



MICHIGAN'S TRIBAL STATE FEDERAL JUDICIAL FORUM

Attempting Great Things

By Justice Bridget M. McCormack

When basketball player Michael Jordan was a freshman at the University of North Carolina, head coach Dean Smith reportedly said to him, "Michael, if you can't pass, you can't play." The oft-repeated claim that we can accomplish more working together than alone might be trite if not so plainly true.

Consider the Lake Sturgeon, the only species of sturgeon unique to Michigan, and the elder statesman of Great Lakes fish.

Historically, the Lake Sturgeon was an important member of the Great Lakes fish community. It was especially relevant to Great Lakes tribes that revered it and relied on it for spring sustenance. But centuries of overfishing, pollution, and habitat loss, together with the species' unique maturation and reproduction cycle, resulted in its steep decline in Michigan by the turn of the century. By that time, the sturgeon was almost wiped out.

But after 135 million years of existence, it is having a comeback.

A unique partnership between our state, federal, and tribal governments set out cooperatively to answer the challenge of the endangered sturgeon in 2002. The Little River Band of Ottawa Indians, working collaboratively with the State of Michigan's Department of Natural Resources, the U.S. Fish and Wildlife Service, and the U.S. Forest Service, developed a streamside rearing operation in the Manistee River in 2004. The Tribe raises young sturgeon in a riverside facility with water pumped in from the Manistee River. The larvae are caught and taken to a streamside hatchery, where they're raised in the same water from which they were removed. When they reach seven inches, they are tagged and released. By imprinting the water as they grow, the Tribe ensures that they will come back decades later to spawn. The Tribe has released the fish into the river annually in increasing numbers. And the technique has now been replicated in other

parts of the state and in Wisconsin with additional tribal partners. As a result of this collaborative approach, the sturgeon is no longer endangered but rather protected for the future.

We can approach our children and families with this same commitment to and spirit of collaboration. In Michigan, we are.

Michigan is home to 12 federally recognized tribes, each with its own court system. These tribal courts, like their state and federal counterparts, work tirelessly to ensure the proper administration of justice within their jurisdiction; to resolve disputes in a manner that will be respected and enforced across jurisdictional lines; and to serve the children, families, and communities whose welfare depends on them. The importance of these shared goals and interests is obvious; so, too, is the benefit that can be gained when all courts, regardless of type or jurisdiction, work together on their behalf. Through Michigan's Tribal State Federal Judicial Forum, we hope to realize that benefit.

Established through the Michigan Supreme Court's adoption of Administrative Order 2014-12 on June 25, 2014, the Forum brings leadership from Michigan's tribal, state, and federal court systems together to address, as equal partners, their many areas of mutual interest and concern. The Forum's membership is composed of the chief tribal judge (or designated representative) for each of Michigan's federally recognized tribes, an equal number of state court judges, and three federal representatives. I have the honor of serving as the Michigan Supreme Court's liaison to the Forum and am proud to be counted among its members.¹

While the Forum is still young, its spirit is not; indeed, this is only its most recent incarnation. In 1992, Michael F. Cavanagh, then Chief Justice of the Michigan Supreme Court, collaborated with leadership from Michigan's federally recognized tribes (then numbering seven) to establish the Michigan Indian Tribal Court—State Trial Court Forum. Consistent with its funding and design, the 1992 forum convened four times over the course of that year, bringing state and tribal court judges together to explore the overlapping issues facing their respective courts and to find common ground in their solutions. And although the formal existence of this forum was limited to one year, its impact most certainly was not.

The 1992 forum accomplished its goals, and then some. Specifically, as a result of the efforts and recommendations of this forum, Michigan Court Rule 2.615 was implemented, providing for state court recognition and enforcement of tribal court judgments. In addition, tribal judges and staff were offered, and encouraged to participate in, the Michigan Judicial Institute's state court educational programming, and that programming was also broadened to better educate state judges and staff about tribal sovereignty and the existence and functioning of tribal courts throughout the state. These training norms continue to this day. Finally, numerous measures were undertaken to better inform and educate the state Bar about tribal courts and law, including the incorporation of such information into the Michigan Bar's annual directory, as well as the creation of both a

State Bar Standing Committee on American Indian Law and a growing American Indian Law Section.

