

Michigan Indian Legal Services, Inc.

MILS REVIEW

Providing civil legal services to low-income Indian individuals and tribes to further self-sufficiency, overcome discrimination, assist tribal governments and preserve Indian families.

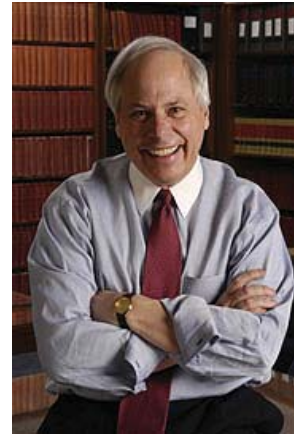
MILS ATTORNEYS SUCCESSFULLY LITIGATE ICWA CLAIMS

By John R. Runyan, Jr., MILS Board Member, Acting President/Vice President

The Michigan Court of Appeals recently issued two decisions in cases decided under the Indian Child Welfare Act (ICWA), 25 USC §1901 *et seq.*, handled by MILS attorneys Tom Myers and Cami Fraser.

On September 11, 2008, the Court issued its *per curiam* opinion in Stephanie Empson-Laviolette v. Nathaniel Ryan Crago, et al., the case handled by Tom Myers. In one of the most significant decisions rendered by a Michigan appellate court under ICWA, the Court of Appeals vacated a trial court's refusal to return an Indian child to the custody of her mother, an enrolled member of the Pokagon Band of Potawatomi Indians. Although the child's legal guardians argued that his mother had consented to their guardianship, the Court of Appeals concluded that even if this were the case, the mother retained the right under §1913(b) of ICWA to withdraw her consent to the guardianship and have the child returned to her custody. Thus, the Court of Appeals concluded that the trial court had erred in finding that ICWA did not apply because the guardianship proceedings were voluntary; and further, that because ICWA preempted the stay imposed pursuant to state law in the guardianship proceedings, the trial court should have terminated the guardianship order and returned the child to his mother's custody as required by §1913(b) of ICWA.

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MILS HELPS A GRANDMOTHER GET ADOPTION SUBSIDY

By Tom Myers, MILS Staff Attorney

A person planning to adopt a special needs child needs to apply for adoption assistance before the adoption. But Mary Smith didn't know about this rule before she adopted her grandson James, and the agency didn't tell her (fictional names).

In June 2005, Minnesota terminated the parental rights of Mary's daughter, and placed James with Mary, who lives in Michigan. Mary adopted James in a tribal court in Michigan in February 2006. James was 16 months old and experienced ear and breathing ailments.

Before the adoption, Mary had been receiving monthly foster care payments for James. After the adoption, the foster care payments stopped. Mary was told she might have been eligible for adoption assistance. But because she didn't apply before the adoption, now she would have to go through an appeal

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MILS ATTORNEYS (CONT)

The Court of Appeals' decision In the Matter of Ashtyn Jasmine Roe, Minor, the case handled by MILS attorney Cami Fraser, was issued on September 25, 2008. That case spawned two separate opinions totaling 26 pages in length, including a partial dissent, and can not be fully summarized in this newsletter.

The Roe case involved §1912(d) of ICWA, which requires that prior to the termination of parental rights involving an Indian child, the State's Department of Human Services must prove by clear and convincing evidence "that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful." Here, the Court of Appeals concluded that

because the Department must "satisfy" the trial court that active efforts were made and were unsuccessful in order "to effect" the termination, the trial court must specifically find that active efforts were made and that these efforts were unsuccessful before it can proceed with the termination of parental rights. Because the Court of Appeals found that the trial court had failed to make the factual findings required under §1912(d) prior to terminating the parental rights of the mother of an Indian child, it reversed the trial court's order terminating the mother's parental rights. Significantly, the Court of Appeals also noted that the majority of jurisdictions interpret "active efforts" as imposing a higher burden than the "reasonable efforts" required by some state statutes, and further, that numerous courts require the service provider to "provide *culturally relevant* remedial and rehabilitative services

to prevent the breakup of the family."

