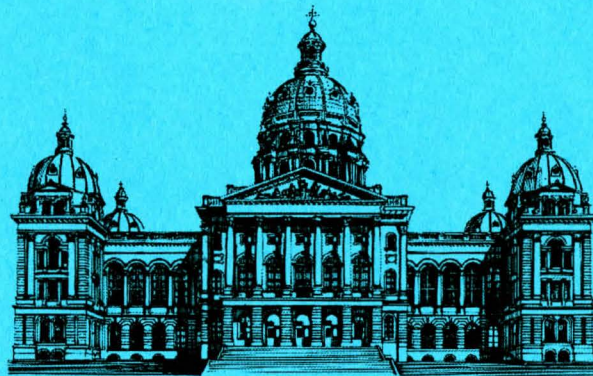


FINAL REPORT

MESKWAKI TRIBAL COURT INTERIM STUDY COMMITTEE



Presented to the
LEGISLATIVE COUNCIL
and the
IOWA GENERAL ASSEMBLY
May 2007

Prepared by the
LEGISLATIVE SERVICES AGENCY



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Meskwaki Tribal Court Interim Study Committee

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MEMBERS

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

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

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AUTHORIZATION AND APPOINTMENT

The Legislative Council established the Meskwaki Tribal Court Interim Study Committee in 2006 and authorized the Committee to meet for two days during the 2006 Legislative Interim. The Committee was charged to continue with efforts to determine the proper manner for the Iowa Court System to recognize civil judgments, decrees, and orders issued by the Meskwaki Tribal Court.



Meskwaki Tribal Court Interim Study Committee

I. Overview.

The Meskwaki Tribal Court Interim Study Committee was charged with continuing the work from previous legislative sessions to determine the proper manner for the Iowa Court System to recognize civil judgments, decrees, and orders issued by the Meskwaki Tribal Court. The Committee was authorized to meet for two days.

The Committee held one meeting on September 29, 2006. Representative Kraig Paulsen presided over the meeting, and Committee members agreed that the primary purpose of the meeting was to receive and gather information and that Committee decisions would not be made at this meeting. The agenda focused on presentations and discussions with Mr. Charles Gribble, an attorney for the Meskwaki Tribe who facilitated presentations by the Honorable Henry M. Buffalo, Jr., Chief Justice, Meskwaki Tribal Court (Appellate Court Division) and the Honorable Elbridge Coochise, Chief Judge, Meskwaki Tribal Court (Trial Court Division); Ms. Theresa Essmann-Mahoney, Clerk of Court, Meskwaki Tribal Court; Ms. Nancy Burk, an attorney who practices family law in the Meskwaki Tribal Court; Mr. Joe Little, Acting Associate Director, Federal Bureau of Indian Affairs, Division of Tribal Support (via speakerphone); and Mr. Dennis Johnson, an attorney with the Dorsey and Whitney Law Firm.

II. Meskwaki Tribal Court History.

Mr. Gribble, Justice Buffalo, and Judge Coochise presented background information and answered Committee members' questions relating to the history, development, and jurisdiction of the Meskwaki Tribal Court. The court consists of an integrated judiciary that includes an appellate court, a trial court, and such lower courts as authorized by the Meskwaki Tribal Council, which, in the future, may include a magistrate court. The presenters noted that the court, which was authorized pursuant to tribal council resolution approximately one and one-half years ago, has handled over 70 civil cases including family law, Indian child welfare, and contract issues. The court has adopted tribal court rules which are modeled after state rules of civil procedure, but which are modified by tribal court judges to incorporate Meskwaki beliefs, values, customs, and traditions, both written and unwritten.

III. Tribal Court Jurisdiction.

Judge Coochise and 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 an indigent defendant must pay for their own attorney.

Judge Coochise noted that concurrent jurisdiction between the tribal court and state and federal courts exists, but is limited by matters relating to tribal governance. In such cases, the tribal court possesses exclusive jurisdiction. Presenters and Committee members also discussed other tribal court jurisdictional issues including the authority of the tribal court to



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hear certain types of civil cases involving Indians and non-Indians occurring both on and off the Meskwaki Indian Settlement. Judge Coochise stated that so far there has been good cooperation between the state courts and the Meskwaki Tribal Court. Committee members agreed on the need for a continuous dialog between the Meskwaki Tribal Court and the Iowa Court System.

IV. Tribal Court Operations.

Ms. Essmann-Mahoney presented information relating to the operations of the Meskwaki Tribal Court. Ms. Essmann-Mahoney noted she is a former assistant clerk of court for Black Hawk County and that in her current position she has more authority to advise people about court procedure than with her previous position in Black Hawk County. She also noted that the primary purpose of the Meskwaki Tribal Court is to resolve internal tribal disputes in a fair and impartial manner. She provided members of the Committee with copies of key court decisions, including both appellate and trial court decisions, and emphasized the importance due process has played in those decisions and the independent nature of the Meskwaki Court System. She also provided members with a copy of the court's docket since the court's first case was filed on May 25, 2005, and noted that most of the cases have involved child welfare, family law, and contract issues. She stated that the Meskwaki Tribal Court recognizes state court judgments and orders, but that there have been some issues with the Tama County Attorney enforcing Tribal Court orders.

