

New York
Federal-State-Tribal Courts
and Indian Nations Justice
Forum Presentation

Hon. Marcy L. Kahn

Marcy L. Kahn is a Justice of the Supreme Court of the State of New York and has served as a trial judge in New York for the past 27 years.

Since its inception twelve years ago, Justice Kahn has co-chaired with the Honorable Edward M. Davidowitz the New York Tribal Courts Committee, which launched the New York Federal-State-Tribal Courts and Indian Nations Justice Forum to bring together representatives of the justice systems of the State of New York, the United State Courts for the Second Circuit resident in New York and the nine Indian Tribes and Nations recognized by the State of New York, to foster cooperation and understanding among their respective justice systems. In 2006, Justice Kahn chaired The First New York Listening Conference, and has since served on the faculty of the National Tribal Judicial College and as a speaker for the United States Department of Justice Bureau of Justice Affairs on State-Tribal cooperation, and for the National Tribal Law and Policy Institute.

Justice Kahn received her B.A. from Stanford University and her J.D. from New York University School of Law.

Providing a Procedure Under the Standards of Comity for the Recognition of Judgments Rendered by Tribunals or Courts of Federally-Recognized Tribes (22 NYCRR 202.71 (new))

The Advisory Committee proposes a new Rule 202.71 to provide for a procedure for the recognition of judgments rendered by tribunals or courts of federally-recognized tribes.

There are several active tribunals operated by the various federally-recognized Indian tribes within the State of New York. Increasingly, the parties that appear before these tribunals seek to obtain recognition of these judgments in New York's courts. As a judgment of a sovereign nation, a tribal judgment may be entitled to comity as a matter of common law. *See Bird v. Glacier Electric Cooperative, Inc.*, 255 F.3d 1156 (9th Cir. 2001); *Wilson v. Marchington*, 127 F.3d 805, 807-11 (9th Cir. 1997); *see generally, Hilton v. Guyot*, 159 U.S. 113, 16 S. Ct. 139 (1895); *S.B. v. W.A.*, 2012 WL 4512894 (S.Ct. West. Co., Sept. 26, 2012). Moreover, tribal money judgments may receive recognition pursuant to Article 53 of the CPLR, which is derived from the Uniform Foreign Money-Judgments Recognition Act.

The Committee has been advised that at least some courts are uncertain as to how to, or whether to, recognize these judgments. The purpose of this rule is to establish an expeditious and uniform procedure for the recognition of appropriate tribal judgments under the substantive common law or Article 53 of the CPLR. This procedural rule is not designed to change in any way the substantive requirements for recognition or non-recognition of any tribal judgments, or any other foreign-nation judgments. Further, it does not amend the procedures required for enforcement of judgments. It is merely designed to provide a roadmap for the parties and the courts as to how to seek recognition of these judgments.

Finally, this provision does not purport to apply to proceedings coming within the scope of the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 *et. seq.*, which requires all state courts to give full faith in credit to any judgment of an Indian tribe applicable to Indian child custody proceedings. Such proceedings would come within the scope of Article 54, which provides for enforcement of judgments entitled to full faith and credit.

Proposal

Section 202.71. Recognition of Tribal Court Judgments. Any person seeking recognition of a judgment rendered by a court duly established under tribal or federal law by any Indian tribe or nation recognized by the State of New York or by the United States may commence a special proceeding in Supreme Court pursuant to Article 4 of the CPLR by filing a notice of petition and a petition with a copy of the tribal court judgment appended thereto in the County Clerk's office in any county of the state. Alternatively, the person may commence an action pursuant to CPLR 3213. If the court finds that the judgment is entitled to recognition under the provisions of Article 53 of the CPLR or under principles of the common law of comity, it shall direct entry of the tribal judgment as a judgment of the Supreme Court of the State of New York.

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OCA Considering Rule to Recognize Tribal Judgments

Joel Stashenko, New York Law Journal

August 5, 2014

Court administrators have proposed a procedure for state courts to formally recognize judgments rendered by Indian courts.

The proposed rule, 22 NYCRR §202.71, was recommended by the Advisory Committee on Civil Practice to eliminate uncertainty among state judges on how much weight to give to tribal court determinations, committee chairman George Carpinello said.

"We had heard from representatives of Indian tribes that state judges, mostly because of lack of familiarity, were not inclined to honor or enforce these judgments," said Carpinello, a partner at Boies, Schiller & Flexner in Albany.

The proposal would allow a party to file a special proceeding under Article 4 of the CPLR with the county clerk's office containing a copy of the Indian tribunal judgment for recognition in state court.

A judge would then decide if the judgment should be recognized under Article 53 of the CPLR or under the common law principle of comity.

The general idea is to have the Indian judgments, where appropriate, accepted by New York courts as they now recognize judgments rendered by courts of other sovereign nations, Carpinello said in a recent interview.

"Native judgments are like foreign judgments," Carpinello said. "They are not entitled to full faith and credit. They are entitled to comity."

Comity applies to the mutual recognition by states or nations of the laws or judicial rulings of other states or nations.

The proposed rule is being circulated for public comment by the Office of Court Administration in anticipation of its adoption by the administrative board of the courts. The comment period ends on Sept. 12.

Of the eight federally recognized Indian tribes in New York, the St. Regis Mohawks, the Senecas and the Oneidas all have structured court systems.

Some Indian court judgments are already accepted by state courts and would not be affected.

Under the federal Indian Child Welfare Act, state courts must give full faith and credit to any judgment of an Indian court applicable to an Indian child custody proceeding. Similarly, the federal Women Against Violence Act specifically requires state courts to recognize certain judgments by Indian tribunals, such as the issuance of orders of protection.

Carpinello said his committee's recommendation grew out of discussions at the New York Federal-State-Tribal Courts Forum and the New York Tribal Courts Committee, two groups formed in the early 2000s to improve communications between the Indian and non-Indian justice systems.

The initiatives were promoted by the National Conference of Chief Justices and former New York chief judge Judith Kaye.

The co-chair of the forum, Manhattan Supreme Court Justice Marcy Kahn ([See Profile](#)), said the proposal does not change the legal standards state courts should use when asked to recognize an Indian court judgment, but makes it clear that essentially the same rules apply to the Indian judgments as those from out-of-state or foreign courts.

"It is really designed to provide a road map for state trial judges and for the parties who are seeking to have state courts recognize judgments already obtained in tribal courts," Kahn said in an interview. "We really don't think that a party that has won a judgment in tribal court should have to relitigate that in state court where a judgment satisfied New York rules for comity for foreign judgments."

The statewide rule is similar to a procedure worked out in the late 2000s between the Oneida Indian Nation and the Fifth Judicial District where individuals seeking to enforce judgments by the Oneida court have to file the judgment with the state court, thereby putting the opposing party on notice of the attempt at enforcement.

A state judge would then extend full faith and credit to the Indian judgment as long as certain conditions are met, such as recognition by the state judge that the tribal judgment would not do "violence" to a strong public policy in New York state.

Kahn said there has been a trend in recent years of the U.S. Department of Justice, other federal agencies and of non-Indian courts to give "greater respect" to Indian courts and their rulings.

