

## Tribal Court-State Court Forum

### Communication Plan

- Forum meeting notices, agendas, minutes are publicly posted [here](#).
- Forum's electronic newsletters are posted [here](#) and are distributed to all interested persons. ContactCarolynn Bernabe at 415-865-7556 or [carolynn.bernabe@jud.ca.gov](mailto:carolynn.bernabe@jud.ca.gov) to be added to the forum's public e-distribution list.
- Forum members agree to serve as liaisons, regularly communicating and coordinating the work of the forum, to advance policies, promote collaboration and educate state and tribal justice system partners:
  1. Forum members, who are members of other Judicial Council (council) advisory committees, will serve as liaisons between the forum and their advisory committees;
  2. Forum members, who are tribal court judges, will serve as liaisons between the forum and the tribe or tribes served by their courts;
  3. Forum members, who serve on the California State Federal Judicial Council (CSFJC), will serve as liaisons between the forum and the CSFJC;
  4. The forum member, who is an appellate justice, will serve as a liaison between the forum and appellate justices statewide;
  5. The Director of Native American Affairs will serve as a liaison between the forum and the Chiefs of Tribal Public Safety in California, federal law enforcement agencies, the California Attorney General's Office, and the California Sheriff's Association; and
  6. The Tribal Advisor to the Governor will serve as a liaison between the forum and the Governor, California executive agencies, and tribal governments.
- Forum members agree to keep tribal chairs of federally and nonfederally recognized tribes in California informed in writing and through presentations.
- Forum cochairs will notify federally recognized tribes in California of any vacancies on the forum and the appointment process.
- Judicial Council (council) staff will notify the state judicial branch when there are state court vacancies as part of the regular advisory committee nomination process.
- When forum recommendations impact other tribal, county, or state agencies, the forum cochairs will enlist the support of forum members and council staff, as appropriate, to contact these justice partners.
- When forum activities warrant media attention, the cochairs will work with the council's office of communication and tribal governments to coordinate press releases to media outlets.

## **Tribal Court-State Court Forum (forum)**

### Outline

#### Forum Background

1. Initiated - letter from Judge Richard Blake, on behalf of the Northern California Tribal Courts Coalition, to California's Chief Justice
2. [Authority](#) - tribal/state entity recognized by the California Rules of Court
3. [Tribal/State Programs](#) - grant funded staffing to support forum projects
4. Strategic Approach
  - Composition
  - Common ground
  - Quickly achievable solutions: sharing resources, prioritizing case types (child welfare and domestic violence), implementing policies with respect to priority case types,
  - Commitment to achieve structural reforms: policies, partnerships, and education
5. [Composition](#)
  - equal tribal and state court judicial membership
  - cochaired by a tribal court judge and state court judge
  - tribal judges are appointed by tribal leadership
  - state court judges are appointed by the California Chief Justice
  - ex officio members: California DOJ and Tribal Advisor to Governor
6. Common Ground- develop initial trust and identify areas of common concern
  - [Scope of work](#)
  - [Values and principles](#)
  - [Regular meetings](#)
  - [Electronic Newsletter](#) (also known as Forum E-Updates)

#### Forum- First Two Years: Focusing on Quickly Achievable Solutions

1. Sharing Resources
  - Education— learning about [California's tribal communities](#) and [tribal justice systems](#), extending invitations to each other to go to conferences sponsored by tribal and state courts and cohosting cross-court cultural exchanges on tribal lands;
  - Technical assistance— sharing expertise: court forms, information on courtroom security, human resources, and other court operations; assistance with grants
  - [Technology](#)— using technology so that tribal and state court judges can view each other's protective orders
2. Prioritizing Case Types— child welfare and domestic violence ([statewide needs assessment](#))
3. Implementing Policies
  - [Improving compliance with the Indian Child Welfare Act](#)
  - [Improving recognition and enforcement of Tribal Protective Orders](#)

## Forum- Long-Term: Achieving Structural Reforms: Policies, Partnerships, Education

### 1. Policies

- Inter-jurisdictional/recognition and enforcement issues re full faith and credit<sup>1</sup>
  - i. [Adult Guardianships and Conservatorships](#)
  - ii. [Child Support](#)
  - iii. Child Welfare
    1. [Access to Records \(AB 1618\)](#)
    2. [Appeals](#)
    3. [Psychotropic Medication](#)
    4. [Tribal Customary Adoption](#)
  - iv. [Delinquency](#)
  - v. [Domestic Violence](#)
- Recognition and enforcement issues relating to [comity](#)
- Technological initiatives
  - i. Consult with the California Attorney General's Office regarding access to California Law Enforcement Telecommunications System (CLETS) by tribal courts.
  - ii. [Access by tribal courts and state courts to the California Courts Protective Order Registry to view each other's protective orders.](#)
  - iii. Electronic notice to tribes in Indian Child Welfare Act cases.
  - iv. Continue [Domestic Assistance Self Help \(DASH\) Tribal/State Program](#)

