



Legislative
Services Agency

MINUTES

Meskwaki Tribal Court Study Committee

September 29, 2006

MEMBERS PRESENT:

Senator Keith Kreiman, Co-chairperson
Senator David Miller, Co-chairperson
Senator Dennis Black
Senator Brad Zaun

Representative Kraig Paulsen, Co-chairperson
Representative Lance Horbach
Representative Kevin McCarthy
Representative Kurt Swaim
Representative Jim Van Fossen

MEETING IN BRIEF

Organizational staffing provided
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- I. **Procedural Business.**
- II. **Opening Comments.**
- III. **Meskwaki Tribal Court History and Operations.**
- IV. **Meskwaki Clerk of Court.**
- V. **Practicing Law in the Meskwaki Tribal Court.**
- VI. **Bureau of Indian Affairs, Division of Tribal Support.**
- VII. **Mr. Dennis Johnson, Attorney, Dorsey & Whitney Law Firm.**
- VIII. **Conclusion.**



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I. Procedural Business.

Call to Order. Temporary Co-chairperson Representative Kraig Paulsen called the Meskwaki Tribal Court Study Committee to order at 10:15 a.m., Friday, September 29, 2006, in Room 22, State Capitol, Des Moines, Iowa.

Election of Co-chairpersons. Temporary Co-chairperson Paulsen entertained a motion to elect Senators Keith Kreiman and David Miller and Representative Paulsen as Co-chairpersons, and the motion was seconded. The Committee unanimously elected by voice vote Co-chairpersons Senators Kreiman and Miller and Representative Paulsen.

Proposed Rules. Co-chairperson Paulsen moved the Committee adopt the proposed rules, the motion was seconded, and the rules were adopted.

Adjournment. The meeting adjourned at 2:45 p.m.

II. Opening Comments.

Co-chairperson Paulsen stated the Committee is approved for two meeting dates and the co-chairpersons will confer to determine the next meeting date. He also stated that a court reporter was requested to record the meeting by Mr. Dennis Johnson, an attorney from the Dorsey & Whitney Law Firm. Co-chairperson Kreiman welcomed everyone to the meeting. Co-chairperson Miller emphasized that the Committee needs to keep an open mind about the issues before the Committee.

III. Meskwaki Tribal Court History and Operations.

Overview. Chief Judge Elbridge Coochise of the Meskwaki Tribal Court (tribal court) informed the Committee that he is a member of the Hopi Tribe and he has worked in several tribal courts throughout his career. Mr. Charles Gribble, an attorney representing the Meskwaki Tribe, stated the tribal court has been in existence for over a year.

Description. Chief Judge Coochise stated the tribal court has handled over 70 cases, including family law, Indian child welfare, and contract cases. The tribal court operates like any other court system with a few modifications. The tribal court's rules of civil procedure are very similar to the federal rules of civil procedure but are modified to incorporate Meskwaki beliefs, values, customs, and traditions, both written and unwritten. An aggrieved party may appeal a decision to the Meskwaki Appellate Court. The tribal court has ruled against the wishes of the tribal government and will probably do so in future cases as well.

Member Questions.

- **Unwritten Rules.** Co-chairperson Paulsen asked whether the tribal court bases some decisions on unwritten tribal rules. Chief Judge Coochise responded that some decisions may derive from unwritten rules if all the parties involved are Meskwaki. Chief Judge Coochise also stated that if a contract entered into by the tribe states that Tama County District Court has jurisdiction over any issues involving the contract, then the tribe would honor that provision of the contract. Co-chairperson Paulsen asked whether traditional



Meskwaki beliefs are read into contract disputes with persons who are not Meskwaki. Chief Judge Coochise stated the traditional beliefs of the Meskwaki are centered around rearing children, not contract law.

