



MiPSAC

Newsletter of the Michigan Professional Society on the Abuse of Children, Inc., the Michigan Chapter of APSAC.

Volume 6, Issue 1

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PRESIDENT'S CORNER

By Frank Vandervort, JD

The Michigan Professional Society on the Abuse of Children (MiPSAC) is the state chapter affiliate of the American Professional Society on the Abuse of Children (APSAC). MiPSAC was established in 1996 in order to provide ongoing interdisciplinary education and communication among the various professionals working within Michigan's child protection system.

The last couple years have been difficult for APSAC as it has undergone a great deal of change, at least two changes in Executive Directors, financial problems and a change in the national office from Chicago to North Carolina. As a result of the national office's difficulties, MiPSAC has experienced its own difficulties. Fortunately, the worst seems to be behind us, both at the national level and here in Michigan.

The MiPSAC Board, like the national Board and staff, are dedicated to doing everything within our power to ensure that the MiPSAC succeeds, grows and prospers. One step in the process of our efforts to revitalize is the reemergence of the MiPSAC Newsletter, through which we will keep our membership informed about MiPSAC's activities and, more importantly, continue our interdisciplinary dialogue to the end that we will all serve children and families more comprehensively.

We are in the process of developing a listserv e-mail list to aide our communications and are considering developing a web site. In the mean times, we continue our efforts through bi-monthly meetings held around the state. Please make it your

goal over the next year to attend at least one MiPSAC meeting. Your input into what we have done, are doing and the direction MiPSAC should take in the future is important and the Board and officers are very interested in your thoughts about how to make MiPSAC a relevant and active part of your professional life.

We are always interested in expanding our membership. So, if you are a member please tell a friend or colleague about the benefits of APSAC/MiPSAC membership. If you are not already an APSAC member, please consider joining. If your membership has expired, please renew. APSAC's publications (Child Maltreatment, the APSAC Advisor), training (see schedule on p. 2) and possibilities for interdisciplinary communication are invaluable to my day-to-day practice in the child welfare system. I am sure they will be to you, too. One upcoming opportunity to experience the benefits of MiPSAC membership is to attend our annual meeting on Monday evening, October 22, 2001 5 PM – 7 PM (held in conjunction with the Michigan Statewide Abuse Conference at the Ypsilanti Marriott).

I hope you will join APSAC (if you are not already a member) and that you will be actively involved with the state chapter. While I know you are very busy (who isn't these days?) a small time commitment can return big rewards for you professionally and for the children and families you serve. I hope to work with you soon!

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UPCOMING MEETINGS & CONFERENCES

We look forward to sharing with you at these meetings. Please call any board member for information.

6th MiPSAC Annual Meeting

Monday, October 22, 2001, 5-7 P.M.

Ypsilanti Marriott

1275 Huron Street South

Ypsilanti, MI 48197 Info: (734) 487-2000

Agenda:

1. Election of 2002 Officers/Board
2. Presentation by the Honorable
Nancy C. Francis, Family Court Division
of the Washtenaw County Circuit Court

University of Michigan 20th Annual Statewide Conference on Abuse and Neglect: Prevention, Assessment and Treatment. October 22-3, 2001

Ypsilanti Marriott, 1275 Huron Street South
Ypsilanti, MI 48197 info: (734) 763-1400

San Diego Conference on Child Maltreatment. January 21-25, 2002

Town & Country Resort Hotel
Info: 858-966-4940

10th Annual APSAC Colloquium

May 29 - June 1, 2002, New Orleans, LA
Contact: APSACmems@aol.com

REMINDER!

Please renew your annual membership to APSAC. You need National membership for MiPSAC. *Part of you annual dues to APSAC pays for MiPSAC membership automatically!*
American Professional Society on the Abuse of Children (APSAC)
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Michigan Professional Society on the Abuse of Children, Inc. **2001 MiPSAC Board of Directors**

President: Frank Vandervort, JD University of Michigan Law School Child Welfare Law Resource Center, 611 Church Street, Suite 4C, Ann Arbor, MI 48104 (734) 998-9191

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The comments expressed in this newsletter reflect the views of the author(s) and do not necessarily represent the views of MiPSAC or the American Professional Association on the Abuse of Children (APSAC).

