

**APPENDIX I**

**MINUTES OF INDIAN TRIBAL/STATE TRIAL COURT FORUM**

# INDIAN TRIBAL/STATE TRIAL COURT FORUM

APRIL 30, 1992

## MINUTES

### Present:

Chief Justice Michael F. Cavanagh  
Chairperson Hon. Garfield W. Hood  
Vice Chairperson Hon. Michael D. Petoskey  
Hon. Michelle Boyer (for Hon. George Nolan)  
Hon. Michael W. MacDonald  
Hon. Patricia Harris  
Hon. Thomas A. Van Tiem, Sr.  
H. Ted Rubin, National Forum Project Director, Institute for Court  
Management, National Center for State Courts  
William Newhouse, Staff, State Court Administrative Office  
Jack C. Crandall, Co-Project Director, State Court Admin. Office  
James Bransky, Project Consultant

### Guests:

Roger Adams, Michigan Public Radio  
Mitch Irwin  
Aaron A. Payment

Chairperson Hood commenced the meeting by asking each forum member to introduce themselves and provide a brief statement of their interest in the forum project.

Chief Justice Cavanagh provided a special welcome to forum members and guests. The Chief Justice stated the genesis for the project grew out of a conversation he had with Mr. Rubin about two years ago when Mr. Rubin described his current duties at the Institute for Court Management. At that time Mr. Rubin was beginning his consulting work on Indian tribal/state trial court forums in other states. The Chief Justice stated when the opportunity presented itself for Michigan to obtain a grant to conduct similar forums it also created a great opportunity to address tribal and state trial court issues. The Chief Justice emphasized his and State Court Administrator Marilyn K. Hall's support for this historic project and look forward to the results of the meetings.

Chairperson Hood invited H. Ted Rubin to comment on the history of the forums and the expectations for the effort in Michigan. Mr. Rubin stated the forums are a national project of the Conference of Chief Justices guided by a Coordinating Council of thirteen (13) tribal, state, and federal officials and attorneys. The Chairperson of the Coordinating Council is Vernon R. Pearson, Retired Justice, Washington Supreme Court. The Michigan forum will be expected to identify jurisdictional issues and recommend ways to address problems, create an Indian tribal court directory, and develop a list of existing agreements between

tribal courts and state and local governments. Mr. Rubin expressed the importance of open and honest communication between the forum members. He stated an atmosphere of mutual respect for each others court systems is essential to the success of the project. Mr. Rubin outlined the issues discussed at other forums in Washington and Arizona and described the initial forum meeting recently held in South Dakota. The results are to be reported to the Coordinating Council at its November 14, 1992 meeting in Alaska.

Chairperson Hood invited each forum member to state briefly the issues they feel the Forum can effectively address. A summary of their comments follows:

Saginaw Tribe of Chippewa Indians Tribal Judge Patricia Harris stated there is currently a problem with the city attorney in Mt. Pleasant, Michigan, recognizing a state circuit court order giving tribal courts jurisdiction over matters in the portion of the six original townships of the county of Isabella which are in the city. The case is currently on appeal.

Judge Harris also noted problems with repossession of automobiles where the tribal court has authority to repossess, but no authority to order the state to change the title. As a result actions must be commenced in both tribal and state courts.

Judge Harris stated tribal payrolls are immune from state judgments, but comity is available on a case by case basis.

Judge Harris stated fines, costs, and civil judgments issued by tribal courts are likewise not enforceable outside the tribal court's jurisdiction and is done on a case by case basis.

36th District Court Judge Thomas A. Van Tiem, Sr. stated he was not familiar with the details of Indian/state trial court jurisdictional issue, but had a deep interest in the topic and was aware of the problems created when enforcing any foreign judgment in a state trial court.

91st District Court Judge Michael W. MacDonald reviewed United States v Michigan, a case arising in Sault Ste. Marie, Michigan, involving jurisdiction of tribal courts over certain areas within the boundaries of the city. He stated cross deputization agreements between local units of government and the tribe resulted from the decision in that case. He further stated the cross deputization resulted in most jurisdictional questions in criminal cases being resolved. He commented the Michigan State Police are not part of this agreement. He stressed the need to work closely with each other.

