

TRIBAL COURT–STATE COURT FORUM MEETING



JUDICIAL COUNCIL
OF CALIFORNIA

TRIBAL COURT–STATE COURT FORUM

December 18, 2014

Toll Free: 1-877-820-7831; Local: 720-279-0026

Agenda

THURSDAY, DECEMBER 18

Item 1

Cochairs' Report

1. Welcome new forum members Judge Daniel Zeke Zeidler of Los Angeles Superior Court and Ms. Jacqueline Davenport, Assistant Court Executive Officer of El Dorado Superior Court
2. [National Indian Nations Conference](#)
3. Memo to Center for Judiciary Education and Research (CJER) Governing Board and Jurisdictional Issues in Cases Involving Federal Indian Law
4. State/Tribal Education, Partnerships, and Services (STEPS)—Information for Tribal Court and State Court Judges
5. [Attorney General Holder Announces ICWA Initiative](#)

Presenters: Hon. Richard C. Blake
Hon. Dennis M. Perluss

Item 2

Report on the Los Angeles County ICWA Roundtable and Trainings

Presenter: Hon. Amy M. Pellman, Judge, Los Angeles Superior Court

Item 3

Indian Child Welfare Act: Proposed Draft Transfer Rule

Presenter: Ms. Ann Gilmour
Action Item: Review and approve rule proposal

Item 4

[Notice of Proposed Rule Making \(NPRM\): Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs](#)

Presenters: Hon. Abby Abinanti, Chief Judge of the Yurok Tribal Court
Ms. Denise Bareilles, Program Manager/Staff Attorney, Yurok Tribal Court

Resource: Mr. Michael Wright, Supervising Attorney, Center for Families, Children,
& the Courts

Action Item: Review and approve draft comment to be submitted to the Office of Child Support Enforcement, Administration for Children and Families

Item 5**Proposal to Amend the California Code of Judicial Ethics**

The Supreme Court is responsible for promulgating the [Code of Judicial Ethics](#) pursuant to Article VI, section 18(m), of the California Constitution. The Supreme Court Advisory Committee on the Code of Judicial Ethics makes recommendations to the court regarding whether amendments to the Code are necessary or appropriate.

Presenters: Hon. Abby Abinanti

Hon. Rebecca Wightman, Commissioner, San Francisco Superior Court

Action Item: Seek volunteers to develop draft proposal to be submitted to the California Supreme Court's Advisory Committee on the Code of Judicial Ethics

Info 1**Bureau of Justice Administration: Training and Technical Assistance Opportunity-
Joint Jurisdictional Court**

Assistance for Tribal, State, and Local Governments to Develop Collaborative
Joint Jurisdictional Justice Initiatives

Info 2**Forum Meeting Schedule**

**ITEM 1:
COCHAIRS' REPORT**

Wednesday, December 10, 2014

9:00 – 5:00 pm

Pre-Conference Institutes

Sam English,
Conference Poster
Artist

Victim/Survivor Healing through Art

This session, led by Turtle Mountain Chippewa artist San English, will provide cultural communication opportunities and explore American Indian expression at both tribal and urban levels about alcohol, drugs and violence and overcoming the pain of victimization. Participants will learn how to expose inner feelings without feeling afraid of criticism, through making art. This session will produce a group piece of art to be displayed during the conference. Space is limited to 20 participants from tribes and 20 non-tribal (state, federal or private agency) registrants.

Andreas

Elton Naswood
Mattee Jim

Crime Victimization in the Native LGBTQ Community

This pre-conference session is designed to focus on issues, needs and challenges in tribal victim services of Native Lesbian, Bisexual, Gay, Transgender (LGBT) and Two Spirit (2S) individuals. The session will include presentations on introduction and advanced LGBT/2S issues, intimate partner violence, policy development, best practices and LGBT/2S victim resources. The information is designed for tribal communities and provides culturally and traditionally based responses to the needs of Native LGBT/Two Spirit victims.

Chino A

Devin Rieckmann-Sell
Justin Souto
Melissa Riley

SORNA: Strategic Planning, Capacity Building and Sustainability (Sponsored by [SMART Office](#))

(Approved for CTAS Orientation Grantees)

This institute will provide an opportunity for the attendees to identify and strategize how they will continue their jurisdiction's work on Sex Offender Registration and Notification Act (SORNA) implementation, sex offender registration, and sex offender management. The institute will assist in developing a sustainability plan that reflects realistic goals and activities that are responsive to the needs of their community, as well as building the capacity of existing programs.

Pueblo A

TBD

Foundation Funding for Tribal Programs

This institute will provide hands-on information and resources to enhance the grant writing skills of potential applicants to foundation funders. It is anticipated that several representatives of foundations interested in funding tribal programs will be on hand to give advice and information on applying.

Catalina A

Leslie Hagan
Lori Moriarty

Drug Endangered Children: Collaborative Responses

(Approved for CTAS Orientation Grantees) (Sponsored by [U.S. Department of Justice, Office of Legal Education](#))

The National Alliance for Drug Endangered Children defines drug endangered children (DEC) as children who are at risk of suffering physical or emotional harm as a result of illegal drug use, possession, manufacturing, cultivation, or distribution. They may also be children whose caretaker's substance misuse interferes with the caretaker's ability to parent and provide a safe and nurturing environment. The primary challenge with illegal substance abuse and DEC is in coordinating the social and political systems charged with preventing, intervening, and treating these cases. This session will discuss relevant federal laws and strategies for developing a successful DEC program.

Madera

Invited members of the

Attorney General's Task Force on AI/AN Children Exposed to Violence Report (Morning

Pasadena (Tentative)

Advisory Committee	<p>Session (Sponsored by Office of Juvenile Justice and Delinquency Prevention)</p> <p>The AG's Advisory Committee held four hearings nationwide to listen to the concerns from Indian country and Alaska Native Villages on the issue of children exposed to violence. Their final report, to be issued in November of 2014, detailed recommendations to begin to address the problems. This institute will detail those recommendations. Advisory Committee members will discuss their approach and findings. This is a ½ day institute, starting at 9:00 am and concluding at noon.</p>	
John Dossett Kelly Stoner	<p>Implementing VAWA Special Domestic Violence Criminal Jurisdiction (Sponsored by Bureau of Justice Assistance and Office on Violence Against Women) (<i>Afternoon Session</i>)</p> <p>This afternoon institute will be a working session where tribes interesting in exercising the Special Domestic Violence Criminal Jurisdiction provisions (March 7, 2015 effective date), will be engage in discussion and working groups on necessary steps. This is a ½ day institute, starting at 1:00 pm and concluding at 5:00 pm.</p>	Pasadena (<i>Tentative</i>)
BJ Jones Michelle Rivard Parks	<p>Using Tradition and Custom to Promote Healing in Tribal Courts (Sponsored by Bureau of Justice Assistance)</p> <p>(Approved for CTAS Orientation Grantees)</p> <p>This pre-conference institute will include several sessions that highlight examples of traditional justice at work in tribal courts. Sessions shall emphasize how the incorporation of traditional justice methodologies, services and programs can promote healing within tribal communities and resolve conflicts for community members.</p>	Sierra
Christine Crossland	<p>National Institute of Justice Indian Country Research Initiatives (Sponsored by National Institute of Justice) (<i>Agenda</i>)</p> <p>This preconference institute will highlight several innovative Indian country research initiatives funded through the National Institute of Justice.</p>	Ventura
Jeff Davis Anadarko Elder Protection Team Dr. Jacqueline Gray Jennifer Cross	<p>Addressing Elder Abuse in Indian Country (Sponsored by Department of Health and Human Services)</p> <p>The pre-conference would be a virtual conference that will be streamed on the internet, addressing elder abuse in Indian country. Jeff Davis, Assistant U.S. Attorney will speak on the elder abuse model code. The Anadarko (OK) Elder Protection Team will talk about the multidisciplinary team and their approach to elder protection. Dr. Jacque Gray, NIEJI program director will speak on elder abuse indicators and the NIEJI program. Jennifer Cross, JD, NIEJI Program Coordinator will speak about implementation of an elder protection program.</p>	Smoketree F
4:00 – 8:00 pm	On-Site Conference Registration and Distribution of Materials	Santa Rosa

Thursday, December 11, 2014

7:00 – 9:00 am	On-Site Conference Registration and Distribution of Materials	Santa Rosa
9:00 – Noon	<p>Plenary Opening Session</p> <p>Emcees Sarah Deer (<i>Mvskoke</i>) Bonnie Clairmont (<i>Ho-Chunk</i>)</p> <p>Opening Invocation Ernest Siva (<i>Serrano/Cahuilla</i>)</p> <p>Honoring Victim/Survivor Voices Flag/Honor Song The Boyz</p> <p>Posting of Colors First Nations Women Warriors (<i>Invited</i>)</p> <p>Welcome</p>	California Ballroom

Jeff L. Grubbe (*Agua Caliente*) (*Invited*)
Chairman, [Agua Caliente Band of Cahuilla Indians](#)

Cultural Ceremony (Chair Ceremony)

Honoring Ceremony for Victims/Survivors of Violence
Jim Clairmont (*Sicangu Lakota*)
Spiritual Leader

Opening Remarks

Karol V. Mason
Assistant Attorney General
Office of Justice Programs
[U.S. Department of Justice](#)

Hon. Eric H. Holder, Jr. (*Invited*)
Attorney General
[U.S. Department of Justice](#)

FBI Indian Country Programs

James B. Comey
Director
[Federal Bureau of Investigation](#) (FBI)

VAWA 2013 Reauthorization: Role of Tribal Leadership

Deborah Parker
Vice Chair
Tulalip Tribe

VAWA 2013 Reauthorization: Pilot Project Panel Presentation

Moderator: John Dossett, General Counsel
[National Congress of American Indians](#)

Panelists include representatives from all three VAWA Special Domestic Violence Criminal Jurisdiction Pilot Project Tribes:

Pascua Yaqui Tribe

Alfred Urbina, Attorney General
Jill Engel, Chief Prosecutor

Tulalip Tribes

Michelle Demmert, Reservation Attorney
Sharon Hayden Jones, Domestic Violence
and Sexual Assault Prosecutor (*Invited*)

Noon – 1:30 pm

LUNCH (on your own)

1:30 – 3:00 pm

Workshops A

Sarah Curtiss
Alyxis Feltus

Native Sisters Society—Community Based Organizing to End Trafficking of Native Women
The Native Sisters Society is a community-based group that formed out of a need to elevate the voices and experiences of Native survivors of sex trafficking. This workshop will show how communities can organize at the ground level in order to address service gaps for Native trafficking survivors.

**A1
Andreas**

Sheri Freemont

Preventing Child Sexual Abuse—Darkness to Light Stewards of Children (Sponsored by [Salt River Pima-Maricopa Community](#))
This program is a national educational program that is designed to educate all persons who care for children how to help prevent child sexual abuse. The program is facilitated by a Tribal Advocacy Director. The program covers difficult subject matter but offers practical ideas to help keep children safe and allows attendees to better coordinate a response.

**A2
Chino**

Gayle Thom
L.G. Robertson

Building Resiliency in Victim Service Providers

Reasons we are drawn to become one who works violent crime cases may be as varied as the many disciplines critical to constructive outcomes. Regardless of our role, the secondary trauma of seeing and hearing the many details when working victims' cases can have a disturbing effect

**A3
Pueblo**

on us as professionals and yes, on our families as well. The trainers' experience responding to violent crime in tribal communities, half of which were child sexual abuse cases, provides firsthand insight. Participants will learn to build resiliency not only within themselves, but also in staff and volunteers. Ours is important work. Resiliency is the key to being able to continue to DO this work well and continue to make a positive difference at home too.

Bethany Case Wind River Santee Sioux Leeh Lake	New OVC Video Series: A Circle of Healing for Native Children Endangered by Drugs This workshop will be the first public screening of a new OVC video series—A Circle of Healing for Native Children Endangered by Drugs. Participants will have an opportunity to view the videos series and interact with a panel of tribal members and programs that are featured in the videos.	A4 Mohave
Jim Warren C. Kirk Johnson Allison Turkel Juli Ann Grant Chris Lobanov- Rostovsky	A Comprehensive Approach to Sex Offender Management: The Importance of Victim-Centeredness (Sponsored by SMART Office) This session will assist participants in gaining a better understanding of the role of victim-centeredness in sex offender management including registration and notification, the impacts of sexual victimization, and how best to develop and provide system support services for victims, families, and the community using existing tribal resources.	A5 Catalina
Lisa Jaeger Mishal Gaede Dave Raasch	Circles of Healing and Justice (Sponsored by Bureau of Justice Assistance and Tanana Chiefs Conference) Participants will join together in demonstrating how the strength of "Circles" is being used in tribal court cases to not only heal victims of crime but also to rekindle cultural practices while holding offenders accountable through community-based sentencing. Community ownership of the outcome is promising to be a more effective means of addressing crime and restoring justice not only for tribal court cases, but also state judicial systems.	A6 Madera
Sarah Deer Peggy L. Bird Sarah Collins Geri Wisner	OVC's Federal Advisory Committee: Recommendations to Attorney General Holder Representatives of the National Coordination Committee on the American Indian/Alaska Native Sexual Assault Nurse Examiner-Sexual Assault Response Team Initiative will provide an overview of the initiative and the committee's recommendations to Attorney General Holder on improving the way Department of Justice agencies respond to sexual violence in tribal nations.	A7 Pasadena
Art Martinez	Transforming Family Trauma, Domestic Violence and Inter-Generational Trauma Experiences The course will guide learning and discussion around the engaging tribal survivance from historical and reoccurring traumatic experiences. The session will inform a discussion of issues of family domestic violence, intergenerational trauma effects, and childhood trauma exposure of Native families. The workshop will emphasize the trauma-informed considerations and knowledge for the engagement of family wellness within Native people and tribal communities.	A8 Sierra
Dianne Barker Harrold Mitch Morrissey Steve Siegel	The Role of Forensic Science as it Relates to Native Americans in the Criminal Justice System The presentation will explore the importance of forensic science in the criminal justice process with a unique focus on Native American impacts. The critical programs discussed will be Cold Case, Familial Searching, DNA Innocence Programs, and Collection of DNA from Offenders.	A9 Ventura
Christine Crossland Twyla Beth Baker- Demaray Michelle Chino Thomasine Heitkamp Ada Pecos Melton André B. Rosay	Crime and Violence in Indian Country: The Myths, the Facts and the Importance of Research (Sponsored by National Institute of Justice) This panel focuses on identifying key myths and dispelling them using examples provided by scientists to bring the facts to life. It also will highlight how popular perceptions of Indian country hinder both research on and responses to crime and violence while explaining how study results impact policies and practices.	A10 Smoketree F
Kara McDonagh Stan Holder	Preparing to Apply for the Coordinated Tribal Assistance Solicitation (Sponsored by Office of Juvenile Justice and Delinquency Prevention) This session will provide information about the FY 2015 Coordinated Tribal Assistance Solicitation (CTAS) and assist tribes as they prepare to respond. Attendees will learn about key considerations in developing their CTAS and other complex proposals, and will be able to ask their questions about the CTAS to the DOJ Office of Justice Program representatives.	A11 Smoketree D/E
Lauren van Schilfgaarde Korey Wahwassuck Christine Williams	Therapeutic Justice: Lessons from the Shingle Springs—El Dorado County Joint Jurisdiction Healing to Wellness Court (Sponsored by Bureau of Justice Assistance) This workshop will explore the intersecting history of Indigenous justice through healing and Western restorative justice, resulting in Tribal Healing to Wellness Courts. The workshop will	A12 Smoketree C

Suzanne Kingsbury then explore the joint-jurisdiction model recently employed by the Shingle Springs Band of Miwok Indians for a Healing to Wellness Court, strategies for engaging in various other models of tribal-state collaboration, and how these models can be adapted to other tribal services.

3:00 – 3:30 pm **BREAK**

3:30 – 5:00 pm **Workshops B**

Sarah Deer Rosemary McCombs Maxey	Tribal Language, Justice and Healing: Finding Our Voice Indigenous language is deeply tied to traditional values. This workshop will provide an example of how language immersion programs can help survivors of crime and their advocates learn about traditional values to promote victim safety and offender accountability.	B1 Andreas
Dianne Barker Harrold	Coordinating a Collaborative Response to Victimization in Tribal Communities This workshop will assist tribal communities in building collaborations that address the needs of crime victims. This workshop will highlight different types of collaboration, ways to deal with change and challenges, the benefits of collaboration, and how to recognize cultural differences.	B2 Chino
Steven Aycock Victoria Sweet	Enforcing Protection Orders Against Non-Indians Under the Expanded Criminal Jurisdiction in VAWA 2013 (Sponsored by Office on Violence Against Women) Effective prosecution of non-Indians for protection order violations in tribal court requires special knowledge and practices. This session will provide participants with the necessary understanding of the new law and methods to improve prosecution of these cases. Participants will also learn how to craft protection orders to enhance enforceability.	B3 Pueblo
Hedi Bogda	Impact of Child Sex Trafficking in Indian Country (Sponsored by SMART Office) This workshop is designed to provide information necessary to properly understand, recognize, and investigate cases involving child sex trafficking and exploitation in and around Indian country. Participants will receive instruction on the dynamics of trafficking and exploitation and tactical implementation designed to identify and combat human trafficking and exploitation.	B4 Mohave
Jim Warren C. Kirk Johnson Allison Turkel Juli Ann Grant Chris Lobanov- Rostovsky	Roundtable Discussion on the Treatment Services Tribal Communities are Providing to Sexual Offenders (Sponsored by SMART Office) This session will describe the initial results of the Native American Sex Offender Management (NASOM) project. The NASOM project surveyed tribal representatives on existing treatment services available within their tribal communities, barriers to providing such treatment, and resources needed to develop a treatment program. In addition, the NASOM project included a review of what is known about providing treatment for Native American juveniles and adults who commit sexual offenses, and this information will be included in the presentation.	B5 Catalina
Kent Miller Rebekah Jones	Facilitating Healing Opportunities through Art Making This workshop will explore the use of art making as a tool for healing—traditional crafts as well as contemporary art. Art, in any of its forms, is an effective healing tool to use with all ages in the tribal community—from young children through elders—and can be adapted to use with people with a wide range of disabilities. We will discuss how the Healing in Art program at the Prairie Band Potawatomi Nation has developed and the differences between our program and art therapy.	B6 Madera
Leslie Hagen	Investigating and Prosecuting Alcohol Facilitated Sexual Assault (Sponsored by U.S. Department of Justice) Widespread anecdotal evidence in Indian country indicates that many, if not a majority, of sexual assault crimes perpetrated against adolescents and adults involve alcohol use by the victim, the defendant, or both. Despite the prevalence of alcohol-facilitated sexual assault, a number of barriers to a successful prosecution may exist. For example, the jury may question whether the sex was consensual or the jury may blame the victim that she put herself at risk by voluntarily consuming alcohol. And, these cases are complicated by the physical manifestations of alcohol like victims being unable to clearly perceive or remember the details of the assault. This session will focus on tips and tools for dealing with these challenges and also overcoming the consent defense.	B7 Pasadena
Brian Kauffman	"Facing Your Giants": The Value of Working in Harmony to Improve Crime Victim Services (Sponsored by Bureau of Justice Assistance) As services and resources for victims of crime in Indian country have improved over the past years there are increasing efforts to add to this momentum and to bring more stakeholders into the process. This presentation will engage participants in interactive activities and facilitated discussions on challenges they face either professionally or personally. Participants will explore elements of leadership and how emotional intelligences can help them in strengthening crime	B8 Sierra

victim services through effective partnerships and relationships within their tribal communities and beyond.

Jeremy NeVilles-Sorell Comanche Fairbanks	Making Space to Rise - Engaging Men and Youth to Promote Safety and Justice for Victims To further address sexual violence we must broaden our effort of outreach, awareness, and education. The Minnesota Indian Women's Sexual Assault Coalition has developed a new toolkit to promote safety and justice for victims by engaging men and youth in examining historical trauma, childhood sexual abuse, and societal messages that contribute to men perpetrating sexual assault.	B9 Ventura
Andre Rosay	National Intimate Partner and Sexual Violence Survey: 2010 Findings on Violence Against American Indian and Alaska Native Women and Men (Sponsored by National Institute of Justice) The National Intimate Partner and Sexual Violence Survey included an oversample of American Indian and Alaska Native women and men. This national large-scale survey provides the first estimates of psychological aggression, coercive control, physical violence, stalking, and sexual violence experienced by self-identified American Indian and Alaska Native women and men.	B10 Smoketree F
Kara McDonagh Pat Sekaquaptewa	Community Based Code Development: Tribal Juvenile Codes (Sponsored by Office of Juvenile Justice and Delinquency Prevention) This session will introduce participants to key considerations in developing or revising a Tribal Juvenile Justice Code. Examples of how tribes have addressed elements of their code in a culturally appropriate manner for their community will be shared, and participants will be introduced to a newly released Juvenile Code Resource.	B11 Smoketree D/E
Heather Valdez Singleton Judge Marcy Kahn Micaelee Horn Judge Monica Zamora Judge William Johnson Judge Dennis Perliss Judge Richard Blake	Tribal Collaborations with State Courts to Provide Safety, Justice and Healing (Sponsored by Bureau of Justice Assistance) Tribal and state representatives from various forums nationwide will discuss the development of their collaboration and the ways in which collaboration can assist victims of crime in Indian country. The panel will also discuss what forums are doing relating to developing policies to address cross-jurisdictional issues (focus on domestic violence) and sustaining the forum work.	B12 Smoketree C
7:00 – 9:30 pm	Conference Working Dinner Emcee Elton Naswood (<i>Navajo</i>) Invocation James Clairmont (<i>Sicangu Lakota</i>) Spiritual Leader Generational Voices Uniting for Healing Bird Singers (<i>Invited</i>) Artists Voices Uniting for Safety, Justice and Healing Moderator: Elton Naswood (<i>Navajo</i>) Healing Power of Words and Poetry Joy Harjo (<i>Mvskoke Creek</i>) Author and Poet Healing Power of Art Sam English (<i>Turtle Mountain Chippewa</i>) Conference Artist Healing Power of Music Joanne Shenadoah (<i>Oneida Nation</i>) Grammy Award Winning Singer/Performer/Composer/Lecturer Co-Chair, Advisory Committee on AI/AN Children Exposed to Violence	California Ballroom

Friday, December 12, 2014

8:30 – 10:00 am	Workshops C	
Courtney Allensworth Sarah Deer	Developing Tribal Elder Abuse Laws: Steps to Starting and Contemporary Considerations This workshop will update and expand on our successful 2012 workshop "Developing Tribal Elder Abuse Laws." In addition to exploring the importance of drafting tribally specific elder abuse codes, the discussion will explore the unique needs of Indian elders, the significance of integrating tribal customs and values into a code, and the importance of drafting both criminal and civil codes so that elders who have experienced abuse and/or sexual assault are protected. New for 2014, this workshop will pay specific attention to the integration of traditional healing for elders. It will also address specific provisions of the 2013 Violence Against Women Act VAWA reauthorization relevant to elders who have experienced sexual assault.	C1 Andreas
Dianne Barker Harrold Gayle Thom	Responding to Homicide in Indian Country This workshop will provide a greater understanding of the prosecution and jurisdictional issues of homicide cases in Indian country as well as challenges for law enforcement, victims' advocates, and affected family members. This workshop will also address the need to incorporate culture into healing, investigating, and prosecuting these cases.	C2 Chino
Lisa Heth Glennis Torpey Jae Csongradi	Sand Tray/Storytelling (Sponsored by Wiconi Wawokiya, Inc.) Sand Tray therapy is a type of therapeutic storytelling that is particularly appropriate in helping children and adults heal from the traumas of domestic violence, sexual assault, violence, and child abuse. This type of approach and therapy has proved to be suitable and successful in working with the Native American population, who still maintain contact with traditional storytelling and cultural ideals. Sand Tray therapy provides an opportunity for survivors to identify and clarify their personal stories. This therapeutic concept allows for an effective healing connection between advocates and trauma survivors.	C3 Pueblo
Cinnamon Ronneng	Creating Sister Space (Sponsored by Office on Violence Against Women) Creating space for victims of violence against women is sacred work. Women coming in to shelter or transitional housing are often overwhelmed by the crisis that brought them to us yet our programs are not always ready for them. Policies and practices can exclude the very women that our programs are designed to serve. This workshop will explore creating "sister space," what it means to provide it, and identify barriers that may be operating in our programs that prevent providers from creating it.	C4 Mohave
Sandy WhiteHawk Lenny Hayes	Understanding and Reclaiming Our Two Spirit Relatives Among Native nations Two Spirit/LGBTQ people have been marginalized and often victims of violence without a resource specific to their needs. "Understanding and Reclaiming Our Two Spirit Relatives" will provide an understanding of the impact of historical and intergenerational trauma on our Two Spirit relatives.	C5 Catalina
Brian Hendrix Suzanne Breedlove	Oklahoma's State-Tribal Crime Victim Liaison Initiative The purpose of the Oklahoma's State-Tribal Crime Victim Liaison Initiative is to enhance victims' compensation and assistance outreach to Oklahoma's thirty-eight federally recognized tribes. This workshop will review Oklahoma's unique history with the thirty-eight tribal governments that are now headquartered in the state, the historical trauma that the Native people survived, and the ongoing outreach efforts to each tribal community as described in the grant.	C6 Madera
Gwenytha Parrish Alyssa Ben Willow Rouillard Moderator: Kimberly Woodard	OVC's American Indian/Alaska Native SANE/SART Demonstration Initiative: Three Years of Lessons Learned and Promising Practices In 2011, under its American Indian/Alaska Native SANE/SART Initiative, the Office for Victims of Crime awarded funds to the Mississippi Band of Choctaw Indians, the Southern Indian Health Council, Incorporated, and the Tuba City Regional Health Care Corporation. The purpose of the initiative is to help the three communities increase their capacity to respond appropriately to sexual violence and to aid them in developing sustainable, high-quality, victim-centered multidisciplinary services and support for victims of sexual violence. Representatives from each of the sites will provide audience members with information on the current status of their projects by engaging in a panel discussion about their successes, challenges, and insights gained after three years of operation.	C7 Pasadena
David Rogers	Preventing Victimization through Collaborative Youth Program Development This workshop is designed to provide guidelines for any organization that wants to design and	C8 Sierra

plan programs for youth in an effort to prevent them from becoming victims of crime and also from becoming engaged in delinquent behavior and creating victims. Communities can reduce these threats by collaborating with other agencies and implementing youth programs that focus on the strengths of the youth and encourages goal development and skills building. The presenter will discuss the nationally funded Community Oriented Policing program and also describe how those program elements are used locally at Nez Perce.

Daniel Goombi
John Calvert

An Officer and a Advocate

Collaborative responses, including tribal police departments, victim service providers, and allied service professionals, have been demonstrated as the best response when addressing violence and abuse both in an emergency and the long term. Relationships among service providers is the first step in building a collaborative response to victimization in tribal communities, so how do we build respectful working relationships when we have such different perspectives? In this workshop, we will explore the perspectives of the professionals involved, and gain insight and appreciation for other professions' roles, goals, and requirements as we work toward developing practices that improve responses to victims of crime.

C9
Ventura

Diane Gout
Julie Atkins

Data Collection in Tribal Communities: The Care and Feeding of Your Vision

Attendees will understand how the use of data can increase capacity, promote accountability, and create opportunities for overall health and well-being for American Indians and Alaska Natives at the program and community levels. Emphasis will be directed at developing data-collection systems in tribal communities that ensure the participation of victim/survivors and the community without creating further trauma.

C10
Smoketree F

Steven Pevar

Enforcing the Indian Child Welfare Act: *Oglala Sioux Tribe v. Van Hunnik*

For the first time, Indian tribes and Indian families have filed a federal lawsuit against state officials seeking to enforce the Indian Child Welfare Act. These officials, the suit contends, are illegally removing hundreds of Indian children from their homes in a manner that violates federal law. The Department of Justice recently filed a "friend of the court" brief supporting the tribes. I am lead counsel in the case, and I will explain what's at stake, what we seek to accomplish, what we have already won, and where the case stands.