MiPSAC Goals:

- ◆ To bring together Michigan professionals working in the area of abused children
- ◆ To foster networking among Michigan professionals
- ◆ To be an information resource for Michigan professionals
- ◆ To sponsor quality training for Michigan professionals.

LEGAL ISSUES By Frank E. Vandervort, JD

NOTICE REQUIREMENTS IN CHILD PROTECTION CASES INVOLVING INDIAN CHILDREN

The Indian Child Welfare Act (ICWA) is a federal statute that governs how individual states' courts handle child custody cases involving Native American children, including child protective proceedings. While such cases do not arise all that often, when Native American heritage is an issue it is critically important for everyone involved that they be handled correctly. A particularly troublesome area of practice within ICWA cases relates to providing proper notice to Indian tribes. Before setting out the current state of Michigan law regarding ICWA's notice requirements, this article will briefly describe the history of the ICWA and the unique status of Indian tribes in child protective proceedings.

History and Status of Tribes

The ICWA was enacted by Congress in 1978 as a response to the long-standing concern expressed by Native American tribes about the century old practice of removing Indian children to boarding schools run by whites, often in affiliation with religious organizations. At these boarding schools, native children were poorly cared for, prohibited from dressing or wearing their hair consistent with cultural practice and severely punished for speaking their native tongue. The practice of removing Indian children from their homes continued in the second half of the twentieth century as states passed and implemented child protection laws.

In enacting the ICWA, Congress found that "an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by non-tribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes."

To protect the interests of the tribes, the ICWA contains provisions either for removal of cases involving the custody of Indian children from state courts to tribal courts or for the tribe to be made a party to the state court proceeding. Generally under Michigan law there are three parties to a child protective proceeding, the petitioner (in Michigan any person or agency may petition the court to take jurisdiction over an allegedly abused or neglected child, but the vast majority of such petitions are filed by Children's Protective Services), the parent(s) and the child(ren). To make sure that the tribes are aware when one of their children may be the subject of a child protective proceeding, and thereby take action to protect their interests in the child, the ICWA requires that notification of state court child protection proceedings be provided.

Notice Requirements

The notice requirements of the statute are found in 25 USC 1912(a). A comparable provision is contained in Michigan's Court Rules, MCR 5.980. The first requirement is that the notice must be provided not by the court but by the petitioner. *In re IEM*, 233 Mich App 438 (1999). NOTE THAT IT IS NEVER SUFFICIENT NOTICE TO MERELY CALL OR WRITE THE MICHIGAN INDIAN CHILD WELFARE AGENCY. Proper legal notice means that a Notice of Hearing, a copy of the petition and a statement that the legal proceedings may result in the termination of parental rights must be sent by registered mail, return receipt requested.

Organization To Notify

The ICWA requires that *both* the child's parents and the child tribe be notified of child protective proceedings. See 25 USC 1912(a). Some parents will know what the tribal affiliation is, some will have some idea of possible affiliation while others will have no idea what tribal affiliation may be. If the parent is clear as to what the tribal affiliation is (e.g., where the parent is an active member of a tribe) that tribe must be provided notice. So, for example, if the parent indicates that he or she is a member of the Grand Traverse Band of Ottawa and Chippewa Indians, that tribe must be provided legal notice.

But the notice requirement is triggered when there is *any* hint that a child *may* be an Indian child. See *In re IEM*. In the *IEM* case the mother basically said at the preliminary hearing, "I think I may have some Indian blood." This ill-defined reference to Native American heritage, the Michigan Court of Appeals later ruled, was enough to trigger the ICWA's notice requirements. But the practical problem arises, what tribe to notify? If the parent is unsure whether he or she has Native American affiliation or if the parent does not suggest a particular tribe, the petitioner must notify the Secretary of the Interior. See *In re IEM*.

If the parent suggests a possible tribal affiliation (e.g., "I think I may be Cherokee"), that tribe must be notified. *In re NEGP*, 245 Mich App 126 (2001). When a parent is not certain as to possible tribal affiliation, it is the best practice to also notify the Secretary of the Interior.

