

State Bar of Michigan  
American Indian Law Committee  
Minutes of March 24, 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. Kinney, M. Petoskey, M. Mansfield, J. Davis, P. Shannon, Supreme Court Representative A. Voice; State Bar Liaison Janet Welch, Guest Rob Lemire (C. Tierney advised she was unable to attend due to work-related scheduling conflict).
2. Agenda Adoption
3. Approval of Minutes of Jan. 27, 2006 & Feb. 17, 2006 teleconferences.
4. Reports – Chair S. Gaskell advised that monthly teleconferences have been helpful in keeping Committee on track with identified goals and that continued participation of members is greatly appreciated. Members of the Committee unable to participate in a meeting are sent minutes to keep them informed of the Committee’s action.
  - a. Child support, custody & guardianship issues: these areas were identified for focus by the Committee during the January meeting. 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. The Committee will continue to gather information to further define these issues.

Guest participant Rob Lemire, Hannahville Indian Community Tribal Prosecutor, shared with the Committee some of the issues he has encountered in his work related to cross-jurisdictional enforcement of child custody and child support orders (special thanks to Rob for his participation and the sharing of information). There was general agreement among those that practice in this area that there is a need for further development of procedures to accomplish the FFC objections of existing laws, as well as training for those within the state court system responsible for registering and maintaining tribal court orders pursuant to MCR 2.615, Enforcement of Tribal Judgments. Discussion also included the problem of non-Indian spouses who do not comply with tribal court orders and enforcement tools to better achieve compliance such as contempt powers via tribal court orders/rules of procedure.

The status of implementation of the federal full faith and credit for child support orders in Michigan was discussed. 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). A subcommittee has formed to gather further information about this issue with recommendations to follow as to how the AIL Committee can assist in this area. M. Mansfield will conduct research to determine the status of implementation of section 1738B in Michigan. Other subcommittee participants include: S. Gaskell, D. Duncan and A. Voice. It was recommended that the subcommittee contact John Wernet, Deputy Legal Counsel, Office of the Governor, as a resource to further define this issue and possible solutions to enforcement difficulties. S. Gaskell will follow-up with J. Wernet. To review a short primer on federal and uniform law on interstate enforcement of child support orders, go to [http://profs.lp.findlaw.com/c\\_enforce/index.html](http://profs.lp.findlaw.com/c_enforce/index.html)

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b. Tribal/State/Federal Judges Forum: During the January meeting discussion the possibility of assisting in the planning of a meeting involving Tribal, State, and Federal Judges occurred; 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 recently spoke with Dawn McCarty, Director of the Michigan Judicial Institute, about training events and judges conferences the MJI organizes. S. Gaskell will be in contact with the Michigan Indian Judicial Institute to share this information and further explore the possibility of arranging such a meeting in conjunction with the MJI.

c. Michigan Court Rule 3.980, involving transfers of Indian children to tribal court in situations involving protective proceedings or certain offenses. During the January meeting the Committee considered the possible need to review 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 has written a memo explaining the problem with the Rule and has been working with the Tribal/State Partnership to identify possible solutions. One identified 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 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.

#### 5. Other –

- a. P. Shannon advised the Committee on the status of the pending appeal in *Michigan Educational Association v. Superintendent of Public Instruction, et al.*, Michigan Court of Appeals No. 267714, involving the Charter Schools Act and challenges to the Bay Mills Community College's statewide chartering authority. The lawsuit was filed on February 2, 2005, by the MEA in Ingham County Circuit Court against the Michigan Department of Education; the Superintendent of

Public Instruction; the State Board of Education; Jay B. Rising, Treasurer of the State of Michigan; and the Department of Treasury. In early March 2005, the Coalition of Educational Choice (CEC) was created as a Michigan non-profit corporation and subsequently intervened as a defendant in the lawsuit. The MEA's lawsuit was dismissed by the Circuit Court last December. Visit the Coalition for Educational Choice at [www.cecschools.org](http://www.cecschools.org) [www.cecschools.org](http://www.cecschools.org) to view pleadings in the matter and for further information about the lawsuit.

- b. J. Kinney expressed interest in renewal of his appointment to the Committee, which was welcomed by S. Gaskell, who recommended that he make his interest known to the SBM by contacting Susan McCann.
  - c. Upcoming teleconferences are scheduled for 10:00a on Friday April 28, May 26, June 23, July 28, August 25, September (meeting will be held in conjunction with the annual SBM meeting at day/time to be announced). To participate dial 1.800.270.1153 and when prompted enter 134891#. If you were unable to participate in a teleconference and would like your opinions heard, please contact Sheila at [gaskellk@msn.com](mailto:gaskellk@msn.com) or 248.421.4691.
6. Adjournment.