C11
Smoketree D/E

Julius Dupree

Grant Program Management: The Importance of Coordination and Community Engagement for Ensuring Success (Sponsored by [Bureau of Justice Assistance](#))

The purpose of this session is to assist participants in recognizing the value of using advisory boards to assist in coordination of grant deliverables. This session explores strategies to inform stakeholders of program activity and progress and engage the community to ensure success.

C12
Smoketree C

10:00 – 10:30 am

BREAK

10:30 – Noon

Workshops D

Leslie Hagen
Geri Wisner

Child Abuse in Indian Country: Protecting the Victim (Sponsored by [U.S. Department of Justice](#))

Native children may be victims of physical or sexual abuse. If the crime occurred in Indian country the case may be investigated and/or prosecuted in multiple jurisdictions. These young victims may then be called to testify in federal and/or tribal court as victims and witnesses in criminal cases. The process can be frightening for these young witnesses. Federal statutes and some tribal codes provide protections for child witnesses during the investigation and in court. This workshop will address jurisdictional issues in child abuse cases and laws that afford protection to child victims in court.

D1
Andreas

Jeremy Nevilles-Sorell
Sarah Curtiss

Growing a Leader—Community Organizing to Address Violence Against Native Women

"Every great leader teaches; every great teacher leads." Leadership requires constant personal growth: recognizing what we know, what we need to learn, and how to pass knowledge on to others. This workshop takes teachings from the medicine wheel to use when mentoring, educating, and organizing to end violence against women.

D2
Chino

Kim J. Day

The Brain's Response to Physical Injury, Psychological Trauma and Abuse (Sponsored by [Office on Violence Against Women](#))

The brain is a complex organ that controls our thoughts, emotions, and responses to life. Damage through injury, including strangulation, and exposure to stress and trauma can impact a person's outward responses and should impact the way that responders interact with the victim. This workshop will discuss the impact of physical injuries, including strangulation to the brain, and the neurochemical changes that can also impact victims after a traumatic event, such as domestic

D3
Pueblo

violence, strangulation injury child abuse, and sexual assault.

Dianne Barker Harrold	Compassion Fatigue and Stress Relief for Service Providers in Indian Country This workshop will provide information for victims of crime service providers in Indian country and identify the differences between vicarious trauma and compassion fatigue; provide strategies for self-care and stress relief; and include interactive exercises and surveys to measure stress levels for both individuals and supervisors of service providers.	D4 Mohave
Diana Webster Robin Cohen Heather Disher	A Special Connection—Animal Therapy and Education for Tribal Victims of Violence and At-Risk Youth (Sponsored by Helen Woodward Animal Center) Traditionally, Native people have looked to the animal world for strength and guidance. Therapy and educational programs that include animals empower tribal victims and youth in transition to rebuild self-worth, encourage healing, build empathy, and break cycles of violence and apathy. Strategies for building and funding programs will be discussed.	D5 Catalina
Joanne Shenandoah Leah Shenandoah	Lifting the Grief through Vibration of Music, Art and Forgiveness—Our Connection to the Natural World as Native People Joanne Shenandoah, PhD, and her daughter Leah Shenandoah, MFA, will present a session on healing through music and art. Many healers are expected to deal with the grief from victims who have suffered a great loss. Many ongoing problems with victims center on the inability to forgive. The Iroquois have belief systems to help with forgiveness and the grieving process. In many instances the connection to the natural world and our cultural traditions have been abandoned. In this session they will share how the traditional knowledge of the Iroquois includes forgiveness and the rituals for the grieving process.	D6 Madera
Cordelia Clapp Caroline Antone	Empowering Women in Tribal Communities to Combat Sexual Violence through SAFESTAR: Sexual Assault Forensic Exam, Services, Training, Access, and Resources This workshop will discuss how the American Indian and Alaska Native community that lack access to Sexual Assault Nurse Examiners can develop their own effective, culturally relevant health care and justice response to sexual violence in their communities through the U.S. Department of Justice/Office on Violence Against Women–funded SAFESTAR Program.	D7 Pasadena
Rebecca Murdock	Vision 21 and OVC Resources to Support Indian Country In May 2013 the Office for Victims of Crime released "Vision 21: Transforming Victim Services Final Report," which provides a framework to permanently alter the way we treat victims of crime. In January 2014 the Congressional Consolidated Appropriations Act included \$12.5 million to enhance resources for underserved populations and address emerging innovations through the use of technology. Funding will also be directed to programs that expand and enhance access to services for American Indian and Alaska Native (AI/AN) communities. This session will provide an overview of Vision 21 as well as opportunities for AI/AN communities to enhance their programs and services to crime victims.	D8 Sierra
Diane Bohn Kathy McBride	Nigaadaazhaadaamin (We Need to Talk About It): Providing a Comprehensive Response to Sexual Assault and Domestic Violence (Sponsored by Indian Health Services) Participants will view and discuss Nigaadaazhaadaamin (We Need to Talk About It), a video created on the Leech Lake Ojibwe Reservation that takes a candid look at domestic violence. The presenters will also provide information about the successes and challenges of their comprehensive sexual assault and domestic violence program.	D9 Ventura
Joan Eliel Danna Jackson Matthew A. Dale	Native American Fatality Review Team and Tribal, Federal, State Collaboration—More than a Vision (Sponsored by Office on Violence Against Women) Last year the Montana Attorney General strategically selected individuals from across the state to be a part of a Native American Domestic Violence Fatality Review Team, the first of its kind in the nation. The group consists of multidisciplinary members, most of whom are Native American, who represent various professions and tribal communities. The review team assists communities in examining the tragedy and identifying gaps in service systems. However, the Native American fatality review team is just one example of the active, positive networking taking place between the state of Montana, the U.S. Attorney's Office, and the tribes. Based on mutual respect, they are working together to bring about change and collaboration in Indian country.	D10 Smoketree F
Steve Derene Dan Eddy Suzanne Breedlove	What is Victims of Crime Act (VOCA) Funding? Tribal Access to State VOCA Funds and Crime Victims' Compensation for AI/AN Crime Victims This workshop is to assure that all service providers and their multi-disciplinary teams and collaborative partners know that State Crime Victims Compensation is available to American Indian and Alaska Native crime victims and how to access this process.	D11 Smoketree D/E

Julius Dupree	<p>Effective Strategies for Implementing and Operating Successful Justice System Programs (Sponsored by Bureau of Justice Assistance)</p> <p>Geared toward Coordinated Tribal Assistance Solicitation grantees but open to all. This workshop will feature a panel of tribal representatives who will engage in discussion about how they have leveraged resources to implement and operate successful justice system programs. Workshop participants will have an opportunity to hear about Department of Justice–funded programs that span the justice system continuum.</p>	D12 Smoketree C
Noon – 1:30 pm	<p>Working Luncheon</p> <p>Emcee Elton Naswood (<i>Navajo</i>)</p> <p>Invocation - TBD</p> <p>Tribal Victim Advocacy Awards Bonnie HeavyRunner Tribal Victim Advocacy Awards Presented by Iris HeavyRunner PrettyPaint and Family (<i>Invited</i>)</p> <p>Federal Role in Safety, Justice and Healing Kevin Washburn (<i>Invited</i>) Assistant Secretary – Indian Affairs U.S. Department of the Interior</p> <p>Generational Voices Uniting through Music Cody Black Bird</p>	East Pool Deck (Weather Permitting)
1:30 – 3:00 pm	<p>Workshops E</p>	
Bethany Case Geri Wisner	<p>The Use of Forensic Interviewing with Child Victims and Witnesses</p> <p>Forensic interviewing is an interviewing process used with children to gather information using a developmentally sensitive, unbiased, and truth-seeking approach. These interviews provide evidence to the police, child protection, prosecutors, and the court during the investigation and prosecution of suspected abuse. This workshop will provide a basic overview of forensic interviewing, including selecting an appropriate interviewer, standard practices in interviewing, and current approaches to working with Tribal victims.</p>	E1 Andreas
Hallie Bongar White	<p>Sexual and Other Abuse of American Indian and Alaska Native Elders (Sponsored by Office on Violence Against Women)</p> <p>This presentation will discuss the different forms of abuse committed against American Indian and Alaska Native elders: sexual, financial, spiritual, financial, physical, and neglect. Strategies for prevention and response will be identified as well as best practices for interjurisdictional and multidisciplinary collaboration.</p>	E2 Chino
Elena Giacci Jane Root	<p>Caring Makes A Difference—Best Practices in Screening and Assessment for Domestic and Sexual Violence in the Healthcare Setting to Increase Safety and Reduce Isolation (Sponsored by Office on Violence Against Women)</p> <p>This workshop will share the lessons learned over five years of working on Project Connect, A Coordinated Public Health Initiative, supported by the Office on Women's Health in partnership with Futures Without Violence, funded by VAWA 2005. Workshop facilitators Elena Giacci, Lead Native Faculty, and Jane Root, Native Faculty on Project Connect 2.0, will share the proven best practices of how to educate and support health professionals to make warm referrals to domestic and sexual violence advocates when disclosures occur. They will demonstrate the positive outcomes for survivors of domestic and sexual violence, when health care systems work in close collaboration with their tribal community advocates.</p>	E3 Pueblo
Jean Bruggeman	<p>Sharing the Stories: A Roundtable Discussion on the Trafficking of American Indians and Alaska Natives</p> <p>Participants will join federal agencies (including the Departments of Justice and Health and Human Services) in an interactive, facilitated discussion, sharing knowledge on incidents and experiences of human trafficking, factors that make American Indians and Alaska Natives</p>	E4 Mohave

vulnerable to human trafficking, and developing strategies for increased understanding and service provision.

Advisory Committee
Members, TBA

AI/AN Children Exposed to Violence Task Force (Sponsored by [Office of Juvenile Justice and Delinquency Prevention](#))

E5
Catalina

The Attorney General's Advisory Committee on AI/AN Children Exposed to Violence convened hearings around Indian country in 2013–14 to talk with communities and experts on this issue. In November 2014 the Advisory Committee issued its final report, detailing recommendations that will address this crisis in Indian country. This session will provide an overview of recommendations and provide discussions by the Advisory Committee on children exposed to violence in Indian country and urban and rural settings.

Arlene OBrien
Cordelia Clapp
Genoveva Antone

Traditional Modalities of Prevention and Response for Service Providers

First responders and service providers in Indian country are at high risk of experiencing vicarious trauma when addressing violent crime victimization in their communities. This interactive workshop will explore traditional, Indigenous ways of prevention, management, response, and healing of vicarious trauma, and will provide participants with the opportunity to develop their own individual or programmatic strategies to achieve optimal mental, spiritual, emotional, and physical health.

E6
Madera

Dee Koester
Leanne Guy
Dawn Stover
Germaine Omish

Relationship Building Amongst Tribal Coalitions: Ensuring Safety and Accountability for Future Generation of Survivors of Domestic Violence and Sexual Assault (Sponsored by [Office on Violence Against Women](#))

Marking the journey of the origins of several tribal coalitions—Washington State ([WomenSpirit](#)), Oklahoma ([Natives Alliance Against Violence](#)), California ([Stronghearted Women's Coalition](#)), and Arizona ([SouthWest Indigenous Women's Coalition](#)); their missions and visions; and ultimately the formation of the Alliance of Tribal Coalitions to End Violence—its mission and vision looking forward.

E7
Pasadena

Pauline Baily
Mary Beaver
Jackie Hill
Diane Payne

Improving Services to Child Victims—Innovations and Successful Strategies in Rural Alaska Native Communities

The Alaska Children's Alliance (ACA) will share unique and innovative ways of honoring and supporting Native children in Alaska who have experienced victimization with minimal resources, utilizing cultural strengths and collaborative approaches. Rural Alaska Native child advocacy centers staff will also share promising practices that can be replicated in other rural and remote, underserved tribal communities where resources are limited.

E8
Sierra

Kathryn England-Aytes
Kimberly M. Day
Leila Goldsmith
Lawrence "Lou"
Robertson
Gayle Thom

Building Resiliency in Child Abuse Organizations Working with Native Children (Sponsored by [National Children's Alliance](#) and [Native American Children's Alliance](#))

Victim service providers who work with abused children often emphasize the importance of building resiliency in their young victims. However, they sometimes overlook the need to develop resiliency in themselves. If providers are unable to cope with the difficult situations inherent in their work, they are susceptible to secondary traumatic stress and burnout. This training is intended to help participants identify the five individual elements of resiliency, and explore how they may be implemented in an organization that provides services to Native children and families through policies, supervisory techniques, and training that support resiliency.

E9
Ventura

Howard Snyder
Andrew D. Tiedt

Current Tribal-Related Data Collection Efforts at the Bureau of Justice Statistics (Sponsored by [Bureau of Justice Statistics](#))

This workshop will describe the statistical information on Native American crime and criminal justice systems produced by the Bureau of Justice Statistics. Along with the new survey of tribal courts, a new effort to survey state and local law enforcement agencies and prosecutor offices that have jurisdiction on tribal lands will be profiled.

E10
Smoketree F

Desiree Coyote
Diana Fleming

Oregon's Experience in Enhancing Effective Tribal Relationships with Non-Tribal Partners for Domestic and Sexual Assault Service Provision (Sponsored by [Office on Violence Against Women](#))

This session will provide information about the ways that tribal, state, federal, and local partners work together in Oregon; offer tips to maintaining effective relationships among and between each partner; and offer strategies that help build their relationship, overcome challenges, and work together on key projects that benefit all survivors.

E11
Smoketree D/E

Julius Dupree

Sustaining Justice System Programs (Sponsored by [Bureau of Justice Assistance](#))

Geared toward Coordinated Tribal Assistance Solicitation grantees but open to all. Agencies must be innovative in their approaches to sustain programs that collectively provide for the safety for

E12
Smoketree C

the community, criminal justice officials, and service providers as well as offenders. The purpose of this session is to assist participants with developing a sustainability plan that reflects realistic goals and activities of their project that reflect the needs of their community and the capacity of existing programs.

3:00 – 3:30 pm

BREAK

3:30 – 5:00 pm

Workshops F

Leslie Hagen

Using Federal Law to Increase Safety for Indian Women: TLOA and VAWA 2013 Implementation (Sponsored by [U.S. Department of Justice](#))

**F1
Andreas**

Native American women suffer intimate partner violence at epidemic rates. Two new statutes, the [Tribal Law and Order Act of 2010](#) (TLOA) and the [Violence Against Women Reauthorization Act of 2013](#) (VAWA 2013), have potentially and dramatically changed the legal authority of tribal courts and have provided federal prosecutors with new criminal offenses to use in the effort to hold abusers in Indian country accountable. This session will cover the relevant changes to federal law and provide an update on implementation efforts for both statutes.

Douglas George
Kanentiio

The Indigenous Healing Knowledge of the Six Nations Iroquois: Using the Ancestral Knowledge of the Iroquois Confederacy in Promoting Aboriginal Justice

**F2
Chino**

The session will concentrate on the specific rituals used by the Iroquois to promote individual, communal, and national healing. These rituals include symbols and procedures invented by Skennenrahowi, the Peacemaker, a prophet who not only taught healing methods but established the Iroquois Confederacy as a forum through which warfare was excluded under law.

Sarah Henry

Full Faith and Credit for Tribal Protection Orders (Sponsored by [Office on Violence Against Women](#))

**F3
Pueblo**

Protection orders are a tool that can help promote the safety of Native women experiencing domestic violence and hold offenders accountable. This interactive session will provide information on the effective issuance and enforcement of tribal protection orders, including the mandate that tribal orders be enforced outside of Indian country.

Victoria Sweet

Asserting Tribal Rights in ICWA Cases (Sponsored by [National Council of Juvenile and Family Court Judges](#))

**F4
Mohave**

This session will review tribal rights guaranteed under the Indian Child Welfare Act, discuss best practices to increase the likelihood tribes will retain connection with children subject to state court proceedings, introduce innovative strategies for doing this, and encourage session participants to share additional ideas and strategies.

Marcella Medicine
Blanket Vikki Eagle
Bear
Terri Yellowhammer
Ethleen Iron Cloud-
Two Dogs
Anna Marajavi

Envisioning a Violence Free Lakota Way of Life

**F5
Catalina**

The vision of the Rosebud Sioux Tribe Defending Childhood Initiative (RST DCI) is "a violence free Lakota way of life." The workshop describes RST DCI's public education campaign toward decreasing incidents of children exposed to violence on the Rosebud Indian Reservation and will highlight collaboration, cultural appropriateness, and technical assistance.

Linda Muise
Priscilla Hovland
Josette Peltier

Equine/Animal Assisted Learning, Healing and Cultural Enlightenment: Providing Comprehensive Wellness Programming to High Risk High School Students

**F6
Madera**

Youth who are victims of crime may experience an extraordinary amount of trauma throughout their lives resulting in significant mental health and behavioral challenges with the propensity for devastating lifelong consequences. Horses and other animals have unique abilities to teach and facilitate growth and healing. Each challenge demands a comprehensive approach using best practice standards and innovative strategies.

Eric Szatkowski

The Dark Side of Digital Technology: Trends in Child Exploitation

**F7
Pasadena**

This workshop will demonstrate how unsupervised and/or inappropriate use of technology by children places them at risk for many types of victimization, including sexual assault, sextortion/blackmail, self-producing child pornography images and/or videos, child sex trafficking, and the social and psychological damage caused by the loss of innocence. This session takes a comprehensive look into the latest trends in digital exploitation of children, including social media, web camera deceptions, grooming in online games, and risky cell phone apps. Using high-profile cases, this session explains techniques used by predators and offers ideas to fight the ongoing battle of online child exploitation.

Susan Whitehorse

Missing and Exploited Children in Indian Country

F8



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
November 18, 2014	Please Review
To	Deadline
Hon. Ronald B. Robie, Chair Center for Judiciary Education and Research (CJER) Governing Board Ms. Diane E. Cowdrey, CJER Director	N/A
From	Contact
Hon. Richard Blake Hon. Dennis Perluss Cochairs, California Tribal Court–State Court Forum	Jennifer Walter, Supervising Attorney 415-865-7686 phone 415-865-7217 fax jennifer.walter@jud.ca.gov
Subject	
Integration of Federal Indian Law into State Judicial Branch Programs and Resources	

On behalf of the California Tribal Court–State Court Forum (forum), we write to request that you consider integrating federal Indian law into educational programs and resources conducted and developed by the Center for Judiciary Education and Research (CJER).

As discussed in greater depth in the attached jurisdictional resource for California judicial officers, federal Indian law is complex and may arise before California state court judicial officers sitting in all assignments including civil, small claims, criminal, family, juvenile, mental health, probate, and traffic.

For several years now, the members of the forum have worked to identify issues of mutual concern and potential solutions to those problems in a variety of areas. A number of significant accomplishments have resulted including recently passed Judicial Council (council) sponsored

legislation to deal specifically with the recognition and enforcement of tribal court money judgments, which was a joint effort between the forum and the Civil and Small Claims Advisory Committee.¹ There were also several joint efforts between the forum and the Family and Juvenile Law Advisory Committee resulting in changes to rules and forms and council sponsored legislation. A subcommittee of the forum worked with a subcommittee of the Probate and Mental Health Advisory Committee for joint submissions to the California Law Revision Commission on the adoption of the Uniform Adult Guardianship and Protection Proceedings Jurisdiction Act.

In all of the forum's work with other council advisory committees, the common thread is surprise at the extent and variety of issues and subject areas in which questions of federal Indian law can arise and hunger for more information, resources and education on these issues.

By way of example, in civil cases (including small claims), if the parties include a tribe, an arm of the tribe or in some instances tribal individuals, or if the subject of the action took place on tribal land or involves trust assets, the court's jurisdiction may be affected.

In criminal assignments, the court may have to interpret PL-280 to determine whether a particular act is subject to state court jurisdiction or must be handled by a tribal court. Issues involving tribal sovereign immunity may arise or the court might encounter issues involving the service or execution of search warrants or subpoenas on tribal lands.

In family proceedings, in addition to the need to consider the applicability of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) in cases involving tribal individuals, events on tribal lands, or tribal trust assets, the court may need to consider whether there are any ongoing tribal court proceedings, and if so, the effect of the Uniform Child Custody Jurisdiction and Enforcement Act and the Uniform Interstate Family Support Act.

In juvenile assignments, judges must be well-versed in the effect and requirements of ICWA.

In probate cases, the court must be aware of ICWA in guardianship proceedings and also may need to consider the status of tribal trust assets in other types of cases.

In traffic assignments, the court must consider the status of lands where an issue arises and whether the particular issue under the Motor Vehicle Code could be considered criminal prohibitory or civil regulatory and the effect of that classification on jurisdiction.

¹ See http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0401-0450/sb_406_bill_20140106_amended_sen_v98.pdf

Hon. Ronald B. Robie
Ms. Diane E. Cowdrey
November 18, 2014
Page 3

Further, there are now more than 300 tribal courts operating across the country and more than 20 located in California. Tribal police forces and other justice agencies are expanding. As a result, in all judicial assignments, there is a need to understand the potential for concurrent tribal court jurisdiction and the involvement of tribal justice agencies. As more tribal courts and tribal justice systems are established, it will become increasingly important for judicial officers to be aware of how issues of federal Indian law may arise in their courts and how to interact with tribal courts and justice systems in a principled, coherent, consistent, and respectful manner. To this end, it will be important for all judicial officers to receive more training on federal Indian law.

Currently, with the exception of juvenile and family law where there is discussion of ICWA, federal Indian law is not incorporated into most CJER education and resources. The forum would like to partner with the CJER governing board to work on incorporating federal Indian law comprehensively into CJER products.



JUDICIAL COUNCIL OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION
CENTER FOR FAMILIES, CHILDREN & THE COURTS

JURISDICTIONAL ISSUES IN CASES INVOLVING FEDERAL INDIAN LAW: A GUIDE FOR CALIFORNIA COURTS

Introduction

When dealing with tribes, tribal members, events that occur in Indian country or anything to do with tribal property or uniquely Indian interests, courts should be aware that federal Indian law may affect their personal, subject matter and in rem jurisdiction.

What follows is a very brief overview of some basic principles of federal Indian law, which may assist judicial officers recognize when cases before them implicate federal Indian law issues. Because of the complexity of federal Indian law, courts should ask counsel for briefing when these issues arise.

Overview of California Indians and Tribal Justice

California Indian Tribes and Territory

California currently has approximately 110 federally recognized tribes,¹ with nearly 100 separate reservations or rancherias.² In addition, there are currently 81 groups petitioning for federal recognition.³ In the 2010 census roughly 725,000 California citizens identified as American Indian or Alaska Native either alone or in combination with other ethnicities.⁴ This represents roughly 14% of the entire American Indian/Alaska Native population of the United States. More information about California's American Indian/ Alaska Native population can be found at <http://www.courts.ca.gov/3066.htm>. See http://www.waterplan.water.ca.gov/tribal2/docs/GW_Basins_and_Tribal_Trust_Lands_map.pdf for map of California Indian country.

¹ See www.bia.gov/cs/groups/public/documents/text/idc006989.pdf

² Some tribes remain "landless", meaning they have no land in trust for their members, while other tribes may have more than one reservation or rancheria.

³ As of November 12, 2013. See www.bia.gov/cs/groups/xofa/documents/text/idc1-024418.pdf

⁴ See www.census.gov/prod/cen2010/briefs/c2010br-10.pdf

Indian Law: General Principles Relating to Jurisdiction

Overview

General Rules (these rules apply in California unless modified by Public Law 280)

Tribes are sovereign and have exclusive inherent jurisdiction over their territory and members (even outside territory), but not necessarily jurisdiction over non-Indians even within tribal territory.

Tribes are under the exclusive and plenary jurisdiction of the federal congress, which may restrict or abolish jurisdiction and sovereignty. The federal government has exercised this power a number of times to limit tribal jurisdiction, assume federal jurisdiction over a number of areas, and delegate that jurisdiction to some states. Congress has granted limited jurisdictional authority to the federal courts (under the General Crimes Act, 18 USC § 1153, and the Major Crimes Act, 18 USC § 1152) and to state courts (for example under Public Law 280).⁵ Congress has imposed limits on tribal courts through the Indian Civil Rights Act (ICRA) (25 USC § 1301-1303).

As a general rule state laws do not apply to Indian country or govern the activities of Indians in Indian country.

Public Law 280 (Pub.L. 83–280, August 15, 1953, now codified at 18 U.S.C. § 1162, 28 U.S.C. § 1360, and 25 U.S.C. §§ 1321–1326)

The general jurisdictional scheme was altered in California by Public Law 280 enacted by Congress in 1953. Public Law 280 transferred federal criminal jurisdiction and conferred some civil jurisdiction on states and state courts in the six mandatory Public Law 280 states, including California. Public Law 280 is now codified in federal law as 28 U.S.C. § 1360 regarding civil jurisdiction and 18 U.S.C. § 1162 regarding criminal jurisdiction.⁶

The U.S. Supreme Court in *California v. Cabazon Band of Mission Indians* (1987) 480 U.S. 202 described Public Law 280's effect on California's civil and criminal jurisdiction in Indian country⁷:

In Pub L. 280, Congress expressly granted six States, including California, jurisdiction over specified areas of Indian country within the States and provided for the assumption of jurisdiction by other States. In § 2 [18 U.S.C. § 1162], California was granted broad criminal jurisdiction over offenses committed by or against Indians within all Indian country within the State. Section 4's [28 U.S.C. § 1360] grant of civil jurisdiction was more limited. In *Bryan v. Itasca County*,

⁵ Public Law 83–280, August 15, 1953

⁶ See attached statutes.

⁷ For more information about Indian country, see section below on *Indian Country*.

426 U.S. 373 (1976), we interpreted § 4 to grant States jurisdiction over private civil litigation involving reservation Indians in state court, **but not to grant general civil regulatory authority**. *Id.*, at 385, 388-390. Accordingly, when a State seeks to enforce a law within an Indian reservation under the authority of Pub. L. 280 it must be determined whether the law is criminal in nature, and thus fully applicable to the reservation under § 2, or civil in nature, and applicable only as it may be relevant to private civil litigation in state court. (480 U.S. at pp. 207-208; emphasis added)

The “criminal/prohibitory” versus “civil/regulatory” distinction was set out by the Court in *Cabazon* as follows:

[I]f the intent of a state law is generally to prohibit certain conduct, it falls within Pub. L. 280’s grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Publ. L. 280 does not authorize its enforcement on an Indian reservation. (480 U.S. at p. 209)

In terms of civil jurisdiction, therefore, the effect of Public Law 280 was to grant Indians access to state court forums to resolve disputes. It did not give the state jurisdiction to impose civil regulatory laws on the tribes or tribal territory. The fact there are misdemeanor criminal penalties for violations of a law is not sufficient, in and of itself, to convert a law from civil/regulatory to criminal/prohibitory under Public Law 280. Further, Public Law 280 applies only to state laws of general application; local ordinances do not apply.

Status of Tribes

Due to the unique history of federal-tribal and state-tribal relations, not all Indian tribes enjoy the same legal status. In general, only “federally-recognized” Indian tribes (those tribes that still enjoy a government-to-government relationship with the U.S. Government) trigger unique jurisdictional considerations for state courts. Federal recognition is required for the tribe to be considered a “sovereign” entity under federal Indian law. The federal government periodically issues a list of “Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs,” which can be found on the Bureau of Indian Affairs (BIA) website.⁸

Tribes that are not federally-recognized are often referred to as “non-recognized” or “unrecognized” tribes. Some of these non-recognized tribes enjoy state recognition and are referred to as “state-recognized” tribes. Some state laws expressly confer certain rights or opportunities on non-recognized tribes and state-recognized tribes, but these do not affect the

⁸ www.bia.gov/cs/groups/public/documents/text/idc006989.pdf

court's jurisdiction.⁹ Many unrecognized tribes are now petitioning or otherwise seeking federal recognition. If that recognition is granted, it will affect the court's jurisdiction. Further references to "tribe" herein mean a federally-recognized tribe.

Tribal Sovereignty

Federally recognized tribes possess the inherent powers of a sovereign government, except as limited by the federal government through treaties, statutes, and common law. This includes the right to determine their own membership, govern themselves, their citizens and their territory, establish laws and establish their own tribal justice systems including tribal police and tribal courts. Further, tribes also enjoy sovereign immunity and cannot be sued in federal or state court unless Congress has authorized the suit or the tribe has waived its immunity.¹⁰

Indian Status

Individuals who are before the court and members of a tribe or eligible for membership in a tribe can trigger unique jurisdictional considerations for state courts. A tribe's jurisdiction over such individuals is determined by tribal law.