While almost all tribes, including those indigenous to New York, had ancient mechanisms for adjudicating disputes among members or against the tribe as a whole, their proceedings and the penalties were often unconventional by non-Indian judicial standards. It was not until 1934 that the federal Indian Reorganization Act allowed the tribes to operate their own courts to enforce their own justice codes.

Wisconsin state courts are the only ones in the nation that extend full faith and credit to all judgments of the tribal courts operating within its borders.

Persons wishing to comment on the tribal court proposal have until Sept. 12 to e-mail submissions to rulecomments@nycourts.gov or via mail to John McConnell, Counsel, Office of Court Administration, 25 Beaver St., 11th Floor, New York, N.Y., 10004.

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Siskiyou / Karuk Cross Court Cultural Exchange
Karuk Tribal Offices,
1836 Apsuun, Yreka, CA 96097
July 15, 2014
8:00 a.m.–5:00 p.m.

Agenda

- 8:00-8:30** **Registration and Sign-in**
- 8:30-9:00** **Blessing/ Invocation & Welcome**
Hon. April Attebury, Karuk Tribal Court
Hon. Laura J. Masunaga, Siskiyou Superior Court
- 9:00-10:00** **Session 1 – Overview of Tribe; Tribal Court and Tribal Services**
Hon. April Attebury
- 10:00-10:15** **Break**
- 10:15-12:30** **Session 2 – Policing and Jurisdiction on Tribal Lands in a PL-280 State**
Ms. Dorothy Alther, California Indian Legal Services
- 12:30-1:30** **Lunch - generously provided by the Karuk Tribe**
- 1:30-3:00** **Session 3 – Challenges in Policing Tribal Lands and Collaborative Solutions**
Panelists:
Mr. Olin Jones, Attorney General's Office of Native American Affairs
Hon. Michelle Krieger, Hoopa Valley Tribal Court
Ms. Stephanie Dolan, Northern California Tribal Court's Coalition

3:00-3:15 **Break**

3:15-4:30 **Session 4 – Collaboration to Enhance Service and Access to Justice**

Panelists:

Hon. Laura Masunaga

Hon. April Attebury

*Mr. Mark Skinner, Self-Help Attorney and Family Law Facilitator, Siskiyou
Superior Court*

4:30-5:00 **Next Steps – Where Do We Go From Here?**

Group Discussion



Judicial Council of California
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JUDICIAL AND COURT OPERATIONS SERVICES DIVISION
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M E M O R A N D U M

Date	Action Requested
July 23, 2014	Please Review
To	Deadline
Family and Juvenile Law Advisory Committee Tribal Court–State Court Forum	N/A
From	Contact
Ann Gilmour, Attorney	Ann Gilmour 415-865-4207 phone 415-865-7217 fax ann.gilmour@jud.ca.gov
Subject	
<i>In re. Abbigail A.</i> – Possible Amendments to Rules 5.482(c) and 5.484(c)(2)	

Recent case law suggests a possible need to amend Rules 5.482(c) and 5.484(c)(2) of the rules of court. On June 16, 2014, the Third District Court certified for publication its decision in *In re Abbigail A.*¹ which held that rule 5.482(c) and rule 5.484(c)(2) are “...inconsistent with the legislative definition of the class of protected Indian children, and therefore the Judicial council lacked authority to expand the definition.” (page 3). Although the 60 day appeal period has not yet expired, staff wanted to alert the Forum and Committee to this matter. Staff is advised by counsel for the minor’s father that he will be filing a petition for review with the California Supreme Court because the holding in *In re. Abbigail A.* appears to be in conflict with a 2011 decision from the Fourth District Court of Appeal in *In re. Jack C. III* (192 Cal. App 4th 967, 122 Cal. Rptr. 3d 6).

Summary of Issue

Rule 5.482 (c) requires a court to proceed as if the child is an Indian child and requires that steps be taken to secure tribal membership for a child whenever a tribe responds to a notice provided under the Indian Child Welfare Act (ICWA) “... indicating that the child is eligible for membership if certain steps are followed.” Rule 5.484(c)(2) mandates that “active efforts” must include “...pursuit of any steps necessary to secure tribal membership for a child if the child is

¹ <http://www.courts.ca.gov/opinions/documents/C074264.PDF>

eligible for membership in a given tribe.” The *Abigail A.* court held that these rules impermissibly extend the reach of ICWA requirements to a child who would not qualify as an “Indian child” within the definition of the federal and state statutes.

Federal law (25 U.S.C. 1903(4)) defines an “Indian child” as:

Any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe

California law (Welf. & Inst. Code § 224.1(a)) incorporates this federal definition into state law:

(a) As used in this division, unless the context requires otherwise, the terms “Indian,” “Indian child,” “Indian child’s tribe,” “Indian custodian,” “Indian tribe,” “reservation,” and “tribal court” shall be defined as provided in Section 1903 of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.)

The *In re. Abigail A.* case facts were that the child’s father claimed Indian ancestry through his maternal grandmother. ICWA notice as required under state and federal law was sent to the relevant tribe(s). The Cherokee Nation of Oklahoma responded to notice that the minors were “...eligible for tribal membership, but neither the minors nor [father] were enrolled members.” The Court held that because neither the child nor the child’s parent were currently “enrolled members” the child did not meet the definition of “Indian child” and ICWA did not apply under federal or state law and the rules of court could not impose ICWA duties on the court or the agency.

In February 2011 the Fourth District Court of Appeal in *In re. Jack C. III.* also addressed Rule 5.482(c) but held that the rule was valid. Leave to appeal *In re. Jack C. III* was denied by the California Supreme Court on May 11, 2011. As in *Abigail A.*, *In re. Jack C. III* involved a situation in which a tribe responded to an ICWA notice stating that the child was eligible for enrollment but neither the child nor the parent was currently an enrolled member. The tribe sought transfer of the case to tribal court and the trial court denied the transfer on the basis that it was not satisfied that the child was “...an Indian child as defined by the law, notwithstanding that he may later become an Indian child and notwithstanding there’s no doubt he may later become an Indian child.” (p. 974). After reviewing relevant provisions of federal and state law and relevant case law, the *Jack* court expressly stated with respect to Rule 5.482(c):

Rule 5.482(c) does not, as the Agency contends, impermissibly expand ICWA beyond its jurisdictional limits. ICWA expressly permits state or federal law to provide a higher standard of protection to the rights of the Indian child and his or her parent or Indian Guardian than the protection of rights provided under ICWA. (25 U.S.C. § 1921.) Thus ICWA does not preempt such higher state standards. [citation] Rather, rule 5.482(c) promotes the timely resolution of dependency matters by avoiding protracted litigation concerning the applicability of ICWA.” (p. 981)

Options

1. Take no action at this time - Given the split of opinion between the *In re. Jack C. III* and *In re. Abbigail A.* cases, the forum and the committee could choose to take no action at this time;
2. Revise the rules consistent with the holding in *In re. Abbigail A.*;
3. Explore the possibility of a revision to the rules which could reconcile *In re. Jack C. III* with *In re. Abbigail A.*;
4. Consider a legislative proposal to clarify the ICWA duties towards children who are eligible for tribal membership but who are not currently enrolled and whose parent(s) are not enrolled.

