

CALIFORNIA TRIBAL COURT–STATE COURT FORUM

June 2022

Accomplishments—Highlights (2010-2022)

Below are some of the key accomplishments of the forum:

1. Sharing of Resources: judicial education and technical assistance to support each other's court capacity to meet the needs of its citizens. Resources have extended to areas of court forms, collaborative justice, court security, grants, human resources, protective order database information, supervised visitation, self-help, and other areas.
 - *Forum E-Update*
This monthly electronic newsletter disseminates information to forum members (tribal court judge and state court judges) and forum friends (any interested person) on grant opportunities, publications, news stories, and educational events.
(<http://www.courts.ca.gov/3065.htm>)
 - *Forum Meeting Agendas, Minutes, and Materials*: Please visit the forum's public website: <http://www.courts.ca.gov/forum.htm>. For more background information, as well as an ongoing summary of policies, partnerships, and education initiated by the forum, please visit: <http://www.courts.ca.gov/3065.htm>.
2. Developing New Resources:
 - *Curriculum on civil and criminal jurisdiction in a Public Law 280 state*, educational offerings at tribal and state court sponsored trainings, updates to existing judicial curriculum and benchguides, and creation of a website to serve as a clearinghouse of resources. <http://www.courts.ca.gov/3064.htm>
 - *Continuing the Dialogue episode on the Indian Civil Rights Act: Fifty Years Later*. Forum members and staff worked on this video program featuring current and former Forum members. Attempting to impose certain constitutional restrictions and protections upon tribal governments and to guarantee Native Americans equal protection under the Bill of Rights, Congress passed the Indian Civil Rights Act. The history of the Act, the effects of the Act, and the state of tribal courts fifty years after enactment are discussed in this edition of the Continuing the Dialogue broadcast series. Chief Justice Abby Abinanti, Chief Judge Claudette White, Tribal Advisor to the Governor Cynthia Gomez (retired), and Professor Joseph Myers, moderated by Chief Judge Christine Williams, explore California tribal court issues and how they relate to and are intertwined with the work of the state's judicial branch. The video is available here: <http://www2.courtinfo.ca.gov/cjer/judicial/3422.htm>
 - *Tribal/State/Federal Court Administrator Toolkit*
This toolkit encourages cross-court site visits and to facilitate shared learning among local tribal, state, and federal courts in California. The toolkit is endorsed by the following groups: California Court Clerks Association, California State-Federal

Judicial Council, the California Tribal Court Clerks Association, the California Court Executives Advisory Committee, the National Judicial College, and the Tribal Court–State Court Forum.

(<http://www.courts.ca.gov/documents/courttoolkit-tribalstatefederal-adminclerks.pdf>)

3. Collection of Tribe-Specific Data and Information

- population characteristics
(<http://www.courts.ca.gov/documents/Tribal-ResearchUpdate-NAStats.pdf>)
- domestic and other violence and victimization statistics
(www.courts.ca.gov/documents/NatAmStatsAbUpdate.pdf)
- tribal court directory (www.courts.ca.gov/14400.htm) and map
(<http://g.co/maps/cvdq8>)
- tribal justice systems
(<http://www.courts.ca.gov/documents/TribalJusticeSystemRU.pdf>)