Eligibility for tribal membership is determined exclusively by tribal law. In contrast, who is considered "Indian" for purposes of federal or state law can vary depending on the applicable statute and cases interpreting it. Someone who is recognized as a tribal member by his or her tribe may not be recognized as "Indian" under applicable federal or state law. By the same token, someone who is an "Indian" within the meaning of federal or state law may not be eligible for tribal membership under tribal law.

State courts must also be aware that in some situations non-member Indians and non-Indians may also be subject to a tribe's jurisdiction. The scope of a tribe's jurisdiction over non-member Indians and non-Indians is a complex and fact-dependent question determined by federal common law. Before ruling, judicial officers are strongly encouraged to request briefing from the parties on these issues when they arise.

Indian Country

The phrase "Indian country" has a specific definition for purposes of federal criminal law, which has been held to apply in the civil context as well.¹¹

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country," as used in this chapter, means (a) all land within the limits of

⁹ For example, Welf. & Inst. Code § 306.6 and Fam. Code § 185 authorize the state court to allow non-recognized tribes to participate in Indian child custody proceedings involving their descendants.

¹⁰ See, e.g., *Kiowa Tribe v. Mfg. Techs., Inc.* (1998) 532 U.S. 751, 754.

¹¹ 18 U.S.C. § 1151; *California v. Cabazon Band of Mission Indians* (1987) 480 U.S. 202, 208 n.5.

any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

However, the definition can vary for purposes of some federal and state statutes.

Indian country is comprised of lands within the recognized territorial jurisdiction of a tribe. As a general rule, tribes retain jurisdiction over persons, property, and occurrences in Indian country, and states have no jurisdiction in Indian country. However, Congress has constitutional authority to assert federal jurisdiction in Indian country and to delegate its jurisdiction to states.

Property Status

Although Public Law 280 gave California courts adjudicative jurisdiction over civil causes of action arising in Indian country that jurisdiction is limited. California courts do not have jurisdiction to make orders authorizing the alienation, encumbrance, or taxation of any real or personal property belonging to an Indian or tribe that is held in trust by the federal government (called “trust property”) or is subject to a restriction against alienation imposed by the federal government (called “restricted property”).¹²

When state courts are asked to make orders relating to the real or personal property of an Indian or a tribe, they must therefore consider whether the property is trust property or restricted property. Examples of such property include land owned by the United States that has been set aside for the exclusive use and benefit of a tribe (“tribal trust land”), allotments of land owned by the United States and held in trust for an individual Indian, and Individual Indian Money (IIM) accounts managed by the federal government.

Adjudicative Versus Legislative Jurisdiction

When faced with a case involving a tribe, an Indian individual or circumstances arising in, a state court must consider whether it has *adjudicative jurisdiction*, meaning the authority of courts to entertain a suit, decide a case and impose an order. However, even when it has adjudicative jurisdiction, the court must also consider what law governs the suit. This involves an analysis of whether the federal, tribal or state law at issue applies to the parties, transaction or occurrence in

¹² 28 U.S.C. § 1360(b).

question. In other words, does the federal, tribal or state government have *legislative jurisdiction*?¹³

In some cases, a state court may have adjudicative jurisdiction but the forum lacks legislative jurisdiction. In rare cases, the state court may have legislative jurisdiction without having adjudicative jurisdiction. When these questions arise in a case involving questions of Indian law, state courts are strongly encouraged to request briefing from the parties before ruling.

Requirement to Apply Tribal Law

In addition to considering whether which state laws apply to the settlement of disputes arising in Indian country, the court may have to consider the applicability of tribal law. The section of Public Law 280 that extends state court civil adjudicative jurisdiction to disputes involving and between Indians arising in Indian Country mandates that:

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

Issues Around Personal, Subject Matter and in rem Jurisdiction

Personal Jurisdiction

Indian or Tribal Petitioner/Plaintiff

In general, a state court has jurisdiction to entertain suits brought by Indians or tribes against an Indian or non-Indian respondent/defendant for claims arising in or outside of Indian country. In rare circumstances, however, state adjudicative jurisdiction over non-Indian defendants for causes arising in Indian country may be pre-empted by federal law.¹⁴

Indian or Tribal Respondent/Defendant

The state court may not exercise jurisdiction over a respondent or defendant tribe unless the tribe has waived its sovereign immunity or Congress has authorized the suit. This is true even for cases involving off-reservation activity.¹⁵ Tribal sovereign immunity can extend to tribal enterprises that are “arms of the tribe” and to representatives of the tribe acting in their official capacity. The court should ask for briefing on the issue if a question arises to whether tribal

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Non-discriminatory state laws apply to tribes and their members when outside Indian country unless federal law provides otherwise.¹⁷ As a result of Public Law 280, state courts also have adjudicatory jurisdiction over causes of action arising in Indian country.¹⁸ However, Public Law 280 also limits the state's adjudicative jurisdiction in significant ways. For example, state courts do not have jurisdiction to enforce state civil/regulatory laws.¹⁹ State courts also cannot enforce local County laws in Indian country.²⁰

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State courts have no jurisdiction to "... adjudicate, in probate proceedings or otherwise, the ownership or right to possession ... of any interest therein... of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States."²¹

Effect of Indian Gaming Regulatory Act

The Indian Gaming Act ("IGRA") affects jurisdiction delegated to California state courts under Public Law 280.²² Specifically, IGRA provides for exclusive federal jurisdiction over tribal violations of state gaming laws²³ and civil actions involving Indian gaming and gaming contract

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There are unique considerations surrounding tribal cultural property and sacred sites.

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Public Law-280 preserved Indian and tribal rights concerning hunting, trapping and fishing. This reservation is reflected in state law.²⁶

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Tribal Courts in California

Not all tribes have tribal courts or judicial bodies. With the enactment of Public Law 280, the federal government withdrew funding to tribes in Public Law 280 states for law enforcement and tribal justice system services.²⁷ From the early 1970's, tribes in non -Public Law-280 states experienced an increase from approximately \$1.5 million in 1972 to over \$10 million in 1990 in federal funding for tribal justice systems, whereas tribes in Public Law 280 states were largely excluded from this new funding.²⁸ In California, less than 1 percent of the national federal law enforcement budget had been allocated to California for tribal justice development.²⁹ This lack of federal support precluded or delayed the growth of tribal law enforcement and justice systems in California.

As a result, many tribes in California lack tribal courts or have courts that exercise only civil jurisdiction over internal tribal matters. For a description of the tribal courts in California and the case types over which they are exercising jurisdiction, see the online California Tribal Courts Directory.³⁰

The Tribal Court-State Court Forum, established in 2010 and now continued as a formal Judicial Council advisory committee under rule 10.60 of the California Rules of Court, is working on identifying and addressing areas of concurrent jurisdiction and establishing mechanisms for the allocation, sharing and transfer of jurisdiction.³¹

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While tribes are recognized as sovereign, they are not “states” for the purposes of the full faith and credit requirements of Article IV of the U.S. Constitution. There is general consensus (but no Supreme Court authority on point) that tribes are not encompassed by the federal full faith and credit statute (28 U.S.C. §1738). There are, however, a number of relevant federal and state provisions that mandate full faith and credit for and between tribal courts:

- ❑ Indian Child Welfare Act (25 U.S.C. § 1911 (d))
- ❑ Violence Against Women Act (18 U.S.C. § 2265)
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- ❑ Uniform Child Custody Jurisdiction and Enforcement Act (Family Code §3404)
- ❑ Tribal Court Civil Money Judgment Act (Code of Civil Procedure §§ 1730 – 1742)³²
- ❑ Interstate and International Depositions and Discovery Act (Code of Civil Procedure §§ 2029.100-2029.900 defines “State” to include tribe)
- ❑ Interstate Jurisdiction, Transfer, and Recognition: California Conservatorship Jurisdiction Act (Probate Code §§ 1980 – 2033 with specific provisions regarding tribes at §§ 2031-2033)³³

Where there is no specific statutory mandate for full faith and credit, the general rule is that tribal court orders are entitled to comity.³⁴ Accordingly, judgments from tribal courts not governed by any of the specific statutes above should be recognized and enforced unless there are grounds not to recognize and enforce the specific judgment.³⁵

In all instances where a tribal court might be exercising concurrent jurisdiction, the state court should try to determine whether there is a pending tribal court action and, if so, seek briefing from the parties on whether it is appropriate for the state court to proceed in light of the pending tribal court proceedings. Courts should endeavor to avoid duplicative and inconsistent judgments from different courts.

³² Effective January 1, 2015.

³³ Effective January 1, 2016.

³⁴ *Wilson v. Marchington*, (1997) 127 F.3d 805 (9th Cir.)

³⁵ According to the *Marchington* court, the mandatory grounds not to recognize and enforce a judgment are: (1) the tribal court did not have both personal and subject matter jurisdiction; (2) the defendant was not afforded due process of law. Discretionary grounds not to recognize and enforce are: (1) the judgment was obtained by fraud; (2) the judgment conflicts with another final judgment that is entitled to recognition; (3) the judgment is inconsistent with the parties' contractual choice of forum; or (4) recognition of the judgment, or the cause of action upon which it is based, is against the public policy of the United States or the forum state in which recognition of the judgment is sought.



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date	Action Requested
November 18, 2014	Please Review
To	Deadline
Hon. Ronald B. Robie, Chair Center for Judiciary Education and Research (CJER) Governing Board Ms. Diane E. Cowdrey, CJER Director	N/A
From	Contact
Hon. Richard Blake Hon. Dennis Perluss Cochairs, California Tribal Court–State Court Forum	Jennifer Walter, Supervising Attorney 415-865-7686 phone 415-865-7217 fax jennifer.walter@jud.ca.gov
Subject	
Integration of Federal Indian Law into State Judicial Branch Programs and Resources	

On behalf of the California Tribal Court–State Court Forum (forum), we write to request that you consider integrating federal Indian law into educational programs and resources conducted and developed by the Center for Judiciary Education and Research (CJER).

As discussed in greater depth in the attached jurisdictional resource for California judicial officers, federal Indian law is complex and may arise before California state court judicial officers sitting in all assignments including civil, small claims, criminal, family, juvenile, mental health, probate, and traffic.

For several years now, the members of the forum have worked to identify issues of mutual concern and potential solutions to those problems in a variety of areas. A number of significant accomplishments have resulted including recently passed Judicial Council (council) sponsored

legislation to deal specifically with the recognition and enforcement of tribal court money judgments, which was a joint effort between the forum and the Civil and Small Claims Advisory Committee.¹ There were also several joint efforts between the forum and the Family and Juvenile Law Advisory Committee resulting in changes to rules and forms and council sponsored legislation. A subcommittee of the forum worked with a subcommittee of the Probate and Mental Health Advisory Committee for joint submissions to the California Law Revision Commission on the adoption of the Uniform Adult Guardianship and Protection Proceedings Jurisdiction Act.

In all of the forum's work with other council advisory committees, the common thread is surprise at the extent and variety of issues and subject areas in which questions of federal Indian law can arise and hunger for more information, resources and education on these issues.

By way of example, in civil cases (including small claims), if the parties include a tribe, an arm of the tribe or in some instances tribal individuals, or if the subject of the action took place on tribal land or involves trust assets, the court's jurisdiction may be affected.

In criminal assignments, the court may have to interpret PL-280 to determine whether a particular act is subject to state court jurisdiction or must be handled by a tribal court. Issues involving tribal sovereign immunity may arise or the court might encounter issues involving the service or execution of search warrants or subpoenas on tribal lands.

In family proceedings, in addition to the need to consider the applicability of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) in cases involving tribal individuals, events on tribal lands, or tribal trust assets, the court may need to consider whether there are any ongoing tribal court proceedings, and if so, the effect of the Uniform Child Custody Jurisdiction and Enforcement Act and the Uniform Interstate Family Support Act.

In juvenile assignments, judges must be well-versed in the effect and requirements of ICWA.

In probate cases, the court must be aware of ICWA in guardianship proceedings and also may need to consider the status of tribal trust assets in other types of cases.

In traffic assignments, the court must consider the status of lands where an issue arises and whether the particular issue under the Motor Vehicle Code could be considered criminal prohibitory or civil regulatory and the effect of that classification on jurisdiction.

¹ See http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0401-0450/sb_406_bill_20140106_amended_sen_v98.pdf

Hon. Ronald B. Robie
Ms. Diane E. Cowdrey
November 18, 2014
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Further, there are now more than 300 tribal courts operating across the country and more than 20 located in California. Tribal police forces and other justice agencies are expanding. As a result, in all judicial assignments, there is a need to understand the potential for concurrent tribal court jurisdiction and the involvement of tribal justice agencies. As more tribal courts and tribal justice systems are established, it will become increasingly important for judicial officers to be aware of how issues of federal Indian law may arise in their courts and how to interact with tribal courts and justice systems in a principled, coherent, consistent, and respectful manner. To this end, it will be important for all judicial officers to receive more training on federal Indian law.

Currently, with the exception of juvenile and family law where there is discussion of ICWA, federal Indian law is not incorporated into most CJER education and resources. The forum would like to partner with the CJER governing board to work on incorporating federal Indian law comprehensively into CJER products.



JUDICIAL COUNCIL OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION
CENTER FOR FAMILIES, CHILDREN & THE COURTS

JURISDICTIONAL ISSUES IN CASES INVOLVING FEDERAL INDIAN LAW: A GUIDE FOR CALIFORNIA COURTS

Introduction

When dealing with tribes, tribal members, events that occur in Indian country or anything to do with tribal property or uniquely Indian interests, courts should be aware that federal Indian law may affect their personal, subject matter and in rem jurisdiction.

What follows is a very brief overview of some basic principles of federal Indian law, which may assist judicial officers recognize when cases before them implicate federal Indian law issues. Because of the complexity of federal Indian law, courts should ask counsel for briefing when these issues arise.

Overview of California Indians and Tribal Justice

California Indian Tribes and Territory

California currently has approximately 110 federally recognized tribes,¹ with nearly 100 separate reservations or rancherias.² In addition, there are currently 81 groups petitioning for federal recognition.³ In the 2010 census roughly 725,000 California citizens identified as American Indian or Alaska Native either alone or in combination with other ethnicities.⁴ This represents roughly 14% of the entire American Indian/Alaska Native population of the United States. More information about California's American Indian/ Alaska Native population can be found at <http://www.courts.ca.gov/3066.htm>. See http://www.waterplan.water.ca.gov/tribal2/docs/GW_Basins_and_Tribal_Trust_Lands_map.pdf for map of California Indian country.

¹ See www.bia.gov/cs/groups/public/documents/text/idc006989.pdf

² Some tribes remain "landless", meaning they have no land in trust for their members, while other tribes may have more than one reservation or rancheria.

³ As of November 12, 2013. See www.bia.gov/cs/groups/xofa/documents/text/idc1-024418.pdf

⁴ See www.census.gov/prod/cen2010/briefs/c2010br-10.pdf

Indian Law: General Principles Relating to Jurisdiction

Overview

General Rules (these rules apply in California unless modified by Public Law 280)

Tribes are sovereign and have exclusive inherent jurisdiction over their territory and members (even outside territory), but not necessarily jurisdiction over non-Indians even within tribal territory.

Tribes are under the exclusive and plenary jurisdiction of the federal congress, which may restrict or abolish jurisdiction and sovereignty. The federal government has exercised this power a number of times to limit tribal jurisdiction, assume federal jurisdiction over a number of areas, and delegate that jurisdiction to some states. Congress has granted limited jurisdictional authority to the federal courts (under the General Crimes Act, 18 USC § 1153, and the Major Crimes Act, 18 USC § 1152) and to state courts (for example under Public Law 280).⁵ Congress has imposed limits on tribal courts through the Indian Civil Rights Act (ICRA) (25 USC § 1301-1303).

As a general rule state laws do not apply to Indian country or govern the activities of Indians in Indian country.

Public Law 280 (Pub.L. 83–280, August 15, 1953, now codified at 18 U.S.C. § 1162, 28 U.S.C. § 1360, and 25 U.S.C. §§ 1321–1326)

The general jurisdictional scheme was altered in California by Public Law 280 enacted by Congress in 1953. Public Law 280 transferred federal criminal jurisdiction and conferred some civil jurisdiction on states and state courts in the six mandatory Public Law 280 states, including California. Public Law 280 is now codified in federal law as 28 U.S.C. § 1360 regarding civil jurisdiction and 18 U.S.C. § 1162 regarding criminal jurisdiction.⁶

The U.S. Supreme Court in *California v. Cabazon Band of Mission Indians* (1987) 480 U.S. 202 described Public Law 280's effect on California's civil and criminal jurisdiction in Indian country⁷:

In Pub L. 280, Congress expressly granted six States, including California, jurisdiction over specified areas of Indian country within the States and provided for the assumption of jurisdiction by other States. In § 2 [18 U.S.C. § 1162], California was granted broad criminal jurisdiction over offenses committed by or against Indians within all Indian country within the State. Section 4's [28 U.S.C. § 1360] grant of civil jurisdiction was more limited. In *Bryan v. Itasca County*,

⁵ Public Law 83–280, August 15, 1953

⁶ See attached statutes.

⁷ For more information about Indian country, see section below on *Indian Country*.

426 U.S. 373 (1976), we interpreted § 4 to grant States jurisdiction over private civil litigation involving reservation Indians in state court, **but not to grant general civil regulatory authority**. *Id.*, at 385, 388-390. Accordingly, when a State seeks to enforce a law within an Indian reservation under the authority of Pub. L. 280 it must be determined whether the law is criminal in nature, and thus fully applicable to the reservation under § 2, or civil in nature, and applicable only as it may be relevant to private civil litigation in state court. (480 U.S. at pp. 207-208; emphasis added)

The “criminal/prohibitory” versus “civil/regulatory” distinction was set out by the Court in *Cabazon* as follows:

[I]f the intent of a state law is generally to prohibit certain conduct, it falls within Pub. L. 280’s grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Publ. L. 280 does not authorize its enforcement on an Indian reservation. (480 U.S. at p. 209)

In terms of civil jurisdiction, therefore, the effect of Public Law 280 was to grant Indians access to state court forums to resolve disputes. It did not give the state jurisdiction to impose civil regulatory laws on the tribes or tribal territory. The fact there are misdemeanor criminal penalties for violations of a law is not sufficient, in and of itself, to convert a law from civil/regulatory to criminal/prohibitory under Public Law 280. Further, Public Law 280 applies only to state laws of general application; local ordinances do not apply.

Status of Tribes

Due to the unique history of federal-tribal and state-tribal relations, not all Indian tribes enjoy the same legal status. In general, only “federally-recognized” Indian tribes (those tribes that still enjoy a government-to-government relationship with the U.S. Government) trigger unique jurisdictional considerations for state courts. Federal recognition is required for the tribe to be considered a “sovereign” entity under federal Indian law. The federal government periodically issues a list of “Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs,” which can be found on the Bureau of Indian Affairs (BIA) website.⁸

Tribes that are not federally-recognized are often referred to as “non-recognized” or “unrecognized” tribes. Some of these non-recognized tribes enjoy state recognition and are referred to as “state-recognized” tribes. Some state laws expressly confer certain rights or opportunities on non-recognized tribes and state-recognized tribes, but these do not affect the

⁸ www.bia.gov/cs/groups/public/documents/text/idc006989.pdf

court's jurisdiction.⁹ Many unrecognized tribes are now petitioning or otherwise seeking federal recognition. If that recognition is granted, it will affect the court's jurisdiction. Further references to "tribe" herein mean a federally-recognized tribe.

Tribal Sovereignty

Federally recognized tribes possess the inherent powers of a sovereign government, except as limited by the federal government through treaties, statutes, and common law. This includes the right to determine their own membership, govern themselves, their citizens and their territory, establish laws and establish their own tribal justice systems including tribal police and tribal courts. Further, tribes also enjoy sovereign immunity and cannot be sued in federal or state court unless Congress has authorized the suit or the tribe has waived its immunity.¹⁰

Indian Status

Individuals who are before the court and members of a tribe or eligible for membership in a tribe can trigger unique jurisdictional considerations for state courts. A tribe's jurisdiction over such individuals is determined by tribal law.

Eligibility for tribal membership is determined exclusively by tribal law. In contrast, who is considered "Indian" for purposes of federal or state law can vary depending on the applicable statute and cases interpreting it. Someone who is recognized as a tribal member by his or her tribe may not be recognized as "Indian" under applicable federal or state law. By the same token, someone who is an "Indian" within the meaning of federal or state law may not be eligible for tribal membership under tribal law.

State courts must also be aware that in some situations non-member Indians and non-Indians may also be subject to a tribe's jurisdiction. The scope of a tribe's jurisdiction over non-member Indians and non-Indians is a complex and fact-dependent question determined by federal common law. Before ruling, judicial officers are strongly encouraged to request briefing from the parties on these issues when they arise.

Indian Country

The phrase "Indian country" has a specific definition for purposes of federal criminal law, which has been held to apply in the civil context as well.¹¹

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country," as used in this chapter, means (a) all land within the limits of

⁹ For example, Welf. & Inst. Code § 306.6 and Fam. Code § 185 authorize the state court to allow non-recognized tribes to participate in Indian child custody proceedings involving their descendants.

¹⁰ See, e.g., *Kiowa Tribe v. Mfg. Techs., Inc.* (1998) 532 U.S. 751, 754.

¹¹ 18 U.S.C. § 1151; *California v. Cabazon Band of Mission Indians* (1987) 480 U.S. 202, 208 n.5.

any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

However, the definition can vary for purposes of some federal and state statutes.

Indian country is comprised of lands within the recognized territorial jurisdiction of a tribe. As a general rule, tribes retain jurisdiction over persons, property, and occurrences in Indian country, and states have no jurisdiction in Indian country. However, Congress has constitutional authority to assert federal jurisdiction in Indian country and to delegate its jurisdiction to states.

Property Status

Although Public Law 280 gave California courts adjudicative jurisdiction over civil causes of action arising in Indian country that jurisdiction is limited. California courts do not have jurisdiction to make orders authorizing the alienation, encumbrance, or taxation of any real or personal property belonging to an Indian or tribe that is held in trust by the federal government (called “trust property”) or is subject to a restriction against alienation imposed by the federal government (called “restricted property”).¹²

When state courts are asked to make orders relating to the real or personal property of an Indian or a tribe, they must therefore consider whether the property is trust property or restricted property. Examples of such property include land owned by the United States that has been set aside for the exclusive use and benefit of a tribe (“tribal trust land”), allotments of land owned by the United States and held in trust for an individual Indian, and Individual Indian Money (IIM) accounts managed by the federal government.

Adjudicative Versus Legislative Jurisdiction

When faced with a case involving a tribe, an Indian individual or circumstances arising in, a state court must consider whether it has *adjudicative jurisdiction*, meaning the authority of courts to entertain a suit, decide a case and impose an order. However, even when it has adjudicative jurisdiction, the court must also consider what law governs the suit. This involves an analysis of whether the federal, tribal or state law at issue applies to the parties, transaction or occurrence in

¹² 28 U.S.C. § 1360(b).

question. In other words, does the federal, tribal or state government have *legislative jurisdiction*?¹³

In some cases, a state court may have adjudicative jurisdiction but the forum lacks legislative jurisdiction. In rare cases, the state court may have legislative jurisdiction without having adjudicative jurisdiction. When these questions arise in a case involving questions of Indian law, state courts are strongly encouraged to request briefing from the parties before ruling.

Requirement to Apply Tribal Law

In addition to considering whether which state laws apply to the settlement of disputes arising in Indian country, the court may have to consider the applicability of tribal law. The section of Public Law 280 that extends state court civil adjudicative jurisdiction to disputes involving and between Indians arising in Indian Country mandates that:

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

Issues Around Personal, Subject Matter and in rem Jurisdiction

Personal Jurisdiction

Indian or Tribal Petitioner/Plaintiff

In general, a state court has jurisdiction to entertain suits brought by Indians or tribes against an Indian or non-Indian respondent/defendant for claims arising in or outside of Indian country. In rare circumstances, however, state adjudicative jurisdiction over non-Indian defendants for causes arising in Indian country may be pre-empted by federal law.¹⁴

Indian or Tribal Respondent/Defendant

The state court may not exercise jurisdiction over a respondent or defendant tribe unless the tribe has waived its sovereign immunity or Congress has authorized the suit. This is true even for cases involving off-reservation activity.¹⁵ Tribal sovereign immunity can extend to tribal enterprises that are “arms of the tribe” and to representatives of the tribe acting in their official capacity. The court should ask for briefing on the issue if a question arises to whether tribal

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sovereign immunity extends to a given enterprise or individual representative of the tribe or to a specific activity.

State courts have jurisdiction over suits against Indians arising outside Indian country.¹⁶

In cases where the cause of action arises in Indian country, a state court may lack personal jurisdiction over an Indian respondent or defendant who resides in Indian country if the individual lacks sufficient contacts outside of Indian country in California and does not voluntarily submit to the state court's jurisdiction. In general, though, most Indians residing within the state of California will have sufficient contacts with the state on which to base personal jurisdiction.

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Non-discriminatory state laws apply to tribes and their members when outside Indian country unless federal law provides otherwise.¹⁷ As a result of Public Law 280, state courts also have adjudicatory jurisdiction over causes of action arising in Indian country.¹⁸ However, Public Law 280 also limits the state's adjudicative jurisdiction in significant ways. For example, state courts do not have jurisdiction to enforce state civil/regulatory laws.¹⁹ State courts also cannot enforce local County laws in Indian country.²⁰

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- ❑ Uniform Child Custody Jurisdiction and Enforcement Act (Family Code §3404)
- ❑ Tribal Court Civil Money Judgment Act (Code of Civil Procedure §§ 1730 – 1742)³²
- ❑ Interstate and International Depositions and Discovery Act (Code of Civil Procedure §§ 2029.100-2029.900 defines “State” to include tribe)
- ❑ Interstate Jurisdiction, Transfer, and Recognition: California Conservatorship Jurisdiction Act (Probate Code §§ 1980 – 2033 with specific provisions regarding tribes at §§ 2031-2033)³³

Where there is no specific statutory mandate for full faith and credit, the general rule is that tribal court orders are entitled to comity.³⁴ Accordingly, judgments from tribal courts not governed by any of the specific statutes above should be recognized and enforced unless there are grounds not to recognize and enforce the specific judgment.³⁵

In all instances where a tribal court might be exercising concurrent jurisdiction, the state court should try to determine whether there is a pending tribal court action and, if so, seek briefing from the parties on whether it is appropriate for the state court to proceed in light of the pending tribal court proceedings. Courts should endeavor to avoid duplicative and inconsistent judgments from different courts.

³² Effective January 1, 2015.

³³ Effective January 1, 2016.

³⁴ *Wilson v. Marchington*, (1997) 127 F.3d 805 (9th Cir.)

³⁵ According to the *Marchington* court, the mandatory grounds not to recognize and enforce a judgment are: (1) the tribal court did not have both personal and subject matter jurisdiction; (2) the defendant was not afforded due process of law. Discretionary grounds not to recognize and enforce are: (1) the judgment was obtained by fraud; (2) the judgment conflicts with another final judgment that is entitled to recognition; (3) the judgment is inconsistent with the parties' contractual choice of forum; or (4) recognition of the judgment, or the cause of action upon which it is based, is against the public policy of the United States or the forum state in which recognition of the judgment is sought.

What if I do not see the type of local educational or technical assistance my court needs?

- ◆ Any assistance focusing on tribal-state-county collaboration—At the request of judges, Tribal/State Programs Unit staff will tailor an educational event to meet local educational needs or provide technical assistance in response to locally identified and targeted needs.

How to learn about local tribal courts and state courts?

To learn if there's a tribal court in your county, please visit the California Tribal Courts Directory (www.courts.ca.gov/14400.htm) or the tribal jurisdictions map (<http://g.co/maps/cvdq8>).

To learn about the local state court in your county, please visit Find My Court www.courts.ca.gov/find-my-court.htm.

What steps can judges take to improve safety for Native victims?

