



Michigan Supreme Court

State Court Administrative Office

Child Welfare Services

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Kelly Howard
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MEMORANDUM

DATE: February 11, 2010

TO: Chief Circuit Judges

cc: Presiding Family Division Judges
Circuit Court Administrators
Family Division Administrators

FROM: Kelly Howard, Director, SCAO Child Welfare Services Division

RE: MCR amendments incorporating the Indian Child Welfare Act (ICWA), 25 USC 1901-1963

The federal Indian Child Welfare Act became law in 1978. Because no federal regulations have been available to guide them, states have varied in their interpretations and use of the ICWA, which has led to inconsistent application around the country, and from court to court within Michigan. While the ICWA's intent is clear on some issues, it is frustratingly opaque on others. The Bureau of Indian Affairs issued its "Guidelines for State Courts" in 1979, but the guidelines are not as authoritative as formally promulgated federal regulations.

With these realities in mind, SCAO's Court Improvement Program created a state-tribal ICWA Committee to analyze the ICWA and offer interpretive recommendations to Michigan courts. The committee recently published a bench guide entitled the [ICWA Court Resource Guide](#).

While drafting that bench guide, the committee also asked SCAO to help conduct a thorough review of all Michigan court rules that apply in ICWA cases. A subcommittee created to conduct that review subsequently recommended extensive rule amendments designed to incorporate the ICWA's provisions into the Michigan Court Rules. Whenever possible, the subcommittee based its recommendations on the exact language of the ICWA. If the ICWA did not provide explicit rules, the subcommittee also relied on the BIA's "Guidelines for State Courts."

The court rules subcommittee formally presented its recommendations to the Michigan Supreme Court in October 2009. The Court designated the matter as ADM File No. 2008-43, and published the proposed rules for comment. Following the public comment period, the justices

unanimously adopted the recommended MCR amendments on January 27, 2010, and ordered that they take effect May 1, 2010. These rule changes provide guidance to the trial courts about the nuances of the ICWA, especially with regard to how the courts' handling of cases that involve an "Indian child" and an "Indian child's tribe" must differ from other child protection, guardianship, and adoption cases.

The new and amended court rules can be found on SCAO's website at:

<http://courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#approved>

The rule changes include:

- Deletion of MCR 3.980, Michigan's only previous court rule addressing the ICWA, and its replacement with multiple new and amended court rules. Most of the amendments appear in Subchapter 3.900, Proceedings Involving Juveniles. Others affect Subchapters 3.800 (Adoption) and 5.400 (Guardianship, Conservatorship and Protective Order Proceedings).
- Additional definitions of special-meaning terms such as "Indian child," "Indian child's tribe," "reservation," and "child custody proceeding." [Note: In ICWA proceedings, "child custody proceeding" has a definition unique to ICWA.] All the definitions come directly from the ICWA; the definitions will help courts discern to whom the ICWA applies and who must be considered a party to an ICWA case under the federal law. For example, the definition of "child custody proceeding" includes "foster care placement." And the latter term includes guardianships, not just our traditional concept of foster care placements that are based on abuse and neglect. This federal requirement is clearly noted in the amended court rules.
- Required notice of proceedings to be provided to Indian tribes when the ICWA mandates it. The ICWA allows tribes to intervene at any time during an ICWA proceeding; therefore, state courts must provide notice of their hearings so the affected tribe(s) will have an opportunity to assert that right.
- Clarification that an Indian tribe has exclusive jurisdiction over any ICWA-defined "child custody proceeding" involving a child whose residence or domicile is on a reservation. If a tribe has exclusive jurisdiction, the amended court rules now explicitly state that a Michigan trial court must dismiss the case, thereby allowing the tribe to assert its jurisdiction.

The amendments reflect substantial revisions of the rules relating to child protective proceedings, adoption, and guardianships, and this short summary outlines only a few of the most important changes. SCAO recommends that you thoroughly review the amendments as you prepare to implement the new rules on May 1, 2010. Child Welfare Services in SCAO will conduct statewide training on the ICWA Court Resource Guide beginning this summer, and the new court rules will be incorporated in those training sessions.

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If judges or court staff have questions about these court rules, please contact Angel Sorrells at sorrellsa@courts.mi.gov or Amy Byrd at byrda@courts.mi.gov.