### 2. Partnerships

- **State/Tribal Education, Partnerships, and Services to Justice- Child Welfare**
- **State/Tribal Education, Partnerships, and Services to Justice- Domestic Violence**
- Cross-Court Cultural Exchanges on tribal lands
- [Innovation Knowledge Center](#) - publicizing tribal court/state court partnerships
- [Tribal/State Partnerships](#)- MOUs, Protocols, Agreements
- Toolkit for Tribal Court and State Court Administrators

### 3. Education

- [Federal Indian law toolkit for judges](#)
- [Educational resources on jurisdiction in Indian country](#)
- Incorporating federal Indian law into state judicial branch education
- Documentary on tribal justice in California (see link to view trailer: <https://vimeo.com/84392263>; password justice15)

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<sup>1</sup> While tribes are recognized as sovereign, they are not "states" for the purposes of the full faith and credit requirements of Article IV of the U.S. Constitution. There is general consensus (but no Supreme Court authority on point) that tribes are not encompassed by the federal full faith and credit statute (28 U.S.C. §1738). There are, however, a number of relevant federal and state provisions that mandate full faith and credit: (1) Indian Child Welfare Act (25 U.S.C. § 1911 (d)); (2) Violence Against Women Act (18 U.S.C. § 2265); (3) Child Support Enforcement Act (28 U.S.C. §1738 B); and (4) Uniform Child Custody Jurisdiction and Enforcement Act (Family Code §3404). Where there is no specific statutory mandate for full faith and credit, the general rule is that tribal court orders are entitled to comity. The forum's legal strategy is address to enforcement problems with orders that should be given full faith and credit through partnerships and education, and recommend policies, typically legislative, to address issues of comity.

## Talking Points

- Working jointly to solve problems faced by tribal and state justice systems
  - Addressing inter-jurisdictional challenges together
  - Examples are listed in forum outline
- State and tribal justice systems have a great deal of experience to share
  - Much to learn from one another
  - More in common than different/Identify areas of commonality
  - Role and goals are the same; the methods, however may be different
- Sharing to reduce the burden on each
  - Sharing and allocating jurisdiction
  - Sharing court-connected resources
  - Sharing educational resources
- Seeking to meet the expectations of those who come before the courts with restricted budgets
  - Tribal courts properly reflect the values and concerns of their local community members and can best serve their communities
  - Tribal courts contend with a shortage of funds<sup>1</sup>
  - Tribes, like their state and local counterparts, deserve the benefit of stable funding to build robust tribal justice systems
- Forging partnerships to advance policies
  - Recommending solutions through legislation, rules, intergovernmental agreements, and other initiatives
  - Implementing structural reforms: solutions are memorialized and become part of everyday justice system operations, and not dependent on the interpersonal relationships of the forum members

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<sup>1</sup> The U.S. Department of the Interior through the Bureau of Indian Affairs provides limited funding for tribal court systems but the funding level is far too low. The BIA has historically denied any tribal law enforcement and tribal court funding to tribes in Public Law 280 jurisdictions— where congressionally authorized concurrent state jurisdiction has been established. Funding for tribal justice systems has been consistently decreasing in recent years. See reduced funding levels in the Consolidated Tribal Assistance Solicitation (CTAS) grant program with the closest direct connection to AI/AN children exposed to violence—in a four-year period, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Tribal Youth Program (TYP) funding went from \$25 million in FY 2010 to \$5 million in FY 2014. (See page 8 of Attorney General’s Advisory Committee on American Indian and Alaska Native Children Exposed to Violence: Ending Violence So Children Can Thrive (November 2014) <http://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2014/11/18/finalaianreport.pdf> and the Indian Law and Order Commission, *A Roadmap for Making Native America Safer: Report to the President and Congress of the United States* (November 2013): vi, available at: <http://www.aisc.ucla.edu/iloc/report/index.html> (citing estimates calculated from data on the webpage “Demographic and Geographic Sketches of Alaska Natives,” Alaska Natives Commission, accessed September 6, 2013, <http://www.alaskool.org/resources/anc/anc07.htm>).

# Tribal Court-State Court Forum

Presentation Location

Date

# Agenda

- California's Tribal Communities
- California's Tribal Courts
- California's Tribal Court-State Court Forum
- Policies
- Partnerships
- Education
- Inter-Court Cooperation
- Challenges
- Conclusion

# California's Tribal Communities

- 110 federally recognized tribes
- 81 groups petitioning for federal recognition
- 725,000 California citizens identify as American Indian or Alaska Native (AI/AN)
- Represents 14% of all AI/AN population in the U.S., more than in any other State
- Tribes as small as 5 members and as large as 6,000 members

# California's Tribal Courts

- California has 23 tribal courts
- More than doubled since 2003
- Courts serve 40 Tribes
- Exercise various types of jurisdictions
- Over a range of case types (administrative, civil, family, juvenile, probate, and criminal jurisdiction)
- California Tribal Courts Directory at <http://www.courts.ca.gov/14400.htm>
- Google Map of Tribal Courts at <http://g.co/maps/cvdq8>



# Tribal Court-State Court Forum

- Background
- Strategic Approach
  - Composition
  - Common Ground
  - Problem-Solving
- Making Top Priority: Child Welfare and Domestic Violence
- Implementing Policies, Partnerships, Education