- **Removal of Judge.** Representative Horbach asked how a Meskwaki judge can be removed from the bench. Chief Justice Henry Buffalo of the tribal court stated a judge can only be removed by a two-thirds majority of the Meskwaki Tribal Council (tribal council).
- **Property Disputes.** Co-chairperson Kreiman asked which court would have jurisdiction if a Meskwaki tribal member living off the settlement sells a lawn mower to a nontribal member and a dispute arose out of the sale. Chief Justice Buffalo responded that if the sale is made off the settlement then a state small claims court would handle that particular case.
- **Record of Decisions.** Co-chairperson Kreiman asked whether a person could access past decisions of the tribal court. Chief Justice Buffalo stated the plan is to codify previous decisions.
- **Tribal Court Role.** Representative Kurt Swaim asked whether the purpose of the tribal court system is to solve internal disputes within the tribe. Chief Justice Buffalo responded that if a tribe has the resources to establish a government, then an important step that naturally follows the establishment of such a government is the creation of a tribal court because some issues simply cannot be resolved by the tribal council. He further stated it is essential that a tribal court establish a relationship with the state court so orders can be recognized and enforced uniformly. Mr. Gribble added the state can recognize tribal court judgments in three ways: 1) adopt legislation recognizing the Meskwaki Tribal Court; 2) establish recognition by court rule; or 3) do nothing and let case law develop over time. He added that the tribal council has never been utilized to determine unwritten Meskwaki law, not even in family cases. He stated that the tribal court does not have jurisdiction to criminally prosecute non-Indians. He emphasized the tribal police could arrest a non-Indian, but it would be up to the county prosecutor to prosecute such an individual.
- **Indian Civil Rights.** Chief Judge Coochise and Chief Justice Buffalo stated that there are four major differences between the Indian Civil Rights Act and the U.S. Constitution and they include the following: the tribe is permitted to recognize a religion, a person is only entitled to a six-person jury, penalties are limited to a maximum one year in jail and a \$5,000 fine, and indigent defendants must pay for their own attorneys.
- **Other Provisions.** Co-chairperson Miller emphasized the need for the tribal court to ensure constitutional protections. Chief Justice Buffalo commented it is important for the tribal court to be independent from the tribal council. Co-chairperson Kreiman asked whether the tribal council can change a Meskwaki Appellate Court decision. Chief Judge Coochise stated such a decision cannot be changed.

IV. Meskwaki Clerk of Court.

Overview. Ms. Theresa Essmann-Mahoney, Clerk of Court for the Meskwaki Tribal Court, stated she is a former assistant Clerk of Court for Black Hawk County. She noted the tribal court is very independent from the tribal council. The tribal court is necessary to resolve internal disputes



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because state and federal courts are not set up to understand some cases that require knowledge of tribal customs and traditions. Tribal court filings are accessible to the public except for cases involving juveniles.

Member Questions.

- **Court Procedures.** Co-chairperson Paulsen asked if court filings are available online. Ms. Essmann-Mahoney responded that paper copies of documents are available to the public, but the documents are not yet available online. Co-chairperson Paulsen asked if the "notice" requirements for a lawsuit are the same as state court "notice" requirements. Ms. Essmann-Mahoney replied the "notice" requirements for the tribal court are the same as state court requirements.
- **Fish and Game Violations.** Senator Black asked whether fish and game violations would be enforced by tribal peace officers. Ms. Essmann-Mahoney replied that if the violator is Meskwaki the tribal police force would make the arrest, but if the violator was not Meskwaki then she is not sure if the tribal police force would arrest the person. Representative McCarthy commented that certified peace officers can only utilize full police powers when the officer is within the officer's jurisdiction; if the officer is outside the officer's jurisdiction, then the officer is not proactive and will not be making arrests unless an obvious law violation occurs in front of the officer.
- **State and Tribal Jurisdiction.** Senator Zaun asked if there are examples where there are jurisdictional problems between the tribal court and state court. Ms. Essmann-Mahoney responded that sometimes in juvenile court there are problems, but most tribal court orders involving juveniles have been honored by the state. Representative Horbach commented that on October 1, 2006, Tama County will decide whether individuals who have been arrested by a Meskwaki police officer will be prosecuted in the county. Mr. Gribble commented that if the county refuses to prosecute individuals, the tribe may request a "writ of mandamus" to force the county to prosecute individuals arrested by a Meskwaki peace officer.