Proposed Next Steps

Forum Work Plan and Accomplishments

1. Sharing Information and Other Resources

Progress in this Area and Potential Next Steps for Forum Consideration:

- (1) Monthly Forum E-Update lists resources, such as grants, educational events, and news. Please send all information and other resources you wish to share to Jenny Walter so that they may be included in the Forum E-Update. Should you have time-sensitive materials to share, the AOC maintains e-distribution lists for forum members, tribal court judges, and others, and can forward your materials.
- (2) The AOC shares all tribal and state court contacts directly with individual judges and online; the tribal court directory and Google map can be found here at the Tribal/State Programs homepage: <http://www.courts.ca.gov/programs-tribal.htm> and the AOC's Courts homepage: <http://www.courts.ca.gov/find-my-court.htm>
- (3) Under the Tribal/State Programs quick link to resources for tribal/state court collaborations, you will find tribal/state forums in the U.S. and tribal state agreements in California, including protocols relating to title IVE, criminal, cross-deputization, domestic violence, child custody, and juvenile delinquency: <http://www.courts.ca.gov/17422.htm>. The Tribal/State Programs staff will assist your court with the development of local protocols and share them at this website.
- (4) Should the forum recommend development of a toolkit to encourage cross-court exchanges among tribal and state court administrators and clerks?

2. Rules/Forms/Legislation

Progress in this Area and Potential Next Steps for Forum Consideration:

- (1) Under the Forum's homepage, you will find current and past rule/form/legislative proposals, including the pending bill (SB 406) to clarify and simplify the process by which tribal civil judgments would be recognized by the state courts of California and enforced just as any state civil judgment would be. <http://www.courts.ca.gov/3065.htm>
- (2) Under the Tribal/State Programs website, you will find model protocols across various case types. <http://www.courts.ca.gov/17422.htm>
- (3) Should the forum recommend amendment of rule 10.462, which governs minimum requirements and expectations for trial court judges, to include specific content on the Indian Child Welfare Act?
- (4) The Forum began looking at some of the issues relating to trespass during its June 29, 2010 and more discussion is needed to identify whether legislation will address the enforcement issues. The issue statement provided at that meeting is presented below.

As sovereign entities, tribes have the right to control who enters their tribal lands. In some cases, tribes will specifically exclude certain individuals from their tribal lands. An order of “exclusion” can be among the remedies that a tribal government or tribal court uses against an individual found to have committed family violence on tribal lands.

Can/will local law enforcement assist to remove an individual who is trespassing on tribal lands?

In 80 Ops.Cal.Atty.Gen. 46 (1997), the California Attorney General concluded that:

Clearly, under federal law (18 U.S.C., § 1162) California’s criminal statutes apply to Indian reservations in the state. Tribal code provisions and orders, on the other hand, do not constitute the criminal laws of the state and have no force and effect elsewhere within California. Such tribal code provisions and orders are not enforceable by a county sheriff either within or without the reservation.

Therefore, law enforcement would not enforce orders of exclusion made under a tribal code or ordinance. Only if the action in question met all of the elements of “trespass” as defined under California law would a local law enforcement officer have authority to take action.

3. Judicial Education

Progress in this Area and Potential Next Steps for Forum Consideration:

- (1) Recommend comprehensive review of state judicial branch education and make proposal to the Governing Committee of the Center for Judicial Education and Research on educational publications and programming for judges and judicial support staff to incorporate topics listed above and (See Forum’s annual agenda, committee charge number 5).
- (2) The AOC, in collaboration with the Department of Justice, produced a webinar on P.L. 280 and it is posted online, along with curriculum relating to P.L. 280.
- (3) The AOC has published two benchguides (Indian Child Welfare Act handbook and Domestic Violence and Tribal Communities), and is in the process of developing an elder abuse benchguide, which will have a chapter on tribal elder abuse. With respect to other judicial benchguides, the Forum has reviewed them and has made initial recommendations to incorporate new content relating to federal Indian law.
- (4) The AOC has incorporated content relating to domestic violence and tribal communities into existing in-person educational programming.
- (5) The AOC is a continuing legal education provider, and therefore, can provide continuing legal education to all participants at forum educational events. (In response to tribal court judges’ request, 6.4 continuing legal educational credits were provided for the forum March 4, 2014 event.)

Session 1: Access to Justice—Promoting Structural Reforms and Exploring Racial Identity

Progress in this Area and Potential Next Steps for Forum Consideration:

- (1) The AOC has the developed the following resources:
 - *A guide to understanding the benefits of providing culturally appropriate services to Native American families from non–federally recognized tribes within the juvenile dependency and delinquency systems* <http://www.courts.ca.gov/documents/Tribal-FollowSpiritICWA.pdf>
 - *A guide to why people may not claim Indian ancestry* <http://www.courts.ca.gov/documents/Tribal-ReasonsNotBACAIRSF2010.pdf>
 - *FACES video describing why inquiring about Native ancestry is so important in ICWA cases* <http://www.youtube.com/watch?v=BIQG65KFKGs>
- (2) Recommend developing judicial scripts and video-taping these scripts for use in judicial education?
- (3) The Judicial Toolkit in your e-binder under resources contains guidance on how to ask parties about their native ancestry and to learn about other related tribal court cases or orders:

How do I learn whether the parties before me are Native American?

[*Child Custody Cases \(Family, Juvenile, Probate Guardianship\)*](#)(active link to ICWA chart)

In all child custody proceedings, the court (and the petitioner, including a social worker, a probation officer, a licensed adoption agency or adoption service provider, or an investigator) must ask the child, the parents or legal guardians, and the Indian custodian as soon as possible whether the child may be an Indian child and must record the information, if applicable, on the petition. In all juvenile cases, at their first court appearance, the parent or guardian must be ordered to complete Parental Notification of Indian Status (form ICWA-020) (Fam. Code, § 177(a); Prob. Code, §§ 1459.5(b), 1513(h); WIC, § 224.3; Cal. Rules of Court, rule 5.481) (excerpted from judicial job aid on ICWA).

All Other Cases

Judicial decision-makers can act only on the information they are provided by litigants, attorneys, court staff, or other participants in the court process.