Judge MacDonald cited problems with non-Indians failing to appear in tribal courts and the enforcement of civil judgments by both tribal and state courts.

Sault Ste. Marie Tribe of Chippewa Indians Tribal Associate Judge **Michelle Boyer** stated she was glad the forum was created as she had never worked with the state trial court system. She stated her tribal court recognizes state trial court garnishments as foreign judgments.

Judge Boyer cited the lack of a divorce code as being a problem, but the tribal court wants to develop such a code. She cited problems created when there is a mixed marriage and the couple resides in housing on tribal lands.

Judge Boyer stated her tribal court covers Chippewa, Mackinac, Luce, Delta, Alger, Schoolcraft and Marquette Counties.

Grand Traverse Band of Ottawa and Chippewa Indian Tribal Judge **Michael D. Petoskey** commented that few understand there are 61,000 Indians in Michigan and as such state and tribal courts should cooperate and share resources. He stated his band was first recognized in 1988. Judge Petoskey stated tribal courts lack infrastructure in terms of codes, rules and statutes. Judge Petoskey further stated his caseload consists primarily of criminal cases involving tribal members relating to treaty ceded waters. He stated he also hears some domestic relations cases and a few child abuse and neglect cases.

Judge Petoskey suggested an overview of tribal court systems in Michigan be presented at the next meeting.

Judge Petoskey outlined issues he felt faced the tribal courts including comparable wage for jobs, upgrading of job and professional skills, new judges training, state bar tribal court directory, certification of enforcement officers, having tribal judges listed in statutes as being able to marry people, and points added to drivers license records for persons found responsible for motor vehicle violations in tribal courts.

Judge Petoskey further stated the Tribal Judges Association members should meet to be advised of the forum and its purpose so their input could be fully considered throughout the forum period.

12th Circuit Court Judge and Chairperson **Garfield W. Hood** stated he considered one important accomplishment could be a court rule which requires state and tribal courts to recognize each others judgments.

Judge Hood also indicated the forum would also have to honestly face the issue of state trial court concerns for due process in the tribal courts. He felt the forum could be a foundation for eliminating some of the distrust between the two

systems. Judge Hood stated that his experience reflected that inter-governmental agreements were often perceived by tribes as diminishing their sovereignty. Judge Hood emphasized the necessity of respect for each others court systems.

**Consultant Jim Bransky** stated court rules could be developed through continued tribal and state court meetings. He indicated it was important for state and tribal courts to consider each other equals even if they agree or disagree on some issues. Mr. Bransky related there are limited resources available to tribal courts to carry out their responsibilities. He stated full faith and credit was a goal to work toward, but a major problem is determining the correct jurisdiction.

**Chairperson Hood** requested the forum to identify the areas they felt were the most important to address. The areas the forum focused on are as follows:

1. Full faith and credit/comity.
2. Institutionalizing the relationship between tribal and state trial courts.
3. Establishing a standing committee on tribal and state trial court relations.
4. Encouraging Michigan's five law schools to teach Indian tribal law.
5. Compile list of inter-governmental agreements.
6. Develop tribal court directory.

The next two forum meeting dates were established -- June 12, 1992 in Leelanau County at a tribal facility to be designated by **Judge Michael Petoskey**. **Judge Petoskey will invite local tribal members and Judge Hood will invite area state trial court judges. Jim Bransky will develop concrete proposals for discussion and an agenda for the next meeting.** The meeting will commence at 9:00 a.m.

August 21, 1992 the Forum will meet at a tribal facility to be designated by **Sault Ste. Marie Tribal Associate Judge Michelle Boyer**. The agenda for this meeting will be developed by **Mr. Bransky** based on the results of the June 12 meeting. Tribal officials and area state trial court judges will be invited to attend.

