

American Indian Law Committee  
Minutes of March 23, 2007, 9:30 a.m. 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), W. Brooks, W. Gregory, S. Johnson, M. Petoskey, C. Tierney, J. Wernet; Michigan Supreme Court Representative A. Voice; State Bar Liaison Candace Crowley; guest Kate Fort; Member D. Duncan advised she was unable to attend.
2. Agenda Adoption
3. Approval of Minutes of Jan. 23, 2007 meeting.
4. Reports

a. Child support, custody & guardianship issues -- As part of its ongoing efforts 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) on this initiative. The Committee 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 distributed to Committee members, and a subcommittee has formed to review the benchbook and prepare recommendations on the incorporation of references to Indian law and procedures. These recommendations will be passed on to ICLE. Committee members S. Gaskell, J. Kinney, K. Tierney, M. Petoskey, D. Duncan and W. Brooks are assisting. The Committee has also obtained assistance from MSU's College of Law Indigenous Law & Policy Center and UDM's Indian Law Center on this ongoing project. A subcommittee teleconference was held on Feb. 15, 2007. Suggested benchbook insertions provided by MSU & UDM were distributed via email to subcommittee members Feb. 23, 2007. A subcommittee teleconference was scheduled for March 1, but canceled due to scheduling conflicts. The subcommittee will continue efforts to review the suggestion insertions and prepare recommendations for amendments. A teleconference of the subcommittee will take place on May 1, 2007 at 4p.

b. Tribal/State/Federal Judges Forum: The Committee has identified as one of its goals to assist in the planning of a meeting involving Tribal, State, and Federal Judges to 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 with the MIJA, the MJI, and the Michigan Supreme Court about training events and judges conferences will be

undertaken to explore the possibility of arranging such a meeting. A meeting with Justice Cavanagh and Committee members occurred on March 15, 2007 to explore furthering this initiative as well as identifying areas of focus for the coming months and years as the Committee and the Supreme Court work on maintaining the state court/tribal court relationship. Justice Cavanagh has served as the Supreme Court Liaison, Michigan Indian Tribal Courts/Michigan State Courts since 1990. When new federal judges are appointed in the W.D. of Michigan, there may be an opportunity to further this initiative in coordination with the MIJA, the MJI and the Michigan Supreme Court.

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 all members for review. The subcommittee working on this issue will gather information and make recommendations to the Committee that may include proposing an amendment to MCR 3.980 along with draft language of the rule change proposed. 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. Clear guidance on the meaning of “emergency” will be included. A. Voice advised that she attended the March 16-17, 2007 conference hosted by the Indigenous Law & Policy Center at MSU College of Law entitled, “Indian Child Welfare Act at 30: Facing the Future,” and that she will attempt to gather background information based on information shared at the conference by, among others, Professor VanderVoort from the University of Michigan, to assist the Committee on this initiative. Committee member M. Petoskey, was the keynote speaker at the conference.

## 5. Other

a. The 32<sup>nd</sup> Annual Federal Bar Association Indian Law Conference will be held April 19-20, 2007 in Albuquerque, New Mexico. Many Committee members will be attending, and J. Wernet will participate in one of the panels. The Committee’s April 20 teleconference will be cancelled due to the scheduling conflict.

b. Discussion led by J. Wernet on the Intergovernmental Accord between the Tribal Leaders of the Federally Recognized Indian Tribes in Michigan and the Governor of the State of Michigan to Expand Joint Economic Development Activities. Under the Accord, there is a Tribal-State Economic Forum that meets monthly to *inter alia*, encourage the development of strong working relationships between tribal and state economic development personnel, and organize an annual conference. This Forum is an excellent example of the open communication that exists between the tribal and state governments in Michigan.

c. As a follow-up to discussion at the Committee’s November 2006 teleconference, W. Gregory advised that he continues to work with the Little Traverse Bay Bands of Odawa Indians on a grant-funded project related to the LEIN, finger printing machines, and the sharing of information among tribes. At this time there is no identified role for the Committee on this initiative.

d. Committee member K. Scotta has advised that she is moving out-of-state and resigning from the Committee.

e. Monthly teleconferences to be held on Fridays at 9:30a in 2007 are: April 20 (canceled due to conflict with FBA Indian Law Conference); May 18 and August 17. 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.

f. The Committee's June meeting will take place in conjunction with the SBM Upper Michigan Legal Institute's annual conference – we will meet on Saturday June 9 at 1:30p at the Grand Hotel on Mackinac Island. Separate notice of the meeting will be sent – please plan to attend and RSVP as requested on the meeting notice.

6. Adjournment.