Although the majority disagreed, the dissenting judge also concluded that by "active efforts," Congress required *current or contemporaneous* rehabilitation efforts and that previous rehabilitative efforts, involving other children and entirely different circumstances, would not satisfy the requirements of §1912(d). Relying upon a previous Court of Appeals' decision, MILS also argued that unsuccessful "active efforts" be proven beyond a reasonable doubt, but the Court rejected this argument, opting instead for the "clear and convincing" standard of proof.

Congratulations to Tom and Cami and their clients!



MILS Helps a Grandmother (CONT)

process. Complicating the issue was the fact that the foster care payments came from Minnesota, and the adoption took place in a tribal court in Michigan.

Mary and her tribal attorney contacted MILS. After research and discussion with the Minnesota Department of Human Services, the MILS attorney decided that Minnesota, not Michigan, was the state responsible for adoption assistance. MILS determined that the foster care agency must notify the prospective adoptive parent about the availability of assistance prior to the adoption. According to Mary, Minnesota had not done this.

MILS applied for adoption assistance January

12, 2007, with the following strategy: apply for assistance, get denied, then appeal. This strategy stalled when the Minnesota Department of Human Services (DHS) refused to grant or deny the application. Instead the DHS said Michigan was the appropriate state. MILS applied for assistance in Michigan, got denied, and supplemented the Minnesota application with the Michigan denial. Finally, on February 26, 2008, the Minnesota DHS denied Mary's application for adoption assistance.

MILS appealed this decision and represented Mary in a telephonic "fair hearing" on April 24, 2008. A Minnesota administrative law judge awarded adoption assistance to Mary, retroactive to the date of adoption.



MICHIGAN INDIAN LEGAL SERVICES' (MILS) SOUTHERN MICHIGAN SATELLITE OFFICE HAS A NEW LOCATION

The MILS Lansing office has been moved to Dexter, Michigan. The Dexter office will allow MILS to continue its goal to serve its client base in the southern Michigan area. The cost savings of the relocation was an added side benefit of this decision.

The new address is:
Michigan Indian Legal Services
P.O. Box 421
Dexter, MI 48130



THE CONTINUED HISTORY OF MILS

By James A. Keedy, Executive Director

As promised in our last issue in “The Early Years of MILS: 1975-1987” we are continuing the history of MILS from 1987 to the present.

MILS began to stabilize its funding and staff beginning in the early 1980s. Beginning in 1985 MILS began receiving Legal Services Corporation funding directly. Dependable LSC funding brought stability and for a time it was the main funding source for MILS. In later years we began receiving funds from the Community Services Block Grant fund, Interest on Lawyers Trust Account and Filing Fee funds. We also receive funding from tribes, individuals and some United Ways.

At the beginning of this period Barry Levine was the director and continued until 1987 when Mike Petokey was promoted to director. In 1988 Jim Keedy became director. In 1985 James Bransky began his long tenure at MILS that did not end until 2000. Bill Brooks began in 1989 and worked at MILS for five years. Later in the decade Elizabeth Roth, Katherine Scotta, Chris Bell, Sean Reed, Helen Yunis, Maura Brennan, Greg Stevens, Jon Siebers and JoAnne Gasco also worked for MILS as staff attorneys.

Darlene Sineway worked for MILS for many years in the 1970s, 80s and again in 2005. Other non-attorney staff include Mary Shomin, Denise Geisert, Merry Koon, Diane Sullivan and Geneva Brown.

Today the staff includes Thomas Myers, Tammy Turner, Aaron Allen, Karen Oskaboose and Cami Fraser.

In the late 1970's MILS began working for federal recognition. It began with work for the Grand Traverse Band of Ottawa and Chippewa Indians and the Huron Potawatomi Tribe. MILS filed the first petition for federal recognition with the Bureau of Indian Affairs under the then new federal recognition regulations. On March 25, 1980 the Grand Traverse Band was recognized by the United States. A bit later MILS began working with the Lac Vieux Desert Band of Lake Superior Chippewa Indians. On September 8, 1988 President Ronald Reagan signed H.R. 3697 entitled the “Lac Vieux Desert Band of Lake Superior Chippewa Indians Act” which recognized the Lac Vieux Desert people as a distinct tribe.