- *Consider improving information sharing with the court in the following ways:*
 - ✓ *Require all court-connected service providers, such as mediators, facilitators, self-help center staff, and legal aid staff to review their intake procedures and forms to include information for litigants explaining why their ancestry and how their property is held might be relevant to their case*
 - ✓ *Refer court-connected service providers to training on PL-280 as it relates to court customers so that they understand why this information is important to the court*

- ✓ *Require all court-connected service providers to help court customers understand why the court would need this information in their case if it is relevant*
- ✓ *Review local court rules, procedures, and operations for potential revisions that would promote this type of information sharing with the court*
- *Consider learning about and coordinating with tribal community services*
 - ✓ *Contact local tribal services and learn what they can offer*
 - ✓ *Print out a list of tribal resources, which can be found at the [AOC's Tribal/State Programs](#): Services are listed by county and type of service, such as dental, domestic violence, education, housing, legal, medical, mental health, and substance abuse treatment. This list or another list you have in your county could be incorporated into a court brochure and available in the courtroom or distributed by the clerk. Here are two typical examples of tribal services:

 - (1) [Tribal TANF](#)- every county social services department has a tribal Temporary Assistance for Needy Families (TANF) office
 - (2) [Indian Health Programs](#)- every county has an Indian health program*
- *Consider developing a protocol that will identify cases where Native American ancestry and/or property information would be relevant*
 - ✓ *If your court is close to a reservation, then the parties' address or zip code may give you reason to believe they are living within the boundaries of the reservation*
 - ✓ *If the case involves the adjudication of property rights and the property is within the boundaries of the reservation, then the protocol can include how the court will let the parties know that it may be limited in issuing orders relating to the property. (For more information, see benchguides 201 and 202, updated with information on federal Indian law as recommended by the forum)*
 - ✓ *If the pleadings or forms filed with the court indicate that the parties are using tribal services in your county, then the protocol can include scripts tailored to the type of case. For example,*

Permissible Ways to Raise the Question of Ancestry

- *There may be special services and programs, or special considerations the court must take into account in this case if you are (list identified groups and include Native American or tribal member). If this is or you think it may be relevant to you, please let the court (attorney, clerk, other) know and we can provide you with further information on ... “*
- *I see from the petition (or other court document) that the parties reside at address, which may be within the boundaries reservation of the Name of Tribe. Before this court can issue orders affecting your property rights, the court must make sure it can exercise jurisdiction. For this reason, I'm going to ask you a series of questions about your residence.*

- *I see in the court report that your son is receiving medical services at the United American Indian Involvement (Los Angeles County’s Indian health program), and while not everyone who uses Indian health programs are Native American, I wanted you to know that if you are Native American, then you may be eligible for and the court can order (as part of your sentence/probation terms and conditions) culturally appropriate services.*

How do I learn whether the parties before me have a pending case in tribal court or a relevant tribal court order?

In order to avoid conflicting tribal and state court orders, judges in California are reaching out to one another to develop cooperative relationships so that they can share information about pending cases. To learn more about these cooperative relationships, see link to forum page <http://www.courts.ca.gov/3065.htm> and resources for tribal/state collaborations <http://www.courts.ca.gov/17422.htm>. In tribal court, tribal judges may simply ask the parties whether they have cases pending on the same matter in state court. In state court, state court judges may simply ask the parties whether they have cases pending on the same matter in tribal court. As good practice, in any case where you (or a Judicial Council form) requires the party to disclose whether there is a related case pending in another state or county, you should also ask whether there is a related case pending in tribal court. In family cases, the court may direct family court services to inquire of the tribal court whether there is a pending tribal court case or order. In child welfare cases, some courts have a standing order to allow for the sharing of this information between tribal and county social services. In other types of cases, the courts may ask their court clerks to inquire of the other court.

Guide

- *Judicial decision makers can act only on the information they are provided by litigants, attorneys, court staff, or other participants in the court process.*
- *Consider improving information sharing in the following ways:*
 - ✓ *Through a state court-tribal court protocol in your county*
 1. *As part of an existing protocol, the court case manager, case coordinator, or clerk, when researching to find related cases, can also seek information from the tribal court in your county to see if the parties have a pending tribal court case or has issued an order. The protocol can then address how to allocate jurisdiction, transfer jurisdiction, or defer to the tribal court jurisdiction if it has already exercised jurisdiction.*
 - ✓ *Through the use of technology:*
 1. *For cases involving protective orders, search the California Courts Protective Order Registry, which is a statewide repository that provides complete, accessible information to judicial officers and law enforcement on restraining and protective orders. (As of the writing of this, 32 state courts and 11 tribal courts are using this database.)*

2. *Searching case registries of actions if the court has a protocol for obtaining information on pending tribal court cases.*

Session 2: Child Welfare

Progress in this Area and Potential Next Steps for Forum Consideration:

- (1) The AOC's Tribal/Programs ICWA homepage contains comprehensive resources on the ICWA and staff is available to conduct local and regional trainings.
<http://www.courts.ca.gov/3067.htm>
- (2) Develop an information sheet on the Baby Veronica case and how it relates to California law. (AOC created this Factsheet and it was used during the meeting)
- (3) Incorporate more discussion of advanced ICWA and Baby V. case into initial dependency training that new judges receive.
- (4) Offer ICWA training to appellate attorneys and appellate court attorneys.

California Tribal Justice (Documentary Trailer)

Progress in this Area and Potential Next Steps for Forum Consideration:

- (1) Funding for the film, thus far, has come from the following two sources: The Cal Humanities and Vision Maker Media Public Media Content Fund (VMM), which gives funding from the Corporation for Public Broadcasting (CPB). Films funded by VMM typically appear on PBS on either P.O.V. or Independent Lens.
- (2) These notes will be forwarded to the filmmaker and executive producer, and together with the AOC, we will continue to seek funding for production of this documentary.

Session 3: Domestic Violence in Tribal Communities

Progress in this Area and Potential Next Steps for Forum Consideration:

- (1) In 2011, the AOC provided access to the California Courts Protective Order Registry by tribal courts. Through this dedicated online database, state courts and tribal courts can view each other's protective orders. The courts that have access are better able to protect the public, particularly victims of domestic violence, and avoid issuing redundant or conflicting orders. To date, 11 tribal courts and 32 state courts are using this database. Learn more at www.courts.ca.gov/15574.htm.
- (2) In 2012, the California Judicial Council adopted a forum-recommended rule 5.386 of the California Rules of Court, which requires state courts, on request by a tribal court, to adopt a written procedure or local rule permitting the fax or electronic filing of any tribal court protective order entitled under Family Code section 6404 to be registered. Learn more about the rule at www.courts.ca.gov/documents/SPR11-53.pdf.

- (3) In 2013, the Tribal Communities and Domestic Violence benchguide was published.
- (4) In 2013, the following state judicial educational courses were revised to incorporate law relating to full faith and credit and tribal protective orders: (1) Ethics and Self-Represented Litigants in Domestic Violence Cases and the Nuts and Bolts Course (January, 2013); (2) Ethics in Domestic Violence Proceedings and Family Law at the Family Law Institute (May, 2013); and (3) Ethics and Self-Represented Litigants in Domestic Violence Cases at Cow County Judges Institute (June, 2013).
- (5) In 2014, the Judicial Toolkit on Federal Indian Law was published and posted to the public website; recommend that it be posted to the Court's Extranet for judges.
- (6) Should the forum recommend further review of state judicial branch education relating to domestic violence, and make a proposal to the Governing Committee of the Center for Judicial Education and Research on educational publications and programming for judges and judicial support staff to incorporate topics listed above. (See Forum's annual agenda, committee charge number 5).
- (7) Should the forum recommend a rule (rule 5.440 and 5.445) and form proposal (FL-105) to encourage parties to disclose related cases in tribal court and judges to communicate with one another about related tribal or state cases? Will this address the issues raised that courts are unaware of each other's pending cases or orders, which have led in some situations to negative impacts on the parties, law enforcement (recognition and enforcement of orders), inter-court cooperation/judicial relationships, public trust and confidence in the authority of both the state and tribal court, and the efficient functioning of the tribal and state justice systems?