V. Practicing Law in the Meskwaki Tribal Court.

Ms. Nancy Burk, an attorney from Burk Law Offices in Toledo, Iowa, stated she is a sole practitioner who specializes in criminal and family law. She stated the tribal court is functioning normally and there have not been any problems practicing before the tribal court. She commented that the tribal court has ordered child support to be paid and those child support orders are beginning to be enforced by the state.

Co-chairperson Kreiman asked where the juvenile statutes are located in the Meskwaki Code. Ms. Burk stated the laws pertaining to juveniles are located in the family law section of the Meskwaki Tribal Code. Representative Horbach asked whether a guardian ad litem in tribal court is paid the same amount as a guardian ad litem in state court. Ms. Burk responded a guardian ad litem in tribal court is paid more than a guardian ad litem in state court.



VI. Bureau of Indian Affairs, Division of Tribal Support.

Overview. Mr. Joe Little, Acting Associate Director of the federal Bureau of Indian Affairs, Tribal Division, presented information via speakerphone about the interaction of Indian tribal courts with state courts. He emphasized the Bureau of Indian Affairs does not have an agenda to encourage states to give full-faith and credit recognition to tribal court judgments, but the Bureau encourages an expedient and efficient court system if the two court systems are to coexist. States do not need to legislate full-faith and credit recognition of tribal courts, but many state courts have been reluctant to adopt such a principle so the legislature takes the lead in adopting full-faith and credit recognition in some instances.

Member Questions. Co-chairperson Paulsen asked whether some states have taken a gradual approach to adopting full-faith and credit recognition of tribal courts. Mr. Little responded by stating some courts have established full-faith and credit recognition on a case-by-case basis.

Co-chairperson Miller asked about state trends for establishing full-faith and credit recognition. Mr. Little stated the trend is for the establishment of more full-faith and credit recognition between the states and tribal courts. Co-chairperson Paulsen asked what some of the problems are in other states that have tribal courts. Mr. Little stated that cross-training is poor between the tribal courts and state courts, court orders need to be more consistent, and the courts need to do a better job exchanging information.

Co-chairperson Miller commented if the state moves toward establishing full-faith and credit recognition to tribal court judgments, the state needs to guarantee the protection of constitutional rights of all citizens.

Co-chairperson Kreiman asked whether a tribal court can have criminal jurisdiction over a person who is not an Indian. Mr. Little said tribal courts do not have jurisdiction over a person who is not an Indian in criminal matters. Co-chairperson Paulson asked about the impact of traditional tribal law upon a person who is not an Indian. Mr. Little stated he has never heard of traditional tribal law being applied to a person who is not an Indian.

VII. Mr. Dennis Johnson, Attorney, Dorsey & Whitney Law Firm.

Mr. Johnson stated the recognition of any tribal court is appropriate, but safeguards also need to be in place. He stated a person who is not an Indian recently had his computers seized pursuant to a Meskwaki court order. He further stated that the person never agreed to be subjected to Meskwaki law. He identified the following problem areas in tribal courts: 1) difficulty in determining the identification of a judge prior to a particular case being heard; 2) personal jurisdiction of the tribal court is too broad; 3) a defendant in a lawsuit is prohibited from filing any counterclaims against the plaintiff; and 4) the common law of the tribe includes unwritten tribal customs and traditions.

He also noted the Meskwaki Tribe is a sovereign nation and has the right to change its laws at any time. Representative Horbach commented that the state of Iowa could change its laws, too. Mr. Johnson opined that if the state grants full-faith and credit to tribal court judgments, then any state law granting recognition should be applicable to tribal members only, be prospective in application,



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and include strict statutory guidelines guaranteeing due process. He emphasized Meskwaki court orders that are inconsistent with state law should not be enforceable in state court.

VIII. Conclusion.

Co-chairperson Kreiman commented that the Committee has not made any decisions about the direction the Committee will take in the future, and indicated the Committee's desire to hear additional testimony about tribal courts. Representative Horbach would like to hear testimony from a representative from the state court system about the tribal court. Co-chairperson Miller would like to hear from people who will offer solutions to the issues before the Committee.

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