

# TRANSFER OF TITLE IV-D CASES TO TRIBAL COURTS

21<sup>st</sup> Annual AB 1058 Child Support Training Conference  
September 12-15, 2017

Hon. Abby Abinanti, Chief Judge, Yurok Tribe  
Hon. Rebecca Wightman, San Francisco  
Jennifer Burgess, YCSS, Yurok Tribe

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## TOPICS TO BE COVERED



- BRIEF HISTORICAL BACKGROUND
- JURISDICTIONAL CONCEPTS
- TRIBAL JUSTICE SYSTEMS
- CASE TRANSFER RULES

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## Historical Background

1975 – Present

- Child Support Program established '75
- Tribal Child Support Program established '96 (through PRWORA)
- 10 Tribal CS Programs funded '99
- Initial Final Tribal IV-D Rule published '04
- 60+ Comprehensive Tribal IV-D programs in U.S.
- Over 53,000 cases (FY 2015 Congressional Report)

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## Historical Background

(continued)

- 2014 – Yurok Tribe became first tribe in CA to achieve comprehensive program status
- So far over 30 cases have been transferred from Humboldt and Del Norte, next up: Siskiyou, Trinity, Shasta and Fresno
- At least one other tribe (in So. CA) is expected to start handling IV-D cases

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## JURISDICTION OVERVIEW

- CONCURRENT JURISDICTION
  - Tribal vis-à-vis State
  - Statutes and case law
- OTHER DOCTRINES & LAWS
  - Exhaustion of Remedies
  - Doctrine of Comity
  - Full Faith & Credit (FFCCSOA)

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## Concurrent Jurisdiction

- CRC 5.72 - court must make threshold determination of concurrent jurisdiction
- Historically, tribes had exclusive jurisdiction over domestic relations matters of its members on reservations (*Williams v. Lee*, 358 U.S. 217 (1958))
- Then, in 1953 Congress enacted PL 280: it created concurrent jurisdiction in 6 states, including California

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## Concurrent Jurisdiction

(continued)

- PL 280 did *not* diminish any inherent tribal court jurisdiction  
*(Montana v. U.S., 450 U.S. 544, 564 (1981); Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians, 612 N.W.2d 709 (2000))*
- Federal and state courts have found specifically that tribal courts have concurrent jurisdiction, so long as they're willing to assume jurisdiction

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## Concurrent Jurisdiction

(continued)

Understanding Tribal Court

### Subject Matter Jurisdiction:

- Members, first and foremost
  - Not restricted to common state territorial definitions (e.g., *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. at 52, no.26 (1989))
  - Extends to all members, wherever located (e.g., Yurok Constitution, Art. 1, Sec.3)

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## Concurrent Jurisdiction

(continued)

Tribal Court Subject Matter Jurisdiction:

- Domestic Relations matters of its tribal membership is one of the areas in which tribes have retained their inherent power
  - Yurok: Title IV-D, Divorce, Child Custody, Guardianship, Domestic Violence, Title IV-E (dependency, in progress)

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## Concurrent Jurisdiction

(continued)

### Tribal Court Subject Matter Jurisdiction

- Subject matter jurisdiction can also extend to actions arising outside Indian country when involving the internal concerns of tribal members
- Under certain circumstances can extend to non-members

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## Concurrent Jurisdiction

(continued)

### Tribal Court Subject Matter Jurisdiction

*Montana v. U.S.*, 450 U.S. 544 (1981)

**Rule:** "The inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." **Two exceptions** noted. A tribe could:

**#1:** regulate "activities of nonmembers who enter consensual relationships with the tribe or its members," as through commercial dealings.

**#2:** exercise "civil authority over the conduct of non-Indians on fee lands within its reservation when the conduct threatens or has some direct effect on the "political integrity, the economic security, or the health and welfare of the tribe."

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## Concurrent Jurisdiction

(continued)

### Tribal Court Subject Matter Jurisdiction

*Tlingit case* (*State of Alaska, et al. v. Central Council of Tlingit and Haida Indian Tribes of Alaska*, (2016) 371 P3d 255)

- Specifically held that tribal courts have inherent, non-territorial subject matter jurisdiction to adjudicate parents' child support obligations
- "Child support orders are a pillar of domestic relations and are directly related to the well being of the next generation."