Filing

It is important, both to permit the trial court to make findings regarding the notice requirements and in order to create a record for an appeals court to review, that copies of any documents sent to a tribe or to the Secretary of the Interior be filed with the court. Similarly, copies of any correspondence received from the tribe or the Secretary of the Interior should be filed with the trial court. Before proceeding further with the case, the parties should ask the court to make findings of fact and conclusions of law on the record—either orally or in writing—as to the following three issues: 1) whether the ICWA's notice requirements were complied with; 2) whether the child is an Indian child within the meaning of the ICWA [NOTE: the tribe—and only the tribe—may decide if the child is a member. See *In re Shawboose*, 175 Mich App 637 (1989)]; and 3) whether the ICWA's provisions apply to the proceedings at hand. *In re Yeary*, (Unpublished No. 224475, February 9, 2001).

If at any point in a termination of parental rights proceedings it comes to light that the child whose welfare is at issue may be an Indian child, the proceedings must stop until the notice requirements of the ICWA have been complied with. *In re NEGP*. If the proceeding is for temporary jurisdiction, the court may issue orders for the protection of the child until such time as the notice has been provided and the court has made findings regarding the notice requirements.

Conclusion

It is critically important that the notice provisions of the ICWA be complied with. Failure to do so may have dire consequences for the child(ren) involved in a case. This article has suggested a checklist for complying with the notice requirements of the statute as currently interpreted by the Michigan courts.

EDITORIAL COMMENT by Leni Cowling

“It’s not my job!”

One of the biggest frustrations to Child Protection workers is this question – whose job is it? The problem of head lice comes to mind. The schools will report cases of head lice to CPS. Clients will say they have contacted the Public Health Department, but received no help and were told to go to their family physician. Family physicians will write a scrip for headlice treatment, but that is all. No one takes the time to show the client how to clean the child, home and environment to rid the lice. Whose job is it?

CPS referrals on filthy home environments are another problem. PS workers have gone into homes where the stench is overwhelming, feces all over the floor, rotting food and soiled clothing is strewn all over. Whose job is it to clean this up to make an adequate environment for children? I had cases where the public health nurses were making weekly visits to these homes, had never reported to PS about the conditions, and said it was not their job to clean it up. While FIA can engage independent contractors, called homemaker services, these services may not give the educational component of housecleaning to the family. I overheard some women in a store recently complaining that FIA is paying a cleaning lady to clean a home on a weekly basis and they wondered how they could get those services free too? Whose job is it?

Frequently Community Mental Health will make a referral to CPS if their client is not keeping appointments. However, when the requested information on the risk to the children in the home is made, their response is that the information is confidential and will not reveal it. Mental health problems with parents can definitely pose a severe risk to the children in the home and may be the cause of much of the severe neglect upon them. However, when a PS case is referred to CMH to address these problems, that agency often closes their case if the client misses 2 appointments, but they never notify the PS worker about the closure. In cases where mental health is an issue, whose job is it to monitor the family on a long-term basis to see if the risks are reduced to the children?

Law enforcement can take a child immediately if that child is found to be in a risk situation. However, the police say they do not want to be saddled with a child at the station as there is no place to put them. So, they make a referral to CPS instead. For cases where the child is left in the car for long periods of time, in hot or cold weather, whose job is it to monitor the risk to the child? Always the parent will promise never to do it again, but there have been cases where the children are made to sleep in the car all night because the mother wants to sleep without interruption. Whose job is it?

In my opinion, much of the frustrations in every discipline is caused by lack of cooperation with other agencies and plans to bridge the gaps. In the meantime, our children are bounced around and grow up knowing nothing but abuse and neglect, while the expertise is not lacking – but wanting.

(The comments expressed reflect the views of the author(s) and do not necessarily represent the views of MiPSAC or the American Professional Society on the Abuse of Children (APSAC).

MiPSAC is looking for articles of interest to our membership for the newsletter. Questions or suggestions to consider are always welcome and should be sent to Leni Cowling, PO Box 892, Bellaire, MI 49615

Volunteers are welcome for MiPSAC Committees:
Membership committee (Vince Palusci)
Legislative committee (Bill Ladd)
Conference/training committee (Pat Walsh)
Newsletter/brochure committee (Leni Cowling)
Communications (Roger Pickering)
Prevention (Newnan Brown)