Session 4: Collaboration

Progress in this Area and Potential Next Steps for Forum Consideration:

- (1) The AOC will continue through its Tribal/State Programs to strengthening collaboration between local state courts and tribal courts. Some of the ways we do this is to:
 - Develop Local Protocols to Promote Collaboration and Promising Practices
 - Collect and post resources for tribal/state collaborations; these resources include protocols, memoranda of understanding, and intergovernmental agreements relating to title IV-E and access to foster care and adoption funding, child custody, criminal procedures, cross-deputization, and domestic violence.
 - Assist local state courts and tribal courts in forming tribal/state roundtables; currently working with Los Angeles.
 - Assist tribal court and state court in developing protocols on concurrent jurisdictional models (criminal cases—Mendocino Superior Court and Humboldt Superior Court with local Tribal Courts)
 - Assist Shingle Springs Tribal Court and El Dorado Superior Court establish a joint jurisdictional court
 - Promote effective tribal/state collaborations by making introductions, preparing informational materials, presenting locally, statewide, or nationally, or assisting cochairs or other forum members with the preparation of their presentations about the forum's activities.

- Support judicially-led cross-court educational exchanges, which 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 identified 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-connect services are working together, understanding jurisdictional complexity and the needs of their tribal community, whether citizens are involved in the state and tribal justice systems.
- Assist with other judicial in-person education workshops, such as at the upcoming Cow County Institute.

Legislation Update

Assembly Bill No. 1618

CHAPTER 57

An act to amend Section 827 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor June 25, 2014. Filed with
Secretary of State June 25, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1618, Chesbro. Juveniles: case file inspection.

Existing law requires the case file of a dependent child or ward of the juvenile court to be kept confidential, except as specified. Existing law authorizes only certain persons to inspect the case file, including, among others, the attorneys for the parties, judges, referees, other hearing officers, and law enforcement officers, who are participating in proceedings involving the dependent child or ward.

This bill would clarify that the authorization for those specified persons to inspect the case file includes persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or is eligible for membership in, that tribe.

The people of the State of California do enact as follows:

SECTION 1. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:

- (A) Court personnel.
- (B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.
- (C) The minor who is the subject of the proceeding.
- (D) The minor's parents or guardian.
- (E) The attorneys for the parties, judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.
- (F) The county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action.
- (G) The superintendent or designee of the school district where the minor is enrolled or attending school.
- (H) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(I) The State Department of Social Services, to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12, of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements, Section 10850.4, and paragraph (2).

(J) Authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and may not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services may not contain the name of the minor.

(K) Members of children's multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor.

(L) A judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, and the following persons, if actively participating in the family law case: a family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code, a court-appointed evaluator or a person conducting a court-connected child custody evaluation, investigation, or assessment pursuant to Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code. Prior to allowing counsel appointed for the minor in the family law case to inspect the file, the court clerk may require counsel to provide a certified copy of the court order appointing him or her as the minor's counsel.

(M) A court-appointed investigator who is actively participating in a guardianship case involving a minor pursuant to Part 2 (commencing with Section 1500) of Division 4 of the Probate Code and acting within the scope of his or her duties in that case.

(N) A local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders.

(O) Juvenile justice commissions as established under Section 225. The confidentiality provisions of Section 10850 shall apply to a juvenile justice commission and its members.

(P) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2) (A) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case files, except those relating to matters within the jurisdiction of the court pursuant to Section 601 or 602, that pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Any information relating to another child or which could identify another child, except for information about the deceased, shall be redacted from the juvenile case file prior to release, unless a specific order is made by the juvenile court to the contrary. Except as provided in this paragraph, the presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile case file, or any portion thereof, of a deceased child only upon a showing by a preponderance of evidence that release of the juvenile case file or any portion thereof is detrimental to the safety, protection, or physical or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.

(B) This paragraph represents a presumption in favor of the release of documents when a child is deceased unless the statutory reasons for confidentiality are shown to exist.

(C) If a child whose records are sought has died, and documents are sought pursuant to this paragraph, no weighing or balancing of the interests of those other than a child is permitted.

(D) A petition filed under this paragraph shall be served on interested parties by the petitioner, if the petitioner is in possession of their identity and address, and on the custodian of records. Upon receiving a petition, the custodian of records shall serve a copy of the request upon all interested parties that have not been served by the petitioner or on the interested parties served by the petitioner if the custodian of records possesses information, such as a more recent address, indicating that the service by the petitioner may have been ineffective.

(E) The custodian of records shall serve the petition within 10 calendar days of receipt. If any interested party, including the custodian of records, objects to the petition, the party shall file and serve the objection on the petitioning party no later than 15 calendar days of service of the petition.

(F) The petitioning party shall have 10 calendar days to file any reply. The juvenile court shall set the matter for hearing no more than 60 calendar days from the date the petition is served on the custodian of records. The court shall render its decision within 30 days of the hearing. The matter shall be decided solely upon the basis of the petition and supporting exhibits and declarations, if any, the objection and any supporting exhibits or declarations, if any, and the reply and any supporting declarations or exhibits thereto, and argument at hearing. The court may solely upon its own motion order the appearance of witnesses. If no objection is filed to the petition, the court shall review the petition and issue its decision within 10 calendar days of the final day for filing the objection. Any order of the court shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ.

(3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300 shall be limited as follows:

(A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail. Unless a person is listed in subparagraphs (A) to (O), inclusive, of paragraph (1) and is entitled to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, shall petition the juvenile court. The juvenile court may only release the portion of, or information relating to the contents of, juvenile case files protected by another state law or federal law or regulation if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition. This paragraph shall not be construed to limit the ability of the juvenile court to carry out its duties in conducting juvenile court proceedings.

(B) Prior to the release of the juvenile case file or any portion thereof, the court shall afford due process, including a notice of and an opportunity to file an objection to the release of the record or report to all interested parties.

(4) A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(5) Individuals listed in subparagraphs (A), (B), (C), (D), (E), (F), (H), and (I) of paragraph (1) may also receive copies of the case file. In these circumstances, the requirements of paragraph (4) shall continue to apply to the information received.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal shall disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

An intentional violation of the confidentiality provisions of this paragraph is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of

attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) (1) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: “Unlawful Dissemination Of This Information Is A Misdemeanor.” Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor’s subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18 years, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor’s school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

(2) Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

(e) For purposes of this section, a “juvenile case file” means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.

(f) The persons described in subparagraphs (A), (E), (F), (H), (K), (L), (M), and (N) of paragraph (1) of subdivision (a) include persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe.

AMENDED IN ASSEMBLY JUNE 18, 2014

AMENDED IN ASSEMBLY JUNE 10, 2014

AMENDED IN SENATE JANUARY 6, 2014

SENATE BILL

No. 406

Introduced by Senator Evans

February 20, 2013

An act to amend, *add, and repeal* Section 1714 of, and to add *and repeal* Title 11.5 (commencing with Section 1730) to Part 3 of, the Code of Civil Procedure, relating to tribal court civil judgments.

