



JUDICIAL COUNCIL
OF CALIFORNIA

TRIBAL COURT-STATE COURT FORUM

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TRIBAL COURT-STATE COURT FORUM

MINUTES OF OPEN MEETING

August 21, 2014

12:15-1:15 p.m.

By Conference Call

**Advisory Body
Members Present:**

Hon. Dennis M. Perluss, Cochair, Hon. Abby Abinanti, Ms. April Attebury, Hon. Jerilyn L. Borack, Hon. Kimberly A. Gaab, Hon. Michael Golden, Hon. Bill Kockenmeister, Hon. Anthony Lee, Hon. David E. Nelson, Hon. Kimberly J. Nystrom-Geist, Hon. Deborah A. Ryan, Hon. Deborah L. Sanchez, Hon. Christine Williams, Hon. Christopher G. Wilson, and Hon. Joseph J. Wiseman

**Advisory Body
Members Absent:**

Hon. Richard C. Blake, Hon. Mitchell L. Beckloff, Hon. Leonard P. Edwards, Hon. Cynthia Gomez, Mr. Olin Jones, Hon. Suzanne N. Kingsbury, Hon. John L. Madigan, Hon. Lester Marston, , Hon. Allen H. Sumner, Hon. Juan Ulloa, Hon. Claudette C. White, and Hon. Sarah S. Works

Others Present:

Hon. Peter J. Herne, Hon. Marcy L. Kahn, Hon. Laura Masunaga, Ms.Carolynn Bernabe, Ms. Jennifer Walter, and Ms. Anne Ronan

OPEN MEETING

Call to Order and Roll Call

The cochair called the meeting to order at 12:18 p.m. Ms. Walter took roll call.

Written Comments Received

No written comments were received.

Approval of Minutes

No minutes to approve.

DISCUSSION AND ACTION ITEMS (ITEMS 1-6)

Item 1

[New York Federal-State-Tribal Courts and Indian Nations Justice Forum Presentation](#)

Presenters: Hon. Peter J. Herne, Chief Judge, St. Regis Mohawk Tribal Court

Hon. Marcy L. Kahn, Justice, Supreme Court of the State of New York,
First Judicial District

Justice Perluss welcomed the presenters. Presenters gave a brief history of the New York Federal-State-Tribal Courts and Indian Nations Justice Forum. In 2002, Chief Judge Judith S. Kaye of the New York Court of Appeals created the New York Tribal Courts Committee to

study the possibility of establishing a federal-state-tribal courts forum in New York. She appointed Justice Marcy L. Kahn of the New York State Supreme Court to chair the Committee. In 2004, the members of the Committee, interested members of all nine (state-recognized) Nations and eight (federally recognized) Tribes, the New York Unified Court System and the United States Courts sitting in New York (portions of the Second Circuit), formalized the New York Federal-State-Tribal Courts Forum (forum). This forum is very active and meets twice a year at the federal northern district courthouse.

Justice Kahn described two forum proposals: (1) a rule of court, based on a local protocol providing comity to tribal civil judgments issued by the Oneida Nation Tribal Court (the protocol also included a process similar to the Teague protocol to be invoked when a conflict arose between the state court and the tribal court), and (2) a legislative proposal to amend the New York domestic relations law to recognize any official of a tribal nation who officiates over a marriage ceremony. The former is circulating for public comment, and the latter is before the Governor for signature.

Chief Judge Herne described the scope of their forum's charge as very broad. The forum's objectives are as follows:

- 1) To develop educational programs for judges and tribal chiefs and Indian communities;
- 2) To exchange information between/among tribes and nations and agencies;
- 3) To coordinate the integration of Indian Child Welfare Act training for child care professionals, attorneys, judges, and law guardians;
- 4) To develop mechanism for promoting resolution of jurisdictional conflicts and development of possible inter-jurisdictional recognition of judgments;
- 5) To foster better cooperation and understanding between/among justice system; and
- 6) To enhance proper ICWA enforcement.

The only topics the forum does not address are issues relating to casino gaming, land disputes, taxation or the substance of any matters currently in litigation. The forum has been instrumental in promoting tribal court-state court drug courts and supporting tribally operated child support programs.

Both presenters indicated it was an honor to be invited to speak to the forum. They stated that they had a great deal to learn from California. Specifically, they asked about local tribal/county/state collaborations, particularly those among county probation, county district attorney's office, and the local tribal and state courts in Humboldt and Del Norte counties.

Both presenters described how their forum worked with the New York State Law Journal to publish a summer 2013 issue on the Baby Veronica case.

Both presenters were also interested in California's application of the Indian Child Welfare Act to delinquency cases. Justice Perluss described the rule of court implementing ICWA in delinquency cases and the California Supreme Court case, *In re: W.B.*, where the court held that other than inquiry, most requirements of ICWA do not apply to a delinquency case when the child comes within the jurisdiction of the court based on conduct that would be criminal if committed by an adult.

Action: Staff to provide contact information for the Chief Judge of the Yurok Tribal Court, Judge Abinanti, and her counterpart on the forum, Judge Christopher G. Wilson. Staff to send council reports on the rules of court relating to delinquency and the Indian Child Welfare Act to Justice Kahn and Chief Justice Herne.