4. Focus on Innovation and Collaboration Through Judicial Leadership

- *Cross-Cultural Court Exchanges*
These exchanges both model the collaborative relationships among tribal and state court judges at a local level and foster partnerships among tribal and non-tribal agencies and service providers. Through these exchanges, which are judicially-convened on tribal lands, participants identify areas of mutual concern, new ways of working together, and coordinated approaches to enforcing tribal and state court orders. Since no court order is self-executing, these exchanges serve to support both state and tribal courts by ensuring that those who are providing court-connected services are working together to meet the needs of their tribal communities regardless of whether citizens walk through the tribal or state courthouse doors. To date, the Tribal/State Programs staff has assisted tribal and state court judges in convening nine exchanges on the following tribal lands: Bishop Paiute, Hopland, Hoopa, Karuk, Quechan, and Yurok.
- *Documentary on Tribal Justice*
The forum has consulted on and participated in the production of this film, which premiered at the Santa Barbara Film Festival in 2017. This film follows two forum members: Judge Abby Abinanti, Chief Judge of the Yurok Tribe, and Judge Claudette White, Chief Judge of the Quechan Tribe. It shows how they are creating innovative justice systems that focus on restoring rather than punishing offenders in order to keep tribal members out of prison, prevent children from being taken from their communities, and stop the school-to-prison pipeline that plagues their young people. (To learn more about the film and watch a 4-minute trailer, <http://www.makepeaceproductions.com/tribaljustice/spotlight/>)
- *Joint Jurisdictional Court- Family Wellness Court*
The forum, at its first meeting, made it a priority to learn about and replicate the first joint jurisdiction tribal-state court in the nation, the Leech Lake-Cass County Wellness Court. Thanks to a technical assistance grant obtained from the Bureau of Justice Assistance of the Federal Department of Justice and the mentorship of Judge

Korey Wahwassuck and Judge John Smith, who started the first joint jurisdictional court in the country, the forum was able to launch a joint jurisdictional court in California. Forum members, Judge Christine Williams, Chief Judge of the Shingle Springs Tribal Court, and Judge Suzanne N. Kingsbury, Presiding Judge of the Superior Court El Dorado County, created the Family Wellness Court.

(<http://www.wellnesscourts.org/files/Shingle%20Springs%20El%20Dorado%20Family%20Wellness%20Court%20Manual.pdf>)

Funded partially with an innovation grant from the Judicial Council of California, the Humboldt Superior Court and the Yurok Tribal Court began a joint jurisdiction Family Dependency Drug Court <https://krctv.com/north-coast-news/eureka-local-news/humboldt-county-and-the-yurok-tribe-partner-as-an-innovative-response-to-opioid-epidemic>

- *Local Tribal/State Partnerships*

The forum fosters tribal court/state court partnerships, such as the Los Angeles Superior Court's Indian Child Welfare Act Roundtable and the Bay Area Collaborative of American Indian Resources— court-coordinated community response to Indian Child Welfare Act (ICWA) cases in urban areas.

5. Focus on Child Support: rule governing title IV-D case transfers to tribal court

- Developed a rule proposal, which provides a consistent procedure for the discretionary transfer of Title IV-D child support cases from the state superior courts to tribal courts where there is concurrent jurisdiction over the matter in controversy. The Judicial Council adopted the rule proposal, effective January 1, 2014. (www.courts.ca.gov/documents/ChildSupportProposalSPR13-17.pdf)
- Transfers of Title IV-D Child Support Cases between State and Tribal Court, which amends rule 5.372 to refine the requirements for transfer of Title IV-D child support cases between state and tribal court. This rule was approved by the Judicial Council at the Council's meeting on September 15, 2017. Changes are effective January 1, 2018. (<http://www.courts.ca.gov/documents/SPR17-18.pdf>)

6. Focus on Civil Money Judgments

SB 406: Tribal Court Civil Money Judgment Act, which will simplify and clarify the process by which tribal court civil money judgments are recognized and enforced in California. For Judicial Council reports, see Invitation to Comment 2011:

<http://www.courts.ca.gov/documents/LEG11-03.pdf>; Invitation to Comment 2012:

<http://www.courts.ca.gov/documents/LEG11-04.pdf>; and Final Report:

www.courts.ca.gov/documents/jc-20121214-itemG.pdf. For chaptered bill, see

[http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0401-](http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0401-0450/sb_406_bill_20140822_chaptered.pdf)

[0450/sb_406_bill_20140822_chaptered.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0401-0450/sb_406_bill_20140822_chaptered.pdf). In collaboration with Professor Katherine

Florey at the U.C. Davis School of Law, the forum conducted a study on the impact of SB 406 that surveyed state court judges, tribal court judges, and tribal practitioners:

<https://www.surveymonkey.com/r/tribalpractitioners>

<https://www.surveymonkey.com/r/statecourts>

<https://www.surveymonkey.com/r/tribalcourts>

Because of this study and the recommendation by the California Law Review Commission, the California Legislature will be considering removing the sunset provision in SB 406.