- ◆ Directly communicate with each other and identify issues of mutual concern.
- ◆ Invite each other to observe court proceedings.
- ◆ Invite each other to participate in justice system meetings or work with each other's justice partners.
- ◆ Learn about each other's courts and procedures.
- ◆ Jointly conduct local or regional trainings.
- ◆ Understand the unique historical trauma responses of Native Americans.

FOR MORE INFORMATION

The Tribal/State Programs Unit of the Judicial Council's Center for Families, Children & the Courts assists the state judicial branch with the development of policies, positions, and programs to promote the highest quality of justice and service for California's Native American communities in all case types. The unit also implements tribal-state programs that improve the administration of justice in all proceedings in which the authority to exercise jurisdiction by the state judicial branch and the tribal justice systems overlaps. To learn more about the Tribal/State Programs Unit or for assistance, call Jennifer Walter at 415-865-7687 or visit www.courts.ca.gov/programs-tribal.htm.

This project is supported with funds from the Office on Violence Against Women, U.S. Department of Justice that are administered through the Governor's Office of Emergency Services (Cal OES).

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Judicial Council of California
Center for Families, Children & the Courts
455 Golden Gate Avenue
San Francisco, California 94102-3688
415-865-4200
www.courts.ca.gov

S.T.E.P.S. TO JUSTICE— DOMESTIC VIOLENCE

State/Tribal Education,
Partnerships, and
Services—Information for
Tribal Court and
State Court Judges

November 2014



JUDICIAL COUNCIL
OF CALIFORNIA
OPERATIONS AND PROGRAMS DIVISION
CENTER FOR FAMILIES, CHILDREN & THE COURTS

This project sets aside funds to provide local educational and technical assistance to tribal and state courts on issues relating to domestic violence.

What is the extent of the problem of domestic violence?

Domestic violence is a particularly troubling issue in Native American communities.

- ◆ 39% of American Indian women report some form of intimate partner violence in their lifetimes, higher than the rate reported by any other race or ethnic group.
- ◆ American Indian victims of intimate and family violence are more likely than victims of other racial groups to be seriously injured and require hospital care.
- ◆ Among American Indian victims of violence, 75% of intimate victimizations and 25% of family victimizations involve an offender of a different race.

For detailed statistics and citations, www.courts.ca.gov/documents/Tribal-NAmericanStatsAbstract.pdf.

What type of local educational assistance is offered?

- ◆ **Faculty**—Identify faculty or pay for travel or other faculty costs.
- ◆ **Facilitator**—Obtain a facilitator for a training or meeting, which brings together tribal and non-tribal representatives.
- ◆ **Educational Materials**—Gather, copy, or develop educational materials.
- ◆ **Educational Curriculum**—Use or tailor our curriculum (i.e., P.L. 280, tribal advocates, Comings and Goings etc.).
- ◆ **Train-the-Trainers**—Train local experts.
- ◆ **Educational Training or Workshop**—Develop a program—brown bag, workshop, or full-day training.

- ◆ **Judge-to-Judge or Court-to-Court**—Structured opportunities for connecting tribal and state court judges or court administrators so that they can learn from each other (e.g., court observations, participation in justice system meetings, sharing information on court operations and procedures).
- ◆ **Cross-Court Educational Exchange**—Convene an educational exchange to learn about each other's courts, share resources, identify local court concerns, and implement local and statewide solutions.
- ◆ **Coordinated Court-Community Responses**—Assistance with tribal/state/county engagement (e.g., help with engaging participation at a domestic violence coordinating council, task force, or other system meeting).

What type of technical assistance is available to support tribal capacity-building?

- ◆ **Judicial Council Forms**—Accessing state judicial branch forms so that they may be used as a basis for creating tribal court forms.
- ◆ **California Courts Protective Order Registry**—Accessing this registry and receiving training on how to use it. 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. Learn more at www.courts.ca.gov/15574.htm.

- ◆ **Registering Tribal Protective Orders**—Assistance developing a local protocol or rule to implement California Rules of Court, rule 5.386, which requires state courts, at the request of a tribal court, to adopt a written procedure or local rule permitting the fax or electronic filing of any tribal court protective order that is entitled to be registered under Family Code section 6404. Learn more about the new rule at www.courts.ca.gov/documents/SPR11-53.pdf.
- ◆ **Online Resources**
 - Court Extranet:** This website contains information relevant to all levels of judicial branch personnel and includes resources designed to meet education, facilities, financial, human resources, legal, special court projects, technology, and other informational needs. It also offers both current news and archived resources.
 - CJER Online:** This website contains educational and other resources for state court judges and tribal court judges. It offers a calendar listing judicial institutes.
 - Dependency Online Guide:** This website contains dependency-related case law, legal materials, articles, and other resources.
- ◆ **Attendance at Judicial Institutes**—All state judicial branch educational programs are open to tribal court judges and offer continuing legal educational credit. There may be limited funding for scholarships to pay for travel expenses.
- ◆ **Security**—Consultation on court security.
- ◆ **Human Resources**—Consultation on court human resource questions.
- ◆ **Letters of Support for Domestic Violence Grant Applications.**

Attorney General Holder
Announces ICWA Initiative

ITEM 2:
Report on the Los
Angeles County ICWA
Roundtable and
Trainings

**THE INDIAN CHILD WELFARE ACT
TRAINING**
LOS ANGELES COUNTY



JUDICIAL COUNCIL
OF CALIFORNIA
TRIBAL COURT-STATE COURT FORUM

**December 5, 2014
1:30–4:30pm**

Edmund D. Edelman Children’s Court
Cafeteria, Lower Level
201 Centre Plaza Drive
Monterey Park, CA 91754

Agenda

FRIDAY, DECEMBER 5

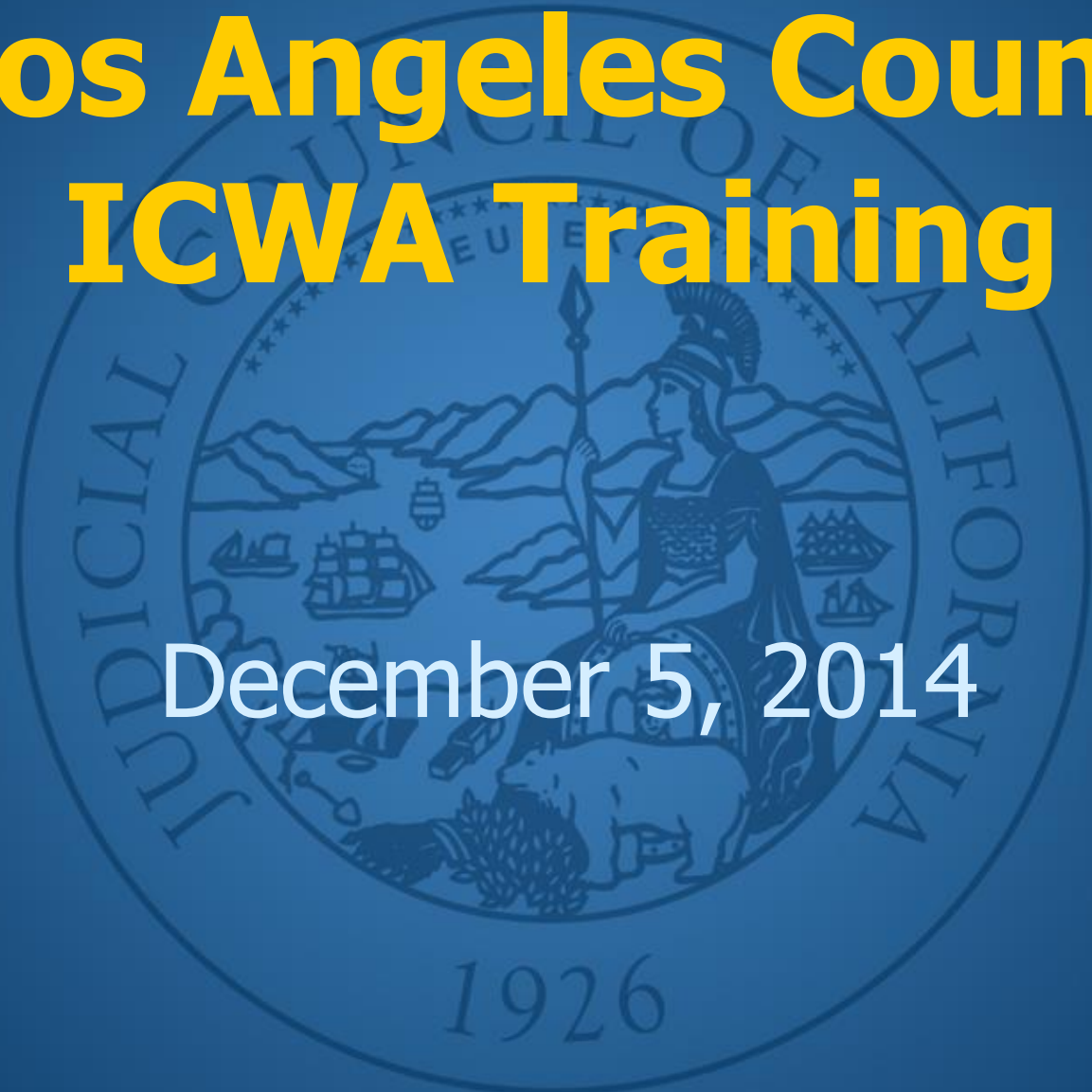
- 1:30–1:45 p.m. **Welcome, Blessing & Introductions**
- *Hon. Michael Nash*
 - *Hon. Amy Pellman*
 - *Ms. Julia Bogany*
- 1:45–2:00 p.m. **What Do We Want To Get Out Of Today?**
- *Ms. Margaret Orrantia*
 - *Mr. Tom Lidot*
- 2:00–2:15 p.m. **Discussion of Current ICWA Challenges**
- *Ms. Julia Bogany*
 - *Ms. Karen Millett*
 - *Hon. Amy Pellman*
- 2:15–2:30 p.m. **Historical & Cultural Perspective on ICWA**
- *Hon. William Thorne*
 - *Hon. Joanne Willis-Newton*
- 2:30–3:00 p.m. **Brief History of ICWA**
- *Ms. Vida Castaneda*
 - *Ms. Ann Gilmour*
- 3:00–3:15 p.m. **Break**
- 3:15–4:00 p.m. **Key Components of ICWA**
- *Hon. William Thorne*
 - *Hon. Joanne Willis-Newton*
 - *Ms. Ann Gilmour*
- 4:00–4:15 p.m. **ICWA Practice In L.A.**
- *Hon. Joanne Willis-Newton*
 - *Hon. Amy Pellman*
- 4:15–4:25 p.m. **Questions & Answers**
- 4:25–4:30 p.m. **Closing**

*Qualifies for 2.5 Hours of Continuing Education Units
(MCLE for Judicial Officers and Court Staff)*

“Let us put our minds together and see what life we can make for our children”
Sitting Bull, 1877

Los Angeles County ICWA Training

December 5, 2014



Learning Objectives

- Participants will recognize the historical, philosophical, and legal basis for the ICWA
- Participants will understand the role of the judge in ensuring positive outcomes for Indian children, their families and tribes
- Participants will be able to apply the provisions of ICWA
 - Inquiry and Investigation of Native Ancestry
 - Noticing of Tribes
 - Active Efforts
 - Use of Expert Witnesses
 - Adoption and Foster Care Placement Requirements

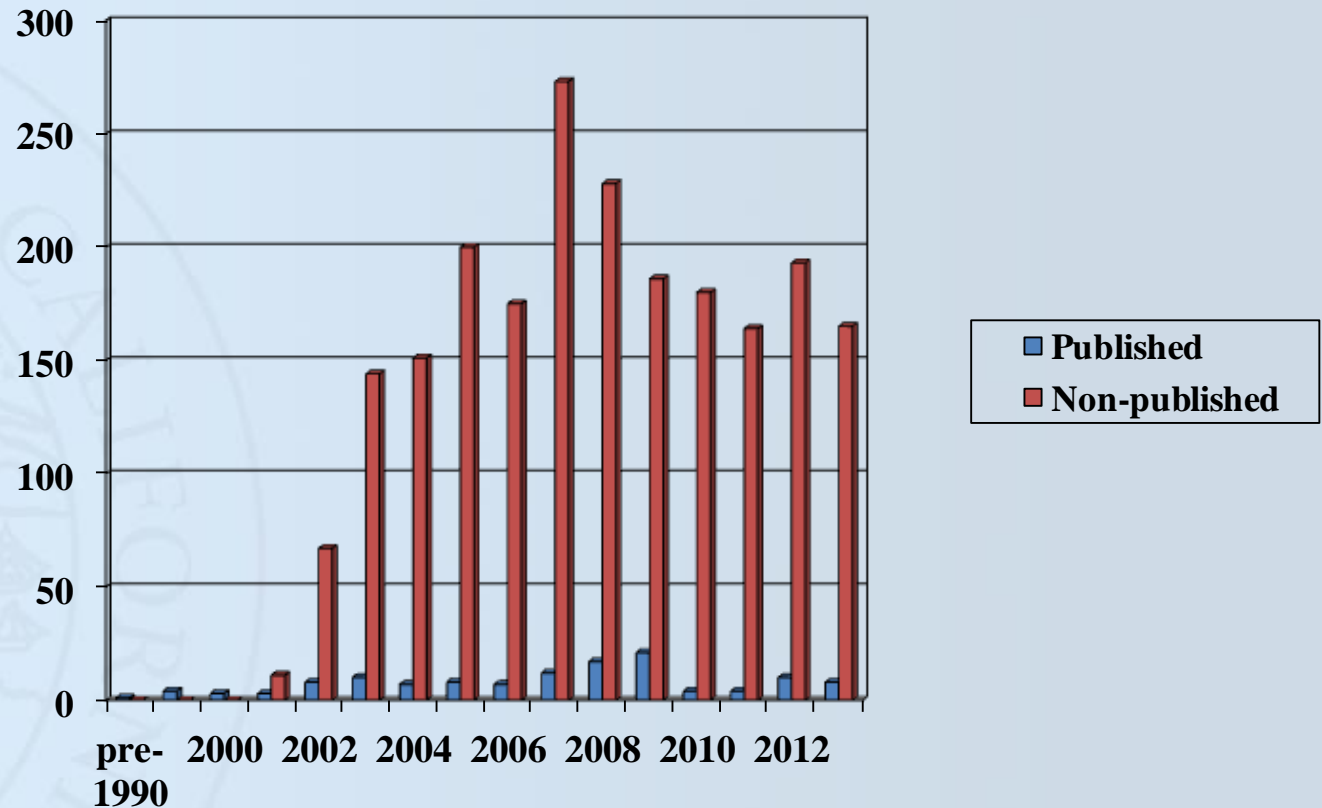


Learning Objectives (cont'd)

- Participants will value how critical it is to identify Indian children during the initial stages of child welfare proceedings and the ongoing duty to inquire throughout the case.
- Participants will value engaging and working with tribes as resources for decision-making throughout the case.
- Participants will value Indian children's connection to their extended family, tribe and community, including membership in their tribe.
- Participants will understand their role in promoting equity and fairness by ensuring ICWA is followed.



CA Court of Appeal Cases re. ICWA up to 11/18/14

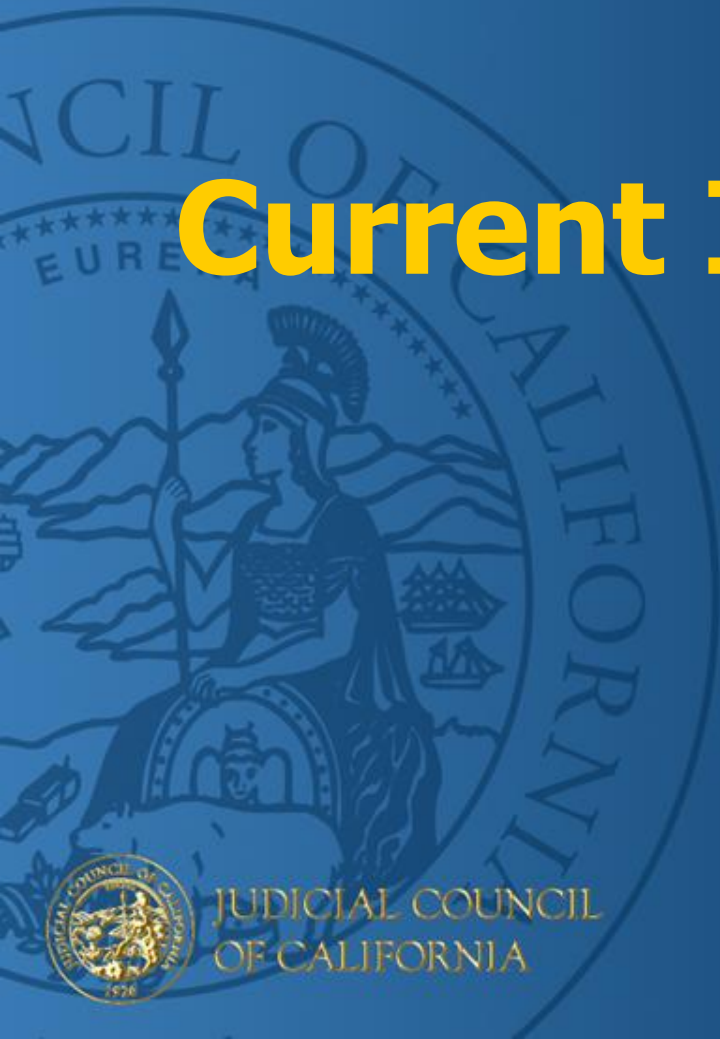


What Do We Want To Get Out Of Today?



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Current ICWA Challenges



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Historical & Cultural Perspective on ICWA



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Federal Indian Policy Eras

- Doctrine of Discovery – 1492-1600s
- Treaty Period – 1600s – 1871
- Indian Removal – 1830-1850
- Reservation – 1850-1880s
- Assimilation & Allotment – 1887-1930s
- Indian Reorganization – 1930s – 1945
- Termination & Relocation – 1930s – 1945
- Self-determination – 1970s - present



California Specific History

- Missions
- Gold Rush
- Unsigned treaties
- Boarding Schools
- Termination Era
- Relocation to Urban Areas
- Judgment Rolls



California's First Governor 1849-1851

- Governor Peter H. Burnett declared:

“That a war of extermination will continue to be waged between the races, until the Indian race becomes extinct, must be expected.”



California Courts

- Authorized “indenture” of Indians long after slavery was outlawed;
- Condoned kidnapping & sale of Indian children;



Consequences for LA County

- No federally recognized tribes;
- More AN/AI than any other county in the Country;
- Many AN/AI from out-of-state tribes as a result of relocation;
- Many unrecognized tribal members.



Federal Policies & Child Welfare

- Boarding school era
- Adoption era



The Boarding School Era



PHOTOGRAPH BY U.S. ARMY SIGNAL CORPS,
COURTESY OF THE ARIZONA HISTORICAL FOUNDATION

OF CALIFORNIA



The Boarding School Era



PHOTOGRAPH BY U.S. ARMY SIGNAL CORPUS,
COURTESY OF THE ARIZONA HISTORICAL FOUNDATION

OF CALIFORNIA



The Boarding School Era

- Lasting impacts
 - Many children died of disease, abuse, broken hearts
 - Broken intergenerational teaching in Indian communities
 - Generations learned to parent from boarding school staff who were abusive



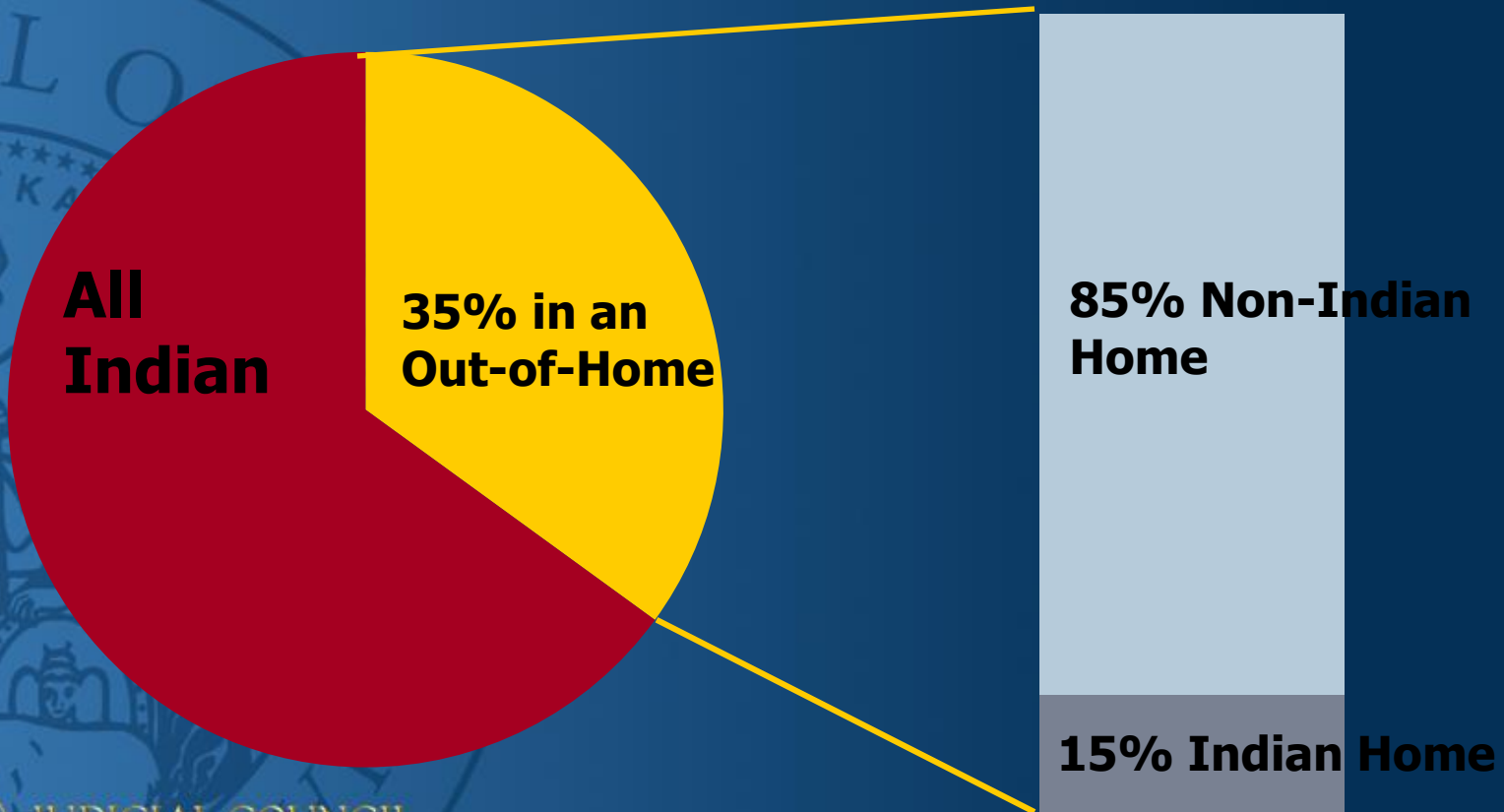
The Adoption Era

- From 1958-1967; legacy lasted much longer
- Goal was to provide adoptive parents for Native American children whose parents were deemed unable to provide a suitable home
- States were paid by the BIA to remove Native American children from their homes alleging neglect
- Close to 400 children were removed and placed in white adoptive homes



The Adoption Era - Statistics

Indian Children and Out of Home Placement – Final Report to the American Indian Policy Review Commission (1976)



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The Adoption Era

In 2001 the Child Welfare League of America (CWLA) formally apologized for the practices during the adoption era.

*The people who make up CWLA today did not commit these wrongs, but we acknowledge that our organization did. They are a matter of record. We acknowledge this inheritance, **this legacy of racism and arrogance**. And we acknowledge that this legacy makes your work more difficult, every day. As we accept this legacy, we also accept **the moral responsibility to move forward in an aggressive, proactive, and positive manner**, as we pledge ourselves to see that nothing like what has happened ever happens again. And we can ask- I do ask and hope- for a chance to earn your respect and to work with you as partners, on the **basis of truth, on the ground of our common commitment to the well-being of children and young people and the integrity of families and cultures**.*

- Shay Bilchik, CWLA Director



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FINDINGS

1. The removal of Indian children from their natural homes and tribal setting has been and continues to be a national crisis.

2. Removal of Indian children from their cultural setting seriously impacts a long-term tribal survival and has damaging social and psychological impact on many individual Indian children.

3. Non-Indian public and private agencies, with some exceptions, show almost no sensitivity to Indian culture and society.

4. Recent litigation in attempting to cure the problem of the removal of Indian children, although valuable, cannot affect a total solution.

5. The current systems of data collection concerning the removal and placement of Indian children are woefully inadequate and "hide" the full dimension of the problems.

6. The U.S. Government, pursuant to its trust responsibility to Indian tribes, has failed to protect the most valuable resource of any tribe—its children.

7. The policy of the United States should be to do all within its power to insure that Indian children remain in Indian homes.

RECOMMENDATIONS

1. Congress should, by comprehensive legislation, directly address the problems of Indian child placement. The legislation should adhere to the following principles:

a. The issue of custody of an Indian child domiciled on a reservation shall be subject to the exclusive jurisdiction of the tribal court where such exists.

b. Where an Indian child is not domiciled on a reservation and subject to the jurisdiction of non-Indian authorities, the tribe of origin of the child shall be given reasonable notice before any action affecting his/her custody is taken.

Brief History of ICWA



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Historical Context for Legislative Action

- Starting in 1957, the Federal “Indian Adoption Project” placed for adoption 395 Native American/Alaskan Native children by non-Native families
- States followed the Project’s example
- Evidence mounted that placements were not positive for Indian children
- The U. S. Congress established a Committee which held hearings over several years and issued its report in 1977

Courts Before ICWA

- Cultural biases regarding child rearing practices were used as justification for removal
- “General neglect” and “social deprivation” were the reasons cited for removal in 99% of cases in South Dakota
- Testimony from anyone besides the state’s case worker was rare
- Parents were coerced into voluntary agreements or relinquishments
- Attorneys were not provided for parents or children
- The burden was on the Indian family to prove they could provide for their children



Congressional Findings

Nationally:

- Indian children 3 times more likely than non-Indian to be placed for foster care or adoption
- About 25%-35% of Indian children had been removed from homes and placed in foster homes, adoptive homes, or institutions (boarding schools)



Congressional Findings

In California:

- 8 times as many Indian as non-Indian children were in adoptive homes
- 90% of these Indian children were in non-Indian homes



Purpose of ICWA

ICWA is designed to remedy cultural mistakes that have resulted in Native American children being placed in out-of-home care by:

- Requiring a higher evidentiary standards for removal and termination of parental rights
- Requirements that caseworkers look beyond the surface and avoid cultural biases
- Involving extended families and tribes in cases
- Judicial understanding of Native American values and tribal sovereignty



Indian Child Welfare Act

ICWA recognized:

"that there is no resource ... more vital to the continued existence and integrity of Indian tribes than their children" and that there has been a failure by non-Indian agencies "to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families"



Indian Child Welfare Act

In passing ICWA Congress stated:

"It is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operations of child and family service programs"

(25 U.S.C. 1902)



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United States Code Annotated
Title 25. Indians
Chapter 21 - Indian Child Welfare

§ 1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds--

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

§ 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

Indian Child Welfare Act

- **In ICWA, Congress recognized cultural bias in the state court and social work systems, which affected Indian children and their families, and which placed the viability of tribes as political and cultural communities at risk**

1978 P.L. 95-608



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Key Components of ICWA



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SB 678 – Cal-ICWA

- **Legislative findings/CA public policy:**
 - State has an interest in protecting Indian children's interest in tribal relations;
 - Protect and encourage relationship between Indian child & tribe regardless of parents actions;

(WIC § 224)



ICWA Application Generally

- Applies to “child custody proceedings” involving “Indian children” (25 U.S.C. § 1903; WIC, § 224.1(a); Cal. Rules of Court, rule 5.664(a)(1))
- “child custody proceedings” – proceedings that could lead to foster care placement, TPR or adoption. (25 U.S.C. § 1903(1); WIC, § 224.1(d); Rule 5.480)
- “Indian child” – under 18*, unmarried, member of tribe or eligible for membership & biological child of member (25 U.S.C. § 1903(4); WIC § 224.1(a) & (b);
- Tribal determination of membership or eligibility is conclusive (WIC § 224.3(e))

*WIC 224.1(b) extends definition to include non-minor dependents.