V. Family Law Practice in the Tribal Court.

Ms. Burk presented information and answered questions relating to her professional experiences practicing family law in the Meskwaki Tribal Court System. She indicated she is a member of the Meskwaki Tribal Court Bar, has represented many tribal court members, and has found the Meskwaki Tribal Court to be very fair. She noted that, from her perspective, the biggest difference between the Iowa Court System and the Meskwaki Tribal Court System is in the area of child rearing. She also emphasized the importance that the tribe's cultural norms of honesty, fair play, and respect play in the tribal court's decision-making process.

VI. State Court Recognition of Tribal Court Judgments.

A. Background.

Mr. Little presented information relating to the legal doctrines of full faith and credit and comity and a discussion of various state approaches to the recognition of tribal court judgments, orders, and decrees including those authorized by statute, and by court rule and through the development of case law. He provided information about the manner in which other states have recognized tribal court judgments. He emphasized that in facilitating discussions such as this Committee is having, the Bureau of Indian Affairs does not have an agenda in encouraging states to give full faith and credit recognition to tribal court judgments,



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but that the Bureau of Indian Affairs' primary concern is with expedient and efficient court systems. Mr. Little also noted that cross training between the tribal and state court systems should be encouraged, including the promotion of a consistent method of using and exchanging information between courts. Committee members discussed concerns with the protection of due process and other constitutional rights and the various state approaches to the recognition of tribal court judgments.

B. Concerns With the Recognition of Tribal Court Judgments.

Mr. Johnson appeared before the Committee to express his concerns about the recognition of tribal court judgments. He stated his law firm, Dorsey and Whitney, represents approximately 20 Indian tribes throughout the United States. He also provided a history of his involvement with the Meskwaki Tribe when he represented the former Elected Tribal Council of the Meskwaki Tribe during an intratribal dispute between the former Elected Tribal Council and an Interim or Appointed Tribal Council in 2003 which was later litigated in federal court.

Mr. Johnson discussed his concerns with both subject matter and personal jurisdictional issues, including the fact that counterclaims against the tribe are not allowed in the Meskwaki Tribal Court. He further expressed concern about the privileged and confidential nature of advice given by the Tribe's Community Panel to the Meskwaki Tribal Court regarding unwritten customs and traditions of the tribe. He also noted that as a sovereign nation, the Meskwaki Tribe has a right to change their laws at any time. Committee discussion focused on the need for certain safeguards, including the need for specific guidelines guaranteeing due process before tribal court judgments are recognized.

VII. Committee Action.

Committee members heard testimony from and held discussions with various interest groups involved in issues relating to the recognition of civil judgments, decrees, and orders issued by the Meskwaki Tribal Court. While Committee members failed to reach a consensus regarding formal recommendations to submit to the General Assembly, it was determined that the following related issues need to be explored further by the General Assembly and that other entities, including the Iowa Bar Association and the Iowa Judicial Branch, should provide additional guidance and input to legislators:

- The establishment of a state court-tribal court commission to encourage communication and cooperation between both courts on an ongoing basis.
- Further consideration of the interplay between federal, state, and tribal court jurisdiction and the recognition of civil judgments, orders, and decrees of a tribal court.
- Effective date and applicability provisions relating to the timing of any legislation giving recognition to civil judgments, orders, and decrees of a tribal court.



This final report summarizing the Committee testimony and discussion was distributed to the Committee members and approved on May 23, 2007.

VIII. Materials Filed With the Legislative Services Agency – Legal Services Division.

The following materials were distributed to members of the Committee and are filed with the Legislative Services Agency and may be accessed from the <Additional Information> link on the Committee's internet page:

<http://www.legis.state.ia.us/aspx/Committees/Committee.aspx?id=154>

1. Legal Terms and Doctrines - Rachele Hjelmaas, LSA Legal Services Division.
2. Tribal Court Questions - Charles Gribble, attorney.
3. Key Decisions of Sac & Fox Tribe of the Mississippi in Iowa Tribal Appellate Court - Theresa Essman-Mahoney, Clerk of Court, Meskwaki Tribal Co.
4. Questions & Answers Regarding Full Faith & Credit - Larry C Lasley Sr., Ex. Dir., Sac-Fox Tribe of the Mississippi in Iowa.
5. Authorization of Tribal & Pueblo Police Officers-New Mexico (NMSA 1978, 29-1-11) - Joseph Little, Acting Asso. Dir. BIA, Albuquerque, NM.
6. Background Information Concerning Tribal Courts, Iowa Tribal Courts, State Court Recognition of Tribal Courts, and 2005 and 2006 Iowa Legislative Action - Rachele Hjelmaas, LSA, Legal Services Division.

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