[AB 627](#) – Recognition of Tribal Court Orders Relating to Division of Marital Assets.

In 2020 the Legislature passed Assembly Bill 627 (Stats. 2021, ch. 58), Judicial Council–sponsored legislation that added section 2611 to the Family Code and revised various provisions of the Tribal Court Civil Money Judgment Act found in the Code of Civil Procedure. The provisions ensure that divorce or dissolution judgments issued by tribal courts that include division of pension assets are effective and, in particular, are recognized as meeting the requirements of the Employee Retirement Income Security Act of 1974 (ERISA). AB 627 mandated that the Judicial Council adopt forms to implement the legislation. The legislation is available at:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB627

7. Focus on Domestic Violence: recognition and enforcement of protective orders
 - *Statewide Needs Assessment*. This assessment informs the work of the forum as it implements solutions identified in the California reports relating to domestic violence, sexual assault, stalking, and teen dating violence in Native American communities (www.courts.ca.gov/8117.htm)
 - *California Courts Protective Order Registry*. By sharing information on restraining and protective orders, state courts and tribal courts are better able to protect the public, particularly victims of domestic violence, and avoid conflicting orders. (www.courts.ca.gov/15574.htm)
 - *Domestic Abuse Self-Help Tribal Project*. Assistance for litigants with obtaining restraining orders in tribal courts and state courts. In this project, a nonlawyer works under the supervision of a reviewing attorney to assist the litigant. The attorney can supervise from any location with technology, training, and review of the nonlawyer’s work. (www.courts.ca.gov/documents/FactSheetDASH.pdf)
 - *Efficient and Consistent Process*. Following effective local tribal and state court protocols, the Judicial Council adopted rule 5.386, which provides that state courts, when requested by a tribal court, must adopt a written procedure or local rule to permit the fax or electronic filing of any tribal court protective order that is entitled to be registered under Family Code section 6404. (www.courts.ca.gov/documents/SPR11-53.pdf)
 - *Jurisdictional Tools for Law Enforcement and Judges*
These educational tools facilitate collaboration among tribal police and county law enforcement. They were developed in collaboration with the following groups: California Department of Justice, California Peace Officers Standards and Training, California Indian Legal Services, California State Sheriff’s Association, and the Tribal Police Chief’s Association in California. (<http://www.courts.ca.gov/documents/Tribal-Law-enforcement-tools.pdf>)
 - *Information Bulletin on Recognition and Enforcement of Tribal Protection Orders*

Consulted with the California Attorney General's Office regarding access to California Law Enforcement Telecommunications System (CLETS) by tribal courts. This consultation, which included federal and other state justice partners, resulted in an Informational Bulletin issued by the California Department of Justice. This Information Bulletin clarifies that verification of a tribal protection order in any statewide database (for example, the California Law Enforcement Telecommunications System (CLETS)) is not a precondition to recognition and enforcement of these orders.

(http://www.courts.ca.gov/documents/tribal_bulletin-court-protection-orders.pdf)

- *Judicial Toolkit on Federal Indian Law*
(<http://www.courts.ca.gov/27002.htm>)
- *Public Law 280 and Family Violence Curriculum for Judges*
(www.courts.ca.gov/documents/Tribal-FamViolenceCurriculum.pdf)
- *Recognition and Enforcement of Tribal Protective Orders (Informational Brochure)*
(<http://www.courts.ca.gov/documents/Tribal-DVProtectiveOrders.pdf>)
- *Tribal Advocates Curriculum*
(www.courts.ca.gov/documents/TribalAdvocacyCurriculum.pdf)
- *Tribal Communities and Domestic Violence Judicial Benchguide*
(<http://www.courts.ca.gov/documents/Tribal-DVBenchguide.pdf>)