LEGISLATIVE COUNSEL'S DIGEST

SB 406, as amended, Evans. Tribal Court Civil Money Judgment Act.

The *existing* Uniform Foreign-Country Money Judgments Recognition Act provides that foreign judgments that grant or deny recovery of a sum of money and that are final and conclusive are enforceable in California, with specified exceptions. The act includes within the definition of "foreign-country judgment" a judgment by any Indian tribe recognized by the government of the United States.

This bill would, *until January 1, 2018*, exempt Indian tribal judgments from the Uniform Foreign-Country Money Judgments Recognition Act, and would instead enact the Tribal Court Civil Money Judgment Act. The new act would likewise provide for the enforceability of tribal court money judgments in California, except as specified. The act would prescribe the procedure for applying for recognition and entry of a judgment based on a tribal court money judgment, the procedure and grounds for objecting to the entry of judgment, and the bases upon which the court may refuse to enter the judgment or grant a stay of

enforcement. The bill would require the Judicial Council to prescribe a form for the notice of filing the application for recognition of the tribal court money judgment, as specified. The bill would require that this application be executed under penalty of perjury, which would expand the scope of the crime of perjury and thus impose a state-mandated local program. *The bill would require the California Law Revision Commission to conduct a study of the standards for recognition of a tribal court or a foreign court judgment under the Tribal Court Civil Money Judgment Act and the Uniform Foreign-Country Money Judgment Recognition Act, and submit a report of its findings and recommendations to the Legislature and the Governor no later than January 1, 2017.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *The California Law Revision Commission shall,*
2 *within existing resources, conduct a study of the standards for*
3 *recognition of a tribal court or a foreign court judgment, under*
4 *the Tribal Court Civil Money Judgment Act (Title 11.5*
5 *(commencing with Section 1730) as Part 3 of the Code of Civil*
6 *Procedure) and the Uniform Foreign-Country Money Judgment*
7 *Recognition Act (Chapter 2 (commencing Section 1713) Of Title*
8 *11 of Part 3 of the Code of Civil Procedure). On or before January*
9 *1, 2017, the California Law Revision Commission shall report its*
10 *findings, along with any recommendations for improvement of*
11 *those standards, to the Legislature and the Governor.*

12 ~~SECTION 1.~~

13 SEC. 2. Section 1714 of the Code of Civil Procedure is
14 amended to read:

15 1714. As used in this chapter:

16 (a) “Foreign country” means a government other than any of
17 the following:

18 (1) The United States.

1 (2) A state, district, commonwealth, territory, or insular
2 possession of the United States.

3 (3) Any other government with regard to which the decision in
4 this state as to whether to recognize a judgment of that
5 government’s courts is initially subject to determination under the
6 Full Faith and Credit clause of the United States Constitution.

7 (b) “Foreign-country judgment” means a judgment of a court
8 of a foreign country.

9 (c) *This section shall remain in effect only until January 1, 2018,*
10 *and as of that date is repealed, unless a later enacted statute, that*
11 *is enacted before January 1, 2018, deletes or extends that date.*

12 *SEC. 3. Section 1714 is added to the Code of Civil Procedure,*
13 *to read:*

14 *1714. (a) “Foreign country” means a government other than*
15 *any of the following:*

16 *(1) The United States.*

17 *(2) A state, district, commonwealth, territory, or insular*
18 *possession of the United States.*

19 *(3) Any other government with regard to which the decision in*
20 *this state as to whether to recognize a judgment of that*
21 *government’s courts is initially subject to determination under the*
22 *Full Faith and Credit Clause of the United States Constitution.*

23 *(b) “Foreign-country judgment” means a judgment of a court*
24 *of a foreign country. “Foreign-country judgment” includes a*
25 *judgment by any Indian tribe recognized by the government of the*
26 *United States.*

27 *(c) This section is operative on and after January 1, 2018.*

28 ~~SEC. 2.~~

29 *SEC. 4. Title 11.5 (commencing with Section 1730) is added*
30 *to Part 3 of the Code of Civil Procedure, to read:*

31
32 **TITLE 11.5. TRIBAL COURT CIVIL MONEY JUDGMENT**
33 **ACT**

34
35 1730. This title shall be known and may be cited as the Tribal
36 Court Civil Money Judgment Act.

37 1731. (a) This title governs the procedures by which the
38 superior courts of the State of California recognize and enter tribal
39 court money judgments of any federally recognized Indian tribe.
40 Determinations regarding recognition and entry of a tribal court

1 money judgment pursuant to state law shall have no effect upon
2 the independent authority of that judgment. To the extent not
3 inconsistent with this title, the Code of Civil Procedure shall apply.

4 (b) This title does not apply to any of the following tribal court
5 money judgments:

6 (1) For taxes, fines, or other penalties.

7 (2) For which federal law requires that states grant full faith and
8 credit recognition, including child support orders under the Full
9 Faith and Credit for Child Support Orders Act (28 U.S.C. Sec.
10 1738B).

11 (3) For which state law provides for recognition, including child
12 support orders recognized under the Uniform Child Custody
13 Jurisdiction and Enforcement Act (Part 3 (commencing with
14 Section 3400) of Division 8 of the Family Code), other forms of
15 family support orders under the Uniform Interstate Family Support
16 Act (Chapter 6 (commencing with Section 4900) of Part 5 of
17 Division 9 of the Family Code).

18 (4) For decedents' estates, guardianships, conservatorships,
19 internal affairs of trusts, powers of attorney, or other tribal court
20 money judgments that arise in proceedings that are or would be
21 governed by the Probate Code.

22 (c) Nothing in this title shall be deemed or construed to expand
23 or limit the jurisdiction of either the state or any Indian tribe.

24 1732. For purposes of this title:

25 (a) "Applicant" means the person or persons who can bring an
26 action to enforce a tribal court money judgment.

27 (b) "Civil action or proceeding" means any action or proceeding
28 that is not criminal, except for those actions or proceedings
29 expressly excluded by subdivision (b) of Section 1731.

30 (c) "Due process" includes, but is not limited to, the right to be
31 represented by legal counsel, to receive reasonable notice and an
32 opportunity for a hearing, to call and cross-examine witnesses,
33 and to present evidence and argument to an impartial
34 decisionmaker.

35 (d) "Good cause" means a substantial reason, taking into account
36 the prejudice or irreparable harm a party will suffer if a hearing is
37 not held on an objection or not held within the time periods
38 established by this title.

39 (e) "Respondent" means the person or persons against whom
40 an action to enforce a tribal court money judgment can be brought.

1 (f) “Tribal court” means any court or other tribunal of any
2 federally recognized Indian nation, tribe, pueblo, band, or Alaska
3 Native village, duly established under tribal or federal law,
4 including Courts of Indian Offenses organized pursuant to Part 11
5 of Title 25 of the Code of Federal Regulations.