# Policies, Partnerships, and Education

- Forging Tribal/State Judicial Relationships
- Finding Local Solutions
- Implementing Solutions Statewide:  
Government-to-Government
- Sharing Educational and Other Resources to  
Support Tribal Justice Development

# Policies: Inter-Jurisdictional

- Recognition and Enforcement Issues:
  - Full Faith and Credit
  - Comity
- Technological Initiatives

# Accomplishments- Child Welfare

- Delinquency and Indian Child Welfare Act

[www.courts.ca.gov/documents/jc-20130426-itemG.pdf](http://www.courts.ca.gov/documents/jc-20130426-itemG.pdf)

- Psychotropic Medication and Tribal Notice

[www.courts.ca.gov/documents/PsychotropicMedsProposal.pdf](http://www.courts.ca.gov/documents/PsychotropicMedsProposal.pdf)

- Tribal Access to Confidential Juvenile Court Files

[leginfo.ca.gov/pub/13-14/bill/asm/ab\\_1601-1650/ab\\_1618\\_bill\\_20140206\\_introduced.pdf](http://leginfo.ca.gov/pub/13-14/bill/asm/ab_1601-1650/ab_1618_bill_20140206_introduced.pdf)

- Tribal Access to Juvenile Appellate Records

[www.courts.ca.gov/documents/jc-20120228-itemA3.pdf](http://www.courts.ca.gov/documents/jc-20120228-itemA3.pdf)

- Tribal Customary Adoption

[www.courts.ca.gov/documents/lr-Tribal-Customary-Adoption-Report\\_123112.pdf](http://www.courts.ca.gov/documents/lr-Tribal-Customary-Adoption-Report_123112.pdf)

- ICWA Clearinghouse of Resources

[www.courts.ca.gov/3067.htm](http://www.courts.ca.gov/3067.htm)

# Accomplishments- Domestic Violence

- Electronic filing of tribal protective orders in state court

<http://www.courts.ca.gov/documents/SPR11-53.pdf>

- Viewing each other's orders in the California Courts  
Protective Order Registry

<http://www.courts.ca.gov/partners/ccpor.htm>

- Informational brochures

[http://www.courts.ca.gov/documents/Tribal-RecognEnf\\_Brochure.pdf](http://www.courts.ca.gov/documents/Tribal-RecognEnf_Brochure.pdf)

<http://www.courts.ca.gov/documents/Tribal-CrossoverIWCA.pdf>

# Partnerships

- State/Tribal Education, Partnerships, and Services to Justice- Child Welfare
  - State/Tribal Education, Partnerships, and Services to Justice- Domestic Violence
  - Promoting State/Tribal Partnerships
    - Publicizing innovative tribal court/state court partnerships
- Innovation Knowledge Center-
- Serving as a clearinghouse for MOUs, Protocols, Agreements
- Tribal/State Partnerships-
- Encouraging Tribal Court and State Court Administrators to Learn About Each Other's Courts (Toolkit)
  - Fostering and Convening Cross-Court Cultural Exchanges

# Hoopla Exchange Slide Show

<http://youtu.be/dvsWoXrg6lA>

# Education

- Federal Indian Law- Online Toolkit for Judges

<http://www.courts.ca.gov/27002.htm>

- Educational Resources on Jurisdiction

<http://www.courts.ca.gov/8710.htm>

- Incorporating Federal Indian Law into State  
Judicial Branch Education

- Documentary on Tribal Justice in California

See link to view trailer: <https://vimeo.com/84392263>;

password justice15



## Inter-Court Cooperation

- Pre-Filing/DA Referral: Diversion for Juvenile Offenders in Tribal Court
- Post-Filing/Pre-adjudication/DA Referral: Diversion for Adult Offenders in Tribal Court
- Post-Plea Deferred Entry of Judgment/ Disposition in State Court for Adult and Juvenile Offenders with Concurrent Case and Court-Connected Services in Tribal Court
- Joint-Jurisdictional Court

## Inter-Court Cooperation: Tribal Justice Development Supports Justice for All

- Forms- Assistance with tribal court forms
- Publications- Making available to tribal courts all Judicial Council publications
- Education- Making available to tribal courts all Judicial Council educational resources
- Resources- Access to grants, tribal support letters, technical assistance with security, HR, & other court administration questions

# Challenges

- Funding
- Enforcement Issues
- Moving Beyond Local Solutions
  - Based on Trust and Individual Relationships to Sustainable Solutions That Work Regardless of the Individuals
- Seeking Your Partnership

# Conclusion- Questions

- Contact Information

Hon. Richard Blake, [hoopajudge2006@aol.com](mailto:hoopajudge2006@aol.com)

Hon. Dennis Perluss, [dennis.perluss@jud.ca.gov](mailto:dennis.perluss@jud.ca.gov)

Jenny Walter, forum counsel,

[jennifer.walter@jud.ca.gov](mailto:jennifer.walter@jud.ca.gov)

- Resources in California

<http://www.courts.ca.gov/14851.htm>