8. Focus on Elder Abuse and Protection Proceedings

- *SB 940: California Conservatorship Jurisdiction Act*, which addresses issues involving conservatorships for members of Indian tribes located in California. The forum initiated a joint working group with the California Judicial Council's Probate and Mental Health Advisory Committee to identify tribal/state issues relating to elder abuse and protective proceedings. This working group reviewed the California Law Revision Commission's (CLRC) recommendation that California adopt a modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). Working in coordination with the Policy and Coordination Liaison Committee and the Office of Governmental Affairs, the forum submitted legislative language to CLRC to address issues involving conservatorships for members of Indian tribes located California. As a result, the CLRC-sponsored legislation, the California Conservatorship Jurisdiction Act (SB 940), incorporates the forum's recommended revisions. (http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0901-0950/sb_940_bill_20140925_chaptered.pdf)
- *Published Tribal Elder Abuse Benchguide* and incorporated into California Judge's Guide: Abuse Later in Life.
(http://www.courts.ca.gov/documents/Elder_Abuse_Tribal_Communities.pdf)

9. Focus on Guardianship Cases: rule proposals, legislative proposals, and legislative reports

The Forum and Probate and Mental Health Advisory Committee recommended amending four rules of court and revising two forms to clarify the procedures required in probate guardianship and specified conservatorship proceedings involving Indian children. The proposed amendments and revisions update the rules and forms to conform to the requirements of the 2016 federal Indian Child Welfare Act regulations and guidelines, California statutory changes, and recent amendments to the California Rules of Court governing all proceedings in which a court is asked to order the removal of an Indian child from the custody of the child’s parent or Indian custodian and placement of the child in the custody of a nonparent or to the termination of parental rights. Additional proposed form revisions clarify the information to be provided to the court, promote conformity with existing law, and make technical changes.

The proposal as approved by the Judicial Council at their meeting in October of 2021 and effective January 1, 2022 may be found here:

<https://jcc.legistar.com/View.ashx?M=A&ID=803685&GUID=53194909-299F-4F59-928B-D5E9BDA28821>

10. Focus on Juvenile Cases: rule proposals, legislative proposals, and legislative reports

- *Appeals*: developed a rule proposal to revise the rule governing sending the record in juvenile appeals to clarify that, if an Indian tribe has intervened in a case, a copy of the record of that case must be sent to that tribe. The Judicial Council adopted the rule proposal, effective January 1, 2013.

www.courts.ca.gov/documents/SPR11-12.pdf

- *Access to Records (AB 1618)*: developed a legislative proposal to amend Welfare and Institutions Code section 827 to share juvenile records between tribal and state courts. This proposal was adopted by the Judicial Council and introduced by Assemblymember Wesley Chesbro. Chaptered as Stats. 2014, Ch. 37, effective January 1, 2015.

www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1601-1650/ab_1618_bill_20140625_chaptered.pdf

- *Comments in support of the proposed regulations*: Indian Child Welfare Act (ICWA) Integration throughout Division 31, ORD No. 0614-05 issued by the California Department of Social Services (CDSS).

www.courts.ca.gov/documents/Tribal_JC_Comments_CDSS.pdf

- *Comments in support of proposed rule*: Regulations for State Courts and Agencies in Indian Child Custody Proceedings (as published in the Federal Register on March 20, 2015 (Vol. 80 FR No. 54 14880)

www.courts.ca.gov/documents/Comments_by_JC_to_BIA.pdf

- *Indian Child Welfare Act rule change*: In response to the California Supreme Court decision in *In re Abbigail A.* (2016) (Cal.5th 83), the forum recommend amending California Rules of Court, rule 5.482, by deleting subdivision (c) of that rule, which the Supreme Court held is invalid. The Family and Juvenile Law Advisory

Committee and Probate and Mental Health Advisory Committee joined in this recommendation, and on July 29, 2016, the Judicial Council adopted this recommendation.

