updating its records after communicating with each tribe. A. Voice has also been exploring with leaders of the SCAO and Michigan Child Welfare Services opportunities for further collaboration with tribes in areas such as child support and child welfare programs. The Committee supports these collaborations and will serve as a resource to further the efforts.

3. S. Gaskell obtained a copy of the Michigan Family Law Benchbook from ICLE staff (Legal Editor Ann Sanderson) as a follow-up to discussions with Mary Hinicker. S. Gaskell is seeking assistance from Committee members to review the benchbook and develop recommendations to incorporate where appropriate reference to tribal law and procedures. These recommendations will then be passed on to M. Hinicker and A. Sanderson, who were very receptive to our input. A subcommittee is forming to undertake this task (S. Gaskell, J. Kinney).

4. 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.

b. 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. Follow-up efforts by S. Gaskell w/the Michigan Indian Judicial Institute about training events and judges conferences MIJI organizes are planned to explore the possibility of arranging such a meeting in conjunction with the MIJI. The MIJI is reorganizing its leadership and further follow-up will occur when the process is complete.

c. Michigan Court Rule 3.980, involving transfers of Indian children to tribal court in situations involving protective proceedings. See 4/28/06 memo sent by J. Keedy of Michigan Indian Legal Services to all members for review. The subcommittee formed to work on this issue (S. Gaskell, J. Keedy, S. Johnson, E. Ollegard) will continue 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. The amendment will focus on the suggestions contained in the 4/28/06 memo, re: standard for emergency removal of an Indian child not living on a reservation, to make it consistent with removal

standards contained in the ICWA. There is a need to include a clear guidance on the meaning of “emergency.” Any interested persons are encouraged to work with this subcommittee. S. Johnson will send subcommittee members via email .pdf attachment research materials he has gathered. The goal is to present for a vote at an upcoming meeting a proposed amended rule.

d. The Committee will author a letter to tribal leaders asking if there are areas they would like addressed within the jurisdiction of the Committee. M. Phelan and M. Mansfield will work with S. Gaskell in the drafting of the letter.

5. Other – Future meetings/teleconferences will be scheduled when a roster of AIL Committee members is issued by the SBM for the 2006-2007 term. To participate in teleconferences, dial 1.800.270.1153 & when prompted enter 134891#. The September 2006 meeting will occur at the SBM Annual Meeting at the Ypsilanti Marriott at Eagle Crest on September 14 from 10a-12p. Teleconferencing arrangements will be made for those that cannot travel to the meeting location. If you were unable to participate & would like your opinions heard, please contact Sheila at gaskellk@msn.com or 248.421.4691.

6. Adjournment.