

# Michigan Indian Legal Services, Inc.

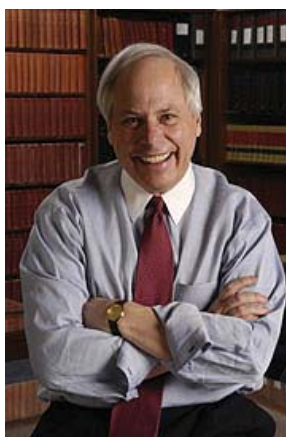
# MILS



# 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



President John R. Runyan, Jr.

In this issue of MILS Review, I would like to introduce you to one of MILS' hard-working staff attorneys, Tom Myers.

Tom was born in Detroit in 1954 and graduated from Pioneer High School in Ann Arbor in 1972. He attended the University of Colorado in Boulder, Colorado, obtaining a Bachelor of Science

in Journalism in 1978. Prior to

attending law school, he worked as an Editor at Paladin Press in Boulder, editing manuscripts, designing books and writing advertising copy. Tom also worked for five years as a Service Engineer, writing service manuals first for AM General in Livonia and later for General Motors Hydra-Matic Division in Ypsilanti, Michigan.

In 1989, Tom decided to go to law school. He attended the University of Montana School of Law in beautiful Missoula, Montana, graduating with a Juris Doctor in 1992. While in law school, Tom worked as an intern at Montana Legal Services in Missoula. Tom also took a number of Indian Law classes while in law school, a subject matter

in which Montana offers more classes than most other law schools.

Following graduation from law school, Tom worked for nearly six years as a full time prosecutor for the Confederated Salish & Kootenai Tribes in Pablo, Montana. In this capacity, he worked with tribal police in investigating criminal wrongdoing, reviewed police reports, made decisions to prosecute, requested warrants, filed complaints and handled approximately 300 criminal cases per year. He gained significant courtroom experience, making court appearances at least three days per week and on weekends as necessary.

Tom came to work as a staff CONT PG 2



Pictured above from left to right: (back) Tom Myers, Aaron Allen, Jim Keedy, Cami Fraser, (front) Tammy Turner and Karen Oska-boose. Photo by Jared Myers.

attorney for MILS in July of 1999. During the first nine years of his employment, he staffed MILS' Lansing office. In mid-2008, MILS decided to close its Lansing office and move its downstate office to Tom's home in Dexter, an experiment that has worked out well for both Tom and MILS. For the past 22 years, Tom has also been the proud father of three children, the youngest of which just graduated from high school.

Although Tom has handled a number of significant cases and other projects during his ten years as a staff attorney, one of the most significant was the Court of Appeals recent

decision in *Stephanie Empson-Lavolette v. Nathaniel Ryan Crago*, 280 Mich App 620, 760 NW2d 793 (2008). In one of the most significant decisions ever rendered by a Michigan appellate court under the Indian Child Welfare Act (ICWA), the Court of Appeals vacated a trial court's refusal to return an Indian child to the custody of his mother, an enrolled member of the Pokagon Band of Potawatomi Indians. Although the child's legal guardians argued that his mother had consented to their guardianship, the Court of Appeals concluded that even if this were the case, the mother retained the right under §1913(b) of ICWA to

withdraw her consent to the guardianship and have the child returned to her custody. Thus, the Court of Appeals concluded that the trial court had erred in finding that ICWA did not apply because the guardianship proceedings were voluntary; and further, that because ICWA preempted the stay imposed pursuant to state law in the guardianship proceedings, the trial court should have terminated the guardianship order and returned the child to his mother's custody as required by §1913(b) of ICWA.

Good work Tom!



## MILS NEWS

- MILS was notified on August 10, 2009 we have been awarded a Community Services Block Grant (CSBG) for American Indian activities in the amount of \$64,094. MILS was one of only two recipients to receive this award.

The CSBG program is administered jointly by the Michigan Department of Human Services and the Michigan Department of Civil Rights as part of the "Legal Aid to Fight Poverty" project. The CSBG program is a competitive federal grant program with specific state eligibility requirements. Grant proposals must comply with the federal Community Services Block Grant Act, and

U.S. Department of Health and Human Services Block Grant Regulations. The goal of this project is to reduce the causes and effects of poverty for as many Indian people as possible in the space of one year. MILS seeks permanent solutions to problems instead of spending resources on the symptoms of problems. One area where MILS has had great success is in helping tribes obtain federal recognition. Other areas include representation of children and families in ICWA cases, education cases and discrimination cases.