Notices for the next two meetings will be mailed by the State Court Administrative Office upon receipt of location maps from the respective hosts and the agenda prepared by the Project Consultant.

## FORUM MEMBERS

### Trial Courts

Hon. Garfield W. Hood  
Chief Judge  
12th Judicial Circuit  
Courthouse  
401 E. Houghton  
Houghton, MI 49931  
TX: (906) 482-5420

Hon. William T. Ervin  
Chief Judge  
Isabella County Probate Court  
County Building  
200 N. Main Street  
Mt. Pleasant, MI 48858  
TX: (517) 772-0911

Hon. Michael W. MacDonald  
Chief Judge  
91st District Court  
City-County Building  
325 Court Street  
Sault Ste. Marie, MI 49783  
TX: (906) 635-6323

Hon. Thomas A. Van Tiem, Sr.  
36th District Court  
Madison Center, Room 3068  
421 Madison  
Detroit, MI 48226  
TX: (313) 965-8741

### Project Leaders

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Regional Court Administrator  
State Court Administrative Office  
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Ms. Kathryn Tierney, Counsel  
Bay Mills Indian Community  
Route 1  
Brimley, MI 49715  
TX: (906) 248-3241  
FAX: (906) 248-3283

### Tribal Courts

Hon. George Nolan  
Chief Judge, Tribal Court  
Sault Ste. Marie Tribe of  
Chippewa Indians  
206 Greenough Street  
Sault Ste. Marie, MI 49783  
TX: (906) 635-6050

Hon. Patricia Harris  
Tribal Judge  
Saginaw Chippewa Tribe  
215 Saginaw Street  
P. O. Box 26  
St. Louis, MI 48880-0026  
TX: (517) 681-3025

Hon. Michael D. Petoskey  
Tribal Judge  
Grand Traverse Band of  
Ottawa and Chippewa Indians  
Northwestern Michigan College  
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### Legal Consultant

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FAX: (616) 947-3956

### NCSA Consultant

Mr. H. Ted Rubin  
Senior Staff Attorney  
Institute for Court Management of  
National Center for State Courts  
1331 Seventeenth St., Ste. 402  
Denver, CO 80202-1554  
TX: (303) 293-3063



# INDIAN TRIBAL/STATE TRIAL COURT FORUM

## MINUTES

JUNE 12, 1992

### Present:

**Chairperson Hon. Garfield W. Hood**  
Vice Chairperson Hon. Michael D. Petoskey  
Hon. Michelle Boyer  
Hon. Patricia Harris  
Hon. Thomas A Van Tiem, Sr.  
Hon. William T. Ervin  
Justice James H. Brickley  
William H. Newhouse, State Court Administrative Office  
Kathryn L. Tierney, Co-Project Leader  
Jack C. Crandall, Co-Project Leader

### Absent:

Hon. Michael W. McDonald  
Hon. George Nolan

### Guest:

Approximately thirty people attended the forum to observe or testify. Those who signed the register are listed in Attachment I to the minutes.

Vice Chair Petoskey welcomed the Forum members and guests to the Grand Traverse Band Governmental Center. He introduced Lewis Sawaquat, Cultural Traditionalist Coordinator for the Grand Traverse Band of Ottawa and Chippewa Indians. Mr. Sawaquat conducted a ceremony using an Indian pipe and smoke. He explained the purpose of the ceremony as he proceeded. Mr. Sawaquat explained his position with the tribe is to bring tradition and culture back into focus.

Mr. Newhouse read the minutes of the April 30, 1992 meeting which were then approved by the Forum.

At the request of Judge Hood, Judge Petoskey reviewed the results of the meeting the Michigan tribal judges held to discuss the forum and its purpose. He explained that he reported not all tribal judges and state court judges could be members of the forum because of grant limitations. The forum judges present at the meeting had invited participation and input by all tribal court judges. He stated there was a general consensus the forum project was worthwhile and there was much optimism for success. The tribal court judges also discussed a National Center for State Courts survey of tribal courts regarding the structure and procedures followed in each. A sample of the survey was distributed to forum members. Another



important element of the meeting was the suggestion the tribal judges should hold regular meetings to keep dialogue open. Consultant Jim Bransky reviewed how he was collecting information from each court on cases handled, the need for a handbook, getting a tribal court directory in the state bar journal, and the expression by the state law library of interest in being a central repository.