In the mid to late 1980s MILS began working with Little Traverse Bay Bands of Odawa Indians, Little River Band of Ottawa Indians and the Pokagon Band of Potawatomi Indians. MILS filed a petition for the Pokagon Band with the BIA in 1988. In 1994 Congress recognized all three tribes in two bills. MILS continues working for federal recognition for one tribe but has moved on to many other kinds of work.

MILS also specializes in Indian Child Welfare Act cases. MILS has appealed four cases to the Michigan Court of Appeals that have been published and has won all four. They are *In re Hanson*, 188 Mich.App. 392, 470 N.W.2d 669 (1991); *In re Elliott*, 218 Mich.App. 196, 554 N.W.2d 32 (1996); *Empson-Laviolette v. Crago*, 2008 Mich. App. LEXIS 1791 (Mich. Ct. App. Sept. 11, 2008) and *In re Roe*, ____ Mich App ____ (2008).

Just this past year MILS began representing criminal defendants in a one year pilot project (CONT PAGE 6)

FAQ'S ABOUT MICHIGAN INDIAN LEGAL SERVICES

By Aaron B. Allen, MILS Staff Attorney

Michigan Indian Legal Services (MILS) seeks to provide assistance to those in need. Sadly, not every eligible client is aware of the free services we offer or the types of cases we handle. Potential clients are strongly encouraged to contact MILS even if they are not sure if their legal issue is one we can handle. Often we can provide direct assistance. If not, we can almost always provide some useful resources and referrals. What follows is a number of frequently asked questions (FAQ's) and brief answers. Their aim is to clarify confusion about our services and reach as many clients as possible.

What does MILS do?

MILS provides civil legal services to low income Indian individuals and tribes to further self sufficiency, overcome discrimination, assist tribal governments and preserve Indian families.

Which tribe does MILS work for?

A common misconception is MILS is a tribally run service offered to tribal members. Actually, MILS is an independent, non-profit organization. Throughout its existence MILS has worked with virtually every Michigan tribe in a number of ways including code drafting, protecting treaty rights, and petitioning for federal recognition. More recently, MILS has served tribal communities by representing individuals in tribal court proceedings.

Where is MILS located?

MILS staff operate out of two locations, Traverse City and Dexter. MILS provides advice and representation to clients throughout the entire state, including the Upper Peninsula. MILS attorneys are licensed to practice in state and tribal courts across Michigan, therefore overnight travel is common for MILS attorneys.

How many attorneys are on staff?

MILS has three full time staff attorneys. Two work out of the Traverse City office, and one works out of Dexter. MILS' Executive Director, James Keedy, serves clients if the other attorneys are unavailable.

What services does MILS offer?

With a focus on Indian law, MILS strives to bring assistance to those who face critical legal problems without representation because they lack the ability to pay. Some examples include those facing eviction, termination of parental rights, and loss of essential services.

How much will it cost me?

MILS provides legal services to qualified applicants without charge. There is no cost to the client.

Who qualifies for legal services?

Potential clients initially contact MILS by phone. An intake worker conducts an application, and then immediately transfers the applicant to an attorney. MILS attorneys review the application and talk to the applicant to determine eligibility. If an applicant has no other representation available they may qualify for services if they are income eligible, if the matter concerns Indian law and if there are no conflicts of interest.

What is "income eligible"?

Applicants must have a household income level low enough to satisfy the standards set by MILS funding sources. Many factors are considered including the number of adults and children living in the home, the

value of household assets and the amount of fixed debt the applicant has.

What is “Indian law”?

Some applicants mistakenly assume that MILS will take any case provided the applicant is Native American, but Indian law is complex. The practice of Indian law includes matters before a tribal court, which are decided based on tribal rules and statutes. Indian law also refers to circumstances in state court where the law applied is different because the person involved is an Indian. The best example is a case that triggers the Indian Child Welfare Act (ICWA). The ICWA is a federal law that dictates the procedures that must be followed in cases concerning the care and placement of an Indian child.

What is a conflict of interest?

Even if the applicant is income eligible and the legal matter involves Indian law, MILS attorneys must first make sure there are no conflicts of interest before agreeing to represent an applicant. MILS serves hundreds of applicants each year. Quite often situations involve people of the same communities, neighborhoods and families. MILS attorneys use a computer program to cross-check names of parties and witnesses against a list of current and former clients. When MILS attorneys are representing one party in a legal matter we are prohibited from representing another party in the same matter. For example, if MILS represents a mother in a child welfare case it would be unethical to represent the father in the same proceeding when the two have contradictory or conflicting interests.