Unrecognized Tribes

- California legislation recognizes benefits of applying ICWA principles to all Indian children, even from unrecognized tribes.

(WIC § 306.6)



Initial Procedural Protections

- Inquiry
 - Initial
 - Further
- Notice

(25 U.S.C. § 1912 (a); WIC § 224.3 & 224.2; Rule 5.481)



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Inquiry- Duty

- **Affirmative and Continuing** duty to ask
 - Whether the child has Indian ancestry
 - * Early inquiry may lead you to additional resources



Initial Inquiry- Ask and Document

- Ask child, parents, guardian, Indian custodian & extended family
- When: in all cases where 300 petition is filed
- Document inquiry and file with court:
 - *Juvenile Petition – ICWA inquiry box*
 - *ICWA-010 Indian Child Inquiry Attachment (attach to petition); and*
 - *ICWA-020(s) Parental Notification of Indian Status*

(WIC § 224.3; Rule 5.481)

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Inquiry- Assess if You Have “Reason to Know”

- Person with an interest in the child provides information **suggesting** that the child is Indian
- The residence of the child, parents, or Indian custodian
- Receiving tribal or other Indian-specific services – often more reliable question

(WIC § 224.3 (b); Rule 5.481 (a)(5))



After Initial Inquiry?

- If no information suggesting the child may be an Indian child then there is no “reason to know”. Stop here!
- * **Caveat:** remember duty to inquire is affirmative and continuing, so later information can give you “reason to know”.



Reason to Know

Duty of Further Inquiry

- Specific steps if “reason to know” child is an Indian child.
 - Interview parents, guardian, Indian custodian & extended family;
 - Contact BIA and CDSS; and
 - Contact tribes and other people reasonably expected to have info on heritage.

(WIC § 224.3(c) & Rule 5.481(a)(4))



Practice Tip

Many appeals could be avoided if the social worker had fully documented inquiry efforts, including all information provided by child's parents and relatives.



Notice

- **When?** – you have “reason to know” an Indian child is involved
- **Whose duty?** – agency sends notice but court and attorneys should participate in ensuring it is done right
- **How Long?** – until it is determined that ICWA does not apply under WIC § 224.2



Notice – What?

- Form ICWA-030 *Notice of Child Custody Proceeding for Indian Child*

- Attachments

- Indian custodian's information
- Copy of the child's birth certificate if available
- Copy of the petition
(WIC § 224.2)



Notice – Sent To?

- Parent or legal guardians/Indian custodian
- Indian child's tribe(s)
- BIA
 - BIA Sacramento Area Director
 - Secretary of the Interior, unless waiver in the file
- (Note: the addresses for BIA and Secretary of Interior are already on the form)
- (25 U.S.C. § 1912(a); WIC §224.2)



How – Send to Tribe

- By certified or registered mail return receipt requested.
- To Tribal Chair or agent designated for ICWA service
- List of agents for service of ICWA notice at:

<http://www.bia.gov/cs/groups/public/documents/text/idc012540.pdf>



California Indian Tribal Groups





Bureau of Indian Affairs
Pacific Region Office
 2800 Cottage Way
 Sacramento, CA 95825
 916-978-6000

Projection: Albers Equal Area Conic
 Datum: NAD83
 The boundaries depicted on this map are for display purposes only. This data does not address encroachments or questions of location, boundary, and area which an accurate survey may disclose.
 Data current as of July 2013

BIA - Pacific Region Indian Reservations and Rancherias

Need Help Finding A Tribe?

- CDSS maintains a list at:
<http://www.childsworld.ca.gov/Res/pdf/CDSSTribes.pdf>
- Lists groups' tribes by affiliation and then gives federally recognized name



**FEDERALLY-RECOGNIZED TRIBES
ICWA CONTACTS FOR NOTICING PURPOSES**

If corrections are needed, please contact Diana Orcino at diana.orcino@dss.ca.gov. Please be aware that this CDSS Tribal Government Listing is NOT to be used in lieu of the official BIA List of ICWA Designates for Noticing (Federal Register/Notices), but rather it should be used in conjunction with the BIA list in order to comply with federal regulations while seeking to ensure the most current address is used.

TRIBAL AFFILIATION

TRIBAL GOVERNMENT

ALABAMA-COUSHATTA

ALABAMA-COUSHATTA TRIBES OF TEXAS
SOCIAL SERVICE DIRECTOR
571 STATE PARK ROAD, 56
LIVINGSTON TX 77351
TELEPHONE 936/563-1252

ALABAMA-QUASSARTE (SEE
CREEK)

ALABAMA-QUASSARTE TRIBAL TOWN
ICWA DIRECTOR
P.O. BOX 187
WETUMKA OK 74883
TELEPHONE 405/452-3987

ALGONQUIAN

SHINNECOCK INDIAN NATION
CHAIRPERSON
CHURCH STREET; P.O. BOX 5006
SOUTHAMPTON NY 11969-0557
TELEPHONE 631/204-9297

APACHE

APACHE TRIBE OF OKLAHOMA
ICWA DIRECTOR
P.O. BOX 1220
ANADARKO OK 73005
TELEPHONE 405/247-9857

APACHE (CHIRICAHUA)

FORT SILL APACHE TRIBE OF OKLAHOMA
ICWA DIRECTOR
43187 US HIGHWAY 281
APACHE OK 73006
TELEPHONE 580/588-2298

Email: rdahlstrom@sauk-suiattle.com
 Shoalwater Bay Tribal Council, Katherine
 Horne, ICWA Contact, P.O. Box 130,
 Tokeland, WA 98590; Telephone: (360)
 267-6766, Ext. 3100; Fax: (360) 267-0247
 Shoshone Bannock Tribe, Brandelle
 Whitworth, Tribal Attorney, P.O. Box 306,
 Ft. Hall, ID 83203; Telephone: (208) 478-
 3923; Fax: (208) 237-9736; Email:
bwitworth@sbtribes.com

Confederated Tribes of Siletz Indians,
 Cathern Tufts, Staff Attorney, P.O. Box
 549, Siletz, OR 97380; Telephone: (541)
 444-8211; Fax: (541) 444-2307; Email:
cathernt@ctsi.nsn.us

Skokomish Tribal Council, Laura Munn or
 Ralph Pulsiser, ICWA Contact, N. 80 Tribal
 Center Road, Shelton, WA 98584-9748;
 Telephone: (360) 426-7788; Fax: (360)
 877-2151

Snoqualmie Tribe, Marie Ramirez, MSW,
 ICWA Contact, P.O. Box 280, Carnation,
 WA 98014; Telephone: (425) 333-5425;
 Fax: (425) 333-5428

Spokane Tribe of Indians, Tawhnee Colvin,
 Program Manager/Case Manager, P.O. Box
 540, Wellpinit, WA 99040; Telephone:
 (509) 258-7502; Fax: (509) 258-7029;
 Email: tawhneec@spokanetribe.com

Squaxin Island Tribe, Donald Whitener,
 Tribal Administrator, 10 SE. Squaxin Lane,
 Shelton, WA 98584-9200; Telephone:
 (360) 432-3900; Fax: (360) 426-6577;
 Email: dwhitener@squaxin.us

Stillaguamish Tribe of Indians, Gloria Green,
 ICW Director, P.O. Box 3782 or 17014 59th
 Ave. NE., Arlington, WA 98223;
 Telephone: (360) 435-3985, Ext. 21; Fax:
 (360) 435-2867

Suquamish Indian Tribe of the Port Madison
 Reservation, Dennis Deaton, ICWA
 Contact, P.O. Box 498, Suquamish, WA
 98392; Telephone: (360) 394-8478; Fax:
 (360) 697-6774

Swinomish Indians, Tracy Parker,
 Swinomish Family Services Coordinator,
 17337 Reservation Rd, LaConner, WA
 98257; Telephone: (360) 466-7222; Fax:

Prosecutor, P.O. Box 1119, Toppenish, WA
 98948; Telephone: (509) 865-5121, Ext:
 4558; Fax: (509) 865-7078; Email: lees@yakama.com

8. Pacific Region

Pacific Region Director, BIA, Federal
 Building, 2800 Cottage Way, Sacramento,
 CA 95825; Telephone: (916) 978-6000;
 Fax: (916) 978-6099

A

Agua Caliente Band of Cahuilla Indians,
 Michelle A. Carr, Esq., Attorney, 5401
 Dinah Shore Drive, Palm Springs, CA
 92264; Telephone: (760) 669-6862; Fax:
 (760) 699-6863; Email: mcarr@aguacaliente.net

Alturas Rancheria, Chairman, P.O. Box 340,
 Alturas, CA 96101; Telephone: (530) 233-
 5571; Fax: 223-4165

Auburn Rancheria, Attn: Cheryl Douglas,
 United Auburn Indian Community, 935
 Indian Rancheria Road, Auburn, CA 95603;
 Telephone: (916) 251-1550; Fax: (530)
 887-1028

Augustine Band of Cahuilla Indians, Mary
 Ann Green, Chairperson, P.O. Box 846,
 Coachella, CA 92236; Telephone: (760)
 398-4722

B

Barona Band of Mission Indians, Charity
 White-Voth, Kumeyaay Family Services
 Director, Southern Indian Health Council,
 Inc., 4058 Willow Rd., Alpine, CA 91903;
 Telephone: (619) 445-1188; Fax: (619)
 445-0765

Bear River Band of Rohnerville Rancheria,
 Vevila Hussey, Social Services Director, 27
 Bear River Drive, Loleta, CA 95551;
 Telephone: (707) 773-1900, Ext: 290; Fax:
 (888) 733-1900; Email: vevilahussey.brbr@nsn.gov

Berry Creek Rancheria (See Tyme Maidu
 Tribe) Big Lagoon Rancheria, Chairperson,
 P.O. Box 3060, Trinidad, CA 95570;
 Telephone: (707) 826-2079; Fax: (707)
 826-0495

Big Pine Paiute Tribe, Rita Mendoza, Tribal

Telephone: (707) 932-7665; Fax: (707)
 932-7846; Email: admin@bridgeportindiancolony.com

Buena Vista Rancheria of Me-Wuk Indians,
 Penny Arciniaga, Tribal Member Services,
 1418 20th Street, Suite 200, Sacramento,
 CA 95811; Telephone: (916) 491-0011;
 Fax: (916) 491-0012; Email: penny@buenavistatribe.com

C

Cabazon Band of Mission Indians, Chairman,
 84-245 Indio Springs Drive, Indio, CA
 92201; Telephone: (760) 342-2593; Fax:
 (760) 347-7880

California Valley Miwok Tribe, as of date,
 there is no recognized government for this
 federally recognized tribe. Please contact
 Pacific Regional Director for up to date
 information.

Cahuilla Band of Mission Indians, Executive
 Director, Indian Child & Family Services,
 P.O. Box 2269, Temecula, CA 92590;
 Telephone: (951) 676-8832; Fax: (951)
 676-3950

Campo Band of Mission Indians, Charity
 White-Voth, Kumeyaay, Family Services
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 Telephone: (619) 445-1188; Fax: (619)
 445-0765

Cedarville Rancheria, Melissa Davis,
 Administrative Assistant, 300 West First
 Street, Alturas, CA 96101; Telephone: (530)
 233-3969; Fax: (530) 233-4776; Email:
phyrra@rocketmail.com

Cher-Ae Heights Indian Community of the
 Trinidad Rancheria, Amy Atkins,
 Executive Manager, P.O. Box 630,
 Trinidad, CA 95570; Telephone: (707) 677-
 0211; Fax: (707) 677-3921; Email: aatkins@trinidadrancheria.com

Chicken Ranch Rancheria, Jan Costa, Tribal
 Administrator, P.O. Box 1159, Jamestown,
 CA 95327; Telephone: (209) 984-4806;
 Fax: (209) 984-5606; Email: chixrnch@mlode.com

Cloverdale Rancheria of Pomo Indians,
 Christina Hermsillo, ICWA Advocate, 555
 S. Cloverdale Blvd., Cloverdale, CA 95425;

Notice Caution

ICWA statute and regulations
mandate sending notice to list
of agents for service in Federal
Register



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Notice – How?

- Registered or certified mail, return receipt requested
- Documentation in court file:
 - Copies of all notices;
 - Original certified mail receipts, and return postcards; and
 - Copies of any and all tribal and BIA responses



Notice – How Long?

- For every hearing unless court makes determination that ICWA does not apply (WIC § 224.2(b))
- If notice sent and no determinative response after 60 days, **court may rule** ICWA does not apply (WIC § 224.3(e)(3))



Notice Response: Child Not A Member Not Eligible

- Then you no longer have “reason to know” and you don’t need to continue to notice that tribe
- BUT – if you get more information, must re-notice



Notice Response: No Response

- If no definitive response within 60 days then court **may** find ICWA does not apply (WIC 224.3 (e) (3))
- After finding, no need to notice unless:
 - Subsequently get more information or
 - Tribe responds after 60 days that the child is eligible



Notice & ICWA applicability

- NOTE – applicability of ICWA depends on status of child, not tribal response.
- If you know child is Indian – ICWA applies whether tribe responds or participates
- In “heritage” cases or unrecognized cases, consider best interests of child & family in applying spirit of the law & engaging native services.



Notice Response: Child Eligible For Multiple Tribes

Court may make a determination for purposes of case which tribe is child's tribe (WIC § 224.1 (d))



Notice Response: Need More Information

- Make best efforts to obtain the information requested & respond
- Remember – both tribe's request and your response should be filed with court



Substantive Protections

- Intervention
- Active Efforts
- Evidentiary Burdens
- Qualified Expert Witness
- Placement Preferences
- Adopted Indian Child's Right
- Invalidation of Proceedings



Intervention

- Tribe has the right to intervene at any point in the proceeding
- Mandatory right does not distinguish between voluntary and involuntary proceedings

(25 U.S.C. § 1911 (c); WIC § 224.4; Rule 5.482 (e))



Active Efforts - Duty

To provide active efforts before the child is removed and placed in foster care and before termination of parental rights

(25 U.S.C. § 1912 (d); WIC § 361(d) & 361.7;
Rule 5.484 (a) & (c))



Purposes of Active Efforts

- To prevent the breakup of the Indian family
- Remediate problems so children can safely remain at home or return home
- To locate family and tribal members who can provide continuity for the child
- To recognize the tribe's interest and stake in its children
- To access benefits available through the tribe



What Are Active Efforts?

- Must be culturally appropriate;
- Must make use of available tribal resources of the child's extended family, the tribe, Indian social service agencies; and
- Must be consistent with tribes' social & cultural standards.

(WIC § 361.7(b); Rule 5.484(c))



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Active Efforts – In Practice

- Develop case plan with input from child's tribe and integrate input into plan (Rule 5.785(c))
- Pursue steps to secure child's tribal membership if possible (Rules 5.482(c) & 5.484(c)(2))*
- Document in case plans and court reports (just as you would reasonable efforts) to support the court's active efforts finding
 - Note contacts with tribe
 - Note use of tribal resources and Native services

(*In question per Abigail A.)



Qualified Expert Witness

- Person qualified to address whether continued custody will result in serious emotional or physical damage to child
- Requires knowledge of tribal culture, family & childrearing practices



Qualified Expert Witness: When Required?

- Before a foster care placement can be ordered (i.e. disposition)
- Before parental rights can be terminated (i.e. .26 hearing)
- Before finding good cause to deviate from placement preferences unless tribe agrees
- (25 U.S.C. § 1912(e) & (f); WIC § 224.6)



Qualified Expert Witness cont.

- Person qualified to address whether continued custody will result in serious emotional or physical damage
- Consider evidence concerning the prevailing social and cultural standards of the tribe



Qualified Expert Witness cont.

May include:

- Social worker; sociologist; physician; psychologist; tribal therapist, healer, spiritual leader, historian, or elder (WIC 224.6(a))
- Must be familiar with tribal culture and child-rearing
- Cannot be an employee of agency



Qualified Expert Witness cont.

Most likely persons:

- A member of the tribe
- Expert in the delivery of child and family services to Indians and tribal customs
- A professional with substantial education and expertise in their specialty

(WIC §224.6(c))



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Qualified Expert Witness cont.

- Written declarations instead of live testimony:
 - Only allowed if parties stipulate in writing
 - Court satisfied stipulation was made knowingly, intelligently, and voluntarily

(WIC § 224.6(e); Rule 5.484(a)(2))



Burden of Proof – Higher Legal Standards

- Foster care placement orders
 - “clear and convincing evidence” including the testimony of a QEW that continued custody is likely to result in serious emotional or physical damage to the child
(25 U.S.C. § 1912 (e); WIC § 361.7(c); Rule 5.484 (a))
- Termination of parental rights orders
 - “beyond a reasonable doubt” supported by QEW
(25 U.S.C. § 1912 (f); WIC § 366.26 (c)(2)(B)(ii); Rule 5.485)



Evidence: Cultural Considerations

The court must consider evidence concerning the prevailing social and cultural standards of the Indian child's tribe, including that tribe's family organization and childrearing practices

(WIC 224.6 (b)(2))



Qualified Expert Witness

- How to find an expert witness?
 - Your county may have a list
 - Check with tribes
 - Judicial Council/CFCC Web site:

<http://www.courts.ca.gov/5807.htm>



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Placement Preferences

Foster care placements - priority order:

1. Member of child's extended family (note includes non-Indian family members);
2. Foster home licensed or approved by child's tribe;
3. Indian foster home licensed by state or county;
4. Children's institution approved by the tribe or other Indian organization with program designed to meet child's needs.

(25 U.S.C. § 1915 (b); WIC § 361.31; Rule 5.484 (b))



Placement Preferences

Adoptive placement – priority order:

1. Member of child's extended family
2. Other member of child's tribe
3. Other Indian family

(25 U.S.C. § 1915(a); WIC § 361.31; Rule 5.484 (b))



Placement Preferences - In Practice

- Tribe may provide different preferences by resolution
- Standards for complying are the prevailing social and cultural standards of the tribe
- **Must** use available tribal services in securing and supervising the placement
- Must maintain placement record and active efforts to comply with preferences for each placement
- **Must** consult with tribe (Rule 5.482 (g))



Good Cause to Deviate

- Parent, Indian custodian or guardian asks
- Child asks
- Extraordinary needs of child established by testimony of qualified expert witness
- No placement meeting preferences found after documented diligent search

(Note: burden on the party requesting other placement Rule 5.484)



Rights of Adopted Indian Child

Adopted Indian person upon turning 18 has the right to learn of all information necessary to protect rights flowing from person's relationship with tribe.



Invalidation of Proceedings

- **Who?** Tribe, child, parent or Indian custodian
- **How?** Petition to invalidate proceedings
- **Why?** Certain violations of ICWA
(25 U.S.C. 1914)



Invalidation for violation of:

- 1911 – jurisdiction; transfer; intervention; full faith & credit
- 1912 – notice; right to counsel; examination of reports; active efforts; QEW
- 1913 – consent requirements



Invalidation - where

- Can file petition in superior court
- Can also file petition in federal court (Doe v. Mann)



ICWA in Los Angeles

- **Population** - understanding the challenges;
- **ICWA Court** – what it does, relationship and responsibility of other courts



Final Thoughts

Any Questions?



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ITEM 3:
Indian Child Welfare
Act: Proposed Draft
Transfer Rule



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date December 9, 2014	Action Requested Please Review
To Family and Juvenile Law Advisory Committee Tribal Court–State Court Forum	Deadline N/A
From Ann Gilmour, Attorney Center for Families, Children & the Courts Jennifer Walter, Supervising Attorney Center for Families, Children & the Courts	Contact Ann Gilmour, Attorney Center for Families, Children & the Courts 415-865-4207 phone ann.gilmour@jud.ca.gov
Subject Amendments to Rule 5.483 and form ICWA- 060	

In October, the Tribal Court-State Court forum (forum) and the Family and Juvenile Law Advisory Committee (committee) decided to recommend a proposal to amend rule 5.483 of the California rules of court and Judicial Council form ICWA-060 *Order on Petition to Transfer Case involving an Indian Child to Tribal Jurisdiction* in response to SB 1460 (stats. 2014, ch. 772).

Staff have now prepared a draft Invitation to Comment and draft amendments to the rule and form for the forum and committee to review. In drafting these documents, several issues arose and staff seek direction from the forum and committee on how to proceed.

1. In 2007, the First District Court of Appeal held in *In re. M..M.* (2007) 154 Cal.App.4th 897, that once a transfer of a case from state court to tribal court is finalized, California courts are deprived of jurisdiction over the case and, thus, precluded any appeal from the transfer order. The court (at page 916) described what a party would have to do in order

to preserve appellate rights if the party objected to the order of transfer to tribal court. Staff have summarized those requirements and included them in the proposed amendments to rule 5.483 so that parties who object to a transfer to tribal court are aware of these requirements.

Staff seek direction from the forum and the committee as to whether this issue should be included in the proposal. If the forum and committee decide to include this in the proposal, staff have included draft language in the Invitation to Comment and in the proposed rule change language. The current language tracks the proposed procedure set out by the court in the *In re. M.M.* decision. Staff seek direction from the forum and committee on whether these procedures are appropriate, and staff is also doing additional research on the appropriate procedures.

2. Subsection (c) of new section 381 of the Welfare and Institutions Code, added by section 12 of SB 1460, requires that petitions to transfer matters from juvenile court to tribal court be given precedence in calendaring. Staff have incorporated reference to this requirement into the proposed amendment. Staff seek direction on whether the forum and committee wish to have this issue addressed in the proposal.

Rule 5.483. Transfer of case

(h) Order on request to transfer

(1) The court must issue its final order on the *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* (form ICWA-060).

(2) When a matter is being transferred from the jurisdiction of a Juvenile Court the Order must include:

- (A) all of the findings, orders or modifications of orders that have been made in the case;
- (B) the name and address of the tribe to which jurisdiction is being transferred;
- (C) directions for the agency to release the child case file to the tribe having jurisdiction pursuant to section 827.15 of the Welfare and Institutions Code;
- (D) directions that all papers contained in the file shall be transferred to the tribal court; and
- (E) directions that a copy of the order of transfer and the findings of fact shall be maintained shall be maintained by the transferring court.

(i) **Objecting to Transfer** If the court grants the petition to transfer, any party that objected to the transfer that intends to seek appellate review of the transfer order must immediately request a stay of the transfer order. If that request is denied the party must then petition the appellate court for a writ of supersedeas pending appeal within seven days of the denial. The appeal shall be governed by Rule 8.416

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455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SPR15-__

Title

Indian Child Welfare Act – Transfers to Tribal Court

Action Requested

Review and submit comments by [deadline]

Proposed Rules, Forms, Standards, or Statutes

Amend Rule 5.483; Amend Form ICWA-060
Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction

Proposed Effective Date

January 1, 2016

Contact

Ann Gilmour, 415-865-4207
ann.gilmour@jud.ca.gov

Proposed by

Family and Juvenile Law Advisory Committee

Hon. Jerilyn L. Borack, Cochair

Hon. Mark A. Juhas, Cochair

Tribal Court-State Court Forum

Hon. Richard C. Blake, Cochair

Hon. Dennis M. Perluss, Cochair

Executive Summary and Origin

Senate Bill 1460 (stats. 2014; ch. 772) amended section 305.5 of the Welfare and Institutions Code and added sections 381 and 827.15 concerning the transfer of juvenile court proceedings involving an Indian Child from the jurisdiction of the juvenile court to a tribal court. These changes necessitate amendments to California Rules of court, rule 5.483 and form ICWA-060 *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction*

Background

Federal and state law mandate that, upon application, certain state “child custody proceedings” involving an “Indian child” be transferred from state court to tribal court unless there is a finding of “good cause” not to transfer.¹ In 2008, as part of a comprehensive rules and forms proposal dealing with *Indian Child Welfare Act* (ICWA) matters following the passage of SB 678 (Stats. 2006 ch. 838), state legislation implementing ICWA in California, the Judicial Council enacted

¹ See the federal *Indian Child Welfare Act* (25 U.S.C. §§ 1901-1963 at § 1911(b)) and the California *Welfare and Institutions Code* § 305.5)

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

California Rule of Court 5.483 governing transfers of child custody proceedings involving an Indian child to tribal court.²

In 2007, the first district court of appeal held that once a transfer from state court to tribal court is finalized, the decision to transfer is not appealable because the California court of appeal has no power over the tribal court to which the case has been transferred.³

The legislature recently enacted Senate Bill 1460 (stats. 2014; ch. 772), which amended section 305.5 of the Welfare and Institutions Code and added sections 381 and 827.15 concerning the transfer of juvenile court proceedings involving an Indian Child from the jurisdiction of the juvenile court to a tribal court. In particular, SB 1460 sets out certain requirements concerning calendaring of transfer matters from a juvenile court to a tribal court and as to the contents of such orders and the information which must be provided when a child's case is transferred from a California juvenile court to a tribal court.

The Proposal

The Tribal Court-State Court Forum (forum) and the Family and Juvenile Law Advisory Committee (committee) propose the following specific amendments:

- Amend rule 5.483 by:
 - Adding a section requiring that when a matter is being transferred from juvenile court be given precedence in calendaring in accordance with Welfare and Institutions Code section 381(c). This subsection is being added in response to Welfare and Institutions Code section 381(c) which was added by section 12 of SB 1460 and requires that these matters be given precedence.

Under the statute, the provision would apply only to Indian Child Welfare matters in juvenile court and not to those in probate or family court.

- Adding a subsection to the rule requiring that any objecting party who intends to appeal an order granting a transfer to tribal court must promptly request a stay of the order pending appeal. If the stay is denied the party must seek a writ of supersedeas pending appeal.

This subsection is being added in response to the decision of the court in *In re. M.M.* (2007) 154 Cal.App.4th 897, which held that a transfer of a child custody proceeding to a tribal court deprives California courts of jurisdiction over the case and, thus, precludes any appeal from the transfer order. Although the M.M. case involved a

² See Item A27 for Council meeting held 10.26.2007 available at <http://www.courts.ca.gov/documents/102607ItemA27.pdf>

³ *In re. M.M.* (2007)154 Cal.App.4th 897.

juvenile dependency proceeding being transferred from state to tribal court, the forum and committee believe that this provision should apply to all Indian Child Welfare Act matters including those in juvenile, probate or family court.

- Add a provision to what is currently subsection (g) stipulating that an order transferring a proceeding from a juvenile court to a tribal court must include: a) all of the findings and orders or modifications of orders that have been made in the case, b) the name and address of the tribe to which jurisdiction is being transferred, c):directions to the agency to release the child case file to the tribe having jurisdiction pursuant to section 827.15 of the Welfare and Institutions Code, d) directions that all papers contained in the file be transferred to the tribal court and copies retained by the transferring court.

Under Welfare and Institutions Code section 381(b), added by Section 12 of SB 1460, these provisions would apply only to proceedings transferred from a juvenile court and not to proceedings transferred from a probate or family court.

- Amend Judicial Council form ICWA-060 *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* by:
 - Adding to number 5 on the form statements that when a case is being transferred from a juvenile court, all of the findings and orders or modifications of orders that have been made in the case are attached, that the county agency is directed to release its case file to the tribe under section 827.15 of the Welfare and Institutions Code, and that all materials contained in the court file are to be transferred to the tribal court with copies maintained by the juvenile court. This is to comply with the requirements of Welfare and Institutions Code 381(b), which was added by section 12 of SB 1460.
 - Adding an advisement that any party wishing to appeal a decision to transfer must request an immediate stay of the transfer order. If that request is denied the party may then petition the appellate court for a writ of supersedeas pending appeal.

This provision is added to address the holding in *In re. M.M.* and follows the recommendations in that decision.⁴

Alternatives Considered

The forum and committee considered taking no action but decided that the proposed changes would assist the courts and litigants and support compliance with the law.

⁴ Because this aspect of the proposal will affect Indian Child Welfare Act appeals from cases in probate court as well as those in family and juvenile courts the forum and committee have consulted with the Probate and Mental Health Advisory Committee and the Appellate Advisory Committee.

