

Michigan Indian Legal Services, Inc.

MILS REVIEW

MILS provides legal services statewide to income-eligible individuals and Tribes, advocates for the rights of individuals, which advances systems of justice and works to preserve Indian families through state and tribal courts.

A HARD-FOUGHT “FOREVER FAMILY”

Mindy** was devastated when she heard the news of the death of Edward**. He was Mindy’s first cousin, but more like a brother, as the two were raised together. Nottawaseppi Huron Band of Potawatomi Band of Indians (NHBP) and the family were notified soon after that his daughter, Chloe**, was in need of care, as her mother’s parental rights had previously been terminated. Nancy Bogren, ICWA attorney for NHBP filed a motion to intervene in the Indiana Child Protective Services (CPS) case, pursuant to the Indian Child Welfare Act (ICWA). After an investigation, the family learned that her foster family wanted to adopt Chloe, and assuming she was with a loving family, opted not to upset this plan. That changed in February of 2013, when they learned that the adoption plan had fallen through, and Chloe was being moved to a different foster home for the third time in four years. Mindy decided Chloe should be with her Native American family, and told NHBP she wanted to adopt her. What she didn’t know is that it would be a two-year battle.

Ms. Bogren notified the Indiana Department of Child Services (DCS) of Mindy’s desire to adopt Chloe, and her preference under ICWA. However, Indiana DCS did not consent, arguing that ICWA didn’t apply, and their preference was for the current foster family to adopt her.

While the Tribe and Indiana DCS battled in court, Mindy and Chloe began to have visits. Every other week, Janet Foster of NHBP would meet the Indiana worker half way, and bring Chloe to Mindy’s for a visit and drive her back after the visit. The visits began for a few hours and progressed to the entire weekend.



On March 26, 2014, the Indiana judge ruled that Indiana DCS was in violation of ICWA, and ordered that Chloe be placed with Mindy within seven days, pending the adoption by Mindy. In the opinion, the judge noted that the foster family had shown a “generally hostile attitude to the NHBP and Chloe’s paternal family” and “had made little effort to embrace Chloe’s heritage,” even promising to move her farther from her family of origin.

This is where MILS came in. Mindy contacted us, upon the recommendation of NHBP, to handle the adoption process in the Michigan court system. On behalf of Mindy, MILS filed the petition for Mindy to adopt Chloe.

Chloe settled into her new household, sharing a bedroom with her new built-in sister, Anna**. Having been placed in non-Native homes and not previously familiar with her Native American heritage, Chloe became involved in pow wows and began dancing in regalia. But, the fight was not over yet for the newly expanded family. After several stumbling blocks, a new home study was finally completed in the fall of 2015. With the help of the NHBP social services department, MILS was able to renegotiate a larger adoption assistance subsidy that was better for the family. The adoption was finally scheduled

for December of 2015.

On the day, the court waiting room was filled with the friends and family. Aunts, uncles, cousins, friends and grandma had all come to share Chloe's final step in getting a "forever family," as she had often referred to it. Chloe was dressed in her finest, a sparkly blue dress, for the occasion. Meg Fairchild, behavioral health manager from the Nottawaseppi Huron Band was there on behalf of the

Tribe. Ms. Fairchild and Mindy reflected on what a long road it had been to arrive at this final step. Everyone in the courthouse knew what it had taken to arrive at this day. Mindy had patiently moved through it all, step by step. She had overcome every set-back with determination, with the help of her excellent advocates at NHBP, Nancy Bogren and Janet Foster. We at MILS were honored to have helped with the final leg of this journey.

**Names have been changed.



MARIA'S STORY

In December of 2015 Maria**, a 35 year old single mother with a debilitating birth defect requested representation at an eviction hearing scheduled for later that week. Maria and her teenage daughter had lived in their home for several years but had stopped paying rent three months before because repairs were not being made to her unit. She had verbally complained on numerous occasions that her doors did not properly lock and were not adequately "weather proofed" - they leaked cold air and rain. Her garage door did not close unless the rails were perfectly aligned which required physical strength she did not often have. Moreover her smoke detectors were defective (blinking) and/or were completely missing. Maria was not given a reason for being evicted and the notice for eviction did not seek past due rent. In Michigan, a family can be evicted from their home (after expiration of the lease) for no cause with 30 days advance notice. The notice attached to the eviction summons and complaint was defective because instead of giving her the mandated 30 days advance notice it only provided her 29 days.

Because evictions are "summary" proceedings wherein timeframes are radically shortened, the notice requirements are strictly enforced. Therefore the entire lawsuit could have been dismissed if the court ordered it. Maria and her MILS attorney attempted to settle the suit prior to the court date but negotiations failed.