Chairperson Hood invited comment for the public regarding the forum. Persons commented as follows:

James Jannetta, Legislative Coordinator for the Grand Assembly reported:

- There is a draft bill in the legislature for law enforcement certification for tribal police. It probably will not move this session, but would ease some cross deputization problems.
- Dialogue with Michigan State Police regarding cross deputization and jurisdictional issues is ongoing.
- The Michigan Task Force on Native Americans recommended the Michigan Indian Preservation Act which is in draft bill form. Director of DSS supports its introduction. The draft bill is in fiscal analysis and this is a cause for concern because the lack of state money could hamper its introduction and/or adoption.
- Full faith and credit should be a top priority of the forum.

Chairperson Hood suggested we should delay further public comment until Consultant Jim Bransky's memo of May 1, 1992 "Priorities Memo" had been read for the benefit of those present. Memo was read.

Mary Gibson, Director of Social Services, Leelanau County stated:

- Her office is generally pleased with the relationship between the tribe and the department.
- Major concern is the attorney general's statement (not opinion) that tribal courts cannot commit children to department. This eliminates the possibility of any state ward chargebacks. She stated DSS is working on amendments to correct the problems.

There was general discussion following Ms. Gibson's comment regarding the reasons for the problem. Judge Deegan and Judge Ervin indicated there was concern on the part of county commissioners who must appropriate child care funds, but then have no control over who charges costs against the fund. Jim Jannetta pointed out the draft bill he discussed would address this issue.

Joseph O'Leary, Keweenaw Bay Indian Tribal Counsel stated the forum should focus on:

- Recognition of each court's judgments (child support when payor moves off tribal land).
- State and tribal court judges attending each others training programs.

Jim Carr, Leelanau County Undersheriff stated:

- To be successful all cooperation between other units of government and the tribal government must be on the grass roots level. GTB and Leelanau have mutual aid agreement, are involved in cross training and observation procedures.

Chairperson Hood introduced Justice James H. Brickley. Justice Brickley stated he was present to provide support for the project and briefly described the Michigan Supreme Court's role in administering the state judiciary.

Chairperson Hood stated that since full faith and credit would be a major issue he would like the forum to hear from Wisconsin state and tribal court judges about their respective experiences. The forum membership agreed it would invite Hon. James B. Mohr, Vilas County Circuit Court, and Hon. Robert Kitticon, Menominee Tribal Court, to the August 21, 1992 meeting of the Forum in Sault Ste. Marie, Michigan.

Within the broad scope of Mr. Bransky's previously read paper Chairperson Hood asked forum members, staff and other attendees to provide brief comments on what problems they were most affected by in their particular area and how they might be addressed. Comments were as follows:

- Judge Harris would like to see tribal court warrants for people not on the reservation honored. Tribal courts recognize state court warrants, state courts do not honor tribal court warrants.

- Jim Jannetta stated there were a cluster of issues around subject matter jurisdiction which cannot be waived--consideration of PL 280 giving state jurisdiction if state and tribes agree; jurisdiction over civil matters occurring on tribal lands; jurisdiction over non-Indians in criminal matters; compulsory attendance at tribal court hearings.
- Kathryn Tierney stated mental commitments for acts both on and off tribal lands. Supreme Court should sponsor regular training on tribal law with continuing legal education credits. There should be no delay waiting for law schools to develop courses.