Do I have to be Native American to qualify for MILS services?

No. MILS does not discriminate based on racial, ethnic or tribal membership of an applicant. Anyone dealing with an important legal situation is encouraged to contact us. However, MILS restricts representation in legal matters that involve Indian law, and the majority of applicants that receive full representation tend to have some Native American affiliation.



MILS Hosts Two National Federal Indian Law List-Serves

By Cameron Ann Fraser, MILS Staff Attorney

MILS hosts two national list-serves for the benefit of attorneys and advocates working throughout Indian Country. A list-serve is an automatic electronic mailing system for individuals who join the group. When e-mail is addressed to a list-serve mailing list, it is automatically broadcast to everyone on the list. The messages are transmitted as e-mail and are available only to individuals on the list.

MILS created and continues to host the list-serve for the National Association of Indian Legal Services. The National Association of Indian Legal Services is comprised of many legal aid offices and programs that provide services to income eligible American

Indians, Alaska Natives and Native Hawaiians. The list-serve was created in April of 1999 and has around 80 active participants from all over the country. The web address for the list-serve is <http://groups.yahoo.com/group/nails/>.

In September of 2007, MILS created and continues to host a national list-serve for criminal defense attorneys and advocates who work in Tribal Courts. There are currently around 110 participants from throughout Indian Country. Discussions include such things as rights guaranteed to Native defendants under the Indian Civil Rights Act and tribal constitutions and codes and how various Tribal Courts have interpreted similar provisions. The web address for the list-serve is: <http://groups.yahoo.com/group/tribaldefenseattorneys/>.



HISTORY OF MILS (CONT)

in the Grand Traverse Band of Ottawa and Chippewa Indian Tribal Court.

In the early years of this century MILS decided that the work on federal recognition was slowing down and it should find out what the various Indian communities around the state would like MILS to do. In a number of trips MILS held meetings at various tribes and Indian centers and asked tribal social workers, tribal judges, tribal attorneys, police, former clients, employees at Indian centers and others what type of work MILS should do in the future.

One of the major requests was that MILS represent clients in tribal court. When MILS started serving clients in the mid 1970s the MILS Board passed a policy that prevented MILS from representing one Indian interest against another. That policy was amended several times but always kept that central purpose. However with this new request the MILS Board modified the policy so that MILS attorneys may now represent an Indian individual in tribal court if the other side is a tribe or a tribally controlled entity like a housing department. The MILS Board kept the part that prevents staff from taking the part of one Indian individual against another Indian individual.

At the same time the MILS Board also modified the case acceptance priorities to meet other requests made in the legal needs analysis. Below I have set out the current case acceptance priorities.

Types of Cases and Matters.

A. Provide legal assistance to individuals and organizations on matters which will assist in the prevention of the breakup of Native American families, using the Indian Child Welfare Act, 25 U.S.C. 1901 et. seq., which preempts state law in state court proceedings involving foster care or adoptive placements of Indian children. MILS will provide education to individuals, families, tribes, attorneys, judges, social workers and others about the Indian Child Welfare Act.

B. Provide legal assistance to ensure that rights

guaranteed to Native Americans by treaty or statute are secured.

C. Provide legal assistance to Indian tribes and organizations in economic development, tribal acknowledgment, tribal land issues, development of tribal government institutions, tribal court development and tribal code development. MILS staff shall obtain and maintain expertise in tribal court development and tribal code development.

D. Provide civil representation in tribal court, taking into account program resources, in tribal courts that are within a two hour one way drive of an MILS office or where a tribal court will work with MILS staff to find a technology solution to the problem of a small staff providing services in many courts separated by hundreds of miles. The courts may provide for audio and or audio/video conferencing or other technologies that allow MILS staff to make appearances without traveling to the court for all hearings. MILS staff may work with courts and tribes to seek funding to implement the necessary technology. MILS staff will also need assistance to communicate with clients. Examples of such assistance may include providing clients access to private telephone services, email, Internet and facsimile machines or other technologies that may become available in the future. Note that under this priority MILS does not change its Indian vs Indian policy that does not allow representation of one individual against another in tribal court.

