

# Indian Child Welfare Act

SCAO's focus on the federal law,  
Michigan's compliance, and ways to  
practically implement the Act.

October, 2009

## **SCAO action**

- Special Committee designated to the Indian Child Welfare Act (ICWA).
- A Subcommittee to evaluate court rules and forms and how they relate to the ICWA.
- State-wide training in 2010 on the work product of both the committee and subcommittee.
- Tribal-Court Relations – New Court Improvement Program committee.

## **Why create a special committee dedicated solely to the ICWA?**

- Response to a multitude of questions from state courts about the ICWA, including Probate Courts asking how to handle issues such as “active efforts.”
- A lack of uniform application of this federal law.
- Tribal representatives expressed concerns about this lack of uniformity.
- The federal law is over 30 years old.

## **Committee membership**

- State court judges, referees, court administrators, probate registers, prosecutors
- DHS staff: Child Welfare Training Institute and Office of Native American Affairs
- Tribal Chairs, judges, legal counsel, and case workers
- MJI, Michigan State Police, Department of Community Health, MI Indian Legal Services, and Urban Indian organizations

## Mission

- Understand why we have the ICWA and what it means for state courts...
- Identify areas of confusion and concern and discuss solutions...
- Develop a Court Resource Guide that compliments the Benchbooks and offers practical tips to implement the ICWA ...
- Review court rules and forms for improvement or clarification ...

## Organization of the Court Resource Guide

- Practical information for Courts**
  - Identifying an “Indian child”
  - Active efforts
  - Qualified expert witness
  - Case Transfer to tribal court
  - Voluntary and involuntary proceedings
  - Funding Streams (e.g. Title IV-E, County Child Care Fund, etc.)
  - Specific recommendations for each type of proceeding (foster care, guardianship, adoption, etc.)

## **The Court Resource Guide**

- Provides best practice tips, especially for those tough situations without obvious solutions.
- Includes questions you may ask to ensure that the caseworker, LGAL, and your own court are complying with the law.
- Will be updated regularly to reflect case law and court rule changes.

## **Court rules & forms**

- A court rules and forms subcommittee was formed as a result of the committee's work.
- The recommendation will be to delete MCR 3.980; the concepts and requirements contained therein will be integrated in all the court rules.
- Court forms will also be examined to include ICWA requirements.

## Training

- Our goal is to have state-wide training on the Court Resource Guide ... how to use it as well as the ICWA's requirements.
- Begin in mid 2010 and will be conducted regionally.
- What would you like to have included in an ICWA training?

## Next steps

- As of August 31, 2009, the Court Resource Guide is complete! It is on your CDs and available online in an interactive format.
- A new "Tribal – Court Relations" Court Improvement Program sub-committee has been formed
- The next discussion will be how to codify the ICWA into Michigan law.
- The ABA has offered its help in these discussions.
- Be ready to send more representatives to these meetings! We need your input and expertise.

## **Contact information**

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