**During the lunch break Judge Petoskey took Forum members on a tour of the facilities of the Grand Traverse Band including the Governmental Center, the Child Care Center and the Fisheries Enforcement and Research Center.**

#### Deliberation on Issues

In the afternoon session the members agreed the next meeting would focus on development of recommendations that do not exceed the authority or direction originally designated for the forum. Goals discussed were:

- Institutionalizing the relationship between state and tribal courts.
- Recommending some mechanism for full faith and credit.
- Exploring ways to provide same educational opportunities for tribal and state court judges and their respective staff.
- Recommending a procedure to have tribal court judgments recognized by state agencies for reporting purposes, i.e., drivers records, marriage, birth, death and divorce records.
- Consideration of the issue of extradition.

Chairperson Hood requested Jim Bransky and Kathryn Tierney to outline an action plan for the next meeting and begin drafting parts of a report which might be possible based on information gathered to date. Work will also continue on the completion of a Tribal Court Handbook, State Bar Indian Tribal Court Directory and gathering the remaining intergovernmental agreements. Chairperson Hood also requested Jack Crandall and Bill Newhouse to bring an outline of services the State Court Administrative Office provides to state trial courts to the next meeting.

**The next meeting of the Forum is scheduled for 9:00 a.m., August 21, 1992 at the Sault Ste. Marie Tribe of Chippewa Indians' facilities.**

## FORUM GUESTS

JUNE 12, 1992

Joseph P. O'Leary

Jim Carr

Bill Gregory

Joe Deegan

Mary Gibson

Gary Aschim

Jim Jannetta

Dennis L. Habedank

Joseph S. Chambers

Lori E. Gilbert

Mary Ann Antoine

Charles DeVerney

Glenn Shiew

Chuck Stewart

Jo Jo McSawby

Rick McSawby

Melanie Stanton

Lynda Parrish

Linda Woods

Geri Boldery

Gilda Allen

Counsel, Keweenaw Bay Indians

Undersheriff, Leelanau County

Grand Traverse Band

Leelanau Probate Judge

Leelanau County DSS

Leelanau County DSS

Sault Ste. Marie Tribe of Chippewa Indians

Grand Traverse Band Law Enforcement

Grand Traverse Band Law Enforcement

Court Clerk - Grand Traverse Band

Court Program Director - Grand Traverse Band

Court Clerk - Grand Traverse Band

Adult Probation Officer - Grand Traverse Band

Juvenile Justice Officer - Grand Traverse Band

Justice Division Manager - Grand Traverse Band

Grand Traverse Band Law Enforcement

J.D.

Bay Mills Tribal Judge

Grand Traverse Band S.A.S. Program Director

Grand Traverse Band Family Violence

Grand Traverse Band Health Educator



**INDIAN TRIBAL COURT/STATE TRIAL COURT FORUM  
MINUTES  
AUGUST 21, 1992  
SAULT STE. MARIE, MICHIGAN**

**Present:**

Chairperson Hon. Garfield Hood, 12th Judicial Circuit  
Vice Chairperson Hon. Michael D. Petoskey, GTB Chippewa and Ottawa Indians  
Hon. Michelle Boyer, Sault Ste. Marie Tribe of Chippewa Indians  
Hon. Thomas A. Van Tiem, Sr., 36th District Court  
Hon. William T. Ervin, Isabella County Probate Court  
Hon. Michael W. MacDonald, 91st District Court

**Absent:**

Hon. George Nolan, Sault Ste. Marie Tribe of Chippewa Indians

**Staff:**

William H. Newhouse, SCAO  
Helen Cook, Region IV, SCAO  
Jack C. Crandall, SCAO, Co-Project Leader  
Kathryn L. Tierney, Bay Mills Tribal Attorney, Co-Project Leader  
James Bransky, Project Consultant

**Guests:**

Approximately fifteen (15) guests attended the forum to observe and/or testify. Those who signed the register are reflected as listed in Attachment 1 to the minutes.

**Meeting:**

Hon. Michelle Boyer welcomed forum members and guests to the Sault Ste. Marie Tribe of Chippewa Indians Reservation.