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## Concurrent Jurisdiction

(continued)

### Tribal Court Subject Matter Jurisdiction

- *Tlingit* did not rely upon *Montana* decision, but found that even if it did apply, it fit within **both** exceptions, due to:
  - Consensual relationship (gives rise to birth of child)
  - Conduct of non-members that threatens or has some direct effect on the...health or welfare of the tribe...
- Focus not on membership status of parent, rather it is on the child

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## Concurrent Jurisdiction

(continued)

### Tribal Court Subject Matter Jurisdiction

*Tlingit* used concept of **RESPECT** in its analysis:

"We are sympathetic to the concerns that nonmember parents may have about contesting their child support rights and obligations in a court system that may be less familiar to them than the state courts. But tribal courts that take on this responsibility share the goals of state courts and parents everywhere..."

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## Other Doctrines & Laws

- Full Faith and Credit for Child Support Orders [FFCCSOA] 28 U.S.C. 1738B
  - Between states, and includes tribal courts
- Yurok Tribe has not adopted the Uniform Interstate Family Support Act [UIFSA]

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## Other Doctrines & Laws

(continued)

- Judicial-Made Doctrine(s) - designed to avoid interference with Indian nations' self-government & area of expertise
  - Exhaustion of Remedies
  - Doctrine of Comity
- State court may establish similar rule of deference where tribal courts exist

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## Other Doctrines & Laws

(continued)

- State case transfer rules in PL 280 states:
  - Wisconsin's Teague Protocol
  - Washington state (statute)
  - Title IV-D child support cases
    - Wisconsin Stat. 801.54
    - California Rule of Court 5.372  
MOU signed by YCSS & DCSS on 11/12/14
    - Minnesota (in development)

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## Tribal Justice Systems

- No two system are alike, but being different is NOT a bad thing
- It is important for systems to fit the communities they serve
- **Recommended viewing:** *Tribal Justice* documentary (KQED premiere on August 21, 2017)  
<http://www.pbs.org/pov/tribaljustice/#.WWgMwcPodko.email>

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## Tribal Justice Systems

(continued)

*Tlingit* specifically highlighted the concept of **RESPECT** in its analysis:

"We have previously emphasized respect for tribal courts, and this respect must inform our analysis. [fn] We are sympathetic to the concerns that nonmember parents may have about contesting their child support rights and obligations in a court system that may be less familiar to them than the state courts. But tribal courts that take on this responsibility share the goals of state courts and parents everywhere..."

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## Tribal Justice Systems

(continued)

- **Partnership** with same goals
  - to create better lives for the children
  - to help parents do their job

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## Tribal Justice Systems

(continued)

- Yurok Tribe guided by: (among other things)
  - Values
  - Responsibility
    - In child support context, can discharge responsibility in different ways, including, e.g. "in-kind"

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## Tribal Justice Systems

(continued)

- Basic framework of justice systems similar
  - Due process - Indian Civil Rights Act (ICRA) – imposes statutory version of due process on tribal courts

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## Tribal Justice Systems

(continued)

- Personal Jurisdiction
  - Yurok Constitution –long arm concept "members wherever located"
  - Follows *Intern'l Shoe* –"traditional notions of fair play and substantial justice"
  - Yurok Family Code –duty of support

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## Tribal Justice Systems

(continued)

- Even though system differences, important to remember common goals when evaluating and making determination of whether to grant case transfer under CA Rule of Court 5.372

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## Case Transfer Rules

- **Rule 5.372** Purpose and Function
  - Establish uniform procedures for the transfer of Title IV-D court cases from California Superior Court to a Tribal Court
  - Permits transfer of superior court cases to tribal IV-D court based on a noticed motion, where there is concurrent jurisdiction
  - Family must be receiving IV-D services
  - Results in transfer of child support & custody

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## Case Transfer Rules

- **Standing:** Who can file a motion?  
LCSA, Non-custodial parent, or Custodial parent
- **Timing:** When can a motion be filed?  
Only after: 1) Notice of Intent to Transfer  
2) 20 calendar days have passed  
**AND**  
3) Both parties have not objected

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## Case Transfer Rules 5.372 Evidentiary Considerations\*

