

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY P. DONN and ANNE E. DONN as
legal guardians on behalf of C.E.S., V.A.S., and
H.M.S, minors,

Plaintiffs,

No. 1:15-cv-00982

HON. JANET T. NEFF

v

HON. LARRY J. NELSON, in his official
capacity as a Leelanau County Family Court
Judge, MATTHEW FEIL, in his official
capacity as Tribal Prosecutor for the Grand
Traverse Band of Ottawa and Chippewa
Indians, and HELEN COOK, in her official
capacity as Supervisor of Anishinaabek Family
Services for the Grand Traverse Band of
Ottawa and Chippewa Indians,

Defendants.

PRE-MOTION CONFERENCE REQUEST

Pursuant to section IV.A.1.b. (at page 4) of this Court's Information and Guidelines for Civil Practice ("guidelines for civil cases"), the Attorney General of the State of Michigan requests a pre-motion conference to consider the following:

1. F.R.Civ.P. 5.1(a)(2) required Plaintiffs to serve notice on Michigan's Attorney General, to advise him that their complaint and first amended complaint (ECF No. 35) challenged the constitutionality of certain provisions of the Michigan Indian Family Preservation Act (MIFPA), Mich. Comp. Laws §§ 712B.1 *et seq.* (*Id.*, Pg. ID 357).

2. Plaintiffs did not provide such notice and did not name the Attorney General as a party in their pleadings.

3. Nonetheless, since the Attorney General now has notice of this challenge, he proposes to file a motion to intervene as of right so as to defend the constitutionality of MIFPA. F.R.Civ.P. 24(a)(1).

4. Meanwhile, F.R.Civ.P. 24(c) requires the Attorney General to accompany a motion to intervene with “a pleading that sets out the claim or defense for which intervention is sought.”

5. The Attorney General anticipates that, in defending the constitutionality of MIFPA, he would raise at least two dispositive procedural defenses in lieu of an answer:

(A) *res judicata*: the Court should apply Michigan case law. 28 U.S.C. § 1738. Plaintiffs raised, or had an opportunity to raise, this constitutional challenge in the state court proceedings, and are therefore barred from collaterally attacking those courts’ final rulings in this Court; and

(B) Abstention: generally, where the state courts have already assumed jurisdiction over a dispute, the federal courts will refrain from doing so. See, *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 800 (1976) and “*Rooker-Feldman*,” i.e., the abstention doctrine adopted in *Rooker v. Fidelity Trust Company*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

6. For the Attorney General to file a dispositive motion attached to his motion to intervene triggers the need for a Pre-Motion Conference under this Court’s guidelines.

The Attorney General therefore requests a Pre-Motion Conference to assist him to determine the appropriate timing and procedure for these motions.

Bill Schuette
Attorney General

/s/ William R. Morris
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