- The Federal Bar Association selected the Indian Law Section to be the recipient of the 2009 Outstanding Newsletter Recognition Award. MILS Board Member Elizabeth Kronk is the

Co-Editor in Chief of the newsletter and Board Member Allie Maldonado is the Chair of the Indian Law Section. MILS Staff Attorney Cami Fraser serves as a contributing editor. In addition, Michigan attorneys and friends of MILS Kate Fort and Zeke Fletcher serve as editors for the newsletter. Congratulations to all!

- A tribal member father applied to live in tribal housing and was rejected. A MILS attorney reviewed the applicable laws and policies, and explained the man's rights to him, including the appeal process. The attorney also contacted the tribal housing authorities. It was determined that an error had occurred, and the man should not have been rejected after all. The mistake was corrected, and the family

was approved for housing.

- A tribal member mother contacted MILS after her children were removed from her care in a child welfare matter in a tribal court. The case involved allegations of substance abuse, and a lack of suitable housing. A MILS attorney represented the mother in court, advised her and advocated for her throughout the lengthy court process. After several months, the tribal court found that the woman had made great strides in addressing her issues, and the children were returned to her care. The fam-

ily now lives in a new, safe, and sober home in tribal housing.

- A MILS client wanted to enroll, along with the client's children, in a Michigan tribe with whom the client was possibly affiliated. The client was adopted and faced the task of getting biological parental information from sealed adoption records to establish Indian ancestry. In addition, paternity had not been established legally. MILS helped the client work with the tribe in establishing Indian ancestry and applying for citizenship. Our client and the children

were accepted by the tribe for citizenship.

- MILS is now on facebook! We have a page located at <http://www.facebook.com/home.php?ref=home#/pages/Michigan-Indian-Legal-Services/96944754957> and a cause page, which can be found at <http://apps.facebook.com/causes/314488/32300345?m=6d54c0aa>. Please look for us online! If you cannot find us just do a facebook search with the words Michigan Indian Legal Services.



## Michigan Supreme Court Decides ICWA Case

MILS attorneys and Michigan State University Indigenous Law and Policy Center filed an amicus brief with the Michigan Supreme Court in the case *In re Lee*. The case started in Mackinac County Circuit Court, where Cheryl Lee's parental rights to her eight year old son were terminated. Lee appealed the termination, first to the Michigan Court of Appeals, then to the Michigan Supreme Court. MILS and the Center filed their amicus brief on behalf of the Indian Law Section of the State Bar of Michigan. MILS' purpose in filing an amicus brief was to help inform the Court about areas of ICWA where the Court had never made rulings. Although the Michigan Supreme Court upheld the termination of Ms. Lee's parental rights, the Court interpreted ICWA in a manner that protects Indian families. The full case citation is: *In re Lee*, 483 Mich 300; 2009 Mich LEXIS 1570 (2009).

The Michigan Supreme Court ruled:



- Neither the Adoption and Safe Families Act nor Michigan law relieved the DHS from ICWA's requirements.
- The clear and convincing evidence standard of proof applies to the ICWA requirement that DHS make active efforts to prevent the breakup of the Indian family.
- ICWA requires active efforts be affirmative, as opposed to passive, which is more than the "reasonable efforts" required by state law.
- ICWA-required services do not have to be current; however services provided too long ago to be relevant to current cir-

cumstances can raise reasonable doubt and defeat termination.

- Active efforts do not always have to be provided in relation to the child who is subject of the current termination proceeding, but past efforts for other children must be shown to be relevant.
- Lower courts cannot use a "futility test" to predict that rehabilitative services would be futile, meaning DHS cannot simply discontinue services once a petition to terminate parental rights predicated upon a prior termination has been filed.
- "Anticipatory neglect" or presumption of unfitness is inconsistent with ICWA and lower courts may only take into account past conduct in conjunction with current evidence.





## Eva Kennedy, MILS Board Member by Beverly Clark

**E**va has been on the MILS Board since 1990. Eva was selected to be a representative of the North American Indian Association (NAIA), about which you will learn more later. She is Oneida and has lived in the Detroit area her entire life.

