

State Bar of Michigan
American Indian Law Committee
Minutes of May 26, 2006 9:30a 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 S. Johnson, J. Keedy, M. Mansfield, Supreme Court Representative A. Voice; (J. Davis, D. Duncan & J. O'Leary advised they were unable to attend due to work obligations). Welcome to new member Shaun Matthew Johnson of the Lansing office of Dykema Gossett, who was appointed May 4, 2006. It was also noted that the State Bar recently solicited applications for new Committee appointments for the 2006-2007 term. S. Gaskell advised the SBM of J. Wernet's interest in serving on the AIL Committee, her interest in continuing to serve as Chair of the Committee, and J. Kinney's continued interest in serving on the AIL Committee. Although the deadline was May 15, S. Gaskell encouraged any interested persons to notify Susan McMann of the SBM of his/her interest in serving on our Committee.

2. Agenda Adoption.

3. Approval of Minutes of April 28, 2006 teleconference.

4. Reports

a. State Bar of Michigan Leadership Forum, June 9 & 10 – S. Gaskell will attend. S. Gaskell also advised that the 2005-2006 Annual Report of the AIL Law Committee was timely filed with the SBM and can be accessed from the SBM homepage by clicking “Sections” and “Annual Reports.”

b. State Bar of Michigan Directors & Officers Liability insurance coverage renewal inquiry of May 16, 2006 – distributed to all members – negative responses acknowledged and S. Gaskell has responded to the SBM “No to both questions.”

c. State Bar of Michigan May 3, 2006 memo seeking suggestions concerning the need for any uniform state law studies or drafting projects, re: Uniform State Laws. Contact S. Gaskell if you have any suggestions.

d. Child support, custody & guardianship issues: The subcommittee formed to work on these issues (M. Mansfield, S. Gaskell, D. Duncan, A. Voice, J. Kinney, K. Scotta) has been very active since the last meeting. On May 9, 2006, S. Gaskell and M. Mansfield attended a Tribal Meeting hosted by DHS – the agenda and relevant documents were distributed to all members with notice of today's teleconference for review and comment. Special thanks to Gary Goddard, DHS Services Legal Liaison, Paul Cloutier, DHS Native American Affairs Specialist,

for including our members as invitees. The meeting was well attended by representatives of Michigan's tribes, and when minutes are provided to S. Gaskell, she will forward them on to AIL Committee members. Among the many agenda items was a draft memo of instructions to Michigan governmental/judicial agencies to petition tribal courts to enter Michigan child support orders so the tribe will honor an Income Withholding Notice for child support.

- a. DHS is soliciting comments concerning the proposed procedure and copies of the documents were provided to all AIL Committee members via the May 23 email notice of this meeting. The AIL Committee intends to respond with written comments and the input of all members is sought. Those interested in participating please join the subcommittee at its next teleconference (Wed. May 31 at 9:30a – use the same call-in procedures that are used from our monthly meetings). If you cannot join is, please submit via email your written comments to S. Gaskell by May 30.
- b. As discussed during the 5/9 meeting, MCR 2.615 (Enforcement of Tribal Judgments) is implicated by these procedures, and the Committee believes this is an ideal time to propose reciprocal procedures to Michigan tribal governments/judicial agencies to petition state courts to enter Tribal orders. KBIC recently had success with MCR 2.615 working with the 12th Circuit Court.
- c. S. Gaskell will forward to AIL Committee members the most recent list from the State Court Administrator's Office ("SCAO") of all Michigan federally recognized 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. Committee members are asked to review the list for updates and provide them to S. Gaskell by May 30. Efforts are underway to obtain copies of each of the tribal ordinances transmitted to SCAO.
- d. The subcommittee has had further contact with MJI and been referred to ICLE staff (Mary Hinicker) to identify information contained in ICLE drafted bench books that addresses support orders and cross jurisdictional enforcement under MCR 2.615. M. Hinicker was very receptive to our input and follow-up efforts are underway to determine if future amendments to improve procedures in this area can be included in the Michigan Family Law Bench Book and/or the Friend of the Court Domestic Violence Resource Book.
- e. The subcommittee is reviewing is the applicability of the Federal Full Faith & Credit for Child Support Orders Act of 1994, as amended, 28 U.S.C. § 1738B, to tribes. Further research will be conducted on this issue and anyone knowledgeable in this area is asked to contact S. Gaskell. Initial research indicates that the use of the term "Indian Country" under

the definition of “state” in the Act is intended to mean tribe or tribal court. An Action Transmittal from the U.S. DH&HS’s Office of Child Support Enforcement, OCSE-AT-02-03, including information about the Title IV-D program and on the applicability of the FFCCSOA to tribes will be provided to subcommittee members for review by M. Mansfield.

- f. The subcommittee continues to gather information to further define these issues and possible solutions and welcomes the participation of all interested members in this effort.

d. Tribal/State/Federal Judges Forum: The Committee has discussed the possibility of assisting in the planning of a meeting involving Tribal, State, and Federal Judges; the meeting would provide judges with an opportunity to explore cross-jurisdictional issues, and for state and federal Judges to learn about tribal courts. Follow-up efforts by S. Gaskell w/the Michigan Indian Judicial Institute about training events and judges conferences MJI organizes are planned to explore the possibility of arranging such a meeting in conjunction with the MJI.

e. Michigan Court Rule 3.980, involving transfers of Indian children to tribal court in situations involving protective proceedings. Thanks to J. Keedy of Michigan Indian Legal Services for the 4/28/06 memo on this topic, sent to all members for review. The subcommittee formed to work on this issue (S. Gaskell, J. Keedy, S. Johnson, E. Ollegard) continues 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, and welcomes the participation of all interested persons. 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. The need to include a clear guidance on the meaning of “emergency” was discussed. Any interested persons are encouraged to work with this subcommittee. The goal is to present for a vote at the September meeting a proposed amended rule.

5. Other -- Monthly teleconferences will start at 9:30 a.m.–future teleconferences are: June 23, July 28 & August 25. To participate dial 1.800.270.1153 & when prompted enter 134891#. The September meeting will occur at the SBM Annual Conference on Sep. 14 from 10a-12p. If you were unable to participate & would like your opinions heard, please contact Sheila at gaskellk@msn.com or 248.421.4691.

6. Adjournment.