6 (g) “Tribal court money judgment” means any written judgment,
7 decree, or order of a tribal court for a specified amount of money
8 that was issued in a civil action or proceeding that is final,
9 conclusive, and enforceable by the tribal court in which it was
10 issued and is duly authenticated in accordance with the laws and
11 procedures of the tribe or tribal court.

12 1733. (a) An application for entry of a judgment under this
13 title shall be filed in a superior court.

14 (b) Subject to the power of the court to transfer proceedings
15 under this title pursuant to Title 4 (commencing with Section 392)
16 of Part 2, the proper county for the filing of an application is either
17 of the following:

18 (1) The county in which any respondent resides or owns
19 property.

20 (2) If no respondent is a resident, any county in this state.

21 (c) A case in which the tribal court money judgment amounts
22 to twenty-five thousand dollars (\$25,000) or less is a limited civil
23 case.

24 1734. (a) An applicant may apply for recognition and entry
25 of a judgment based on a tribal court money judgment by filing
26 an application in superior court pursuant to Section 1733.

27 (b) The application shall be executed under penalty of perjury
28 and include all of the following information:

29 (1) The name and address of the tribal court that issued the
30 judgment to be enforced and the date of the tribal court money
31 judgment or any renewal thereof.

32 (2) The name and address of the party seeking recognition.

33 (3) (A) Any of the following statements, as applicable:

34 (i) If the respondent is an individual, the name and last known
35 residence address of the respondent.

36 (ii) If the respondent is a corporation, the corporation’s name,
37 place of incorporation, and whether the corporation, if foreign, has
38 qualified to do business in this state under the provisions of Chapter
39 21 (commencing with Section 2100) of Division 1 of Title 1 of
40 the Corporations Code.

1 (iii) If the respondent is a partnership, the name of the
2 partnership, whether it is a foreign partnership, and if it is a foreign
3 partnership, whether it has filed a statement pursuant to Section
4 15800 of the Corporations Code designating an agent for service
5 of process.

6 (iv) If the respondent is a limited liability company, the
7 company's name, whether it is a foreign company, and if so,
8 whether it has filed a statement pursuant to Section 17060 of the
9 Corporations Code.

10 (B) Except for facts that are matters of public record in this
11 state, the statements required by this paragraph may be made on
12 the basis of the applicant's information and belief.

13 (4) A statement that an action in this state to enforce the tribal
14 court money judgment is not barred by the applicable statute of
15 limitations.

16 (5) A statement, based on the applicant's information and belief,
17 that the tribal court money judgment is final and that no stay of
18 enforcement of the tribal court money judgment is currently in
19 effect.

20 (6) A statement that includes all of the following:

21 (A) The amount of the award granted in the tribal court money
22 judgment that remains unpaid.

23 (B) If accrued interest on the tribal court money judgment is to
24 be included in the California judgment, the amount of interest
25 accrued on the tribal court money judgment, computed at the rate
26 of interest applicable to the judgment under the law of the tribal
27 jurisdiction in which the tribal court money judgment was issued.

28 (C) The rate of interest applicable to the money judgment under
29 the law of the jurisdiction in which the tribal court money judgment
30 was issued.

31 (D) A citation to the supporting authority.

32 (7) A statement that no action based on the tribal court money
33 judgment is currently pending in any state court and that no
34 judgment based on the tribal court money judgment has previously
35 been entered in any proceeding in this state.

36 (c) All of the following items shall be attached to the application:

37 (1) An authenticated copy of the tribal court money judgment,
38 certified by the judge or clerk of the tribal court.

39 (2) A copy of the tribal court rules of procedure pursuant to
40 which the tribal court money judgment was entered.

1 (3) A declaration under penalty of perjury by the tribal court
2 clerk, applicant, or applicant’s attorney stating, based on personal
3 knowledge, that the case that resulted in the entry of the judgment
4 was conducted in compliance with the tribal court’s rules of
5 procedure.

6 1735. (a) Promptly upon the filing of the application, the
7 applicant shall serve upon the respondent a notice of filing of the
8 application to recognize and enter the tribal court money judgment,
9 together with a copy of the application and any documents filed
10 with the application. The notice of filing shall be in a form that
11 shall be prescribed by the Judicial Council, and shall inform the
12 respondent that the respondent has 30 days from service of the
13 notice of filing to file objections to the enforcement of the tribal
14 court money judgment. The notice shall include the name and
15 address of the applicant and the applicant’s attorney, if any, and
16 the text of Sections 1736 and 1737.

17 (b) Except as provided in subdivision (c), service shall be made
18 in the manner provided for service of summons by Article 3
19 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part
20 2.

21 (c) If a respondent is the State of California or any of its officers,
22 employees, departments, agencies, boards, or commissions, service
23 of the notice of filing on that respondent may be by mail to the
24 office of the Attorney General.

25 (d) The fee for service of the notice of filing under this section
26 is an item of costs recoverable in the same manner as statutory
27 fees for service of a writ as provided in Chapter 5 (commencing
28 with Section 685.010) of Division 1 of Title 9 of Part 2, but the
29 recoverable amount for that fee shall not exceed the amount
30 allowed to a public officer or employee of this state for that service.

31 (e) The applicant shall file a proof of service of the notice
32 promptly following service.

33 1736. (a) If no objections are timely filed in accordance with
34 Section 1737, the clerk shall certify that no objections were timely
35 filed, and a judgment shall be entered.

36 (b) The judgment entered by the superior court shall be based
37 on and contain the provisions and terms of the tribal court money
38 judgment. The judgment shall be entered in the same manner, have
39 the same effect, and be enforceable in the same manner as any
40 civil judgment, order, or decree of a court of this state.

1 1737. (a) Any objection to the recognition and entry of the
2 tribal court money judgment shall be served and filed within 30
3 days of service of the notice of filing. If any objection is filed
4 within this time period, the superior court shall set a time period
5 for replies and set the matter for a hearing. The hearing shall be
6 held by the superior court within 45 days from the date the
7 objection is filed unless good cause exists for a later hearing. The
8 only grounds for objecting to the recognition or enforcement of a
9 tribal court money judgment are the grounds set forth in
10 subdivisions (b) and (c).

11 (b) A tribal court money judgment shall not be recognized and
12 entered if the respondent demonstrates to the superior court that
13 at least one of the following occurred:

14 (1) The tribal court did not have personal jurisdiction over the
15 respondent.

16 (2) The tribal court did not have jurisdiction over the subject
17 matter.

18 (3) The judgment was rendered under a judicial system that
19 does not provide impartial tribunals or procedures compatible with
20 the requirements of due process of law.

21 (c) The superior court may, in its discretion, decline to recognize
22 and enter a tribal court money judgment on any one of the
23 following grounds:

24 (1) The defendant in the proceeding in the tribal court did not
25 receive notice of the proceeding in sufficient time to enable the
26 defendant to defend.

27 (2) The judgment was obtained by fraud that deprived the losing
28 party of an adequate opportunity to present its case.

29 (3) The judgment or the cause of action or claim for relief on
30 which the judgment is based is repugnant to the public policy of
31 the state or of the United States.

32 (4) The judgment conflicts with another final and conclusive
33 judgment.