Besides her tasks as wife (married to Maynard for 47 years until his death), mother of five, grandmother of eight and now as a great grandmother and taxi driver, Eva worked for the General Services Administration, for Headstart, has done sports committee work, was active in the PTA, and has been involved with NAIA almost since its beginnings. Her special love was working with the children and helping start the Kateri Circle. She and Maynard worked tirelessly in their efforts to enrich the lives of Native people. Along with NAIA, she and Maynard were involved with Dean

George and Harold Gould in their early discussions about the formation of MILS.

Eva has found her work with MILS gratifying in many ways, both personally and professionally. On the personal side, she enjoys the travel and meeting people. She wishes to travel to all 50 states, with 48 down and Montana and Hawaii to go, and has traveled throughout Canada. She sees people in all her travels with the same problems that afflict the Native community in Michigan and bemoans the slow progress being made. Despite these hardships, she sees that Native people keep smiling. As a board member, she religiously visits Traverse City for MILS quarterly meetings. As for being part of its achievements, Eva is very proud of the way MILS has helped so many through its efforts on behalf of Native people, particularly by its work to achieve federal recognition for so many tribes. She



Photo by Cami Fraser

would like to see MILS do more in the Detroit area, perhaps someday being able to open an office in Detroit. She brings to our meetings a thoughtful, caring persona and an understated sense of humor which everyone enjoys. Congratulations Eva as you begin your 20th year with MILS!



## The North American Indian Association of Detroit, Inc. by Beverly Clark



NAIA really began in a different form in the mid-1930s, when Scott N. Peters, Chipewewa, arrived in Detroit. He was the Department of the Interior's Educational Guidance and Placement

Officer. He began the tough task of finding jobs for many Natives even though it was a period when serious discrimination existed. In 1940, Peters persuaded the Board of Directors at the

Detroit YMCA to let Natives use the facilities free of charge. Soon after, organizational guidelines and a constitution were written and the North American Indian Club was born.

NAIA has had as many as 300 members, representing up to 40 different bands and tribes in North America. Like all

such organizations, NAIA experienced growth pains. Initially it moved between different locations: YMCA, Holy Trinity, and Salvation Army to name a few. In the early 1970s, it moved to a building on John R St. near Grand Circus Park where it resided until moving to its present home at 22720 Plymouth Road, east of Telegraph, about 25 years ago.



## MILS Offers New Service to Help Feed the Hungry by Aaron Allen



This summer, MILS attorneys received training and certification to register eligible clients for certain state benefits that provide free food to older Michigan residents. The training was made possible through MiCAFE (pronounced My Cafe), a program developed by Elder Law of Michigan. MiCAFE, or Michigan's Coordinated Access to Food for the Elderly, helps seniors (60 and older) apply for a Bridge Card to pay for food, so seniors can afford other essential items like medicine. The Bridge Card functions like a debit card, similar to Michigan's food stamp program, which no longer uses actual paper stamps. Seniors simply swipe their card at grocery store checkout lines, as simple and discreet as using

a debit card.

Beverly Clark, MILS Ex Officio board member, was already a MiCAFE volunteer, and helped arrange training for MILS attorneys as well. MILS is grateful to Bev, and to Sarah Himes, the MiCAFE Project Director who traveled all the way from Lansing to Traverse City to conduct the day long training. As a result MILS attorneys can now assist elder clients to apply for the Bridge Card in the comfort and privacy of our office, and in some circumstances even over the phone. Before MiCAFE, Michigan seniors had to travel to the Department of Human Services to apply for the Bridge Card in person. This created a hardship for many Native American elders. Now it is much easier to apply, because MILS attorneys can help clients apply using the internet. For more information, interested seniors should contact MILS at 1-877-968-6877, MiCAFE at 1-877-664-2233, or visit [elderlawofmi.org/micafe](http://elderlawofmi.org/micafe).



## Misunderstandings about the Indian Child Welfare Act by Tom Myers

While ICWA has had good results, there continue to be several points of confusion. We hope the following questions and answers will clear up some of that confusion.