When the 1992 forum's formal existence sunsetted, the relationships and goodwill continued, carrying forward the forum's spirit and objectives and yielding even further progress in the years that followed. In particular, the Michigan Indian Judicial Association was created, and the enduring coalition of state and tribal partners served

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an important role in the enactment of the Michigan Indian Family Preservation Act (MIFPA), which provides a critical state law codification, clarification, and reinforcement of the Indian Child Welfare Act (ICWA). In addition to these specific accomplishments, the tribal courts have been a critical partner in enforcing child support orders issued by state courts. For example, during the three-year period of 2012–2014, the Tribal Court of the Little Traverse Bay Band of Odawa Indians collected over \$500,000 in state-ordered child-support payments. And since 2007, the Tribal Court of the

Pokagon Band of Potawatomi Indians has facilitated the collection of over \$5 million in such payments.

Today's Forum was born from these relationships and marks a renewed commitment to their history of collaborative success. And fittingly enough, at the heart of its (re)emergence were Justice Cavanagh and Chief Judge Michael Petokey of the Pokagon Band Tribal Court, who first met and began working together during the 1992 forum. Under their guidance, a two-day ICWA roundtable was convened in October 2013 at the Grand Traverse Band of Ottawa and Chippewa Indians, providing an opportunity for tribal, state, and federal representatives both to discuss this important topic and to gauge their respective levels of interest in a broader and more formalized cooperative process. The dialogue was productive, the interest was unanimous, and the Forum soon took shape—resembling in many ways its 1992 predecessor (even sharing four of its members) but expanding upon its reach and ambition.

Like its predecessor, the Forum's goals—memorialized in its collaboratively developed Naakonigewin, or charter—center around advancing the mutual interests and concerns of its membership through understanding, cooperation, and support. With federal partners at the table, increased tribal and state participation, and no clock set to end its work, the Forum is now better positioned to pursue these goals comprehensively and uniformly throughout court systems within Michigan: from



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educating state, tribal, and federal judges regarding the similarities and differences between their courts and legal systems; to eliminating information-sharing barriers across jurisdictions and identifying opportunities for substantive collaboration; to fostering consistency in the judicial handling of cases of particularly overlapping

concern, such as ICWA, MIFPA, and IV-D child custody cases.

The Forum meets three times per year, with host locations rotating among its tribal members. Forum members have the opportunity at each meeting to visit the local host tribal court and learn about its docket, challenges, and strategies.

Subcommittees carry out the Forum's work between meetings. With initial funding support from Casey Family Programs, the Michigan Supreme Court, and the Forum's hosting tribes—and a search for sustainable funding options ongoing—this work is well under way. The Forum's first meeting was held in October 2014, and by its November 2015 meeting, Forum members had prioritized short-, medium-, and long-term goals on a wide range of matters: providing stakeholder education regarding ICWA and the Violence Against Women Act; facilitating bench sharing between tribal and state court judges, and identifying solutions for competing tribal and state court orders; reviewing existing ICWA data and improving their input, collection, and accuracy; developing Polycom capacity in tribal courts; implementing restorative justice or peacemaking as a concurrent path in state courts; and creating a transfer rule, or statute, between state, federal, and tribal courts. Forum members have also provided support for new ICWA regulations, provided training in collaboration with the Court Improvement Program, and prepared a proposed amendment to one of Michigan's court rules.

In addition to these broader goals, tribal and state court judges whose jurisdictions overlap have formed relationships that are making docket collaboration productive and efficient. State judges are enforcing tribal court divorce judgments, for one example. And where tribal courts have resources for supporting a tribal member with criminal matters in both tribal and state courts, the tribal court is taking the lead on providing the supervision and support. The Forum is eager to continue this work in its second year and beyond, and to build on the foundation of collaborative success built by those who came before us.

A Seneca proverb reminds that "He who would do great things should not attempt them all alone." I suspect the sturgeon would likely agree. So, too, Michigan's children. ■

Endnote

1. These representatives are drawn from both the federal judiciary and the U.S. Attorney's Office.