

American Indian Law Committee
Minutes of October 27, 2006 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/Introduction of new and past members. Present: S. Gaskell (Chair), W. Brooks, W. Gregory, J. Wernet, J. Kinney, M. Mansfield, D. Duncan. Members A. Voice, K. Scotta, M. Petoskey, K. Tierney advised they were unable to attend.

2. Agenda Adoption

3. Approval of Minutes of September 14, 2006 meeting.

4. Reports

a. Child support, custody & guardianship issues

1. The Committee continues efforts related to issues of comity versus full faith and credit. In particular, the Full Faith and Credit for Child Support Orders Act, 25 U.S.C. § 1738B (“FFCCSOA”). Because the FFCCSOA applies to child support orders, including income withholding 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.”). In certain subject matters areas such as the FFCCSOA and the Violence Against Women Act (protection orders), federal law expressly includes Indian tribes within the FFC mandate. Unlike FFC, 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 within the bench and bar on the distinction between the discretionary rules of comity versus the mandates of federal FFC laws. The Committee will seek to collaborate with state agencies as well as 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. A meeting of the MIJA is scheduled for November 6, 2006, to be hosted by the Little Traverse Bay Bands Tribal Court. Unfortunately, due to other commitments, S. Gaskell is unable to attend a planning meeting to be held on November 5, 2006, where discussion of agenda items for a future MIJA meeting will occur. S. Gaskell was able to share details of the Committee’s work in this area with MIJA (special thanks to Matthew Fletcher and Wenona Singel) so that the topic could be considered as a future MIJA agenda item. Copies of background materials on this issue will be sent to new Committee members.

2. A. Voice facilitated the Committee’s efforts to obtain copies of the tribal ordinances on file with the State Court Administrator’s Office (“SCAO”) of all 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. Opportunities to work collaboratively with tribal leaders and leaders of the SCAO and Michigan Child Welfare Services in areas such as child support and child welfare programs are being explored -- the Committee supports these collaborations and will serve as a resource to further the efforts. A. Voice advised via email of a new division within the SCAO called Family Services, which was created by combining the former Child Welfare Services and the Friend of the Court Bureau. Staff includes Director Dan Wright, Director Steven Capps, Training and Development Manager Carol Siemon, and Foster Care Review Board Manager James Novell. A future teleconference call may be held with Training & Development Manager Siemon to explore Committee efforts in the areas of child support, custody and guardianship issues.

W. Gregory advised that his past experience with MCR 2.615 has been positive, that the rule has been used to great advantage in areas such as warrants and subpoenas.

3. The Committee 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. Copies of the benchbook were sent to Committee members who have agreed to review the benchbook and assist in drafting recommendations on the incorporation of references to tribal law and procedures. These recommendations will be passed on to M. Hinicker and A. Sanderson, who were very receptive to our input. Committee members S. Gaskell, J. Kinney, K. Tierney, M. Petoskey will be joined by D. Duncan and W. Brooks in this endeavor. The Committee has also requested the assistance of MSU's College of Law Indigenous Law & Policy Center. ICLE advises that there is a 2006 revised version of the Benchbook that will be sent to the Committee so the review process can begin with the most recent version.

4. The subcommittee continues to gather information to further define these issues and possible solutions and welcomes the participation of all interested members.

b. Tribal/State/Federal Judges Forum: The Committee discussed assisting 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 and the MJI about training events and judges conferences will be undertaken to explore the possibility of arranging such a meeting.

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 (S. Gaskell, J. Keedy, S. Johnson, E. Ollegard) 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. Any interested persons are encouraged to work with this subcommittee. S. Johnson will send subcommittee members via email .pdf attachment research materials on the laws of other jurisdictions in this area. The goal is to present for a vote at an upcoming meeting a proposed amended rule. Copies of these materials will be sent to new members. W. Gregory advised that he is scheduled to attend a hearing next week in Lansing concerning a contested transfer to tribal court.

d. The Committee will send a letter to tribal leaders to further positive relationships and seek input on areas they would like addressed within the jurisdiction of the Committee. M. Phelan & M. Mansfield will work with S. Gaskell on drafting with a target date of November 2006 for mailing. M. Mansfield advised that she attended a conference related to tribal economic development and there may be an additional item related to that conference for inclusion in the letter.

W. Gregory advised of two grant projects he is working on related to the LEIN and cross-indexing of tribal and state numbering systems, seeking support for the initiatives. Further details of the grant work will be provided so the Committee can determine what type of support it can provide to the initiatives.

5. Other—next teleconference is scheduled for Dec 1, 2006 at 9:30a. The Committee is exploring potential locations for a future meeting during the 2006-2007 term. Monthly teleconferences to be held on Fridays at 9:30a in 2007 are: January 19, February 23, March 23, April 20, May 18, June 22 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.

6. Adjournment.