The U.S. Congress passed ICWA in 1978, to keep Indian families together. Too many Indian children were being removed from their homes by non-Indian social workers. Often these children were adopted into non-Indian families. Tribal advocates saw this as an insidious practice that could contribute to the eventual destruction of tribes and their culture.

Now, when a Department of Human Services (DHS) worker removes an Indian child from a parent, ICWA requires the child's tribe be notified. The tribe can then request transfer of the case to tribal court, or the tribe can become involved in the state court case. When a child protection case happens on a reservation, ICWA and state laws generally do not apply—tribal law applies, in tribal court.

For an off-reservation case that stays in state court, ICWA provides additional protections, such as stricter requirements before a parent's rights can be terminated.

### 1. Does ICWA apply only when DHS removes a child?

No. ICWA can apply to voluntary proceedings, for example, where a parent gives a child up for adoption, or gives guardianship of their child to a friend or relative.



## **2. What if a parent abandons a newborn Indian child under the Safe Delivery of Newborns Act?**

The Safe Delivery of Newborns Act allows a parent to anonymously abandon a newborn to a fire department, police station or hospital. This interferes with the enforcement of ICWA, because there is no way for a court to determine if the child is Indian. This conflict is an ongoing concern among Indian law advocates.

## **3. Does ICWA apply in a divorce involving an Indian child?**

No, as long as one of the parents gets custody of the child. Nor does ICWA apply in a custody dispute between unmarried parents. However, ICWA might apply if the court awarded custody to a third party.

## **4. Does ICWA apply in a juvenile delinquency case?**

Yes, if the juvenile is detained for a “status offense” such as runaway or truancy. ICWA does not apply if the juvenile is detained for an offense that would be a crime if committed by an adult, such as assault or burglary. ICWA might apply if the child was removed not as punishment, but because of conditions in the child’s home.

## **5. What if the child does not belong to a federally recognized tribe?**

ICWA does not apply. However, if the child belongs to a non-federally recognized tribe, the DHS may still opt to notify the child’s tribe, and the tribe can ask the court for permission to intervene. Non-federally recognized tribes include state historic tribes and most Canadian bands. The Federal Register contains a list of federally recognized tribes under “Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs.”

## **6. Who is an Indian child under ICWA?**

An Indian child is an unmarried person under 18 who is either (1) a member of a tribe, or (2) eligible for membership in a tribe, and the biological child of a tribal member. ICWA contains no blood quantum requirement, but rather depends on membership rules of individual tribes.

## **7. Does ICWA protect a non-Indian parent of an Indian child?**

Yes. ICWA protections still apply in a case where the DHS removes an Indian child from a non-Indian parent.

## **8. What is MICWA, and whose side is MICWA on?**

The Michigan Indian Child Welfare Agency (MICWA) is a non-profit agency under contract to the DHS. MICWA duties include recruiting Indian foster homes, home studies, tribal identification, and recommending adoption placements. While MICWA supports enforcement of ICWA, MICWA’s role could be adverse to a parent, depending on the facts of a case.

## **9. What should the parent of an Indian child do if their child is removed?**

The parent should tell the DHS and the court that their child is Indian. If they think their child might be eligible but are not sure, they should tell the DHS and the court anyway.

Parents who cannot afford to hire an attorney are entitled to a court appointed attorney, and should ask the court to appoint an attorney. Upon the request of a parent eligible for MILS services, MILS will offer to consult with court appointed attorneys on ICWA questions.

Readers with ICWA questions may email them to MILS at [questions@mils.org](mailto:questions@mils.org), and we will try to answer them in the next newsletter.



## Student Internship Opportunities at MILS

Michigan Indian Legal Services (MILS) continues the tradition of welcoming legal interns to assist our legal staff. Over the years, MILS has seen interns go on to successful and rewarding careers in Indian Country. MILS internships offer exceptional students the opportunity to experience the practice of Indian law from a unique vantage point. MILS encourages students to volunteer for possible participation in a MILS Internship in Traverse City this year. Current law students interested in an internship with MILS should send a letter of interest to:

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

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.

I wish to assist MILS' important work and include a tax deductible contribution of: \$\_\_\_\_\_.

Name: \_\_\_\_\_

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\_\_\_\_\_ Please indicate if you are an attorney. (optional)

# Michigan Indian Legal Services, Inc.

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