



# JUDICIAL COUNCIL OF CALIFORNIA

TRIBAL COURT-STATE COURT FORUM

[www.courts.ca.gov/forum.htm](http://www.courts.ca.gov/forum.htm)  
[forum@jud.ca.gov](mailto:forum@jud.ca.gov)

## TRIBAL COURT-STATE COURT FORUM

### MINUTES OF OPEN MEETING

October 9, 2014

12:15-12:45 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. Bill Kockenmeister, Hon. Anthony Lee, Hon. David E. Nelson, Hon. Kimberly J. Nystrom-Geist, Hon. Deborah A. Ryan, and Hon. Juan Ulloa

**Advisory Body  
Members Absent:**

Hon. Mitchell L. Beckloff, Hon. Leonard P. Edwards, Hon. Michael Golden, Hon. Cynthia Gomez, Mr. Olin Jones, Hon. Suzanne N. Kingsbury, Hon. John L. Madigan, Hon. Lester Marston, Hon. Allen H. Sumner, Hon. Deborah L. Sanchez, Hon. Christine Williams, Hon. Christopher G. Wilson, Hon. Claudette C. White, Hon. Joseph J. Wiseman, and Hon. Sarah S. Works

**Others Present:**

Hon. Peggy Bird, Ms.Carolynn Bernabe, Ms. Vida Castaneda, and Ms. Jennifer Walter

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#### OPEN MEETING

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#### 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

The committee approved the August 21, 2014 forum meeting minutes.

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#### DISCUSSION AND ACTION ITEMS (ITEMS 1-4)

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##### Item 1

##### Cochairs' Report

- [CJEO Informal Ethics Opinion](#)

Justice Dennis Perluss reported on the informal ethics opinion issued by the California Supreme Court Committee on Judicial Ethics Opinions (CJEO) stating that state court judges may appropriately participate and discuss the activities of the forum in an educational documentary.

To view the opinion, click on item, CJEO Informal Ethics Opinion or

<http://www.judicialethicsopinions.ca.gov/sites/default/files/CJEO%20Informal%20Opinion%20Summary%202014-004.pdf>

- [Legislative Updates](#)

Justice Perluss reported on the following forum-initiated legislative proposals:

[AB 1618: Tribal Access to Confidential Juvenile Court Files](#) 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 solve a conflict between federal and state law on one side, and juvenile courts on the other. This bill was approved by the Governor on June 25, 2014, filed with Secretary of State on June 25, 2014, and is now chaptered as Stats. 2014, Ch. 37, effective January 1, 2015.

[SB 406 Tribal Court Civil Money Judgment Act](#) simplifies and clarifies the process by which tribal court civil money judgments are recognized and enforced in California. This bill was approved by the Governor on August 22, 2014, filed with Secretary of State August 22, 2014, and is now chaptered as Stats. 2014, Ch. 243, effective January 1, 2015.

[SB 940 Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act \(UAGPPJA\) Proposed for California](#) addresses issues involving conservatorships for members of Indian tribes located in California. This bill was approved by the Governor on September 25, 2014, filed with Secretary of State September 25, 2014, and is now chaptered as Stats. 2014, Ch. 553; some portions effective January 1, 2015 and others January 1, 2016.

**Item 2**

**A Report on the World Indigenous Legal Conference "*Past, Present, Future*"**

Judge Peggy L. Bird, who is of the Sun Clan from Kewa Pueblo in New Mexico and a tribal court judge for the Taos Pueblo Tribal Court and the Nambe Pueblo Tribal Court, reported on the annual legal indigenous conference. Held biennially, the conference brings together indigenous lawyers and academics and those interested in understanding issues critical to the development of indigenous people.

In 2014, the Indigenous Lawyers Association of Queensland hosted the conference, which was combined with the World Indigenous Legal Conference in Brisbane Australia. The conference addressed: indigenous knowledge: practice and research; human rights; indigenous women and children; economic independence; relationships to land; and criminal justice. In conjunction with the conference, the Indigenous Lawyers Association also invited papers to be submitted to the law journal, which will be published in early 2015.

Judge Bird and forum member, Judge Deborah Sanchez, are organizing the next World Indigenous Legal Conference in 2016, which will take place in Syracuse, New York.

**Item 3**

**Inyo-Bishop Cross Cultural Exchange**

Judge William Kockenmeister described the exchange he cohosted with Judge Dean Stout, Presiding Judge of the Inyo Superior Court and former forum member, on September 12, 2014 at the Bishop Paiute Tribal Center, housing the Tribe's new museum. Over 30 participants attended the exchange. Session topics included 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.

Judge Kockenmeister reported that participants spoke positively about all of the sessions. Ms. Candace Heisler walked the participants through the forum's tribal version of the Comings and Goings exercise, and this was particularly well-received.

Judge Kockenmeister recommended the experience of hosting an exchange to his forum colleagues and remarked that it brought tribal and non-tribal community members together to problem-solve and address domestic violence.

#### **Item 4**

##### **Indian Child Welfare Act Cases**

- [In re Abbigail \(2014\) 226 Cal.App.4th 1450](#)
- [In re J.S. \(4th Appellate District, 9/11/14\)](#)

Judge Jerilyn Borack summarized the two cases. She highlighted that the Third District Court of Appeal case of *In re Abbigail (2014) 226 Cal.App.4th 1450 [173 Cal.Rptr.3d 191]*, review granted Sept. 10, 2014, S220187 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." A day after the California Supreme Court granted review of the *Abbigail A.* decision, the Fourth District issued its decision in *In re J.S.*. Consistent with the holding in the *Abbigail* decision, the Fourth District held that ICWA did not apply where a child was eligible for enrollment in the Cherokee Nation but neither the child nor the biological parent of the child were members of the tribe.

Forum members considered recommending rule changes, but given that the issue is pending before the California Supreme Court, the forum decided to take no action at this time and await the ruling of the California Supreme Court. Ms. Walter informed the forum that the Family and Juvenile Law Advisory Committee (committee), cochaired by Judge Borack, would discuss the cases and staff would report back to the forum on the committee's discussion and decisions. Ms. Walter informed the members that staff would be developing a video that will educate tribes about the state court juvenile dependency process, timelines, and judicial decision-making, while also educating state court judges about the type of information needed about a child and the steps a tribe must take to determine whether a child is an "Indian child" under the Indian Child Welfare Act. She explained that the project would be a joint forum-committee project, and thanked Judge Borack for agreeing to participate in developing the video.

*Next Steps: Staff will prepare a memorandum for the forum and committee that will summarize recent legislation and court decisions and, after committee review and discussion, will report back to the forum.*

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#### **A D J O U R N M E N T**

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There being no further business, the meeting was adjourned at 12:45 p.m.

Pending approval by forum at its next teleconference scheduled on December 18, 2014.