E. Provide community education regarding the unique status of Native Americans.

F. Provide legal assistance to Native Americans subject to discrimination due to their status as Native Americans.

G. Provide counsel, advice and brief services to Indian elders including simple wills. MILS will provide full representation to Indian elders seeking to preserve state and federal benefits. Staff will provide legal information to Indian elders when possible at previously scheduled gatherings of Indian elders. MILS staff will make known its availability for educational presentation etc.

H. Provide legal assistance to parents and/or parent groups in cases where a local governmental elementary or secondary school system's policies, lack of policy, lack of enforcement of school policies or local, state or federal law has a disparate negative impact on a group of two or more unrelated American Indian students. Provide representation in school expulsion cases.

I. MILS staff will offer tribes the opportunity to have an MILS staff attorney schedule regularly recurring visits for member attorney consultations at tribal offices or other member gathering spaces. MILS will offer the same service to Indian organizations as resources permit. MILS staff are encouraged to seek out opportunities for community legal education.

J. Provide legal assistance to Native American individuals faced with a loss of essential services, when other legal assistance is unavailable. MILS may represent individuals who will lose public benefits when other legal assistance is unavailable. For example:

1. MILS shall assist clients in preventing homelessness. As examples, permissible activities under this priority include the defense of individual eviction, foreclosure, and tax activities that establish legal precedent protecting or expanding the rights of tenants and homeowners. Permissible activities include advocacy activities that increase the supply, availability, safety, security, or repair of low income housing.

2. MILS shall assist clients in obtaining and maintaining basic income and other necessities for household stability. As examples, permissible activities under this priority include cases and matters meant to protect a household from the loss of essential income or possessions due to garnishment of attachment. Permissible activities include cases or matters intended to prevent terminations of needed utilities. Permissible activities include cases or matters which seek to obtain subsistence income for indigent persons and families through public assistance programs such as AFDC, FS, State Disability Assistance, State Family Assistance, State Emergency Relief, MESC, Social Security, SI, etc. Permissible activities include cases or matters assisting families in

obtaining or maintaining child support. Permissible activities include cases or matters in the consumer law area where the case or matter is necessary to protect the economic stability of the individual client or where the business practice may have a significant impact on many low income clients.

3. MILS shall assist clients in maintaining stable homes for their children. As examples, permissible activities under this priority include cases and matters meant to prevent the transfer of custody from an established custodial environment with a natural parent.

4. MILS shall assist clients in securing needed health care. As examples, permissible activities under this priority include cases or matters which seek to secure medical services or coverage for low income persons, such as MA, Medicare, SMA, RCHP, private insurance, etc. Permissible activities include medical POA's for senior citizen clients. Permissible activities include cases or matters which seek payment for services already provided or which seek relief from medical debt.

5. MILS shall advocate for low income persons within the legal system so that low income persons have full and fair access to that system.

6. MILS shall attempt, through its legal work, to strengthen its local communities. MILS is part of a network of agencies providing services to the community's poorest citizens. Moreover, in many instances, the quality of life for the community's poorest citizens is affected by more general community initiatives. MILS should engage in work intended to improve services to the low income community and in work which strengthens the overall community.

7. MILS shall attempt, through its legal work, to strengthen the families within its communities. Many of MILS' case specific priorities are in areas that support the integrity, safety, and well-being of the family. Because of the importance of the family to our society and to our communities, cases and matters which have the goal of strengthening families are permissible cases under this statement.



COOPERATIVE LAW ENFORCEMENT AGREEMENTS: AN INDIAN COUNTRY LAW ENFORCEMENT SOLUTION

By Karrie Wichtman, Law Student
Michigan State University College of Law

Law enforcement in tribal communities has been a leading concern of tribal leaders throughout the country for many years. While tribal leaders have known for decades that Indian communities experience higher crime rates than the national average¹, this “news” is just now getting the broader attention it deserves.² In addition to complex jurisdictional issues, the problems stem from the fact that basic law enforcement protection and services are severely inadequate for most of Indian Country.³ These inadequacies have led to characterization of the state of law enforcement in Indian Country as a “public safety crisis”⁴ by the Executive Committee on Indian Country Law Enforcement Improvements.

