

American Indian Law Committee
Minutes of December 14, 2007 9:30a Teleconference

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. Present: S. Gaskell (Chair), C. Crowley, D. Duncan, W. Gregory, S. Johnson, J. Kinney, M. Petoskey, J. Wernet
2. Agenda Adoption
3. Approval of Minutes of Oct. 26, 2007 meeting
4. Reports

a. Child support, custody & guardianship issues – No new reporting on this 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 Benchbook. The Benchbook was provided by ICLE staff (Legal Editor Ann Sanderson), and a subcommittee formed to review the Benchbook and prepare recommendations on the incorporation of references to Indian law and procedures for presentation to ICLE. The Committee has been assisted by MSU's College of Law Indigenous Law & Policy Center and UDM's Indian Law Center. Handouts of draft comments were provided to Committee members, and all were encouraged to review the Benchbook and the suggested revisions and coordinate comments with S. Gaskell.

b. Tribal/State/Federal Judges Forum: The Committee seeks to assist in the planning of a meeting involving Tribal, State, and Federal Judges. Follow-up efforts with the MIJA, the MJI, and the Michigan Supreme Court about training events and judges conferences have occurred to explore the possibility of arranging such a meeting. Committee discussion included recognition that ideally such a meeting should occur with a specific objective or purpose in addition to providing an opportunity to explore cross-jurisdictional issues, further positive relations, and provide state and federal judges with information about tribal courts

c. Michigan Court Rule 3.980 involves transfers of Indian children to tribal court in protective proceedings. See 4/28/06 memo sent by J. Keedy of Michigan Indian Legal Services to Committee members. 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 focus would be on recommendations 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. Clear guidance on the meaning of "emergency" will be included. Efforts to locate materials from an amendment proposed in 2002

are underway. No new reporting this month.

d. HB 4650, Uniform Foreign-Country Money Judgment Recognition Act - Legislative analysis and text of the bill is available online at <http://legislative.mi.gov/doc.aspx?2007-HB-4650> . The Committee has discussed the issued with members of the SBM American Indian Law Section and the Michigan Indian Judicial Association. There is general agreement that an amendment could avoid 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. Kieran Marion of the Uniform Law Commission has been contacted by Committee members and encouraged those interested persons / groups to work with his office on presenting a proposed amendment in this regard. Several Committee members participated in the MIJA's October 29 meeting, where a discussion of HB 4650 occurred.

5. Other

a. Michigan Supreme Court Justice Michael Cavanagh and 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. Elections at the October 2007 MIJA meeting resulted in a change of leadership. The incoming MIJA President is Wenona T. Singel, the Chief Appellate Judge for the Little Traverse Bay Bands of Odawa Indians.

b. 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.

c. MCL 551.7 (Persons authorized to solemnize marriage) – Committee discussed statute and absence of tribal chairs and judges from list of persons authorized to solemnize marriage under this state law. Issue was raised after Judge Dakota (Keweenaw Bay Indian Community) shared with a committee member his experience in performing marriage ceremonies under tribal law and then being presented with a circuit court marriage form that he is asked to sign. 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 (as a committee member recalls) 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.

6. Adjournment.