- Nature of the action \*
  - Interests of the parties \*
  - Identities of the parties
  - Convenience of the parties and witnesses
  - Whether state or tribal law will apply \*
  - The remedies available in state or tribal court
  - Any other factors deemed necessary by the superior court
- \* Subject to Change

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## Case Transfer Rules

Some of the changes pending as a result of several Cross-Cultural Exchanges:

- Clarify transfer can go in both directions ("between" court)
- Allow transfer on court's own motion
- Remove some factors, and recognize a presumption of trial court jurisdiction where child involved is member or eligible for membership
- Specify court cannot consider perceived adequacy of the tribal justice system; clarify burden on objecting party
- Permit state court to contact tribal judge

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**Case Transfer Rules  
Overview of Transfer Process**

**Initial Case Identification**

- Initial match with Yurok Tribe
- Tribe identified qualifying cases
- Transfer in waves – next wave 4 set for 8/1/17
- Rule 5.372 Coordinators established
  - Local Tribal Liaison; State Tribal Case Manager; YCSS Case Specialist

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**Case Transfer Rules  
Overview of Transfer Process**

**Local Tribal Liaison Duties**

- Primary Contact Tribal Case Inquiries
  - LCSA Caseworkers; State DCSS Tribal Case Managers and Case Participants
- Identifies court order status with YCSS
- Initiates tribal verification process
- Supports CA Rule 5.372 transfers; refers jurisdictional Qs to local attorneys

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**Case Transfer Rules  
Overview of Transfer Process**

**State Tribal Case Manager Duties**

- Sends tribal verification forms to YCSS
- Notifies LCSAs if Yurok tribe has confirmed case is eligible for transfer
- Identifies any associated cases for transfer
- Answers questions of tribal liaisons & YCSS
- Refers legal Qs to DCSS Legal Tribal Liaison

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## **Case Transfer Rules Overview of Transfer Process**

- The State Tribal Manager also assumes case management responsibility provided:
  - The superior court has approved transfer of its case to tribal court

**AND**

- The **only** reason the State IV-D case cannot be closed is because amounts are still owed to recoup aid paid

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## **Case Transfer Rules Overview of Transfer Process**

- The State Tribal Case Manager will also provide Intergovernmental (IG) Services
  - Receive all incoming IG referrals and coordinate requests for limited-term or one-time services
  - Provide case inquiry assistance and escalations
  - Provide training & education on IG case process
  - Ensure compliance with Uniform Interstate Family Support Act (UIFSA 2008) and 45 CFR, 303.7

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## **Case Transfer Rules Overview of Transfer Process**

### **YCSS Case Specialist Duties**

- Delegates/works with Case Aide on
  - Tribal enrollment verifications
  - YCSS New Case Notifications to DCSS
  - Transmittal Acknowledgements
  - Case transfer initial noticing

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## **Case Transfer Rules Overview of Transfer Process**

YCSS Case Specialist duties (continued)

- Keeps track of possible transfer cases
  - Analyzes ability to transfer, citizenship, connections to tribe, contact with tribal court, etc.
  - Case staffs with Program Manager for forward to contract Attorney
  - Tracks case transfer process, follow-ups

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## **Case Transfer Rules Overview of Transfer Process**

YCSS Case Specialist duties (continued)

- Responds to Foreign Enforcement IWOs
  - Prepares letter identifying tribe's judicial process
  - Once requested forms received, prepares Petition for Enforcement of Foreign Support Order packets, does noticing
  - Responds to e-mails re: process & follows up on time lines

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## **Case Transfer Rules Overview of Transfer Process**

Ongoing Case Identification

- Established a Tribal Verification Procedure
- LCSA notifies State Tribal Case Manager if any case participant is identified as Yurok
  - Form then sent by State to verify tribal membership & whether tribe has basis to exercise jurisdiction
- Transfers outside "waves" require case specific consultation with YCSS

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## **Case Transfer Rules**

### **Next Procedural Steps**

- Once tribal membership verified, DCSS flags the case in CSE as a "DCSS Managed Tribal IV-D Case"
- Yurok Child Support Services (YCSS) sends a "Notice of Intent to Request Case Transfer" form to CP and NCP
  - CP/NCP have 20 calendar days to respond