This crisis is exacerbated by the jurisdictional mess created by the patchwork of federal laws and Supreme Court decisions that requires tribal officers to navigate a formidable body of law to determine what authority they may or may not have in a wide variety of situations. Tribal officers must consider the location of an alleged crime, their present location, the political identity of the alleged perpetrator, the political identity of the alleged victim and the nature of the alleged crime before determining what action, if any, they are authorized to take.⁵

Depending on these factors, any number of law enforcement agencies may have jurisdiction to arrest offenders or conduct investigations. The overlapping jurisdictional authority of various agencies can compound the task of enforcing criminal jurisdiction on Indian land. For example, a tribal law enforcement officer has no authority to arrest a non-Indian violating state law on the reservation. Furthermore, state officers cannot respond to calls involving Indians on tribal land. Additionally, tribal law enforcement officers, without special authority, cannot enforce federal laws on reservation land. In all of these instances, an officer attempting to exercise authority outside of their jurisdiction has no more authority than a normal citizen doing the

1 See Statement of Byron L. Dorgan, U.S. Senator from North Dakota, S. Hrg. 110-136, June 21, 2007, available at http://frwebgate.access.gpo.gov/cgi-in/getdoc.cgi?dbname=110_senate_hearings&docid=f:36303.pdf (last visited September 2, 2008). “At a time when violent crime rates have decreased nationally, Indian reservations are experiencing a steady increase in violent crime. American Indians and Alaska Natives are two and a half times more likely to be victims of violent crime than a member of the general public in this Country. The rate of violence for Native youth between the ages of 12 and 17 is 65 percent greater than the national rate for the general public. American Indians and Alaska Native women are 2 1/2 times more likely to be raped or sexually assaulted than other women in the United States.”

2 See Tribal Justice Improvement Act of 2008, a bill to amend the Indian Law Enforcement Act, the Indian Tribal Justice Act, the Indian Tribal Justice Technical and Legal Assistance Act of 2000, and the Omnibus Crime Control and Safe Streets Act of 1968 to improve the prosecution of, and response to, crimes in Indian Country, and for other purposes. Available at <http://www.gpo.gov/congress/senate/pdf/43268/0081.pdf> (last visited September 2, 2008).

3 See Statement of Joe E. Garcia, President, National Congress of American Indians, S. Hrg. 110-432, March 19, 2008, available at <http://www.gpo.gov/congress/senate/pdf/43268/0019.pdf> (last visited September 2, 2008). “A recent Bureau of Indian Affairs analysis indicates that in BIA Law Enforcement, 1,153 officers are needed but it has only 358. The gap is 795 officers (69 percent unmet need). In Tribal Law Enforcement—3,256 officers are needed but tribes have only 2,197. The gap is 1,059 officers (33 percent unmet need). Total need is 1,854 law enforcement officers. To put this in perspective, these 2,555 Indian country law enforcement officers make up about 0.004 percent of the total of 675,734 state, city and county law enforcement officers in the United States, yet they patrol approximately 2 percent of the landmass of the United States and 1 percent of the population.

4 See Executive Summary, Report of the Committee for Indian Country Law Enforcement Improvements, Final Report to the Attorney General and the Secretary of Interior (U.S. Department of Justice, Criminal Division, October 31, 1997), available at <http://www.usdoj.gov/otj/icredact.htm> (last visited September 2, 2008).

5 Stewart Wakeling, Miriam Jorgensen et al., Policing on American Indian Reservations: A Report to the National Institute of Justice, July 2001, available at <http://www.ncjrs.gov/pdffiles1/nij/188095.pdf> (last visited 3/27/08).

same.

In order to address this crisis, Michigan tribes, as well as those located in other states, have taken matters into their own hands by approaching local law enforcement and their state counterparts to enter into cooperative agreements. These agreements expand the authority of officers who would ordinarily not be able to enforce certain laws against certain individuals. Cooperative arrangements including Deputization, Cross-Deputization or Mutual Aid agreements have proved instrumental in streamlining the exercise of law enforcement in Indian Country; allowing officers to more effectively perform their duties of protecting the public from crime.

