

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SPR17-18

Title	Action Requested
Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court	Please Review and provide comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 5.372	January 1, 2018
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Ann Gilmour, Attorney 415-865-4207 ann.gilmour@jud.ca.gov
Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair	
Tribal Court–State Court Forum Hon. Abby Abinanti, Cochair Hon. Dennis M. Perluss, Cochair	

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee (committee) and the Tribal Court-State Court Forum (forum) propose amendments to rule 5.372 governing discretionary transfer of title IV-D child support cases from the state courts to tribal courts in cases of concurrent jurisdiction. The amendments would allow transfers from the tribal court to the state court, clarify the contents and procedures for motions to transfer, and modify the factors and procedures for ruling on motions to transfer. These proposed amendments are based on suggestions received from those involved in transfers between the state courts in Humboldt and Del Norte Counties and the Yurok Tribal Court.

Background

The Judicial Council adopted California Rules of Court, rule 5.372, effective January 1, 2014, in response to the need for consistent procedures for determining the orderly transfer of title IV-D child support cases from the state court to the tribal court when there is concurrent subject matter jurisdiction.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),¹ as amended by the Balanced Budget Act of 1997,² authorized the direct federal funding of tribal child support programs. Before the passage of PRWORA, tribal members seeking child support program services only had the option of applying to state title IV-D programs for assistance in establishing and enforcing child support orders. After the enactment of PRWORA, a number of tribes located outside of California applied for and received federal funding to develop tribal title IV-D child support programs. The first tribe located in California to receive federal funding for a tribal title IV-D child support program was the Yurok Tribe.

The Yurok Tribe began receiving grant funding from the federal Office of Child Support Enforcement for startup planning for a tribal child support program on August 1, 2011. The Yurok Tribe had comprehensive direct services available by August 1, 2013. The beginning of title IV-D funding for tribal child support programs created the need for a statewide rule of court to aid in the orderly transfer of appropriate cases from the state court to the tribal court. Rule 5.372 was adopted to meet this need. While the Yurok Tribe is the first tribe located in California to begin a federally funded child support program, rule 5.372 was drafted in anticipation that other tribes may develop such programs in the future.

Since implementation of rule 5.372 on January 1, 2014, over 40 cases have been considered for transfer between the state courts in Humboldt and Del Norte Counties and the Yurok Tribal Court. The Yurok Tribe intends to seek transfer of cases currently under the jurisdiction of state court in the following counties: Lake, Mendocino, Shasta, Siskiyou, and Trinity. In addition, at least one other tribe located in Southern California is expected to soon begin handling title IV-D child support cases.

Representatives of the state Department of Child Support Services, local county child support agencies, the tribal child support program, the tribal court, the state courts, and Judicial Council staff met to review the case transfer procedures at a cross-court educational exchange on October 26, 2016. Based on the experience with the transfers that have taken place so far, the participants made a number of suggestions to improve the transfer process, including amendments to rule 5.372 to streamline the process, reduce confusion, and ensure consistency and efficient use of court resources.

The Proposal

This proposal would amend rule 5.372 to address the suggestions made by those involved in the transfers that have taken place to date.

¹ Pub.L. No. 104-193 (Aug. 21, 1996) 110 Stat. 2105.

² Pub.L. No. 105-33 (Aug. 5, 1997) 111 Stat. 251.

Allowing transfers to state courts

- Amending the title and subdivision (a) to clarify that a title IV-D child support case may be transferred between tribal and state courts in both directions. The prior rule had only envisioned a title IV-D child support case being transferred from the state court to the tribal court. However, the goal is to ensure that a title IV-D child support case will be in the jurisdiction (tribal or state) that is best able to serve the family and protect the best interests of the child. As a family's circumstances change, a case that may have initially been best served by tribal court jurisdiction may transition to one that is best served by state court jurisdiction. The Full Faith and Credit for Child Support Orders Act³ mandates full faith and credit for child support orders between tribal and state courts, thereby contemplating movement in either direction. The mutual recognition of child support orders issued by a tribal or state court has aided the ability of these orders to be transferred from an issuing court to another court for effective enforcement of those orders;
- Adding new subdivision (i), which describes the state court procedure when a tribal court with concurrent jurisdiction decides it is in the child's best interest for the case to be heard in state court; and
- Revising subdivision (h) to add the exception in new subdivision (i), which authorizes the filing of a motion to transfer a case back to state court when a tribal court determines that it is not in the best interest of the child or the parties to retain jurisdiction.