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## **Case Transfer Rules**

### **Next Procedural Steps**

#### Tribal Intent to Transfer Packets

- Statement of intent to transfer child support court case from Superior Court to Yurok Tribal Court based on concurrent jurisdiction
- Notice that the transfer will include related custody and placement issues
- Copy of CA Rule of Court (outlines factors considered if any objection)

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## **Case Transfer Rules**

### **Next Procedural Steps**

#### Tribal Intent to Transfer Packets

- Participants right to object in writing & request hearing w/in 20 calendar days
- Blank "Response to Case Transfer" requiring:
  - Consent or the reason(s) for objection
  - Information on related cases filed in Yurok Tribal Ct involving same participants, or their minor children
- Proof of Service (FL-686) prepared [FC§17212] listing all documents served

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## Case Transfer Rules

### Next Procedural Steps

- Next: On State IV-D Program Side
  - DCSS coordinates with LCSA in filing the Notice of Motion
  - LCSAs will:
    - Prepare, file & serve the Notice of Motion on Case Participants and tribe(s)
    - Attend the hearing
    - Prepare final disposition of transfer hearing  
(in accordance with local practice)

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## Case Transfer Rules

### Next Procedural Steps

- Next: On State IV-D Program Side
  - LCSA Filed Motions
    - Cover letter
    - Notice of Motion
    - Important Notice
    - Legal Basis for Motion
    - Facts in Support – with/by Tribal Supporting Decl.
    - Points and Authorities

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## Case Transfer Rules

### Next Procedural Steps

- Points to Remember
  - LCSA – Represents the Public Interest [CA Fam. Code Sec. 17406]
    - Not to take sides; no attorney-client relationship with CP or NCP; officer of the court
  - LCSA – Duties [CA Fam. Code Sec. 17400]
    - Promptly & effectively establish, modify & enforce child support obligations, etc.; take appropriate action

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## Case Transfer Rules

### Next Procedural Steps

Points to Remember (continued)

- LCSA is providing notice that another jurisdiction has authority & availability to resolve domestic relations issues
- LCSA seeking direction from court as to where issues should be heard prospectively
- LCSA expectation is to assist court in its fact finding effort for court's determination

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## Case Transfer Rules

### Next Procedural Steps

- Superior Court Process
  - Notice of Motion seeks finding concurrent jurisdiction exists and an order the superior court case should transfer to tribal court
  - A hearing is scheduled when:
    - Either CP or NCP object to transfer
    - 20 day calendar timeframe has elapsed and no notices returned undeliverable
    - Both parties consent to transfer, but may proceed as uncontested

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## Case Transfer Rules

### Next Procedural Steps

- Superior Court Process (continued)
  - A hearing is **not** scheduled when:
    - Both CP and NCP object to transfer
  - OR**
  - Notices are returned undeliverable

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## Case Transfer Rules

### Next Procedural Steps

- Procedure after order granting transfer
  - Superior Court sends packet to Yurok Tribal Court
    - Order on Request for Case Transfer
    - Copy of entire family law/child support court file, including all orders and pleadings
    - Yurok sends an Acknowledgement of Receipt back to the Superior Court

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## Case Transfer Rules

### Types of Cases

- Non-shared case [DCSS has no interest in case]
  - CP or children have never received public assistance
  - Formerly Assisted (FA) cases where public assistance has been recouped and remaining obligations are payable to the family
  - IV-D case is closed when YCSS notifies DCSS that the case transfer is complete

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## Case Transfer Rules

### Types of Cases

- Shared case  
[Both DCSS and YCSS have a mutual interest in case]
    - One or more participants are tribal members or are eligible for tribal enrollment
    - A case that is either Currently Assisted (CA) or FA with Permanently Assigned Arrears (PAA) owed to the state
- DCSS is responsible to recoup public assistance  
IV-D case remains open in CSE

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## **Case Transfer Rules YCSS – Case Management**

- YCSS Child Support Services: (examples)
  - Income Withholding (judicial process)
  - Reservation Employers; Fishing Income (fish buyers)
  - Custody/Support – review & reassess order
  - Manage case disbursement payments
  - Contact nearby tribes for assistance
  - Yurok Family Centered Services
  - Intergovernmental Request

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**QUESTIONS?**

**THANK YOU !**

**[And one more slide to keep in mind]**

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