In all of the agreements the intent of the agencies is clear: to work together to cooperatively enhance public safety efforts in and around Indian Country. These agreements are often the product of intense and complicated negotiations between local and tribal authorities. The exact terms of the agreements vary depending on the specific challenges and needs of each jurisdiction. In addition each agreement requires tribes and local agencies to overcome any number of potential barriers. These barriers may include mere differences in the structure of the tribal and local law enforcement agencies; a reluctance on the part of the tribe to give state or local police authority in Indian Country; insensitivity on the part of local law enforcement to tribal customs, culture, and traditions; liability issues; local political climate; or perceived lack of authority to name a few.

Law enforcement agencies in Michigan are generally eager to cooperate with one another to provide optimal law enforcement to their citizens.⁶ In Michigan, there are twelve federally recognized tribes.⁷ Of those tribes, ten operate their own law enforcement departments.⁸ Of the ten tribes that maintain tribal law enforcement departments, nine have agreements with a local jurisdiction or local police.⁹ These agreements take the form of deputization of tribal officers by the county sheriff,¹⁰ as well as cross deputization of tribal and county officers to enforce each other's laws under certain limitations.¹¹ However, there is no state-wide agreement providing for the deputization of tribal police.

An analysis of sources of authority¹² indicates that the State of Michigan is not precluded by law from entering into an agreement between the Michigan State Police and tribal law enforcement. Despite this authority, all law enforcement agreements in Michigan are entered into at the local level. While it makes sense on many levels to allow tribes to enter into one agreement with the State Police, major concerns rest with the

6 Criminal Jurisdiction in Indian Country: The Solution of Cross-Deputization by Hannah Bobee, Allison Boisvenu, Anderson Duff, Kathryn E. Fort, and Wenona T. Singel, Michigan State University College of Law Indigenous Law & Policy, Occasional Paper Series, available at <http://www.law.msu.edu/indigenous/papers/index.html>.

7 These include: The Bay Mills Chippewa Indian Community, Grand Traverse Band of Ottawa and Chippewa Indians, Hannahville Potawatomi Indian Community, Huron Potawatomi Indians, Keweenaw Bay Indian Community, Lac Vieux Desert Band of Lake Superior Chippewa Indians, Little River Band of Odawa Indians, Little Traverse Bay Bands of Odawa Indians, Match-e-be-nash-she-wish Band of Potawatomi Indians, Pokagon Band of Potawatomi Indians, Saginaw Chippewa Indians and Sault Ste. Marie Chippewa Indians.

8 See Criminal Jurisdiction in Indian Country: The Solution of Cross-Deputization, note 6 supra.

9 Id.

10 See Deputization Agreement between the Grand Traverse Band of Ottawa and Chippewa Indians and the Sheriff of Leelanau County; and Law Enforcement Agreement between the Bay Mills Indian Community and the Chippewa County Sheriff.

11 Interlocal Agreement for Deputization and Mutual Law Enforcement Assistance between the Little Traverse Bay Bands of Odawa Indians and the County of Emmet.

12 See MI Att'y Gen. Op. No. 4803 (October 29, 1973) available at <http://www.ag.state.mi.us/opinion/datafiles/1960s/op04087.pdf> (last visited September 2, 2008); MCL 29.609; MCL 51.70; and MCL 124.502.

lawyers who perceive the possible liability issues these agreements can create.¹³ However, other states have attempted to address these concerns through legislation. For example, Washington State Governor Christine Gregoire recently signed a bill that gives tribal police officers meeting certain standards the authority to arrest non-Indians on tribal land.¹⁴

The Washington legislation contains certain requirements in order for tribal police to have arrest authority over non-Natives. First, “a tribal department will have to be certified by the Criminal Justice Training Commission in Burien, to show that each officer was trained to commission’s standard.”¹⁵ Then, a tribe will have to submit that certification along with proof of insurance to the Washington Office of Financial Management.¹⁶ If the tribe is approved, within a year they would have to seek a memorandum of understanding with neighboring law enforcement to “set ground rules for how the tribal and non-tribal agencies would cooperate.”¹⁷ If the tribal police and local authorities could not come to an agreement within a year, a binding arbitration would begin, with the arbitrator deciding which side has a more reasonable proposal.¹⁸ The authority provided by the act extends only to the exterior boundaries of the reservation or “outside the exterior boundaries of the reservation” under certain circumstances.¹⁹