Clarifying the contents and procedures for motions to transfer.

Amending subdivision (e) to:

- Allow the state court to suggest transfer to tribal court on its own motion should circumstances suggest to the court that tribal court jurisdiction may be in the child's best interest;
- Require that certain information be included in the motion to transfer to tribal court. This information is fundamental to the court's determination of concurrent jurisdiction;
- Specify the forms of evidence that the court may rely on when making its ruling on a transfer motion;
- Recognize a presumption of tribal court jurisdiction if the child involved in the case is a tribal member or eligible for tribal membership. This is consistent with legal principles that generally recognize tribal subject matter jurisdiction over children who are members or eligible for membership in the tribe;⁴
- Specify the time limit within which any objection to the transfer to tribal court must be brought; and

³ 28 U.S.C. § 1738(B).

⁴ *Williams v. Lee* (1959) 358 U.S. 217; *Sanders v. Robinson* (9th Cir. 1988) 864 F.2d 630; *State v. Central Council of Tlingit and Haida Indian Tribes of Alaska* (Alaska 2016) 371 P.3d 255; 25 U.S.C. § 1911.

- Provide that the objecting party has the burden of proof to establish that there is good cause not to transfer the matter to tribal court. This is consistent with state implementation of the Indian Child Welfare Act of 1978 (ICWA);⁵

Modifying the factors and procedures for ruling on motions to transfer.

Amending subdivision (f) to:

- Remove some of the factors to be considered in making a determination to transfer to tribal court. The original list of factors was drawn from a Wisconsin rule that governs the transfer of general civil matters where there is concurrent tribal and state court jurisdiction. Not all of those factors were relevant to the consideration of the more specific title IV-D child support case type. In particular, the nature of the action, the interests of the parties, and whether state or tribal law will apply are all the same in these child support cases. The inclusion of these on the list of factors to be considered was confusing and an inefficient use of court resources;
- Specify that the court may not consider the perceived adequacy of the tribal justice system in determining whether to transfer the case. This is consistent with state and federal law under the ICWA;⁶ and
- Permit the state court judge to contact the tribal court judge to resolve procedural issues consistent with procedures contained in the Uniform Child Custody Jurisdiction and Enforcement Act and the Tribal Court Civil Money Judgment Act.⁷

Alternatives Considered

The forum and committee considered taking no action at this time; however, it was decided that amending the rule now, based on the experience of existing users, would prevent the perpetuation of problems in additional counties and facilitate the transfer process as more tribes begin operating their title IV-D programs.

Implementation Requirements, Costs, and Operational Impacts

The forum and committee do not believe that there will be any costs associated with this proposal. In fact, to the extent that the proposal streamlines the process for these transfers it will reduce costs and court time.

⁵ 25 U.S.C. § 1901 et seq.; see Welf. & Inst. Code, § 305.5(c)(4).

⁶ See Welf. & Inst. Code, § 305.5(c)(3); 25 C.F.R. § 23.118(c)(5) (2016).

⁷ See Fam. Code, § 3410; Code Civ. Proc., § 1740.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee [or other proponent] is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the courts require in order to implement this proposal? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would an effective date six months from Judicial Council approval of this proposal provide sufficient time for implementation?
- How well would this proposal work in small courts? Large courts?

Attachments and Links

1. Proposed amendments to Cal. Rules of Court, rule 5.372, at pages 6–8

Rule 5.372 of the California Rules of Court would be amended, effective January 1, 2018, to read:

Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 10. Government Child Support Cases (Title IV-D Support Cases)

Rule 5.372. Transfer of title IV-D cases between ~~to a tribal court~~ and state court

(a) Purpose

This rule is intended to define the procedure for transfer of title IV-D child support cases ~~from~~ between a California superior court ~~to~~ and a tribal court.

