

American Indian Law Committee  
Minutes of September 14, 2006 10a Meeting  
State Bar of Michigan Annual Meeting/Ypsilanti Marriott at Eagle Crest

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 -- Present: S. Gaskell (Chair) and member M. Petoskey. A. Voice, J. Keedy, E. Ollgaard, M. Mansfield & K. Tierney advised they were unable to attend.
2. Agenda Adoption
3. Approval of Minutes of Aug. 25, 2006 teleconference; the SBM website may have some of the Committee's past minutes filed under the American Indian Law Section of the website; the Committee will ask that its minutes be moved to the appropriate location.
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 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 within the bench and bar of the discretionary rules of comity versus the mandates of federal full faith and credit. 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 on this initiative.

2. A. Voice has assisted the Committee in obtaining 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.

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 will be 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) are working on this project, and other resources will be explored.

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 Michigan Indian Judicial Association and the Michigan Judicial Institute 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.

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.

5. Other—next teleconference is scheduled for Oct 27, 2006 at 9:30a. The Committee is exploring potential locations for a future meeting during the 2006-2007 term. A schedule of future monthly teleconferences to be held on Fridays at 9:30a will be forthcoming. To participate in teleconferences, 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.