The forum and committee also considered a more limited proposal addressing only the issues concerning implementation of SB 1460 and not including the provisions addressing the *In re. M.M.* decision. The committee and forum concluded that it was important to include this provision otherwise some litigants might be unaware of the requirements of *In re. M.M.* and might be inadvertently deprived of their anticipated opportunity for appeal.

Implementation Requirements, Costs, and Operational Impacts

The forum and committee believe that there will be minimal one-time costs associated with the amendment of form ICWA-060. The forum and committee believe that by clarifying the appeal requirements the proposal may reduce costs of litigation on this issue.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee and forum are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee and forum also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

Proposed revision to rule 5.483

Proposed revised form ICWA-060

Senate Bill 1460 (stats. 2014; ch. 772) available at

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1460

In re. M.M. (2007)154 Cal.App.4th 897 available at <http://www.lexisnexis.com/clients/CACourts>

**Office of Child Support Enforcement,
Administration for Children and Families,
Department of Health and Human Services**

Comment Form

To: Director, Division of Policy and Training, OCSE/DP, 901 D Street SW,
Washington, DC 20447

From: Judge Richard C. Blake and Justice Dennis M. Perluss, Cochairs, California
Tribal Court–State Court Forum (forum)

Tribal Affiliation: A consortium of tribal and state court judges in California

Date: December 18, 2014

Comment:

The summary of the *Notice of Proposed Rule Making: Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs* (as published in the Federal Register on November, 17, 2014 (Vol. 79 FR No. 221 68548) states that these proposed revisions will make Child Support Enforcement program operations and enforcement procedures more flexible, more effective and more efficient by recognizing the strength of existing state enforcement programs, which are laudable goals supported by the forum. Under the Tribal Impact Statement, when the federal Office of Child Support Enforcement (OCSE) circulated the proposal in April 2011, it contacted tribal leaders to engage in written consultation. At that time, there were no Tribal IV-D programs operating in California, however, today there are; the Yurok Tribe began receiving grant funding from the OCSE for start-up planning for a tribal child support program on August 1, 2011 and today operates a comprehensive IV-D program.

We are writing this comment to describe the impact this proposed rule would have in California on the local tribal and state courts, and to request that the draft rule be revised to address the following concerns: (1) the proposal does not envision the type of judicial jurisdictional framework that exists in California; (2) it does not allow for flexibility of overlapping jurisdictions of a tribal and state court or overlapping tribal and state child support services; (3) it will cause confusion and undermine due process rights of parties in tribal and state courts; and (4) it may result in conflicting orders and redundancy in services.

Judicial Framework and Concurrent Jurisdiction Between Tribal and State Courts

The issue of concurrent jurisdiction between state and tribal courts is governed by various statutes and case law. In 1953, through the enactment of Public Law No. 83-280 (Public Law 280) (18 U.S.C. §1162 and 28 U.S.C. § 1360), Congress extended to six states (including California) state jurisdiction over many crimes and some civil matters when the cause of action arose in

Indian Country. While Public Law 280 extended state jurisdiction in specified areas, it did not diminish any inherent tribal court jurisdiction. Federal courts have specifically found that tribal courts have concurrent jurisdiction over domestic relations actions as long as they are willing to assume jurisdiction. *Sanders v. Robinson* (9th Cir. 1988) 864 F.2d 630. The Full Faith and Credit for Child Support Orders Act, P.L. No. 103-383 (28 U.S.C. § 1738(B) mandates full faith and credit for child support orders between tribal and state courts. The mutual recognition of child support orders issued by a tribal or state court has aided the ability of these orders to be transferred from an issuing court to another court for effective enforcement of those orders.

In California, under Family code section 4251 et seq. child support actions, where title IV-D services are being provided, are heard by child support commissioners and rule 5.300 et seq. of the California Rules of Court govern practice and procedures for these support actions. The largest tribe in California, the Yurok Tribe, operates a tribal IV-D program that offers the following services: locating non-custodial and custodial parents, establishing paternity by voluntary declaration or court order, establishing child support orders, providing a non-cash alternative for child support payments, petitioning the Yurok Tribal Court to issue orders for Yurok Reservation employers to withhold wages, collecting and processing child support payments, and extinguishing past due child support debt owed to the State of California.

The proposed rule does not address the concurrent jurisdiction of tribal and state courts nor does it allow for the complexity in enforcement procedures and practices that must be worked out between the tribal and state court or the tribal and state child support services agencies.

Flexibility for Overlapping Jurisdictions

In California, [rule 5.372](#)¹ governs transfer of court cases between the tribal and state courts, however, because not every operational aspect or procedure of the respective tribal and state IV-D agencies is addressed by the statewide rule of court, the state title IV-D program and the tribal IV-D program have concurrently executing protocol agreements to set forth the agencies' respective responsibilities for the process of transferring case management responsibilities for child support services from the state to the tribe. The rule is intentionally broad to allow the tribal IV-D agency and DCSS to develop protocols to meet the unique needs of each of the tribal IV-D programs and the state child support agency. Further, although it was anticipated that either a tribal IV-D agency or a state IV-D agency will be the party initiating case transfer, the rule allows for flexibility to permit a party to request transfer where appropriate. The proposed rule's case closure notice and criteria provisions do not allow for statewide rules of court and tribally-specific/state negotiated protocol agreements.

Confusion for the Parties and Due Process Concerns

Under section 303.11 of the proposed rule, the only party entitled to notice is the recipient of child support services, whereas under state court rule 5.372(d), all of the

¹ See link for copy of rule http://www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_372

parties receive notice of the petition to transfer the case. Under section 303.11, the parties have no right to object to the transfer, whereas under rule 5.372(d), all parties have the right to object to the case transfer.

Under rule 5.372(e) and (f), if the state court finds, after notice to the parties, a timely objection to the transfer is made, the court must conduct a hearing on the record and consider the following factors before making a determination of whether to transfer the case: (1) the nature of the action; (2) the interests of the parties; (3) the identities of the parties; (4) the convenience of the parties and witnesses; (5) whether state or tribal law will apply to the matter in controversy; (6) the remedy available in such tribal court; and (7) any other factors. In contrast, under the proposed rule, no court hearings are contemplated as part of the transfer and case closure procedures.

Conflicting Orders and Redundancy in Child Support Enforcement Services

By not contemplating concurrent jurisdiction of either the tribal and state courts or the tribal title-IVD and state title-IVD services, there is great potential for conflicting child support orders and overlapping, inefficient child support enforcement services.

To address our concerns, we recommend that, at the very least, the proposed rule be changed to acknowledge the type of legal framework that exists in California and to limit its application to administrative (non-judicial) jurisdictions. These changes to the proposed rule would promote flexibility, effectiveness, and efficiency by recognizing the strength of tribal and state courts, which have worked out the orderly transfer of court cases and management responsibility for child support services between tribal and state courts through statewide rules of court and memoranda of agreements.

We thank you for the opportunity to submit these comments.

ITEM 5:
Proposal to Amend the
California Code of
Judicial Ethics

**REQUEST FOR FORMAL OPINION BY THE HON. ABBY ABINANTI,
COMMISSIONER SAN FRANCISCO SUPERIOR COURT**

ISSUE

Can a California State Judicial Officer who serves part time as a Commissioner, and part time as the Chief Justice of the Yurok Tribe (YTC) raise funds for the YTC, including but not necessarily limited to the pursuit of federal/state funding; foundation funding; corporate funding; charitable donations from religious groups and/or individuals?

FACTS

Abby Abinanti, is an enrolled member of the Yurok Tribe (the largest Tribe in California); she was admitted to the State Bar of California in 1978 (she was the first California Native American woman to have been admitted to the practice of law in California); she was appointed as a Commissioner of the San Francisco Superior Court in 1994, retired in 2011 and was reappointed to the present part-time position in 2014; she was appointed as the Chief Judge of the Yurok Tribe in 2007 with the knowledge and permission of the San Francisco Superior Court, that sought and received an opinion from the then Administrative Office of the Courts that determined there was no inconsistency between the role of a state court judicial officer and the role of the a tribal court judge (See Authorities A “Opinion re: Superior Court Judge Serving as Tribal Judge”). As Chief Judge she is the top ranking judicial official of her Nation and her duties include the directing of the Court and all justice programs within the Nation.

In its current form of government, the Yurok Tribe was organized in 1993 after a long federal court battle with the United States. There are currently more than 5,984 enrolled tribal members. The Yurok Reservation, (the “Reservation”) is located in Northern California,

approximately sixty miles south of the Oregon and California border. This area is one of the most isolated wilderness areas of California and has been home to the Yurok people since time immemorial. The Reservation encompasses parts of Humboldt and Del Norte Counties. The Reservation consists of a total of 56,363 acres from the mouth of the Klamath River with the Pacific Ocean to the confluence with the Trinity River in the village town of Weitchpec.

The Yurok Reservation is located in an extremely isolated area in Northern California that is severely economically disadvantaged. Yurok families on and around the Reservation are faced with significant social and economic challenges within their daily lives. Del Norte and Humboldt Counties have a higher percentage of poverty and unemployment rates than State and National averages. The total population of Humboldt County is 134,493, of which 19.7% are at or below the poverty level. The total population of Del Norte County is significantly lower at 27,873, with a total of 21.5% persons at or below the poverty level.¹

Unemployment information for the month of July for Humboldt County shows a rate just below the rate for the State of California at 7.8%. Del Norte County has a much higher rate of 10.2%. Klamath, the main city located on the Yurok Reservation, has over double the rate of both counties, at 20.7%.²

Justice Needs of the Yurok Tribal Community

The federal government, by the enactment in 1953 of PL 280, 67 Stat. 588, converted California to a state of concurrent jurisdiction. That law did not alter the trust status of Indian lands or terminate the tribes trust relationship with the federal government, nor did it end the

¹ U.S. Census Bureau: State and County QuickFacts. Data derived from Population Estimates, American Community Survey, Census of Population and Housing, County Business Patterns, Economic Census, Survey of Business Owners, Building Permits, Census of Governments Last Revised: Tuesday, 08-Jul-2014 06:42:54 EDT

² Local Area Unemployment Statistics (LAUS), Labor Market Division, California Employment Development Department, August 15, 2014

sovereign immunity of the tribes. There are a total of six states with this status. The law did not gain a wide following as the initial version did not require knowledge/approval of the tribes and states resented the fact that the lands so “acquired” were not taxable by the states. Thus the states were given the duty of law enforcement without the ability to pay for it, as Congress also failed to appropriate funds for the new responsibilities. (See American Indian Law in a Nutshell – 5th Edition, by William C. Canby, Jr. Senior Judge, United States Court of Appeals for the Ninth Circuit pages 258-285.)

The justice needs of California’s tribal communities have not been well served since the enactment of PL 280. The federal government withdrew from the provision of direct justice services in California’s Indian Country and also withdrew most funding for tribal justice systems. No additional funding was provided to the state of California to assist in providing for the justice needs of California’s tribal communities. The result is a lack of adequate access to justice for tribal communities in California. In her report “A Second Century of Dishonor: Federal Inequities and California Tribes”³ the scholar Carole Goldberg documents the inadequacy of justice services for California’s tribal communities. More recently the Judicial Council itself undertook a study of barriers to court access faced by California’s tribal communities.⁴ The report discusses a number of the barriers contributing to lack of adequate justice services in California’s tribal communities and among the policy recommendations for possible solutions includes “...support for the development of tribal justice systems.”⁵

³ Available at <http://www.aisc.ucla.edu/ca/Tribes.htm>

⁴ See Native American Communities Justice Project report at <http://www.courts.ca.gov/documents/NACJPREsearchReport051310.pdf>;
See also the NACJP policy report at <http://www.courts.ca.gov/documents/NACJPPolicyPaper051810.pdf>

⁵ See policy report at page 9.

Non-tribal Courts have grappled with the dual systems paradigm throughout our shared judicial history, including developing the concept that prosecution for the same crime in tribal court and in federal court does NOT constitute double jeopardy because the prosecution is by separate sovereigns. (See *United States v. Wheeler* (1978) 435 U.S. 313; *Long v. United States* (7th cir., 2003) 324 F.3d 475.) More specifically related to California is case law that clearly states that absent express congressional authorization, state laws do not apply on Indian reservations. (See *Cabazon Band of Mission Indians, et.al. v. Larry D. Smith, et al.* (C.D. Cal., 2003) 34 F. Supp.2d 1195.) The Yurok Tribal Court has established admissions requirements for practice, which includes a Bar Exam instituted in 2010, that is separate from either state or federal requirements. As of 2014, the American Bar Association will allow members of an Indian Bar Association to become a member.

The current relationship between the tribal and state court systems has come a long way from the times of the First Chief Justice of the State of California, Serranus Clinton Hastings, who colored his legacy by his support/encouragement of the genocidal activities of “legally” sanctioned Indian killers primarily in what is now Mendocino County. The Tribal Court-State Court Forum was created by the former Chief Justice Ronald M. George in May of 2010 to discuss issues of mutual importance to tribal and state justice systems. The Forum is charged with identifying issues concerning the working relationship between tribal and state courts and recommending to the Judicial Council ways to address these issues. The Forum is co-chaired by a Judicial Council member and a Tribal Court Judge. The Judicial Council, through endorsement and support of the Tribal Court-State Court Forum has acknowledged that it supports the

development and expansion of tribal courts in California as part of overall development and administration of justice in California.⁶

The federal government has taken the position that organized tribes in PL 280 states, including California, are not entitled to receive direct federal funding for either law enforcement or the operation of courts as a matter of public policy, unlike organized tribes in non-PL 280 states. The Yurok Tribe has appealed this ruling, and has so far been unsuccessful in a several years long administrative appeal process. It is the responsibility of the Chief Judge of the Yurok Nation to insure the continuation of the judicial branch and prevent the interruption of the operation of justice to our citizens and to all others who have justice concerns within the Court's jurisdiction.

The YTC currently operates the first tribally controlled Child Support Court in California, has an established Family Law Court, has a Wellness Court, has the first tribally controlled California State Certified Batterers Intervention Program (with a cultural component), has two federally certified probation officers, has received funding for a truancy program and a Juvenile Wellness Court. The Court has civil enforcement calendars for fishing, environmental enforcement (including this summer's combined federal, state, tribal eradication of illegal marijuana grows program which was supplemented by the national guard and included the issuing of multiple warrants), traffic enforcement, drug enforcement, animal control, general civil authority, etc. YTC has negotiated agreements with the two surrounding counties (Humboldt and Del Norte) to share supervision/jurisdiction in some civil and criminal matters. Additionally YTC has both a civil and criminal access program both of which are currently seeking additional funding to survive.

⁶ See Tribal Court-State Court Forum documents at <http://www.courts.ca.gov/documents/TribalPrinciplesValues.pdf> and <http://www.courts.ca.gov/documents/TribalScopeofwork.pdf>.

Like all justice systems, tribal justice systems need funding to provide for the justice needs of citizens. In California, due to Public Law 280, there is little to no sustained federal funding for tribal courts. Federal funding is only in the form of grants which are inconsistent and unreliable. The Chief Judge, in response to her on going responsibilities and in recognition of the continuing and increasing needs of the justice system, has embarked on a campaign to raise funds, including funds from resources other than federal grants. (See **Exhibit B** for Example of Request for Donation.) In an informal discussion with a state court peer the Chief Judge was alerted to the potential issue/conflict with her state role and sought an ethic's opinion from the Ethics Hotline which clearly states it is not allowed. (See **Exhibit C** for 2013-2014 Informal Response (Edwards) (9/8/14) No. 404.)

REQUEST FOR OPINION

The Honorable Abby Abinanti now seeks a formal opinion from the California Supreme Court Committee on Judicial Ethics (herein "the Committee"). Prior to making this request she has informed her Presiding Judge Cynthia Ming-mei Lee and Supervising Judge Charlotte Walter Woolard of the possible conflict and informed the Executive Director of the Yurok Tribe and the Yurok Tribal Council of the issues. Though it is her strongly held belief that her roles do not conflict, it is her stated intention to resign the State Court position if it is the opinion of this Committee that she is in violation of the her State Judicial Ethics requirements. She requests that she be given the opportunity to inform her Presiding Judge and Supervising Judge and allow them to transition in an orderly fashion.

It is the position of the Chief Judge of the YTC that the Canons and Rules related to prohibition on fund raising by state court judges do not apply to this situation. The Chief Judge of the Yurok Nation, when raising funds, is doing so under the following conditions: 1) she is not

wearing the state court judicial officer hat when doing this fund raising, but rather is specifically acting in her capacity as Chief Judge of the Yurok Tribal Court; and 2) NOT advancing any private interests. The California Judicial Conduct Handbook states the prohibition rationale as follows:

The principle reason for the general prohibition on judicial fund raising for civic and charitable organizations is that judges should not be in the position of using their considerable power and prestige to advance a private interest, even for nonprofit enterprises and good causes. Were judges allowed to solicit for civic and charitable causes, potential donors could well feel coerced, especially those who might come before the judge. Judges are supposed to narrow the use of their judicial power to the pursuit of justice. Abuse of this power outside the court erodes the independence of the judiciary. (Rothman, California Judicial Conduct Handbook (3d ed. 2007) section 10.43, p. 557.)

Seeking funding to support the Yurok Tribal Court is not advancing a “private interest”; it is the “pursuit of justice.” In the same way that the Chief Justice of California and members of the Judicial Council advocating for funding for the Judicial Branch is not “fundraising” for a “private interest”, it is using their authority for the pursuit of justice.

Chief Judge Abinanti submits that seeking the funding to support the development and continuation of Yurok Tribal Court and other Yurok tribal governmental justice services required to meet the needs of the Yurok tribal nation is entirely consistent with her ethical duties/responsibilities and that the rules and authorities developed to address fundraising for private, nonprofit or charitable enterprises are simply of no application here.

EXHIBIT A

From: Perkins, Charles
Sent: Tuesday, October 09, 2007 4:06 PM
To: Nunn, Diane
Cc: Finke, Chad; Tognetti, Tracy
Subject: Opinion re: Superior Court Judge Serving as Tribal Judge

Dear Diane:

You asked whether there is any legal impediment to a California superior court judge sitting also as a judicial officer of an Indian tribe, i.e., a sovereign nation. We survey below the potential legal impediments to a judge serving both functions. As will appear, it most likely would be permissible for a judge to preside in both courts, assuming that the judge (a) receives no remuneration for performing tribal work beyond the reimbursement of actual reasonable expenses; and (b) serves as a tribal judge on his or her personal time.

We must caution, however, that, as will be discussed, the propriety of a superior court judge also presiding over tribal court conceivably could be challenged on any of several generalized legal and/or ethical grounds. It appears that no court or other authority has addressed the question of whether a superior court judge may properly preside over a tribal court—or a court of any foreign jurisdiction—in the face of any such legal or ethical attack. Thus, although we have a high degree of confidence in our conclusion that, under the parameters set forth above, a judge may serve both roles, we cannot say with certainty that doing so is without risk.

The Constitutional Proscription Against Dual Office-Holding Is Inapplicable

At first blush, article VI, section 17 of the California Constitution appears most relevant to your question, as it is specifically directed to dual office-holding by judges. That constitutional provision provides in part: “A judge of a court of record may not practice law and during the term for which the judge was selected is ineligible for public employment or public office other than judicial employment or judicial office, except a judge of a court of record may accept a part-time teaching position that is outside the normal hours of his or her judicial position and that does not interfere with the regular performance of his or her judicial duties while holding office.” (We will sometimes refer to this provision as the proscription against “dual office-holding.” In addition, unless otherwise specified, further constitutional references are to the California Constitution.) If the position of tribal judge is considered “public employment or public office,” this constitutional clause could be implicated. Notably, where a judge’s alternate office or employment is found to be “public,” the constitutional proscription can still apply even if the judge receives no compensation for serving in the alternate role. (See *Abbott v. McNutt* (1933) 218 Cal. 225, 231-232 [addressing predecessor section to article VI, section 17, which was identical in all material respects].)

As noted, the express language of article VI, section 17 provides that a judge is ineligible for public employment or office “other than judicial employment or judicial office.” Although we found no authority clearly addressing the issue, it is certainly possible—

perhaps probable—that service as a judge of a tribal court would be considered “judicial employment or judicial office” under the Constitution, and thus not be prohibited by this section. (But see *Wyatt v. Arnot* (1907) 7 Cal.App. 221, 230 [stating, without citation, that a judge of one county has a duty to resign if he or she intends to qualify as a judge of a different county].) More significantly, however, in *People v. Sisco* (1943) 23 Cal.2d 478, our Supreme Court held that the constitutional provision barring judges from holding other public offices applies only to California state offices. The court reasoned:

It is clear that the State of California cannot, by its Constitution or otherwise, determine eligibility or prescribe qualifications for offices other than its own state offices. This section of the Constitution is not intended to, and does not relate to federal offices. . . . Manifestly, the only office or employment for which the Constitution of California can declare the conditions of eligibility or ineligibility of a person is an office or employment under the authority of the State of California. This state has no power, by Constitution or otherwise, to declare that a judge of the superior court is ineligible to occupy an office in another state or under the government of the United States. It is therefore obvious that section 18 [now section 17] of article VI relates exclusively to the eligibility of judges to hold or occupy other offices which exist under the authority of the State of California.

(*Id.* at p. 493; see also 67 Ops.Cal.Atty.Gen. 41, 43 (1984) [examining history behind 1966 revision of California Constitution and concluding that “it seems clear that the understanding of the California Constitution Revision Commission when it formulated the new wording of article VI, section 17, patterned on former article VI, section 18, was that the provision applied exclusively to state offices and was not intended to change the rule of the *Sisco* case that the provision had no application to federal offices”].)

Similarly, the position of tribal judge would not be an office of the State of California, and the state would have no authority to establish eligibility requirements for that position. (See *People v. Williams* (1988) 202 Cal.App.3d 835, 843-844 [Indian tribes may establish tribal courts as an exercise of their inherent sovereign powers]; *Conroy v. Frizzell* (D.C.S.D. 1977) 429 F.Supp. 918, 922 [through constitutions and bylaws, tribes can “establish reservation courts, and define the duties and powers of those courts”].) Thus, article VI, section 17 poses no barrier to a superior court judge presiding over a tribal court.

The constitutional proscription against holding lucrative offices would most likely prohibit a superior court judge from performing tribal work except on a volunteer basis.

Article VII, section 7 states:

A person holding a lucrative office under the United States *or other power* may not hold a civil office of profit. A local officer or postmaster whose compensation does not exceed 500 dollars per year or an officer in the

militia or a member of a reserve component of the armed forces of the United States except where on active federal duty for more than 30 days in any year is not a holder of a lucrative office, nor is the holding of a civil office of profit affected by this military service.

(Italics added. We will sometimes refer to this section as the “lucrative office” clause.) The primary purpose of this provision appears to be “to prevent ‘dual office-holding by one person under two separate and distinct governments, and the separation of the allegiance justly due one by its officers from that due to another power.’” (*McCoy v. Board of Supervisors of Los Angeles County* (1941) 18 Cal.2d 193, 197.)

There is little California authority interpreting or applying article VII, section 7. In all likelihood, however, it can be applied to judges, whose position would be considered a “civil office of profit.” (See *Sischo, supra*, 23 Cal.2d at pp. 483-484 [considering potential applicability of article VII, section 7 where a judge volunteered for Army Reserves and was then ordered to active duty]; *People ex rel. Atty. Gen. v. Turner* 20 Cal. 142, 146 [judge who held position in federal customs office at the time of election was not precluded from judgeship because federal appointment had not been properly effectuated and he thus “did not hold a lucrative office within the meaning of the prohibitory provision of the Constitution of this State”]; 2 Witkin, California Procedure (4th ed. 1997) Courts, § 61, p. 88 “[j]udges are . . . subject to the general constitutional provision that no person holding a *lucrative office* under the United States, or any other power, is eligible for any *civil office of profit*” [italics original].) The key question then becomes whether the position of tribal judge is a “lucrative office under the United States or other power”

As indicated, there is little authority—particularly in recent years—applying the lucrative office provision of the state Constitution, and certainly none that addresses positions with an Indian tribe. And although most if not all states maintain similar constitutional or statutory provisions (see 67 C.J.S. (2002) Officers and Public Employees, § 43, p. 202; 63C Am.Jur.2d (1997) Public Officers and Employees, § 66, pp. 509-510; see also *People ex rel. Atty. Gen. v. Leonard* (1887) 73 Cal. 230, 234 [“we have found upon investigation that in very many, if not all, of the various state constitutions the principle seems to have been incorporated and adopted of prohibiting the holding by one person at the same time of a lucrative federal office and any one of the more important state offices”]), we have found no cases or other authorities from any jurisdiction that have considered any state’s “lucrative offices” equivalent in the context of a tribal position. Nonetheless, we conclude that if a superior judge were also to serve as a tribal judge and receive compensation for that service, California’s lucrative office provision likely would be violated and the judge would risk forfeiting the superior court seat. (See *Leonard, supra*, 73 Cal. at pp. 231, 235 [at the moment county supervisor accepted federal postmaster position, “he became an unconstitutional holder of the office of supervisor, and [that office] at once became vacant”]; *In re Marriage of Alarcon* (1983) 149 Cal.App.3d 544, 551 [based on lucrative office provision, appellate justice’s seat “immediately became vacant” upon accepting appointment to the federal bench]; see also *People ex rel. Bagshaw v. Thompson* (1942) 55 Cal.App.2d 147, 153-145 [assumption of

second, incompatible office acts effectively as a resignation from and results in forfeiture of first office], superseded by statute on other grounds as stated in *People v. Cherry* (1989) 209 Cal.App.3d 1131.)

(Although we have found no case or other authority addressing a lucrative office provision in the context of a tribal position, a 2000 newspaper report indicates that the Nevada Supreme Court rejected a litigant's challenge to a Nevada prosecutor's right to hold office—brought under a “lucrative office” clause in the Nevada Constitution—based on the fact that the individual also served as a tribal judge. We have confirmed that the Nevada high court rendered a “decision without published opinion” through which the case in question was “dismissed,” but have been unable to locate further information about the case disposition in any electronic database. According to the newspaper, the “Justices said the tribal job amounted to an employment contract and so ‘was not a public office in the ordinary sense.’” (See www.lasvegassun.com/sunbin/stories/nevada/2000/jul/10/510488540.html.) Also, in *Williams, supra*, 202 Cal.App.3d 835, a convicted defendant asserted that his court-appointed attorney had a conflict of interest because the attorney also served as a tribal prosecutor. Whether court-appointed defense counsel constitutes “a civil office of profit” might be debatable but, in any event, the defendant did not raise the lucrative office clause as a ground for reversal.)

The position of tribal judge most likely would be considered an “office under the United States or other power”; that “other power” being the tribe in question, which is bestowed with significant characteristics of sovereignty. (See *Williams, supra*, 202 Cal.App.3d at pp. 843-844, 846; see also *People v. Superior Court* (1990) 224 Cal.App.3d 1405, 1408, 1410-1411 [Indian tribes are considered “states” for purposes of act allowing California courts, at the request of “a judge of a court of record in any state,” to issue subpoenas for the attendance of witnesses in out-of-state criminal proceedings].) Construing the term “public office” in the related context of the constitutional proscription against dual office-holding, the court in *Abbott, supra*, 218 Cal. at page 230, defined the term as the “right, authority, and duty, created and conferred by law, the tenure of which is not transient, occasional, or incidental, by which for a given period an individual is invested with power to perform a public function for the benefit of the public,” and noted that “[t]he most general characteristic of a public officer . . . is that a public duty is delegated and entrusted to him, as agent, the performance of which is an exercise of a part of the governmental functions of the particular political unit for which he, as agent, is acting.”

It appears clear that, generally speaking, the office of “judge” of a sovereign entity is a component of the governmental functions of that entity. We assume here that any tribal judge position that a superior court judge might hold would be established by tribal law and have rights, authority, and duties under that law. (*Conroy, supra*, 429 F.Supp. 918 at p. 922. Whether any particular superior court judge would be qualified, pursuant to *tribal law*, to sit as a tribal judge is a question that we do not address, as we have no information regarding the laws of any particular tribe that may be involved, or about any state judge in question.) Thus, although we have found no direct authority, the position of tribal judge likely would qualify as an “office under the United States or other power”

under the lucrative office provision. (Cf. *Alarcon, supra*, 149 Cal.App.3d at p. 551 [federal judgeship is a lucrative office under article VII, section 7].)