(b)–(d) * * *

(e) Determination of concurrent jurisdiction by a superior court

(1) The superior court may, on its own motion or on the motion of any party and after notice to the parties of their right to object, transfer a child support and custody provision of an action in which the state is providing services under ~~California~~ Family Code section 17400 to a tribal court, as defined in (a). This provision applies to both prejudgment and postjudgment cases.

(2) The motion for transfer to a tribal court must include the following information:

- (A) Whether the child is a tribal member or eligible for tribal membership;
- (B) Whether one or both of the child’s parents is a tribal member or eligible for tribal membership;
- (C) Whether one or both of the child’s parents lives on tribal lands or in tribal housing, works for the tribe, or receives tribal benefits;
- (D) Whether there are other children of the obligor subject to child support obligations;
- (E) Any other factor supporting the child’s or parents’ connection to the tribe.

1 (3) When ruling on a motion to transfer, the superior court must first make a
2 threshold determination that concurrent jurisdiction exists. Evidence to
3 support this determination may include:

4
5 (A) Evidence contained within the motion for transfer;

6
7 (B) Evidence agreed to by stipulation of the parties; and

8
9 (C) Other evidence submitted by the parties or by the tribe.

10
11 The court may request that the tribal child support agency or the tribal court
12 submit information concerning the tribe's jurisdiction.

13
14 (4) There is a presumption of concurrent jurisdiction if the child is a tribal
15 member or eligible for tribal membership. If concurrent jurisdiction is found
16 to exist, the transfer to tribal court will occur unless a party has objected ~~in a~~
17 ~~timely manner~~ within 20 days after service of notice. On the filing of a timely
18 objection to the transfer, the superior court must conduct a hearing on the
19 record considering all the relevant factors set forth in (f). The objecting party
20 has the burden of proof to establish good cause not to transfer to tribal court.

21
22 **(f) Evidentiary considerations**

23
24 (1) In making a determination on the application for case transfer, the superior
25 court must consider:

26
27 (1) ~~The nature of the action;~~

28
29 (2) ~~The interests of the parties;~~

30
31 (A) The identities of the parties;

32
33 (B) The convenience ~~of~~ the parties and witnesses;

34
35 (5) ~~Whether state or tribal law will apply;~~

36
37 (C) The remedy available in the superior court or tribal court; and

38
39 (D) Any other factors deemed necessary by the superior court.

40
41 (2) In making a determination on the application for case transfer, the superior
42 court may not consider the perceived adequacy of tribal justice systems.

1 (3) The superior court may, after notice to all parties, attempt to resolve any
2 procedural issues by contacting the tribal court concerning a motion to
3 transfer. The superior court must allow the parties to participate in, and must
4 prepare a record of, any communication made with the tribal court judge.
5

6 **(g) Order on request to transfer**
7

8 If the superior court denies the request for transfer, the court must state on the
9 record the basis for denying the request. If the superior court grants the request for
10 transfer, it must issue a final order on the request to transfer including a
11 determination of whether concurrent jurisdiction exists.
12

13 **(h) Proceedings after order granting transfer**
14

15 Once the superior court has granted the application to transfer, and has received
16 confirmation that the tribal court has accepted jurisdiction, the superior court clerk
17 must deliver a copy of the entire file, including all pleadings and orders, to the clerk
18 of the tribal court. With the exception of a filing by a tribal court as described by
19 subdivision (i) of this rule, the superior court may not accept any further filings in
20 the state court action in relation to the issues of child support and custody that were
21 transferred to the tribal court.
22

23 **(i) Transfer of proceedings from tribal court**
24

25 (1) If a tribal court determines that it is not in the best interest of the child or the
26 parties for the tribal court to retain jurisdiction of a child support case, the
27 tribe may, upon noticed motion to all parties and the state child support
28 agency, file a motion to transfer the case to the jurisdiction of the superior
29 court along with copies of the tribal court’s order transferring jurisdiction and
30 the entire file.
31

32 (2) The superior court must notify the tribal court upon receipt of the materials
33 and the date scheduled for the hearing of the motion to transfer.
34

35 (3) If the superior court has concurrent jurisdiction it may not reject the case.
36
37