On the day of trial, the parties reached a settlement. Maria and her daughter were allowed to stay

through the end of January and pay a total of two months' rent (instead of the required 4 months' rent). The landlord also agreed to make all the requested repairs by the end of the following week. Maria saved two months' rent for a future security deposit and the lawsuit was dismissed.

**Names have been changed.



MICHIGAN INDIAN LEGAL SERVICES MAKES A DIFFERENCE

In a tribal court criminal case, an MILS attorney convinced the tribal prosecutor to dismiss the case before the Court completed the arraignment. The client was charged with malicious mischief/vandalism and had no prior criminal charges or convictions. Although the client had damaged another person's property, they had already paid for repairs and apologized to that person. Upon our suggestion, the prosecutor discussed the case with the victim and the police officers involved. After she did this, the prosecutor agreed to dismiss the charge with prejudice.



An MILS attorney is helping a client amend his birth certificate to accurately reflect the name of his true father so that he will be eligible to enroll into a Michigan Tribe.

For a tribal member who wants to travel to Canada to track his family's migration to Michigan, we researched cross border issues. He had pleaded no contest to driving while impaired 10 years ago. Canada does not honor the Jay Treaty requirements of free passage for Native Americans and asserts that they have the right to determine who may enter their country and can deny him entry based solely on the DWI conviction from 10 years ago. We found an alternative solution and provided him advice on Canada's policies and procedures for two types of "Rehabilitation"- "deeming" at the port of (Canadian) entry and "individual" from within the United States.

In a tribal court criminal case, an MILS attorney advocated for a client's entry into the new Healing to Wellness Court. Although the Wellness Court team was at first hesitant to accept the client because the team thought the client had been untruthful about their criminal background, we helped the client explain why there was a discrepancy in the disclosures and the Wellness team's background check. After reviewing the client's letter and our letter explaining the situation, the Wellness team decided to accept the client as a participant in the program.

MILS provided assistance to a woman who lived in the house her mother owned. Her mother had walked on approximately one year ago. While the woman and her brother were the heirs to the house, when her mother died, a debt was owed to the nursing home in which she resided. The estate, therefore, filed an eviction against the woman, so that the estate could sell the house and pay the debt. We settled the eviction case with the estate allowing the woman to remain in the home for six weeks while she sought private financing to purchase the house in her name.

In cooperation with the Nottawaseppi Huron Band of Potawatomi's legal department and under a contract with the Tribe, an MILS attorney successfully settled a state DNR ticket for a tribal member. The member was ticketed for catching too small of a fish (in lieu of fishing without a license) on the Grand River. In a Pretrial chambers conference the Prosecuting Attorney agreed to dismiss the ticket if the tribal member did not commit any further violations for a three month period. At the end of the three month period, the ticket was dismissed.



MILS WAS BUSY IN THE TRIBAL COURTS IN 2015

2015 was a busy year here at MILS. Not only did we have cases in almost all of the tribal courts in Michigan, we helped members from all the federally recognized tribes in Michigan! From North to South, here is a breakdown of the number of tribal members from Michigan tribes who contacted MILS for legal help this past year:

Bay Mills Chippewa Indian Community (Bay Mills): 55
Grand Traverse Band of Ottawa and Chippewa (GTB): 68
Hannahville Indian Community (Hannahville): 9
Keweenaw Bay Indian Community (KBIC): 20
Lac Vieux Desert Band of Lake Superior Chippewa (LVD): 15
Little Traverse Bay Bands of Odawa (LTBB): 83
Little River Band of Ottawa (LRB): 10
Match-e-be-nash-she-wish Band of Potawatomi: 1
Nottawaseppi Huron Band of the Potawatomi (NHBP): 53
Pokagon Band of Potawatomi (Pokagon): 191
Saginaw Chippewa Tribe: 3
Sault Ste. Marie Tribe of Chippewa Indians: 35

In addition, we helped Michigan residents who are members from 37 other tribes across Turtle Island.

Since 2010, MILS attorneys have provided representation in 227 separate tribal court cases! In that time, we have represented individuals in 10 of the 12 tribal courts in Michigan. We have represented parents and children in 60 separate child welfare cases in 7 different tribal courts: Bay Mills, GTB, Hannahville, KBIC, LRB, LTBB, and LVD tribal courts. We have represented 6 people facing garnishment of tribal wages or per capita payments in the Pokagon, NHBP, and GTB tribal courts. We have represented 11 different families being evicted from private and tribal public housing: GTB, NHBP, LTBB, and LVD. We have also represented 13 juveniles in delinquency cases at KBIC, GTB, LTBB and Saginaw Chippewa tribal courts. In addition, we have provided representation for individuals in 126 different criminal matters at Bay Mills, GTB, LRB, LTBB, NHBP, and Pokagon. We have also provided representation in guardianship, paternity, elder protection, and trust fund/per capita cases.