Chairperson Hood introduced members of the forum. He announced the resignation of Hon. Patricia Harris from the forum. Tribal Court Judge Bradley Dakota of the Keweenaw Bay Indian Community will be recommended for appointment to the vacancy created by Judge Harris' resignation.

Mr. Newhouse read the minutes of the June 12, 1992 meeting which were unanimously approved by the forum.

Consultant Bransky read a memo entitled: "Development and Implementation of Action Plan". The memo included his contacts and activities to date.

James Jannetta, Tribal Attorney and Legislative Coordinator for the Inter Tribal Council provided a legislative update:

The Michigan Indian Family Preservation Act (MIFPA) is pending in DSS Executive Committee. Last step before introduction. Will have impact on probate and tribal courts.

The text of the Law Enforcement Certification bill has been agreed upon and will be introduced soon. It could be enacted this year as there is no apparent opposition.

**Public Comment:**

Sylvia Evans, MDSS stated she is working on the MIFPA with the Governor's office. A cost analysis has been completed and it looks favorable. She added no new costs have been built in and she hoped the forum would support MIFPA.

Robin Saxton, Michigan State Police stated they have a "working agreement" for tribal lands, but would like a more formal agreement.

Judge Lowell Ulrich, Chief Judge, Chippewa County Probate Court, questioned how the state can pick up additional State Ward Chargebacks (SWCB) through MIFPA. Jannetta stated placement cost was offset in fiscal analysis.

Judge Ulrich cautioned that Families First is not a panacea for the problem of placement costs. Jannetta explained that delinquency petitions are not addressed by this, only proceedings defined in the Indian Child Welfare Act (ICWA). Sylvia Evans stated the goal is to reduce placements and focus is on child welfare cases.

Richard Hoekstra, MDSS, stated MIFPA would improve working relations between tribal courts and probate courts and the fiscal analysis of the bill will receive a great deal of DSS scrutiny.

**Wisconsin Circuit/Tribal Court Judges:**

The judges were unable to attend, however their comments on full faith and credit and other issues were distributed to forum members and is Attachment 2.

A discussion regarding how to best address full faith and credit issues revolved around legislation or court rules. It was concluded that full faith and credit was procedural and might best be addressed through a court rule.

There was discussion regarding paternity orders and jurisdiction. Comments were made that state court action should not be required and that tribal court orders establishing paternity should not be assumed to be faulty.

Two items, an article from the Detroit Legal News and S.B. 1101 regarding full faith and credit were distributed to the members.

### **Full Faith and Credit Discussion**

Judge MacDonald stated care should be taken not to reinvent the wheel of full faith and credit. Chairperson Hood stated he would like to focus on the best way to accomplish. Jannetta recommended court rule because subject is procedural. Court rule should be adopted by both tribal courts and Supreme Court with reciprocity. Jim Bransky will draft a court rule. Discussion of compliance and who would oversee.

### **Institutionalizing Relationships**

Discussion on draft of handbook of tribal courts. Discussion on best way to supply information to State Bar Journal and necessity for annual updates.

Discussion regarding Michigan Tribal Judges Association compiling handbook information. An article will appear in the May 1993 issue of the State Bar Journal regarding the work of the forum.

Consultant Bransky is still collecting information to be placed in the State Law Library.

Consultant Bransky has contacted the Director of the State Bar regarding having an Indian Law Section of the State Bar. A minimum number of fifty (50) members is required for such a section.

### **SPECIFIC RECOMMENDATIONS OF THE FORUM:**

By consensus and without objection the following recommendation will be formally voted upon at the next forum meeting:

1. In order to foster continuing relations between the state trial courts and state tribal courts the Chief Justice should appoint a permanent committee on State Trial Court/Indian Tribal Court relations.



2. Interested attorneys and judges should pursue the creation of a state bar section on Indian law.
3. A court rule should be adopted by both tribal courts and the Michigan Supreme Court implementing full faith and credit.
4. Recommend making state judicial education programs available to tribal court judges.
5. Recommend administrative services available to state trial courts be made available to tribal courts.