Here, we do not know how frequently a superior court judge might also sit as a tribal judge, but one potentially might argue that his or her tribal service would be “transient, occasional, or incidental” (*Abbott, supra*, 218 Cal. at p. 230), and that the position thus should not be considered an “office” under the lucrative office provision. In our opinion, this would be a risky position to take because unlike the article VI, section 17 dual office-holding clause, no California case has recognized a potential “transient, occasional, or incidental” exception to the lucrative office provision. And other jurisdictions have effectively rejected such an argument. In *Highsmith v. Clark* (1980) 245 Ga. 158 [264 S.E.2d 1], for example, a county commissioner contended that because his second position as a federal magistrate was “part-time, amounting to only the equivalent of one day per month,” it did not violate a state statute prohibiting civil officeholders from holding any “office of profit or trust” of any of the several states, a foreign state, or the federal government, other than certain temporary presidential appointments to commissions or policy-making agencies. (*Id.* at p. 159.) The Georgia Supreme Court rejected the commissioner’s argument, finding that the magistrate position, although part-time, was clearly one of profit or trust and did not otherwise fall within the statutory exception (it was not a temporary appointment). The individual thus could not serve as a county commissioner. (*Id.* at pp. 159-160.) Because a violation of the lucrative office provision of the Constitution could result in the forfeiture of judicial office (*Leonard, supra*, 73 Cal. at pp. 231, 235; *Alarcon, supra*, 149 Cal.App.3d at p. 551), we would not advise here that it is safe to assume that sporadic or occasional service as a tribal judge would be permissible under that provision.

The only remaining question then is whether the office of tribal judge would be considered “lucrative” within the meaning of article VII, section 7. Again, the precise meaning of “lucrative” in this context does not appear to have been addressed by any California court. The courts of other states tend to conclude that while the reimbursement of actual, reasonable expenses does not render an office “lucrative,” any form or amount of compensation beyond such reimbursement does. (See 63C Am.Jur.2d, *op. cit. supra*, § 22, pp. 473-474 & cases cited therein [“[w]hile a position is not an office of profit when no compensation is provided for services rendered in and by virtue of the position, any compensation, no matter how meager, renders an office ‘lucrative’”; “[r]eimbursement for expenses alone [, however,] does not render an office ‘lucrative’”; see, e.g., *In re Carlisle* (2006) 209 S.W.3d 93, 95-96 [49 Tex. Sup. Ct. J. 262] [although a per diem of \$10 for each meeting attended, paid *as compensation* for services, can cause an office to be “lucrative,” reimbursement of actual incurred expenses only cannot]; *Book v. State Office Building Commission* (1958) 149 N.E.2d 273 [238 Ind. 120] [a “lucrative office” is “an office to which there is attached a compensation for services rendered”].) Thus, if a superior court judge serving as tribal judge were paid any amount of compensation beyond actual reasonable expenses—presumably at the scheduled state reimbursement rate—the tribal position would likely be deemed “lucrative” and article VII, section 7 would be violated. Conversely, however, if a superior court judge were to

volunteer his or her services to an Indian tribe and receive no monetary or other form of compensation, then the tribal judge position would not be “lucrative.”

We do note, however, that an argument could be made that a tribal judge should be considered a “local officer” and, thus, an Indian tribe could pay a superior court judge up to \$500 each year pursuant to the provision in article VII, section 7 that states: “A local officer or postmaster whose compensation does not exceed 500 dollars per year or an officer in the militia or a member of a reserve component of the armed forces of the United States except where on active federal duty for more than 30 days in any year is not a holder of a lucrative office, nor is the holding of a civil office of profit affected by this military service.” Again, with no cases or other authorities clearly on point, we would strongly recommend against a superior court judge taking this position, as the risk of doing so—i.e., potential office forfeiture—is simply too high.

In sum, assuming a superior court judge was to perform tribal work on a volunteer basis, there would not appear to be a constitutional impediment to holding both positions. If the judge were to receive compensation from the tribe, however, the judge could risk forfeiting his or her superior court seat.

The proscription against holding incompatible offices, along with certain rules of judicial ethics, could be violated if a superior court judge were also to serve as a tribal judge, unless the judge performed all tribal work on personal time.

In 2005, the Legislature codified the common law “incompatible offices doctrine” by adding section 1099 to the Government Code. That section states, in part: “A public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold two public offices that are incompatible.” Violation of this provision results in the forfeiture of the first office held. (Gov. Code, § 1099(b).) Various legislative history materials indicate that the Legislature intended for the proscription to apply to officers at *all* levels of state and local government and, thus, it would apply to judges. (Compare Sen. Bill No. 274 (2005-2006 Reg. Sess.) as introduced Feb. 16, 2005 [limiting incompatibility provision to local government officials] with Sen. Com. on Local Gov., Analysis of Sen. Bill No. 274 (2005-2006 Reg. Sess.) as amended March 29, 2005, p. 4 [noting that common law rule applies to state and regional officers yet bill only references local governments, and that this “might imply that it’s OK for state officials to hold incompatible offices”] and with Sen. Bill No. 274 (2005-2006 Reg. Sess.) as amended June 30, 2005 [bringing *any* “public officer” within the bill’s scope].) A question thus arises of whether service as a tribal judge could be deemed incompatible with the duties of a judge of the superior court.

The code gives three examples of situations where the prohibition against incompatible office-holding could be violated: “(1) Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body. (2) Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices. (3) Public policy

considerations make it improper for one person to hold both offices.” (Gov. Code, § 1099(a).) Notably, however, in enacting section 1099, the Legislature expressly noted as follows:

Nothing in this act is intended to expand or contract the common law rule prohibiting an individual from holding incompatible public offices. It is intended that courts interpreting this act shall be guided by judicial and administrative precedent concerning incompatible public offices developed under the common law.

(Stats. 2005, ch. 254, § 2; see also Gov. Code, § 1099(f).) Under common law, “[i]t is extremely difficult to lay down any clear and comprehensive rule as to what constitutes incompatible offices” (*People ex rel. Goodell v. Garrett* (1925) 72 Cal.App. 452, 456), but incompatibility can exist where, among other things, an individual cannot in every instance discharge the duties of both offices or where there is inherent inconsistency or repugnancy in the functions of the two offices. (See *id.* at pp. 455-459; 52 Cal.Jur.3d (2001) Public Officers and Employees, § 52, pp. 99-101.)

We do not know the particulars of the duties, responsibilities, and functions of the tribal judge positions in question here. However, other than potential conflicting time demands, discussed below, we are aware of no obvious incompatibilities between a tribal judge position and a superior court judgeship. Neither office is subordinate to or exercises supervisory powers over the other. Presiding over the adjudication of alleged offenses against the *law of a tribe*—whether civil or criminal—would not appear to create a clash of loyalties or other repugnancy with the position of superior court judge. (Cf. *Shepherd v. Platt* (Ariz. Ct. App. 2005) 177 Ariz. 63, 65 [865 P.2d 107] [under Arizona law, no violation of incompatible offices doctrine where county supervisors also served on Navajo Tribal Council because nothing in record indicated that either governmental entity was subordinate to the other, the functions of the two offices were inconsistent, or that it was physically impossible to perform the duties of both offices].)

It is possible that situations could arise where a tribal court proceeding becomes so enmeshed with a superior court matter—such as where concurrent jurisdiction might exist (see, e.g., *In re M.M.* (2007) 154 Cal.App.4th 897, 915 [state and tribal courts have concurrent jurisdiction over certain child custody matters]; *Astorga v. Wing* (Ariz. Ct. App. 2005) 211 Ariz. 139, 142 [118 P.3d 1103] & cases cited therein [recognizing instances of concurrent jurisdiction between state or federal courts and tribal courts, and noting certain jurisdictional conflicts that can arise]; *Bowen v. Doyle* (2d Cir. 2000) 230 F.3d 525 [tribal defendant seeks federal court injunction against further state court proceedings where similar action pending in tribal court])—that an incompatibility could arise. The fact that two offices might have concurrent jurisdiction over a matter generally will not, by itself, render the offices incompatible (see, e.g., *Garrett, supra*, 72 Cal.App. at p. 459), however, and in the event an unanticipated conflict were to arise, a cure would likely be found in the statutes and rules governing judicial disclosure and recusal. (See Code Civ. Proc., §§ 170.1-170.3; Cal. Code Jud. Ethics, canon 3E.)

We also note that a superior court judge generally should conduct his or her off-the-bench affairs so as to minimize the possibility of creating conflicts, and hypothetical circumstances can be envisioned under which service as a tribal judge could create such conflict. (See Cal. Code Jud. Ethics, canon 2A & Adv. Com. com. thereto; see, e.g., *id.*, canon 4C(3)(c) [judge should not serve as officer or director of an organization that frequently engages in adversarial judicial proceedings]; *id.*, canon 4C(D)(1)(b) [judge should not engage in financial or business dealings that require judge to come in frequent contact with lawyers or others who are likely to appear before the court].) At the same time, however, complete insulation from any activity or association that in theory could give rise to a conflict would be impossible and is not required. (See Adv. Com. com. to *id.* canon 4A; *id.* canon 4B.) Accordingly, absent some likely entanglement between a tribal judge position and that of superior court judge of which we are unaware, we do not see any inherent incompatibility between the two offices.

The only exception to the statement above is based on the fact that serving as a tribal judge would necessarily require a commitment of a superior court judge's time. Before assuming the bench, every superior court judge must attest that he or she will faithfully discharge the duties of office. (Cal. Const., art. XX, § 3.) Ethically, each judge's judicial duties must "take precedence over all other activities." (Cal. Code Jud. Ethics, canon 3A.) A judge must dispose of all judicial matters fairly, promptly, and efficiently, and this "requires a judge to devote adequate time to judicial duties, be punctual in attending court and expeditious in determining matters under submission." (*Id.*, canon 3B(8) & Adv. Com. com. thereto; see also *id.*, canon 4A(3) [extrajudicial activities must not interfere with performance of judicial duties]; Cal. Rules of Court, rule 10.603(c)(1)(C) [presiding judge of each court must "apportion the business of the court among the several departments of the court as equally as possible"]; *Alex v. County of Los Angeles* (1973) 35 Cal.App.3d 994, 1001 [each judge owes a duty to fellow judges to "perform his fair share of the heavy caseload," to the taxpaying public to "perform a full day's work," and to the attorneys and litigants to handle their matters expeditiously].) A judge also must diligently discharge any administrative duties he or she may have. (Cal. Code Jud. Ethics, canon 3C(1).)

As indicated, offices are incompatible where "there is a possibility of a significant clash of duties or loyalties between the offices." (Gov. Code, § 1099(a)(2).) In addition to possibly directly violating one or more of the ethical and legal rules described above—requiring superior court judges to give the duties of office precedence over all other activities and to discharge those duties expeditiously and efficiently—any effort to perform tribal work while on court time could result in divided loyalties rendering the tribal work incompatible. Because such a result could result in forfeiture of the superior court judgeship (*id.*, subd. (b)), we strongly advise that any work as a tribal judge be performed on the superior court judge's personal time. (We also note that because work as a tribal judge is not part of a superior court judge's normal duties, any such work done on state court time could be challenged as an unlawful gift of public funds. (See Cal. Const., art. XVI, § 6; *Golden Gate Bridge and Highway District v. Leuhring* (1970) 4 Cal.App.3d 204, 207.))

Various additional potential barriers to a superior court judge also serving as a tribal judge most likely would not apply.

Our research disclosed several additional issues which, at least facially, might appear to be potential legal impediments to a superior court judge also serving as a tribal judge. As will be highlighted below, however, upon closer examination, none appears to be problematic.

- Government Code section 19990 prohibits any “state officer or employee” from engaging “in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee.” Subject to the approval of the Department of Personnel Administration, each “appointing authority” is to determine those activities that are improper, with the code setting forth several non-exhaustive examples of improper activities. (Gov. Code, § 19990.) One such example is “not devoting his or her full time, attention, and efforts to his or her state office or employment during his or her hours of duty as a state officer or employee.” (*Id.*, subd. (g).) Thus, if Government Code section 19990 applies to judges, then performing tribal work during the regular hours of a superior court judge would likely violate Government Code section 19990, and this would be another reason why any such work should be conducted on the judge’s personal time.

Although there is no law clearly on point, Government Code section 19990 most likely does not apply to courts or to the judicial branch. The section is located in title 2, division 5, part 2.6 of the Government Code. For purposes of that part, “state employee” is defined as including only (1) those state employees in the civil service, all of whom serve in the executive branch (see Cal. Const., art. VII, §§ 1(a), 4(a), (b) [exempting, *inter alia*, all court officers and employees from the civil service]; (2) specified other groups of executive branch personnel; and (3) “all employees of the executive branch of government who are not elected to office.” (Gov. Code, § 19815(d).) While no statute specifically defines the corresponding term “state officer” used in Government Code section 19990, it is reasonable to presume that the term is similarly limited, i.e., that it applies only to state officers serving in the executive branch. (See Cal. Code Regs., tit. 2, § 599.605 [defining “employee” as encompassing both officers and employees subject to title 2, division 5, part 2.6 of the Government Code for purposes of the implementing regulations].)

This conclusion is buttressed by reference to the legislative history and placement within the Government Code of section 19990, which originally was added as part of the Governor’s Reorganization Plan No. 1 of 1981. (Stats. 1981, ch. 230, § 55, p. 1168.) The plan “created the Department of Personnel Administration [DPA] to administer the nonmerit aspects of state employment for nonelected employees *in the executive branch of government*” and specified other nonjudicial agencies. (Legis. Counsel’s Dig., Sen. Bill No. 668, 4 Stats. 1981 (1981–1982 Reg. Sess.) Summary Dig., p. 66, italics added; see also, Gov. Code, § 19815.2; Stats. 1981, ch. 230, § 55, p. 1168.) Section 19990 was included within part 2.6 of division 5 of title 2 of the Government Code—which created the DPA and defines its powers and duties (see e.g., Gov. Code, §§ 19815.2, 19816–

19816.21)—in the chapter addressing employee days and hours of work. Accordingly, it is reasonable to construe section 19990 as applying only to officers and employees over whom the DPA has jurisdiction. Because the DPA does not have jurisdiction over judicial branch personnel (see *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1337, fn. 26, rev. denied), Government Code section 19990 most likely does not apply to judicial officers and employees.

Nonetheless, under the doctrine of *in pari materia*, statutes of related subject matter are to be given similar interpretations, where possible. (See 58 Cal.Jur.3d (2004) Statutes, § 123, pp. 535-537 & cases cited.) If not devoting one's "full time, attention, and efforts to his or her state office or employment during his or her hours of duty as a state officer or employee" is an incompatible activity for the purposes of Government Code section 19990, it is possible that under section 1099 of that code, a court would deem a tribal judge position incompatible with the office of superior court judge if work associated with the former were performed during the regular hours of the latter. (Cf. *Garrett*, *supra*, 72 Cal.App. at p. 456 [noting that at common law (which Government Code section 1099 non-exhaustively codifies) it is extremely difficult to set forth a precise definition of "incompatible offices"].) Thus, although Government Code section 19990 does not apply per se to the judiciary, provisions of that section could be looked to in determining "incompatible offices" under section 1099. This possibility reinforces our conclusion, above, that any tribal work should be performed on a superior court judge's personal time.

- Nothing in the California Code of Judicial Ethics specifically addresses the propriety of a superior court judge volunteering his or her time to preside over a court of another jurisdiction. Canon 4C(2), however, prohibits a judge from accepting appointment to a "governmental position that is concerned with issues of fact or policy" *except* with regard to matters related to "the improvement of the law, the legal system, or the administration of justice." Even if a judicial position of a sovereign tribe is considered a "governmental position" under the canon, and even if that position is one "concerned with issues of fact or policy"—questions to which there are no immediate clear answers—such a position would be concerned with the administration of justice and, thus, not violative of canon 4C(2).

In addition, under the heading "Service as Arbitrator or Mediator," canon 4F of the California Code of Judicial Ethics states: "A judge shall not act as an arbitrator or mediator *or otherwise perform judicial functions in a private capacity* unless expressly authorized by law." (Italics added.) Again, we have found no precedent wherein the applicability of this canon was examined in the context of a superior court judge serving as a volunteer judge for a sovereign entity, but there appears to be no express legal authorization that allows such service. Nonetheless, we conclude that this canon most likely would not pose a barrier to a superior court judge serving as tribal judge. Significantly, although we have advised that a superior court judge should serve as tribal judge on his or her personal time, this does not necessarily mean that the judge would be acting "in a "private capacity." Rather, the judge would be acting in an official, essentially governmental capacity, albeit for an Indian tribe. Notably, while sitting as

tribal judge, a superior court judge would enjoy absolute judicial immunity (*Penn v. United States* (8th Cir. 2003) 335 F.3d 786, 788-789), which demonstrates that he or she would not be acting in a private capacity. Thus, canon 4F most likely would not be violated were a superior court judge to preside over tribal court.

- Government code section 1023 states: "A person is ineligible to hold office or employment of any kind under the State, any county, city, district or other political or governmental unit of the State if he, while either a citizen or resident of the United States, has by oath bound himself to support, maintain or further the military or political activities or policies of any foreign government or of any official thereof or society or association therein or to obey the orders or directions of any foreign government or of any official thereof." Violation of this provision is a felony. (Gov. Code, § 1026.) We assume here that in order to preside over a tribal court, a superior court judge would not be required to bind himself or herself by oath "to support, maintain or further the military or political activities or policies of," or to "obey the orders or directions of" the Indian tribe.

We hope this has sufficiently answered your question. Please feel free to call or email me should you have any further concerns. We also note that the opinion set forth above is designed to offer general guidance as to the legal and ethical propriety of a superior court judge also presiding over a tribal court. In the event that an individual judge would like assistance determining whether a specific planned course of action would raise any ethical concerns, that judge should contact the CJA's Judicial Ethics Hotline at 415-263-4600 or toll-free at 866-432-1CJA.

Charles Perkins
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"Serving the courts for the benefit of all Californians"

EXHIBIT B



Abby Abinanti <aabinanti@gmail.com>

FW: Project Find 250 Friends

1 message

Katelyn Sanderson <ksanderson@yuroktribe.nsn.us>

Thu, Sep 18, 2014 at 8:22 AM

To: Abby <aabinanti@gmail.com>, Abby Abinanti <aabinanti@yuroktribe.nsn.us>

September 16, 2014

Dear Sky Thompson,

You are receiving this letter either because I know you or someone who knows me has forwarded it to you. I am a member of the Yurok Tribe and the current Chief Justice of the Yurok Tribal Court. The Yurok Tribe is the largest Indian Tribe in the State of California with over 6,000 enrolled members. Most of the Tribes and tribal people located in California have achieved a status of invisibility. Those of you receiving this letter probably know little or nothing about us. We top every negative index known to modern society: highest elementary school truancy, highest illiteracy rate, highest unemployment rate, highest rates of arrest/recidivism, highest rate of substance abuse, etc. We lack basic infrastructure with minimal public transportation, requiring driving times up to 2 to 4 hours in order to receive adequate services. In portions of the eastern end of the Reservation there are homes that still lack electricity, phones, and running water. Are we pathetic? No we are not. We are determined to overcome these obstacles that have resulted from the destruction of our home lands and efforts to try and extinguish our culture. We intend to prevail in a manner consistent with our values as world renewal people. We as a people will continue to strengthen our commitment to developing "modern principles" of justice. Our deeply held values will help lead us in returning to being who we have always been; responsible stewards of our environment and our families.

Though we may top most negative indices at the moment, we have made and will continue to make tremendous strides as a Tribe, as individual Yuroks, and as the Yurok Tribal Court. The federal government claims they do not have to fund tribal courts in California as they are "excused" by the provisions of Public Law 280, a claim much disputed by the Tribes. Public Law 280 is a law which restricts exclusive criminal jurisdiction in Indian Country but allows tribal court to retain concurrent jurisdiction. As a result of this the Yurok Tribal Court is 95% funded by federal grants. It is the federal government who is also "responsible" for 566 other federally recognized tribes. The grant process is highly competitive; for instance, this year only four legal service programs administered by tribes will be funded. In 2011, the Yurok Tribal Court received grants to fund both a civil and criminal project. Despite the fact that both projects have been recognized as being very successful; neither one were refunded this year. It is for these programs that we are seeking support for...I will describe them both to you. If you can, please choose at least one to support.

YUROK TRIBAL COURT'S CRIMINAL LEGAL ASSISTANCE PROGRAM

During the 3 year life of this project, more than 299 Yurok people were provided with legal assistance in the Yurok Tribal Court and in the neighboring state courts of Humboldt and Del Norte Counties. The Tribal Court built a program based on the fact that this Court has concurrent criminal jurisdiction with the state courts. This allows our Court to "share" responsibility for the administration of justice. We have therefore successfully created a diversion program where we jointly supervise defendants. The Yurok Tribal Court is able to provide greatly enhanced levels of supervision because we are connected to our community and to our tribal people. This has resulted in the successful completion of deferred sentences for convicted felons and the diversion of misdemeanor and felony defendants to the Yurok Tribal Court most of who were repeat offenders for drug/alcohol related offenses.

This program has also successfully helped those who were previously convicted of crimes in

presenting petitions for dismissal. There have been a total of ten petitions granted so far. This "clean slate" program allows for rehabilitated applicants to be eligible to obtain foster care licenses, educational benefits, housing benefits, and employment. Five of those applicants additionally have received certificates of rehabilitation, which has resulted in the filing of 5 applications for consideration for governor's pardons which are still pending.

This successful project no longer exists as it was defunded.

YUROK TRIBAL COURT'S CIVIL LEGAL ASSISTANCE PROGRAM

Since its inception in 2011, this program has served 455 tribal members (or their spouse or partner). We have provided a legal access center where tribal members are provided with services in order to prepare them for administrative hearings, state court appearances, and tribal court appearances. Assistance is also provided in the form of finding and completing court forms, meeting service requirements, and prepare for mediation and court appearances. Our access center has provided a civil attorney to appear with the applicants in all courts and to draft final orders after hearing.

This program has worked successfully with our Yurok Social Services clients in the areas of dependency representation, domestic violence victim assistance, and perpetrator compliance. The program has assisted with the development of the very first Tribal Child Support Program in the State of California. The program successfully works with clients in order to transfer their cases to the Tribal Court from the State Court system. Our Legal Assistance Program has brought about the return of tribal children to their families, has assisted with the retention of housing, worked with families in crisis to develop relationships that will support co-parenting when parents are no longer together, worked with petitioners/respondents in civil actions to ensure just outcomes.

YUROK TRIBAL COURT

The Yurok Tribal Court has turned into a highly successful and innovative tribal court. The Court was originally established in 1974, by the U.S. Federal government to regulate Indian fishing on the Klamath River. The Yurok Tribe has subsequently adopted the Yurok Constitution in 1993 vesting the judicial power and authority to the Yurok Tribal Court over enacted legislation and ordinances. I currently work half-time as the Chief Justice of the Yurok Tribe. Jessica Carter is the Court Administrator-Program who is in charge of developing and supervising court programs. The Court currently has 14 full-time employees and 1 part-time driver. Programs include: Yurok Child Support, Civil Legal Assistance Program, Criminal Legal Assistance Program, a Justice Planning Project, Juvenile Reentry Planning Project, Batterer's Intervention Program, Sex Offender Monitoring, and an Adult Wellness and Family Wellness Court. We have the following court calendars: Family Law, Child Support, and Civil (this includes offenses for environmental, fishing, driving, animal control, conduct, marijuana cultivation, civil disputes, housing disputes, and specific probate matters). The Tribe has numerous ordinances which are enforceable in the Tribal Court. Please look at our web site to learn more about us www.yuroktribe.org<<http://www.yuroktribe.org>>

Other programs include the administration of the Tribal Bar Exam, establishment of the Yurok Employee on line law school program in conjunction with Concord Law School, and the supervision of the construction of the Yurok Tribe's new Multi-Purpose Justice Center facility.

PROJECT FIND 250 FRIENDS

You are receiving this letter because I am hoping you will become a member of Project Find 250 Friends, or that you will grab a few of your friends and combine....each Friend in asking to give \$1,000 for this next year's programming. Our fiscal year begins October 1, 2014. We are committed to continually seeking funds from both public and private grants. We do not want to have to ask again. We wouldn't be asking now if we could see any other way. The Yurok Tribe has established a non-profit organization, the Hoh-Kue-Moh Corporation in order to raise these additional funds so that your contribution will qualify as a tax deductible contribution. We are asking you to please support our civil and criminal projects, and once you give you will be sent a receipt to file with your taxes. Please click [here](http://www.gofundme.com/e9pep4)<<http://www.gofundme.com/e9pep4>> to support our cause.

With Respect,

Abby Abinanti
Chief Justice, Yurok Tribal Court

 winmail.dat
17K

EXHIBIT C

2013-2014 Informal Response
No. 404

(Edwards) (9/8/14)

The Confidentiality Policy of the California Judges Association Ethics Committee protects the identity of the Inquiring Judge and the text of the individual inquiries. The identity of the Inquiring Judicial Officer is known only to the Ethics committee member directly responding to the inquiry and the Vice-Chair of the Committee. Except as compelled by law, or with the consent of the inquiring judge, no member of the Ethics Committee, the member's staff or the staff of the California Judges Association may disclose the text of an Informal Response in a manner which identifies the inquiring judicial officer or the subject matter thereof. Disclosure of the inquiry on the part of the inquiring judicial officer to anyone other than a member of the Ethics Committee or the member's staff may constitute a waiver of this policy.

Inquiry: J is a tribal chief judge for a Native American tribe in California and a SJO (subordinate judicial officer) in a Superior Court also in California. J's tribe needs to fund raise. J is considering sending out letters over J's signature on tribal stationary asking individuals for money. J would not indicate that J is a SJO in a Superior Court, only that J is the chief judge of the tribal court.

1) Can J ethically send out fund raising letters to private individuals with J's signature?

Informal Response: No

Citations: Canons 2B, 4A, 4C(3)(d)(ii), 4C(3)(a)(6), 4C(3)(d)(i), 4C(3)(d)(iv), 4C(3)(e),
[last amended 1/1/13]

Ethics Update:

Informal Response:

Opinion(s): CJA Ethics Opinion No. 41

Rothman 3rdEd Handbook §§ 10.42, 10.43, 10.48, 10.50,

Other:

Category: Civic and Charitable Activities - Fundraising

Vice Chair Comment:



YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548

Open Letter to the San Francisco Superior Court
From: Abby Abinanti, Commissioner/Duty Officer Retired

My retirement from the San Francisco Superior Court became effective November 22, 2014. I could not leave without a farewell...many of you I did not know, many I knew only in passing...all of you with whom I have had contact with in the years I have been associated with the Court have been unfailingly generous to me.

I have as some of you know served since 2008 as the Chief Judge of the Yurok Tribe, and I am an enrolled member of that Tribe. Those duties have never been full time and during the times I was functioning in that role Court, I was doing so with the support of the Superior Court who received an Advisory Opinion from the then Administrative Offices of the Court which allowed for the dual function. Tribal Courts in California operate with tremendous burdens which include nations mired in poverty, rural environs with communication/network challenges more consistent with what many term third world countries (for instance our Reservation is not yet served with electricity or adequate running water on the eastern portion). The most relevant burden for this discussion is that neither the State Government nor the Federal Government consider it their responsibility to fund tribal courts. (California is a P.L. 280 State, and the Federal Government has made the policy decision to not fund tribal courts or law enforcement in the 6 P.L. 280 states.)