MILS offers our newsletter by email. By saving material, labor and postage costs on our newsletter, we can devote more space to news and useful information about Indian law.

Please email us at newsletter@mils3.org and tell us if you can receive our newsletter by email.

Michigan *Federally Recognized Tribes*

Keweenaw Bay Chippewa Tribe

Lac Vieux Desert
Chippewa Tribe

Hannahville
Potawatomi Tribe

Bay Mills Chippewa
Indian Community

Sault Ste Marie Tribe
Chippewa Indians

Little Traverse Bay Bands
of Odawa Indians

Grand Traverse Band
Ottawa/Chippewa Indians

Little River Band
Ottawa Indians

Saginaw Chippewa Tribe

Gun Lake Potawatomi Tribe

Pokagon Band
Potawatomi Indians

Huron Band
Potawatomi Indians



0 50 100 Miles

This map is intended for general informational purposes only, and is subject to change. LTBB makes no warranties of any kind, including but not limited to data accuracy or project application. Data Sources - State of Michigan CGI, LTBB GIS Department, LTBB Education Department. July 10, 2007

**You've been convicted of (or pled to) a crime and you want to visit CA?
Canada that is...**

The Jay Treaty, signed in 1794 between Great Britain and the United States, provides that American Indians may travel freely between the two countries. Under the treaty and corresponding legislation, Native Indians born in Canada (who have 50% or more blood quantum) are entitled to freely enter the United States for a variety of purposes, including but not limited to employment, study, and immigration. However, Canada has not provided reciprocity of these conditions, and therefore may deny you entry into the country if you've been convicted of a crime or pled to a crime in the United States.

If you are a US citizen and have been convicted of or pled to a crime in the United States that is or may be considered a crime in Canada then you may apply for entry into Canada by being "Deemed rehabilitated," requesting "Individual Rehabilitation," applying for a pardon or requesting a Temporary Residence Permit.

1. Being "Deemed Rehabilitated"

Being "Deemed Rehabilitated" is risky because the application is conducted by a border agent at the point of entry into Canada. If you are not "deemed rehabilitated" you will be denied entry and will have to turn around and go home.

In order to be deemed rehabilitated the crime you committed must have been 1) punishable in Canada by less than 10 years in prison and 2) 10 years must have elapsed since you committed or finished the sentence for the crime.

2. Individual Rehabilitation

This is an application process done prior to your planned visit, so you know in advance of your planned trip whether you will be allowed to enter Canada. You will need to complete the application which can be found at <http://www.cic.gc.ca/english/information/applications/rehabil.asp>

In order to apply for individual rehabilitation 1) 5 years must have elapsed since you committed the crime and 2) 5 years must have elapsed since you completed all the requirements of your sentence. Individual Rehabilitation costs a non refundable \$200.00 initially and fees can increase to \$1000.00 (Canadian) depending upon the seriousness of the crime committed.

3. Apply for a Pardon

This is a process that must be applied for and conducted in the State in which you committed the crime. If you do receive a pardon then you still have to check with the Canadian Citizenship and Immigration office to see if they will accept it and allow you entry.

4. Request a Temporary Residence Permit

This is a process that initially begins from your home in advance of your planned travel. In order for you to be eligible for this 1) 5 years must have elapsed since the end of your sentence and/or 2) special circumstances have arisen wherein your need to enter or remain in Canada outweighs the health and safety risk to Canadian residents. Temporary Residence Permits cost \$100 - \$500 (depending upon how many people in your family apply).

To apply for entry into Canada or to find more information about it, please use this link:
<http://www.cic.gc.ca/english/index.asp>

Your support of MILS is critical to our ability to provide legal services that would otherwise be unavailable to Michigan's Native American community. 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.

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

Access to Justice Fund
Michigan State Bar Foundation
306 Townsend Street
Lansing, MI 48933

Your continued support will assure MILS's ability to provide free legal services to those that need it most. Michigan Indian Legal Services participates in the Access to Justice Campaign to increase resources for civil legal aid to the poor in Michigan. The ATJ Campaign is a partnership of the State Bar of Michigan, the Michigan State Bar Foundation and Michigan's civil legal aid programs. Tax deductible contributions to the ATJ Fund are received and administered by the Michigan State Bar Foundation according to the Access to Justice Fund Guidelines located at www.msbf.org/atjfund.

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