- *Psychotropic medication*: Recommended a rule proposal to provide notice to tribes in juvenile cases where psychotropic medication is being considered. (www.courts.ca.gov/documents/SPR13-18.pdf)
- *Transfers*: recommended a rule and form proposal to improve the procedure for the transfer of court proceedings involving an Indian child from the jurisdiction of the state court to a tribal court. These changes were in response to provisions of Senate Bill 1460 (Stats. 2014, ch. 772) (SB 1460) and the Court of Appeal decision in *In re. M.M.* (2007) 154 Cal.App.4th 897. SB 1460 requires the state juvenile court to give the tribal court specific information and documentation when a case, governed by the *Indian Child Welfare Act*, is transferred. The *In re M.M.* decision implicates an objecting party's right to appeal a decision granting a transfer to a tribal court. (www.courts.ca.gov/documents/SPR15-27.pdf)
- *Tribal Customary Adoption*: Provided expertise in the preparation of the statutorily mandated report on tribal customary adoption from the Judicial Council to the State Legislature. (www.courts.ca.gov/documents/lr-Tribal-Customary-Adoption-Report_123112.pdf)
- *Indian Child Welfare Act*: Amend Rule 5.552 to allow tribal access to the juvenile court file consistent with Welfare and Institutions Code 827. The rule change will address an inconsistency between section 827 and rule 5.552, which continues to require that representatives of an Indian child's tribe petition the juvenile court if the tribe wants access to the juvenile court file notwithstanding that section 827 no longer contains such a requirement. This rule was approved by the Judicial Council at the Council's meeting on September 15, 2017. This item partially addresses the recommendation 1 in the California ICWA Compliance Task Force report concerning tribal access to child welfare case records. Changes are effective January 1, 2018. (<http://www.courts.ca.gov/documents/SPR17-16.pdf>)
- The Forum worked with the California State Bar and the California Supreme Court through the Spring 2018 RUPRO process to develop and vet amendments to California Rule of Court, rule 9.40 which governs out of state attorneys wishing the practice before California courts. The amendments make it easier for attorneys representing tribe in Indian Child Welfare Act cases to appear *pro hac vice* in California courts.
- The Forum drafted and recommended that the Judicial Council submit comments on two proposed federal regulations related to requirements under the Indian Child Welfare Act.
- The Forum worked on a comprehensive rules and forms proposal to implement the requirements of federal ICWA regulations and California AB 3176. The proposal affects juvenile and ICWA rules and forms. The proposal was approved by the Judicial Council at its meeting on September 24th, 2019. The proposal is available at:

<https://jcc.legistar.com/View.ashx?M=F&ID=7684873&GUID=52B4C6B1-F704-458F-BF42-EB1AA4F82000>

- The Forum drafted and recommended that the Judicial Council adopt rules governing remote appearances by an Indian Child's tribe in ICWA Proceedings. The rules were approved by the Judicial Council at their meeting on September 25, 2020 and came into force on January 1, 2021. The proposal as approved by the Judicial Council may be found here:
<https://jcc.legistar.com/View.ashx?M=F&ID=8772000&GUID=CD8CA00F-A49D-4699-B462-923655020E3F>
- The Forum recommended amending rule 5.514 of the California Rules of Court and adopting a new mandatory form ICWA-101 to be used to have a judge witness the consent of an Indian parent or custodian to the temporary custodial placement of an Indian child in accordance with section 1913 of title 25 of the United States Code, 25 Code of Federal Regulations parts 23.125–23.127, and Welfare and Institutions Code section 16507.4(b)(3). The proposal was approved by the Judicial Council at their meeting in September of 2020 and the rules and forms became effective January 1, 2021. The proposal as approved by the Judicial Council may be found here:
<https://jcc.legistar.com/View.ashx?M=F&ID=8766383&GUID=A020BC77-5E9A-4FD6-9747-FD07705F93F7>
- The Forum recommended that the Judicial Council amend rule 5.522 of the California Rules of Court and approve a new optional form and instruction sheet for that form, to be used by an Indian child's tribe to provide information to the court on issues where consultation with the child's tribe is required by the Indian Child Welfare Act, and for the tribe's position on these issues in cases governed by the Indian Child Welfare Act. This proposal originated with comments from tribal advocates and attorneys.
The Judicial Council approved the proposal at its meeting in September of 2020 and the proposal became effective January 1, 2021. The proposal as approved may be found here:
<https://jcc.legistar.com/View.ashx?M=A&ID=711584&GUID=760102E7-3D1B-4C00-9CA8-0A7AA617BF8B>

11. Focus on Parentage

In partnership with the California Department of Public Health-Vital Records, on the recommendation of the Tribal Court-State Court Forum, an All County Letter was issued in February 2016 clarifying the statewide policy that all tribal court orders relating to adjudications of facts of parentage would be accepted.