In addition, the legislation requires tribal officers acting under peace officer authority in arresting non-Indians on tribal land to waive sovereign immunity in the event of a legal challenge. The legislation also specifies that tribal court authority is not extended and that Indians cited outside the reservation boundaries could be referred to state court.²⁰

Thus, concerns such as training, liability insurance and sovereign immunity are addressed. Once Tribes submit evidence of certification and insurance, the local authorities are required to enter into agreements with the tribes within a year. If the agreement doesn’t come to fruition, a binding arbitration ensures that some compromise is reached. At least in Washington State, it is now mandatory that local law enforcement cooperate with tribal police departments. Similar legislation exists in Arizona, Oklahoma, Kansas²¹ and New Mexico.²²

Given the state of the economy in Michigan and lack of resources across the board, an agreement between the tribes and the Michigan State Police may be a cost effective and efficient way to address law enforcement concerns in Indian Country and surrounding areas. The issue of a state-wide solution for deputi-

13 See Criminal Jurisdiction in Indian Country: The Solution of Cross-Deputization, note 6 supra.

14 Engrossed House Bill 2476-2008, Chapter 224, Laws of 2008, March 28, 2001, effective July 1, 2008, available at <http://apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Bills/Session%20Law%202008/2476.SL.pdf> (last visited 9/3/2008).

15 Id.

16 Id.

17 Id.

18 Rob Carson, Tribal Police Hopeful for Increased Authority Against Non-Indians, The News Tribune, March 25, 2008, available at <http://www.thenewstribune.com/news/local/story/311756.html> (last visited 9/02/08).

19 These circumstances include “with consent of the local sheriff; in response to an emergency involving threat to human life or property; in response to a request for assistance pursuant to a mutual law enforcement assistance agreements; when transporting a prisoner; when the officer is executing an arrest or search warrants; or when an officer is in fresh pursuit.” Washington State House of Representatives, Bill Analysis, HB 2476, January 18, 2008, available at <http://apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Bill%20Reports/House/2476.HBA%2008.pdf> (last visited 9/02/08).

20 The Seattle Times, Editorial, Expand Tribal Police Authority, February 11, 2008, available at http://seattletimes.nwsources.com/html/editorialsopinion/2004172750_tribed11.html?syndication=rss (last visited 9/02/08).

21 Rob Carson, Tribal Police Bill Stirs Up Dissent, The News Tribune, January 19, 2008, available at <http://www.thenewstribune.com/news/local/story/259063.html> (last visited 9/01/08).

22 Manual Valdes, Bill Would Expand Tribal-Police Authority, The Seattle Times, January 31, 2008, available at http://seattletimes.nwsources.com/html/politics/2004155584_tribalpolice31m.html (last visited 3/27/08).

zation of tribal officers does not appear to have been revisited in 5 to 6 years. Now may be the time!

For an in depth look at cross deputization agreements generally, specifically focusing on the issues of cross deputization in Michigan; a discussion of Federal Indian law and state criminal jurisdiction in Indian Country generally; an examination of the structure of law enforcement agencies in Indian Country; an analysis of the use of cross-deputization generally including barriers to negotiation; and a discussion of cooperative agreements in Michigan including the legal authority to enter into these agreements and barriers to do so, see *Criminal Jurisdiction in Indian Country: The Solution of Cross-Deputization* by Hannah Bobee, Allison Boissvenu, Anderson Duff, Kathryn E. Fort, and Wenona T. Singel, Michigan State University College of Law Indigenous Law & Policy, Occasional Paper Series, available at <http://www.law.msu.edu/indigenous/papers/index.html>.



Michigan Indian Legal Services (MILS) is a nonprofit organization that provides free legal services to those who qualify. Therefore, we do not collect any money for services provided to our income eligible clients. MILS relies solely on grants, and various funding sources including individual donations to continue to provide our legal services.

Your support of MILS is critical to our ability to provide legal services that would otherwise be unavailable to Michigan's Native American community. While some tribal governments have benefited from gaming, many native individuals still struggle in poverty. Native Americans remain some of the most disadvantaged citizens. This disadvantage is compounded by unique legal needs. Your continued support will assure MILS' ability to provide free legal services to those that need it most.

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