

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.

LETTER FROM THE PRESIDENT by John R. Runyan, Jr.



President, John R. Runyan, Jr.

In this issue of MILS Review, I would like to introduce you to Wendi Wilson, a part-time clerical employee at Michigan Indian Legal Services. Wendi has been chiefly responsible for MILS' move to a "paperless" office, scanning twenty-five years worth of paper records into an electronic format. She is also the cheerful voice that most clients hear when they first call the office.

Wendi was born in Traverse City and moved to the Grand Traverse Band reservation where she lives today when she was thirteen years of age. Wendi has four athletic children and during the summer months, she and her children "live" at the softball park.

Wendi's oldest daughter, Andrea, who will graduate this

year, is seventeen and the captain of her high school basketball team. Her son Steven is twelve and has just finished his first year of organized football. Dylan, age eleven, has made the baseball all-star team two years in a row. Wendi's daughter, Sophia, who just turned ten years of age, also plays basketball.

Wendi is also an avid softball player as well as a bowler. She has worked at the Grand Traverse Band casino for 13 years and began working at MILS in November 2011, through a federal grant. Wendi was hired part-time as an MILS employee in March 2012.



Wendi Wilson

MICHIGAN INDIAN LEGAL SERVICES MAKES A DIFFERENCE

An MILS attorney helped a young Canadian Indian woman obtain a US social security number under the Jay Treaty so that she will be able to work and go to school.

With the help of an MILS attorney, a mother was able to reunify with her child through a tribal court proceeding.

MILS attorneys helped a tribal elder win a small claims case and her rental security deposit was returned to her.

An MILS attorney was able to successfully resolve a garnishment case filed in a tribal court so that all bills were paid by the appropriate third party and the client did not

lose their per capita payment.

An MILS attorney was able to successfully defend against a juvenile probation violation petition. The Tribal Court found that our client did not in fact violate the terms of their probation.

On behalf of a tribal elder, MILS attorneys sought the dismissal of a petition filed under a tribal elder protection code. The Tribal Court found the law to violate tribal custom and the tribe's constitution because of the lack of procedural and substantive due process protections.



An MILS attorney successfully negotiated a stipulation in a custody matter that preserved the daughter of the client's Native American religious beliefs.

An MILS attorney successfully negotiated the dismissal of child welfare case in favor of a prevention case being opened.

MILS attorneys helped a tribal elder successfully obtain a conservator through a tribal court case.

An MILS attorney drafted a land deed to transfer property from one family member to another.

An MILS attorney was able to gain the dismissal of a tribal child welfare case in favor of a voluntary, temporary guardianship.

MILS attorneys provided representation to an Indian couple in responding to a petition for guardianship of their child. The case was dismissed because of MILS efforts.

An MILS attorney helped a tribal elder assert her rights in a DHS administrative proceeding.

An MILS attorney helped an Indian mother retract the voluntary termination of her parental rights.

An MILS attorney was able to convince the friend of the court to withdraw a garnishment petition because of the client's substantial compliance with their child support obligations.

MILS attorneys ghost wrote a motion to have the court appoint an attorney under ICWA and MIFPA in a juvenile guardianship case. The Court subsequently appointed counsel.



THE FIRST ANNUAL BENEFIT A SUCCESS!

By James A. Keedy

On January 25th in snowy downtown Traverse City the firm of Wojnecka & Sherigan, P.C. , Shelby Township, sponsored the First Annual Benefit for MILS at the City Opera House. While the weather prevented more distant supporters from attending a grand time was had by all.

While guests mingled and enjoyed the fabulous refreshments Jim Bransky and Pat Ivory warmed us with their music. All the while a collage of photos from MILS past 38 years, prepared by Leslie Van Alstine II, played on the big screen.

Guests enjoyed bidding on a wonderful array of donations in the silent auctions, jewelry, black ash and quill baskets, free resort lodging, dining and more.

Michigan Indian Legal Services extends a hearty thank you to all who supported MILS. First and foremost thank you Wojnecka & Sherigan, P.C. for initiating and sponsoring the evening.

Thank you also to all the generous sponsors.

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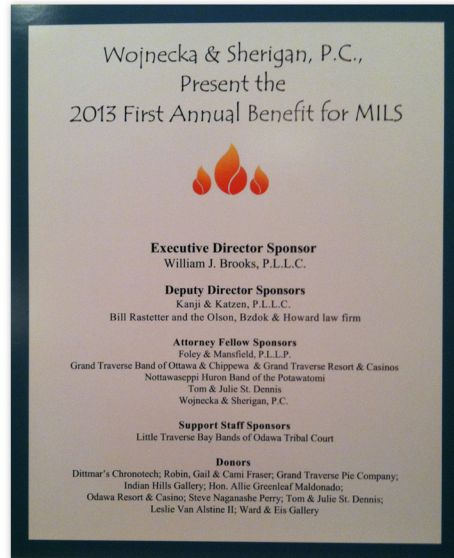
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else that would like to receive our newsletter.