**The final forum meeting is scheduled for October 23, 1992 in Lansing, Michigan. Consultant James Bransky will circulate a draft of the final report by October 1, 1992 so members can comment PRIOR to the final meeting. State Court Administrative Office will arrange the meeting place and accommodations and advise under separate cover.**

Adjourned.

ATTACHMENT "1"

INDIAN TRIBAL COURT/STATE TRIAL COURT FORUM

AUGUST 21, 1992

FORUM GUESTS:

1. Julius Eggbert Sault Ste. Marie
2. Hon. Bradley Dakota Tribal Court Judge, Keweenaw Bay Indian Comm.
3. Wes Martin Hannahville Tribal Court
4. Carol S. Andray Chippewa-Ottawa Conservation Court
5. Lt. Charles Ludwick MSP Post Commander (Sault Ste. Marie)
6. Edward W. Berkompas Chippewa County Sheriff
7. Joseph P. O'Leary Tribal Atty., Keweenaw Bay Indian Comm.
8. Robert Muldare Michigan State Police
9. Hon. Douglas B. Gurski Chief Judge, Saginaw Chippewa Tribe
10. Brian E. Ray Michigan State Police
11. Lowell R. Ulrich Chippewa County Probate Court
12. Dawn Duncan Tribal Atty., Hannahville Indian Community
13. Julie A. Timmer Bay Mills Indian Community
14. Sylvia Evans Acting Director, Native American Affairs, DSS
15. Richard Hoestra Michigan Dept. of Social Services
16. James Jannetta Tribal Atty., Sault Ste. Marie Tribe of Chippewa Indians
17. Monica M. Lubiarz Prosecuting Atty., Sault Ste. Marie Tribe of Chippewa Indians



**INDIAN/TRIBAL COURT FORUM**

**MINUTES**

**OCTOBER 23, 1992**

**PRESENT:**

Chairperson Hon. Garfield W. Hood  
Vice Chairperson Hon. Michael D. Petoskey  
Hon. Michelle Boyer  
Hon. Bradley Dakota  
Hon. Thomas A. Van Tiem, Sr.  
Hon. William T. Ervin  
James A. Bransky, Consultant

**ABSENT:**

Hon. Michael W. MacDonald

**STAFF:**

William H. Newhouse, SCAO Staff  
Kathryn L. Tierney, Co-Project Leader  
Jack C. Crandall, Co-Project Leader  
Chief Justice Michael F. Cavanagh  
State Court Administrator Marilyn K. Hall  
Deputy State Court Administrator John D. Ferry, Jr.

**GUESTS:**

J. Bruce Kilmer, Regional Administrator, SCAO  
Kevin J. Bowling, Regional Administrator, SCAO  
Linda Parrish, Tribal Judge, Bay Mills  
Joseph P. O'Leary, Tribal Attorney, Keweenaw Bay  
Patricia Cummings, State Court Administrative Office

Following introductions Chairperson Hood requested the reading of the minutes of the August 21, 1992 meeting. The minutes were unanimously approved as read.

Chief Justice Cavanagh stated he wished to thank the forum members for their participation in this historic event in Michigan. He stated the Supreme Court will give consideration to the forum's recommendations and indicated a willingness to consider establishing some mechanism to continue the work started by the forum.

State Court Administrator Hall stated she was impressed with the accomplishments of the forum given the limited time and resources available and stated it reflected the dedication of the members. She expressed the willingness of the SCAO to work toward implementing the forum's recommendations and together with the tribes to seek further funding from the National Center for State Courts to carry on follow-up activities.

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Judge Garfield Hood stated the scope of today's meeting would be to review the second draft of the report and obtain final approval by the forum members. He stated he would also like to see the forum discuss implementation of the recommendations after this final meeting.

Review of the final report was led by Consultant James Bransky. The report is divided into parts. Discussion of Part A of the draft court rule led to changes in the language.

Motion by Judge Van Tiem and supported by Judge Ervin to amend the proposed rule to limit its applicability to federally recognized Indian tribes in Michigan. Discussion. Motion defeated. By consensus the draft report will be amended to read "federally recognized Indian tribes".