34 (5) The proceeding in the tribal court was contrary to an
35 agreement between the parties under which the dispute in question
36 was to be determined otherwise than by proceedings in that tribal
37 court.

38 (6) In the case of jurisdiction based on personal service only,
39 the tribal court was a seriously inconvenient forum for the trial of
40 the action.

1 (7) The judgment was rendered under circumstances that raise
2 substantial doubt about the integrity of the rendering court with
3 respect to the judgment.

4 (8) The specific proceeding in the tribal court leading to the
5 judgment was not compatible with the requirements of due process
6 of law.

7 (9) The judgment includes recovery for a claim of defamation,
8 unless the court determines that the defamation law applied by the
9 tribal court provided at least as much protection for freedom of
10 speech and the press as provided by both the United States and
11 California Constitutions.

12 (d) If objections have been timely filed, the applicant has the
13 burden of establishing that the tribal court money judgment is
14 entitled to recognition. If the applicant has met its burden, a party
15 resisting recognition of the tribal court money judgment has the
16 burden of establishing that a ground for nonrecognition exists
17 pursuant to subdivision (b) or (c).

18 1738. The superior court shall grant a stay of enforcement if
19 the respondent establishes one of the following to the superior
20 court:

21 (a) An appeal from the tribal court money judgment is pending
22 or may be taken in the tribal court, in which case the superior court
23 shall stay state execution of the tribal court money judgment until
24 the proceeding on appeal has been concluded or the time for appeal
25 has expired.

26 (b) A stay of enforcement of the tribal court money judgment
27 has been granted by the tribal court, in which case the superior
28 court shall stay enforcement of the tribal court money judgment
29 until the stay of execution expires or is vacated.

30 (c) Any other circumstance exists where the interests of justice
31 require a stay of enforcement.

32 1739. An action to recognize a tribal court money judgment
33 or any renewal thereof shall be commenced within the earlier of
34 the following periods:

35 (a) The time during which the tribal court money judgment is
36 effective within the territorial jurisdiction of the tribal court.

37 (b) Ten years from the date that the tribal court money judgment
38 became effective in the tribal jurisdiction.

39 1740. (a) The superior court may, after notice to all parties,
40 attempt to resolve any issues raised regarding a tribal court money

1 judgment by contacting the tribal court judge who issued the
2 judgment.

3 (b) The superior court shall allow the parties to participate in,
4 and shall prepare a record of, any communication made with the
5 tribal court judge pursuant to this section.

6 1741. (a) The Uniform Foreign-Country Money Judgments
7 Recognition Act (Chapter 2 (commencing with Section 1713) of
8 Title 11 of Part 3) applies to all actions commenced in superior
9 court before the effective date of this title in which the issue of
10 recognition of a tribal court money judgment is raised.

11 (b) This title applies to all actions to enforce tribal court money
12 judgments as defined herein commenced in superior court on or
13 after the effective date of this title. A judgment entered under this
14 title shall not limit the right of a party to seek enforcement of any
15 part of a judgment, order, or decree entered by a tribal court that
16 is not encompassed by the judgment entered under this title.

17 1742. *This title shall remain in effect only until January 1,*
18 *2018, and as of that date is repealed, unless a later enacted statute,*
19 *that is enacted before January 1, 2018, deletes or extends that*
20 *date.*

21 ~~SEC. 3.~~

22 SEC. 5. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.

Open Meeting Rule and
Conference Call Schedule
2014-2015

What meetings are subject to rule 10.75 and considered to be open?

The Forum is subject to the rule

1. Issues to report to the council:
When reviewing issues that the forum will report to the Judicial Council are generally open (except as otherwise provided by (c)(3) *rule committees* and *closed sessions* for one of the reasons listed in (d). (Cal. Rules of Court, rule 10.75 (c).)
2. Budgets
When discussing budget recommendations- recommending that the Judicial Council approve an allocation or direct an expenditure of public funds.

When might the Forum not be subject to the rule?

- Meetings of the forum or forum subcommittee to review issues that will not be reported to the council (or to an internal committee receiving report for the council) are not subject to the rule
- Subcommittees or ad hoc subcommittees that are composed of less than a majority of members and are charged with performing a specific task of limited duration
- Educational meetings education or training for members
- Exchanges concerning best practices or information of general interest to members.

Notice, agendas, minutes, and public comment (Cal. Rules of Court, rule 10.75(e)–(g) & (m))

- Giving notice by posting agendas five business days before the meeting;
- Giving notice by posting materials three business days before the meeting;
- Allowing the public to listen to the open portion of a meeting and submit written comments;
- Allowing public comment at in-person meetings that are open to the public if the public may attend in-person; and
- The official record of our meetings, once approved by the forum, will be written minutes along with any public comments received, and minutes for open sessions will be posted to a public website.

Conference Calls, Email, and Website

- Forum will have its own conference call number (1-877-820-7831), email (forum@jud.ca.gov), and website (<http://www.courts.ca.gov/forum.htm>). The forum conference call number will allow members, council staff, and invited guests to speak during the meeting and the public will only have the ability to listen to the meeting. The purpose of the email is for the forum to receive public comments. The purpose of the website is to allow the public to view the forum's roster, meeting agendas and materials, meeting minutes, and other pertinent information.
- Regarding the forum's conference call number:
 - Council staff will have a moderator code to activate our line;
 - Members and invited guests on the agenda will have the participant code. (This code will not be posted or included on the notice or agenda. Instead, this number will be provided to participants via an e-mail. Please do not distribute.)
 - The public will have a listen-only code: Individuals that enter this code will receive a message at the beginning of their call indicating that they may only listen to the call. This code will be placed on the notice and agenda.)

Meeting Process

To effectively facilitate the public's remote attendance at our meetings, staff will:

- Ask members to put their phones on "mute" when not asking questions or commenting to avoid background noises and interruptions;
- Remind members to not put their phones on hold at any time during the meeting (including the break) to avoid distractions caused by on-hold music;

- Notify members that the call is open to the public; therefore, there may be individuals listening to the meeting;
- Advise if the call is being recorded; and
- Request the advisory members to identify themselves prior to speaking for the benefit of all participating and listening to the meeting.

Action by e-mail between meetings (rule 10.75(o))

Forum cochairs may distribute a proposal by e-mail to all members for action between meetings if

- (1) The forum discussed and considered the proposal at a previous meeting, but concluded more information was needed
or
- (2) The cochairs conclude that prompt action is needed.

Forum must follow the following requirements if the proposal is one that would have been appropriate for discussion at an open meeting: post public notice; must seek public comment for one complete business day before acting on the proposal; all communication between members about the proposal must be by e-mail; written minutes describing the action taken on the proposal must be prepared for approval at a future meeting; must attach any public comments received; and must be posted on the California Courts website once approved.

Tribal Court-State Court Forum (Forum)
Conference Call Schedule
2014-2015

Toll Free: (877) 820-7831
Local: (720) 279-0026
Passcode: To be provided
Time: 12:15 p.m. – 1:15 p.m.

DATES:

1. August 21, 2014
2. October 9, 2014
3. December 18, 2014
4. February 19, 2015
5. April 16, 2015
6. June 11, 2015