We are always looking for article ideas. Please tell us
if you would like to see an article about a particular
topic. "Letters to the Editor" are also welcome.

CAN YOU IDENTIFY THESE MICHIGAN TRIBAL COURTS?

The first three people to correctly identify and email the answers to newsletter@mils3.org wins an MILS mug! Please include your name and mailing address in the email. Thank you! Winners will be announced in the next MILS newsletter.



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MICHIGAN INDIAN FAMILY PRESERVATION ACT (MIFPA)

By Elaine M. Barr

On January 2, 2013, the Michigan Indian Family Preservation Act was signed by the governor and went into immediate effect. At first glance, the creation of a state ICWA appears unnecessary and redundant, but when considering the vastly different ways courts have found to interpret the federal law, a few states have found drafting a state ICWA

continued survival of federally recognized tribes and protection of Indian children.

Examples of some of the most significant differences and clarifications:

MIFPA removes the requirement of being a biological child of a tribal member. MCL 712B.3(k) As to child custody proceedings, MIFPA language



an effective tool in increasing compliance. ICWA is often seen as distant and unfamiliar federal requirement to state child welfare systems. As such, it is often not consistently applied. Many lawyers representing the interests of tribes or parents in ICWA cases will acknowledge that often the only way to achieve a fair application of ICWA is to educate the judge about the law. This is much more easily accomplished when there is a state law to cite to. Therefore, the enactment of MIFPA into state law provides a direct and accessible source for state child welfare professionals. MIFPA helps provide the clarification necessary for consistent state wide implementation and the

mirrors ICWA but also includes guardianships under the Juvenile Code and the Estates and Protected Individuals Code.

MCL 712B.3(b)(i)(B)&(C)

The exclusive jurisdiction section is the same as ICWA with additional language clarifying the tribe retains jurisdiction over wards of the tribal court with any subsequent change in residence or domicile.

MIFPA defines good cause not to transfer to tribal court, including what courts shall not consider MCL 712B.7(3)-(5)

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MIFPA significantly strengthens the notice requirements MCL 712B.9(3)

MIFPA explicitly defines active efforts and establishes a burden of proof for a finding of active efforts MCL 712B.3(a)

MIFPA addresses placement preferences and good cause to deviate from those preferences. The court shall address efforts to place an Indian child in accordance with the placement preferences at each hearing until the placement meets the requirements. MCL 712B.23(4)

While ICWA provides minimal direction on guardianships, MIFPA provides that for EPIC or juvenile guardianships determined to be involuntary and the court knows or has reason to know the child is an Indian child, MIFPA permits the court to order the department or a court employee to conduct an investigation and file a written report. In addition to information required in EPIC at MCL 700.5204, MIFPA requires the report to

include, but does not limit it to:

- (a) Whether or not the child is an Indian child.**
 - (b) The identity and location of the child's parents, if known.**
 - (c) If the child is an Indian child, the report must also address all of the following:**
 - (i) The tribe or tribes of which the child is a member or eligible for membership.**
 - (ii) If the child and family need culturally appropriate and other services to preserve the Indian family.**
 - (iii) The identity and location of extended family members and if no extended family members can be found, what efforts were made to locate them. MCL 712B.24(1)**
- MIFPA sets forth requirements for the guardianship hearing. MCL 712B.25**



American Indian Law on the Michigan State Bar Examination

By Douglass A. McIntyre

Over the last decade much of Indian Country has seen a vast economic explosion through gaming and other tribal ventures. This is particularly true in Michigan, where twelve recognized tribes can be found scattered throughout the State. These Tribes often work closely with the surrounding area to form close working relationships. In addition, significant populations of American Indians can be found in many of Michigan's larger cities, such as Detroit and Grand Rapids. These factors have created an abundance of legal work both on and off reservation involving different aspects of American Indian law. For these reasons, an attorney anywhere in Michigan could be faced with a legal issue involving American Indian law.

With the belief that a basic understanding of American Indian law is needed to train and edu-

cate future practitioners of law, the American Indian Law Section (AILS) has regularly met since 2012 with the goal of having American Indian law added to the Michigan Bar Examination. In late 2012 a letter, accompanied by support letters from a diverse group of individuals, was delivered to the Michigan Board of Law Examiners. While the Board has yet to officially respond, it is interesting to note the July 2013 exam included a question involving an American Indian Tribe. AILS plans to resubmit the request in the new year. Hopefully Michigan will soon join the ranks of other states such as New Mexico, Washington, and South Dakota, all of which have seen the importance of American Indian law and included it on their Bar Examinations.



Michigan Indian Legal Services 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.

You can help! Please consider making a tax-deductible contribution this year by sending any amount to:

**Michigan Indian Legal Services
814 S. Garfield Ave. Suite A
Traverse City, MI 49686**

MILS is recognized by the Internal Revenue Service as a 501(c)(3) charitable organization, and your gift may qualify for tax deductible status on your federal income tax return. When making a contribution please use the form below or a regular piece of paper to provide us with your name and address. This information will be used to provide you with a letter of receipt for tax purposes.

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