It was recognized by the forum the state trial courts will use its regular process of recommending the final form of any rule. That will require a review by rules committees at each court level before submission to the Supreme Court for possible publication. It is hoped that forum members will participate in presenting the rule to their respective rules committee. Judge Petoskey stated the tribal judges have rule making authority for their courts.

The forum adopted the draft of Part A as amended.

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Discussion of Part B regarding legislative efforts included the hope that some committee could be established to carry on the work of the forum where legislation was required. The forum adopted the draft of Part B with minor amendments relating to style.

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Discussion of Part C regarding institutionalization of relationships. A great deal of discussion took place which again focused on continuing the work of the forum. Judge Petoskey volunteered to continue as liaison for the tribes subject to their approval if there was a need to request further National Center for State Court grants. The SCAO has agreed to meet informally with tribal judges to discuss its services and available resources. Tribal judges continued to express interest in training and manuals and to be willing to pay for them. Judge Petoskey agreed to formulate a letter for his and the Chairperson's signature expressing the appreciation to the State Bar for its interest in the topic of Indian law. The forum adopted Part C with minor amendments relating to style and editing.

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Discussion of the conclusion section resulted in including a thank you to the State Court Administrator and the Project Consultant. The conclusion section was adopted with minor changes in style and editing.

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Consultant James Bransky distributed a draft of the tribal court directory which will be attached as an appendix to the report. The directory was accepted without comment.

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It was agreed the forum members would receive the final copy of the report prior to final distribution. Chairperson Hood will be presenting the results of the forum at a November meeting in Ketchikan, Alaska. Vice Chair Petoskey and Chairperson Hood will present the report to the Tribal Legislative Forum sponsored by the Tribal Grand Assembly on December 2, 1992 in Lansing. Consultant Bransky agreed to attempt to get the final draft completed in time for Chairperson Hood to take a copy to Alaska. Chairperson Hood thanked all the forum members and respective staff who made the work of the forum so productive. Forum members especially expressed thanks to William Newhouse and Kathryn Tierney. Forum adjourned.



ATTACHMENT "2"

# Menominee Indian Tribe of Wisconsin



P. O. Box 429  
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## MENOMINEE TRIBAL COURTS

### FULL FAITH & CREDIT

#### OUTLINE

#### A. Article 4, section 1 - U.S. Constitution

1. Legal requirement to grant full faith and credit subject to some limited exceptions. (state courts).
2. Must be a final judgment, rendered by a competent court w/ due process accorded.

#### B. Alternatives to Full Faith and Credit.

1. County. Is discretionary on the part of each Court and made on case-by-case basis. Depends on the flexibility and sensitivity of the individual Judge.
2. State Legislation. Wisconsin and Washington have statutes providing for enforcement of Tribal judgments and orders. There is some review same as county.
3. Tribal - State Agreements. If no statutory or constitutional barrier may enter into such an agreement. Advantage is that it could clarify the problems and address the scope and degree of mutuality existing between the respective governments.



## Full Faith & Credit - Outline

Page (2)

C. In practice, all the alternatives are generally one-sided in favor of tribal recognition of state law and judgments, rather than being truly mutual agreements.

e.g. Reluctance of counties to honor Tribal court orders to release records in child custody/abuse matters.

State court Judges being skeptical of tribal court judgments and orders. Treated as inferior courts.

### D. Need For Court of Record?

1. This varies from state to state. Generally to qualify as court of record, court must record all acts and proceedings, have contempt power, and maybe, appellate review. This is not required under federal law. See 28 U.S.C, section 1738 re: Authentication and proof of judicial acts, records and proceedings.

### E. Is Full Faith and Credit Desirable?

1. There has been some concern by Tribes in terms of maintaining discretion to protect prerogatives. Will reciprocity hinder tribal sovereignty.

2. May tribes thinking in terms of agreements rather than full faith and credit.