Item 2

Cross Court Cultural Exchange Report

Presenters: Hon. April Attebury and Hon. Laura Masunaga

The presenters described the exchange convened by the two judges on Karuk tribal lands. The exchange was well-attended, with more than 30 participants. Representatives from alcohol and drug, social services, law enforcement, district attorney's office, public defender's office, probation, the tribal court and state court attended. The day commenced with a traditional blessing and welcome. Session topics included: (1) Overview of the Karuk Tribe, Karuk Tribal Court and Tribal Services; (2) Policing and Jurisdiction on Tribal Lands in a PL-280 State; (3) Challenges in Policing Tribal Lands and Collaborative Solutions; and (4) Collaboration To Enhance Service and Access to Justice.

Participants reported that the exchange was a huge success. The lesson learned during the exchange was that together the two justice systems can better address the needs of tribal members by sharing ideas and leveraging substance abuse, mental health, and other services. As a result of this exchange, Judge Masunaga has invited Judge Attebury to attend criminal justice system meetings as a key justice partner. Together they are planning to explore how their two courts' collaboration can pave the way for culturally appropriate diversion programming for tribal members.

Ms. Walter informed forum members of the next cross-cultural court exchange planned by Judge William Kockenmeister, Chief Judge of the Bishop Paiute Tribal Court, and Judge Dean Stout, Presiding Judge of the Inyo Superior Court and former forum member. She invited forum members to attend the exchange on September 12, 2014. Session topics include historical trauma, full faith and credit and jurisdictional issues affecting protection of domestic violence victims on tribal lands, and victim-centered and culturally sensitive practices in domestic violence in tribal communities.

Action: Invitation extended to forum members to attend the exchange in Inyo County on Bishop Paiute tribal lands.

Item 3

Indian Child Welfare Act

Presenter: Hon. Jerilyn L. Borack

Judge Borack presented the facts of the recent Third District Court of Appeal case, *In re Abbigail A.*, 226 Cal. App. 4th 1450, 173 Cal. Rptr. 3d 191 (2014) and the Fourth District Court of

Appeal case, *In re. Jack C. III*, 192 Cal. App. 4th 967, 122 Cal. Rptr. 3d 6 (2011). She reconciled the two cases and concluded that rules 5.482(c) and 5.484(c)(2) of the California Rules of Court need not be changed. The forum discussed the two cases, and upon review of the options described in the memorandum prepared for this meeting, decided to take no action at this time.

Action: The forum decided to take no action at this time.

Item 4

Forum Work Plan and Accomplishments—Discussion of Next Steps

Presenter: Hon. Dennis M. Perluss, Cochair

Justice Perluss directed forum members to the yellow highlighted text, starting on page 6 of the forum's work plan, contained in the meeting materials. These recommendations were submitted by members as part of their work plans during the annual in-person meeting of the forum. Forum members reviewed and adopted the follow items, reprinted from the work plan:

Child Welfare:

- (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.

Domestic Violence in Tribal Communities

- (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?

Action: For education-related next steps contained in the work plan, staff to prepare a memorandum from forum cochair to the CJER Governing Committee and work with Judge Kimberly Gaab, forum member and CJER Governing Board member, to present the recommendations to the CJER Governing Board.

Item 5

Legislation Update

Presenter: Jennifer Walter

- [AB 1618](#) *Juveniles: case file inspection* chaptered as Stats. 2014, Ch. 37, effective January 1, 2015
- [SB 406](#) *Tribal Court Civil Money Judgment Act* chaptered as Stats. 2014, Ch. 243, effective January 1, 2015
- Other legislative updates

Ms. Walter gave the following status reports on the forum-initiated and council sponsored legislation:

AB 1618: Tribal Access to Confidential Juvenile Court Files, which provides tribal entities and officials with access to confidential juvenile court files and records for children who are members of the tribe or eligible for membership in the tribe. By explicitly including tribes, tribal officials, and tribal entities within the exception to the confidentiality of juvenile court files, the bill will resolve a conflict between federal and state law on one side, and juvenile courts on the other. Chaptered as Stats. 2014, Ch. 37, effective January 1, 2015.

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

SB 406: Tribal Court Civil Money Judgment Act, which will simplify and clarify the process by which tribal court civil money judgments are recognized and enforced in California. The Assembly and Senate passed the bill as amended, and it is before the Governor for his anticipated signature. http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0401-0450/sb_406_bill_20140618_amended_asm_v96.pdf At the date of preparation of these minutes, the Governor had signed the bill, and you can find the chaptered bill here:

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

Ms. Walter also gave a status report on SB 940, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) Proposed for California. The California Judicial Council approved submission of comments to the California Law Revision Commission (CLRC) for adoption in California of a modified version of the UAGPPJA to address issues involving conservatorships for members of Indian tribes located in California. The California Judicial Council supports this bill. When these minutes were prepared, this bill was enrolled and before the Governor for signature. http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0901-0950/sb_940_bill_20140815_enrolled.pdf

Item 6

Open Meeting Rule and Conference Call Schedule 2014-2015

Presenters: Carolyn Bernabe and Jenny Walter

Ms. Bernabe and Ms. Walter directed forum members to the notes describing implementation of the open meeting rule, as applied to the forum, prepared for this meeting. Ms. Bernabe informed members that they would be receiving outlook invitations updating their calendars with new

forum conference call telephone number and password. The forum's scheduled meetings will continue on a bimonthly basis. Justice Perluss requested that members confirm the dates listed in the meeting materials with the dates in their outlook calendars to verify that the correct dates were in members' calendars.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 1:15 p.m.

Pending approval by forum at its next teleconference scheduled on October 9, 2014.