The Yurok Tribal Court is primarily funded by private and federal grants. During my tenure we have created a Civil Access Center for assisting Yurok families in State and Tribal Court, a Criminal Diversion Program that created the first of its kind Clean Slate Program on a Tribal Reservation, we just recently signed a historic agreement with the State of California and will go on line as the first Tribal Child Support Court in California in April of 2015 with state court cases being transferred to Tribal Court, and we have a very successful Wellness Court Program for drug and alcohol offenders. Slated for 2015 are a GMO Ordinance to protect our environmental resources; a truancy/education ordinance and advocacy program which is a direct

response to the Attorney General's 2013 Report on Elementary School Truancy; and we are working on a pilot project to initiate a Registered Sex Offender Program on our Reservation because of the high number of RSO relocating with minimum supervision to rural Counties; we now have Federally certified Probation Officers who have also been State certified (the first reservation personnel to do so) to present the 52 week Batterer Intervention Program for domestic violence offenders, this program includes a strong cultural component, and finally we are a featured site in Anna Deavere Smith's new theater project debuted in the Bay Area in the Spring of 2014 the Pipeline between School and Prison.

The Yurok Tribe is the largest Tribe in this State and has the largest program/infra structure of any Court. We will be moving into a new Multipurpose Justice Center facility that will be completed in early 2015. All of this to say I have benefited tremendously from lessons learned, skills honed, friends made who gave of their time to assist us/allowed us to shadow to learn functions of a Court and/or Court programs. Without my time with the San Francisco Superior Court and the giving nature of this Court I could not have lead and/or followed the Yurok Court into what I believe is a truly culturally/legally sound court that reflects the traditional village values of the Yurok. The developing Tribal Court, I believe truly reflects and embodies our value as Yurok People which we have translated into modern day practices needed for the problems and issues our world currently faces. It allows us to assume our rightful place as World Renewal People for our world and return to roles and responsibilities.

During recent months it came to my attention that my fund raising for the Yurok Tribal Court might be an ethical violation as a State Judicial Officer. I first sought a hot line opinion and then went on to get a "formal" but confidential opinion. In summary the opinion is that if I wished to avoid an ethics showdown I had to cease fund raising for the Yurok Tribal Court or cease acting as a State Judicial Officer. My responsibility was clear to me. I am the first Yurok, the first Native American woman to be admitted to the State Bar of California, and San Francisco Superior Court was the First California Court to ever appoint a California Native American to their ranks.

Based on all of the above I have strong ties/allegiances to the Yurok Tribal Court and to the San Francisco Superior Court. It is difficult in a world so large, with such a range of experiences to frame the thoughts to explain what

my time on the San Francisco Superior Court has meant to me, my family, my Tribal Nation, and other tribal people. I came of age in a time and place where many cruelties were accepted daily, behavior I never thought to be gifted as I was by my association with the San Francisco Superior Court. With this Court I learned as an adult to be a better person, because I was treated fairly/considerately and without bias, it was a novel institutional experience which unless you have had the benefit of the opposite can be overlooked.

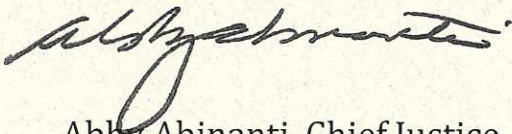
With all these things in mind I could not/would not allow a public ethics brawl to affect either of the institutions I hold in such high esteem. I do believe I am right, and will pursue the option of creating an exception to the existing ethics rules, which coincidentally happen to be open for revision comments until 1/12/15 that would allow states such as California with concurrent jurisdiction the option for such dual service/responsibility. There are many more Indian lawyers in the ranks now...and each system would benefit from a continued relationship, but we Tribal judges must be able to meet our responsibilities at home.

A special thank you to Presiding Judge Cynthia Ming Mei Lee and Supervising Judge Charlotte Woolard who patiently and supportively let this process play out giving me every opportunity to retain my position. A special thank you to Commissioner Rebecca Wightman who has been a steadfast friend.

And to Val Mason, who sat beside me for nearly two decades, you are and always were the better person, you taught me much of my job, you encouraged, supported and put up with me....for all of the years I am eternally grateful.

And to the Court staff of the Fourth Floor and YGC you were always there for me, through it all, unfailingly kind and bloody damn good at your jobs....THANK YOU!

With Respect,

A handwritten signature in black ink, appearing to read 'Abby Abinanti', written in a cursive style.

Abby Abinanti, Chief Justice
Yurok Tribal Court

POINTS TO CONSIDER

Prepared by Judge Abby Abinanti and Commissioner Rebecca Whiteman

- Code of Judicial Ethics does not speak to activities relating to a tribal nation
 - References in Code itself show the context to be with regard to
 - Governmental activities (e.g. appearing at a public hearing or officially consulting with an executive, legislative or public official)
 - Civic activities or service (e.g. appointment to a governmental committee or commission or other governmental position; service as an officer director, trustee or nonlegal advisor))
 - Charitable activities (e.g. soliciting funds by a judge as an officer, director, trustee or nonlegal advisor to an organization)

A state judicial officer who is also a Chief Justice of their federally recognized tribe has distinct duties, and such activity cannot be considered in the context of a rule that deals with appearances at executive, legislative or other hearings, civic activities or service, or charitable activities. **A federally recognized tribe is not a “charitable” cause or activity.**

- State Courts and Tribal Courts – Need and Importance of Collaboration
 - CA Tribal Court—State Court Forum was established in 2010. It is a coalition of various tribal court and state court leaders who come together as equal partners to address areas of mutual concern. (In 2013, CA Rule of Court 10.60 was adopted establishing the forum as a formal advisory committee.) While a great deal of its work involves making recommendations to the Judicial Council to improve the administration of justice in all proceedings in which authority to exercise jurisdiction overlaps, it has additional duties, including, but not limited to:
 - “Identify issues of mutual importance to tribal and state justice systems, including those concerning the working relationship between tribal and state courts in California”
 - “Recommend appropriate activities needed to support local tribal court—state court collaborations”

And among its stated objectives includes the objective to:

- “Foster excellence in public service by promoting state and tribal court collaboration that identifies new ways of working together at local and statewide levels and maximizes resources and services for courts”

Examination, re-examination, analysis and review of the existing Code of Judicial Ethics is needed, with the help, guidance and input from the California Tribal Court—State Court

Forum, in understanding the cultural and legal differences of the respective systems of justice.

- Native American jurists – dual roles – need for clear guidance that fosters collaboration
 - Until recently, there had never been an occasion to even consider the situation of a state judicial officer also having responsibilities as a judicial officer of a tribe; Code of Judicial Ethics has been in existence over 50 years. In the past century, there have been only two state Native American judicial officers period, and only one of which is the Chief Justice of their tribe.

The Code of Judicial Ethics was written at a time when the CA Courts had no Native American judicial officers in its ranks. Given the importance of diversity on the California bench as a whole, as well as the need for recognition and importance of collaboration with and between the California Courts' justice system and Tribal Courts, the time has come to clarify the California Code of Judicial Conduct to delineate permissible conduct in this very limited situation.

SEE ALSO: The California Tribal Court-State Court Forum document entitled:

“Principles and Values: A Living Document”

The need to work together to get a reasonable and workable solution to the unique ethics issue presented is something that is embodied in this document.

- No Complete Ban - Exceptions that are justifiable already exist
 - Sitting judges are allowed to directly solicit and fundraise – even from attorneys who may appear in front of them, so long as certain guidelines are followed. See Canon 5 and Rothman, CA Judicial Conduct Handbook (3rd ed.), §10.46, p.560.
 - Other classification of judges and/or situations exists where the Code of Judicial Conduct provides narrowly drawn exceptions. See Canon 6.

There is no reason why a clearly delineated exception cannot be detailed to address this unique type of situation that can arise for judicial officers in this state.

- Policy reasons behind the no solicitation or fundraising general rule are not implicated in a narrowly defined exception, so long as other provisions of the Code of Judicial Ethics are followed and safeguards are in place.

The situation of a state judicial officer also being the Chief Justice of a federally recognized tribe is relatively rare. The distinct roles and courts involved, and the importance of fostering diversity and collaboration between such courts deserve a distinct mention in the Code of Judicial Ethics.

CANON 4: A JUDGE SHALL SO CONDUCT THE JUDGE’S QUASI-JUDICIAL AND EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. Extrajudicial Activities in General

...

B. Quasi-Judicial and Avocational Activities

...

C. Governmental, Civic or Charitable Activities

(1) [Cannot appear at public hearing or officially consult w/executive, legislative or public official EXCEPT on matters concerning the law, the legal system or the administration of justice, or judge’s private or personal interests.]

(2) [Cannot accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. But may serve in military reserve or represent a national, state or local government on ceremonial occasions or with respect to historical, educational or cultural activities.]

(3) Subject to the following limitations and the other requirements of this code,

(a) [Can serve as an “officer, director, trustee or nonlegal advisor of an organization or governmental agency” devoted to the improvement of the law, the legal system, or the administration of justice, provided does not constitute a public office w/in meaning of CA Const. Art. VI, sec. 17]

(b) [May serve as an “officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, service, or civic organization.” not conducted for profit]

(c) [Cannot service as an “officer, director, trustee, or nonlegal advisor” if it is likely the organization

(i) will be engaged in judicial proceedings that would ordinarily come before the judge,
or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court in which judge is member]

ALTERNATIVE 1

DRAFT REVISION TO CANNON 4(C)(3)

(d) a judge as an officer, director, trustee, or nonlegal advisor, or as a member or otherwise

(i) may assist such an organization in planning fundraising and may participate in the management and investment of the organization's funds. However, except as permitted in Cannon 4C(d)(v), a judge shall not personally participate in the solicitation of funds or other fundraising activities , except that a judge may privately solicit funds for such an organization from members of the judges' family or from other judges (excluding court commissioners, referees, retired judges, court-appointed arbitrators, hearing officers, and temporary judges);

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fundraising mechanism, except as permitted in Canon 4C(3)(d)(i);

(iv) shall not permit the use of the prestige of his or her judicial office for fundraising or membership solicitation but may be a speaker, guest of honor, or recipient of an award for public or charitable service provided the judge does not personally solicit funds and complies with Canons 4A(1), (2), (3), and (4)."

(v) may, if acting solely in the capacity of Chief Justice of a federally recognized tribe, personally participate in solicitation of funds or other fundraising activities on behalf of the tribe's legal or justice system, provided the judge complies with Canons 4A(1), (2), (3) and (4) and laws regarding disclosure and disqualification.

Alternative 2

DRAFT REVISION TO CANNON 4(C)(3)

“(d) a judge as an officer, director, trustee, or nonlegal advisor, or as a member or otherwise

(i) may assist such an organization in planning fundraising and may participate in the management and investment of the organization’s funds. However, a judge shall not personally participate in the solicitation of funds or other fundraising activities , except that a judge may privately solicit funds for such an organization from members of the judges’ family or from other judges (excluding court commissioners, referees, retired judges, court-appointed arbitrators, hearing officers, and temporary judges), and a judge, acting solely in the capacity of Chief Justice of a federally recognized tribe, may personally participate in solicitation and other fundraising activities on behalf of the tribe’s legal or justice system, provided the judge complies with Canons 4A(1), (2), (3) and (4) and the laws regarding disclosure and disqualification ;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fundraising mechanism, except as permitted in Canon 4C(3)(d)(i);

(iv) shall not permit the use of the prestige of his or her judicial office for fundraising or membership solicitation but may be a speaker, guest of honor, or recipient of an award for public or charitable service provided the judge does not personally solicit funds and complies with Canons 4A(1), (2), (3), and (4).”

Alternative 3

DRAFT REVISION TO CANNON 6

CANON 6: COMPLIANCE WITH THE CODE OF JUDICIAL ETHICS

A. Judges

B. Retired Judge Serving in the Assigned Judges Program

C. Retired Judge as Arbitrator or Mediator

D. Temporary Judge, Referee or Court-Appointed Arbitrator

E. Judicial Candidate

F. Time for Compliance

G. [Repealed]

H. Judges on Leave Running for Other Public Office

I. Judges Serving in Separate Tribal Judicial Capacity

A judge, who also serves as the sole Chief Justice of a federally recognized tribe, shall comply with all provisions of this code, except for the following, insofar as the conduct relates solely to the support of the tribe's legal or justice system, and is done solely in the capacity of and as Chief Justice of such tribe:

4C(3)(d)(i)—Fundraising and solicitation of funds; provided the judge complies with Canons 4(A)(1), (2), (3) and (4) and the laws regarding disclosure and disqualification.



Application

Training and Technical Assistance Opportunity for Tribal, State and Local Governments to Develop a Collaborative Joint Jurisdictional Court Initiative

Please prepare an application responding to the questions below. Applications may be prepared in Microsoft Word® or .pdf format and should be submitted via email attachment to leof@ohsu.edu. Applications may be no more than seven pages in length. Font should be 12 pt.

Applications are due Friday, **January 30, 2015** by 5:00 p.m. Pacific Standard Time

The initial written application has a total possible value of 70 points. All applications will be reviewed and applications that score at least 50 out of 70 points on first review will be reviewed by all Project TEAM staff. The five applications with the highest scores based on full review will be designated semifinalists. Identified tribal and local government leaders from semifinalist applications will be contacted the week of February 9, 2015 for completion of a 15 minute community readiness survey and an interview with Project TEAM staff the week of February 16, 2015. Survey completion and interview are worth 30 points, with a total application value of 100 points. Two sites will be chosen for Project TEAM support with TTA services to be provided either during April, June and August 2015, or November 2015, and January and March 2016. All applicants will be notified of their status on March 2, 2015. Applicants not chosen through this process will be considered for future support or will be referred to other Bureau of Justice Assistance (BJA), U.S. Department of Justice approved training and technical assistance providers for potential TTA support.

Informational Webinar

The National Criminal Justice Association (NCJA) will host a webinar to provide information about this project and answer questions about the application process. The webinar is scheduled for Wednesday, January 7, 2015 at 3:00 pm eastern time. To register for the webinar please click [here](#).

Application Questions

Please answer the following questions clearly and with as much detail as possible.

1. **Identification of project leaders/statement of commitment** (worth 20 points out of 100)

Success of this project will be determined at least in part by the strength of leadership and the degree of commitment from these leaders. Please list an identified leader from both the tribal government or court system and the local government or court system. **All applications must identify designated leaders from both the tribal and local government entities.** Include:

- The designated leaders' names
- Current titles or positions and any past experience relevant to the project
- Full contact information: address, phone number, and email address

Both the tribal and local government leaders must submit a statement of commitment to the project indicating their ability to participate personally and bring supporting staff/participants to the three on-site visits to be scheduled for either April, June and August 2015, or November 2015 and January and March 2016. Leaders should also describe their role in the project and describe the resources and abilities they will bring to the collaboration.

2. **Description of the problem** (worth 10 points out of 100)

Please describe the problem you intend to address through creation of a joint-jurisdiction collaboration. Include:

- A description of the problem faced by the community; and
- How the problem affects both the tribal and non-tribal population.

3. **Description of the proposed joint-jurisdiction collaboration** (worth 20 points out of 100)

Please describe the joint-jurisdiction collaboration you wish to create. Include:

- Goals and objectives of the collaboration;
- Proposed nature of collaboration (e.g., a joint jurisdiction court to handle a specific issue or population);
- Identify key participants and what roles they will play;

- What factors in the environment will encourage project success; and
 - What potential barriers or challenges to implementation exist.
4. **List of proposed participants** (worth 10 points out of 100)
- Collaborations do better when support is broadly based, widespread and balanced between key participants (e.g., representatives from both tribal and local governments and communities.) Please identify the individuals you expect to participate in creating and implementing your collaboration. Where possible, please identify participants by name and provide contact information. If recruitment is ongoing, projected participants may be identified by role (e.g., parole officer).
5. **Description of the existing tribal-local community relationship and information on any existing or past collaborations** (10 points out of 100)
- Please describe the existing relationship between the tribal government and community and the local government and community. Describe how the existing relationship may affect the proposed collaboration or be affected by it. Describe any existing or past collaborative efforts and what happened during those projects. Applications should include materials documenting support from the Tribal Council or other governing tribal authority and any equivalent political or judicial authority in the state or local government that would be required to proceed with the project.
-

All applications will be reviewed and those scoring at least 50 out of 70 points based on the answers to the above questions will be contacted for the second stage of the process. The second stage is worth 30 points and consists of the completion of a 15 minute survey to determine collaboration readiness and a phone interview between Project TEAM staff and the designated tribal and local government leaders. Phone interviews will take place the week of February 16, 2015.

Questions about the application process should be directed to Allison Leof at leof@ohsu.edu or (503) 494-3805.



This project was supported by Grant No. 2012-IC-BX-K003 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.



Training and Technical Assistance Opportunity

Assistance for Tribal, State, and Local Governments to Develop Collaborative Joint Jurisdictional Justice Initiatives

Project TEAM (Together Everyone Achieves More) is now accepting applications from representatives of federally recognized Indian tribes and local governments who wish to develop a joint jurisdiction, justice related collaboration. Applications are available on the Project TEAM [website](#) and are due January 30, 2015. An informational [webinar](#) will be hosted by the National Criminal Justice Association on Wednesday, January 7, 2015 at 3:00 p.m. eastern time. Two proposals will be selected through this process and Project TEAM will provide services between March 2015 and March 2016.

The purpose of this current initiative is to help two additional communities create successful joint-jurisdiction, justice-related collaborations of their own. The goal of collaboration is to improve client outcomes, make more effective use of resources, and build a long-term sustainable relationship between tribal and other government authorities. The Project TEAM staff will draw on the Minnesota and California experiences described below to help two tribal and local government partnerships develop and implement a joint-jurisdiction court or justice initiative of their own.

BACKGROUND

The Project TEAM collaboration model is based on the work of Judges John P. Smith and Korey Wahwassuck who together created a joint jurisdiction Wellness Court with participation by the Cass County, Minnesota District Court and the Leech Lake Band of Ojibwe Tribal Court. The Cass County-Leech Lake Wellness Court was successful in reducing recidivism and improving public safety as well as contributing to improved relations between the Tribe and local communities. Because of the model's success and significant interest from communities in developing their own joint jurisdiction initiatives, the Bureau of Justice Assistance (BJA), U.S. Department of Justice (DOJ) has provided funding for Project TEAM to assist federally recognized Indian tribes

and their state or local government partners with developing joint-jurisdiction collaborative initiatives in the courts or criminal justice system.

The first Project TEAM assistance took place in 2014. Over three separate, two day meetings, the TEAM Project staff helped the Shingle Springs Band of Miwok Indians and the El Dorado County Superior Court in El Dorado County, California design a joint jurisdiction court to serve tribal youth and their families identified through delinquency, truancy or dependency (child protective services) proceedings. The court is scheduled to begin proceedings in Spring, 2015.

The request for proposals and the application are available on the [Project TEAM Website](#).

Important Information

Proposals Due:	January 30, 2015 by 5:00 p.m. PT
Selection Announcement:	March 2, 2015
Project Period:	Site One: March through August, 2015 Site Two: October 2015 through March 2016
Applicant Webinar:	Wednesday, January 7, 2015 at 3:00 pm eastern time. Register here .
Eligibility:	Applications must be jointly submitted by a representative from both a federally- recognized Indian Tribe and a local or state government authority
Information Contact:	Allison Leof, (503) 494-3805 or leof@ohsu.edu

This project was supported by Grant No. 2012-IC-BX-K003 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.



Request for Proposals

Training and Technical Assistance Opportunity for Tribal, State, and Local Governments to Develop a Collaborative Joint Jurisdictional Court Initiative

IMPORTANT INFORMATION

Proposals Due:	January 30, 2015 by 5:00 p.m. Pacific time
Selection Announcement:	March 2, 2015
Project Period:	Site One: March through August, 2015 Site Two: October 2015 through March 2016
Applicant Webinar:	Wednesday, January 7, 2015 at 3:00 pm eastern time. Register here .
Eligibility:	Applications must be jointly submitted by a representative from both a federally-recognized Indian Tribe and a local or state government authority
Information Contact:	Allison Leof, (503) 494-3805 or leof@ohsu.edu

This project was supported by Grant No. 2012-IC-BX-K003 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.



PURPOSE

The Leech Lake Band of Ojibwe Tribal Court and the Cass and Itasca County District Courts in Minnesota have successfully operated joint-jurisdiction Wellness Courts for the past seven years. Not only have the courts reduced recidivism by chronic alcohol and drug offenders and thus improved public safety, the courts have contributed to generally improved relationships between the Indian tribe and local governments. In 2014, the Shingle Springs Band of Miwok Indians and El Dorado County Superior Court in California worked with Project TEAM (Together Everyone Achieves More) to develop a joint jurisdiction, wrap-around family court for their community. The purpose of this request for proposals is to select two additional communities to receive Project TEAM support in creating a successful joint-jurisdiction, justice-related collaboration of their own. The goals of the joint jurisdiction collaboration will be to improve client outcomes, make more effective use of resources, and build a long-term sustainable relationship between tribal and other government authorities. The Project TEAM staff will draw on the Minnesota and California experiences to help two tribal and local government partnerships develop and implement a joint-jurisdiction court or justice initiative of their own.

BACKGROUND

Project TEAM has been funded by the Bureau of Justice Assistances (BJA), U.S. Department of Justice (DOJ) to assist federally-recognized Indian tribes and their state or local government partners with developing a joint-jurisdiction collaborative initiative in the courts or criminal justice system.

In 2006, Judge John P. Smith of Cass County and Judge Korey Wahwassuck from Leech Lake Band of Ojibwe joined together to combat impaired driving and substance-use related crime in their community by creating a joint-jurisdiction Wellness Court. The court was successful in reducing recidivism and improving public safety, and has also contributed to improved relations between the Tribe and the local communities. Other justice-related collaborations have since been formed, such as a juvenile reentry program and a juvenile diversion program in collaboration with Anishinabe Legal Services. The Cass County-Leech Lake Wellness Court has won several national and international awards (Harvard University Honoring Nations Award; National Association of Drug Court Professionals Award; and National Criminal Justice Association Award, among others), and both Judge Smith and Judge Wahwassuck are frequently asked to consult on the creation of joint-jurisdiction projects. Judge Wahwassuck and Judge Smith have published articles describing the Minnesota collaboration and the

benefits of joint jurisdiction projects in the *Washburn Law Journal* and the *William Mitchell Law Review*.¹

In 2014, Project TEAM conducted its first on-site training and technical assistance (TTA) with the Shingle Springs Band of Miwok Indians and the El Dorado County Superior Court in El Dorado County, California. Over three separate, two day meetings, Project TEAM staff helped participants from the tribe and local government agencies design a joint jurisdiction court to serve tribal youth and their families identified through delinquency, truancy or dependency (child protective services) proceedings. The court is scheduled to begin proceedings Spring, 2015.

Judges Wahwassuck and Smith are members of Project TEAM and are joined by Jennifer Fahey, JD, a former prosecutor with experience creating a joint tribal-local court sentencing circle collaboration; and Allison Leof, PhD, a senior policy analyst and project manager who will be coordinating the project through the Center for Evidence-based Policy (Center) at Oregon Health & Sciences University (OHSU). Full biographies of the Project TEAM staff can be found on the project [website](#).

Project TEAM is one of many initiatives sponsored by the U.S. Department of Justice to improve justice outcomes in tribal and non-tribal communities. More information on these initiatives can be found on the U.S. Department of Justice's Office of Tribal Justice [website](#) and Tribal Law and Order Act [page](#), BJA's [National Training and Technical Assistance Center](#), and the Tribal Law and Policy Institute's Walking on Common Ground [website](#), which provides resources for promoting and facilitating tribal-state-federal collaborations.

GOAL

The goal of Project TEAM is to help communities create and implement a joint-jurisdiction program that will improve client outcomes, build relationships between tribal and state and local governments, and make more effective use of resources. Tribal and state or local government agencies that are interested in building a joint-jurisdiction, justice-related project are encouraged to apply. Eligible projects include:

- Wellness courts, mental health courts, veterans court, or other diversion programs
- Juvenile justice reform programs
- Collaborative supervision/reentry programs

¹ See; Wahwassuck, K. (2008). The new face of justice: Joint tribal-state jurisdiction. *Washburn Law Journal*, 47, 733-755. Retrieved from <http://contentdm.washburnlaw.edu/cdm/ref/collection/wlj/id/5687>. Wahwassuck, K., Smith, J.P., & Hawkinson, J.R. (2010). Building a legacy of hope: Perspectives on joint tribal-state jurisdiction. *William Mitchell Law Review*, 36 (2), 859-897. Retrieved from <http://open.wmitchell.edu/wmlr/vol36/iss2/3/>.

- Alternatives to detention/incarceration

Other projects that involve creating a joint-jurisdiction court or justice program involving both tribal and other governments will be considered.

PROJECT DETAILS

Applicants will be asked to submit a written application responding to five questions. Applicants who meet the basic minimum requirements (score 50 points out of 70 possible points; see below for details) will proceed to the semifinalist stage. Semifinalists will complete a 15-minute email survey assessing readiness for collaboration and participate in a phone interview with Project TEAM staff worth a total of 30 points. Details on the application process are provided below. Applications are due January 30, 2015. Two sites will be selected to receive Project TEAM services through this process. Final selection will take place by March 2, 2015 and planning will begin immediately.

The project will involve three onsite, facilitated two day meetings. One selected site will receive services in April, June and August 2015. The other site will receive services in November 2015, January and March 2016. The first meeting will focus on building relationships, identifying and prioritizing goals and challenges, and developing a sense of shared values and mission. The second meeting will focus on the development of a structure for how to work together, including formal agreements, role clarification, and resource commitment. During the third meeting, participants will finalize details for achieving their goals, including work and communication plans, and measurable performance objectives and data collection.

ELIGIBILITY

The proposed collaboration must be between a federally recognized Indian tribe and a state or local government agency. Although one goal of the initiative is to develop new relationships, it is expected that applicants will have a specific project in mind and have identified leaders from both the tribe and local governments. **Both parties must demonstrate a willingness to work together to develop a joint-jurisdiction partnership and must have approval from appropriate authorities to pursue the project.** Applicants should confirm that both the tribal and local governmental authorities support the application before proceeding. Applications will require a signed resolution from the Tribal Council or governing body of the Tribe showing support for the collaboration before final selection.

FUNDING

This is a training and technical assistance opportunity and does not come with direct funding for the site selected. TEAM staff anticipates, however, that the work completed through the

project will provide recipients with a strong strategy, program implementation tools, and a sustainability plan. These resources could then be used to develop grant applications for funding.

APPLICATION WEBINAR

The National Criminal Justice Association (NCJA) will host a webinar Wednesday, January 7, 2015 at noon pacific/3:00 p.m. eastern time. The webinar will introduce Project TEAM staff, describe the application process and TTA services offered. In addition, Judge Suzanne Kingsbury of El Dorado County Superior Court and Judge Christine Williams of the Shingle Springs Band of Miwok Indians will be present to describe their experience with Project TEAM and the status of their joint jurisdiction initiative. To register for the webinar, please click [here](#).

APPLICATION PROCEDURE AND REQUIREMENTS

To apply for TTA funding, applicants must submit an application via email attachment. The application must include the following information:

- Designated leaders for both the tribal and state or local government bodies. Examples of designated leaders can include judges, elected/appointed officials, or department heads. Please include a name and full contact information for the tribal and local government designated leaders. The Project TEAM staff will contact these leaders during the interview process to confirm their commitment to the project, if the application proceeds to the semifinalist stage.
- A statement from both leaders explaining their commitment to the project and describing the role they will play in the collaboration.
- A description of the problem the partners seek to solve through a joint-jurisdiction partnership.
- A description of the proposed joint-jurisdiction project.
- A list of proposed participants to participate in facilitated onsite meetings by name or role (e.g., parole officers, the court clerk, etc.). Applicants are expected to show widespread support for the proposed project and a willingness or ability of participants to participate in the onsite meetings.
- Background on any previous collaboration between tribe and local authority and general discussion of the relationship between tribe and local government partners.
- Material documenting support from the Tribal Council or other governing tribal authority and any equivalent political or judicial authority in the state or local government that would be required to proceed with the project.

The [application form](#) is available on Project TEAM [website](#). Applications may be prepared in Microsoft Word® or .pdf format and should be submitted via email attachment to leof@ohsu.edu. Applications may be no more than seven pages in length and should be in 12-point font.

SELECTION CRITERIA and PROCESS

Applications are due on January 30, 2015 and Project TEAM staff will begin the review process immediately, beginning with an initial screening of applications. Applications that score 50 out of 70 points will be referred for full review by all Project TEAM staff. The five applications with top scores based on full review will be designated semifinalists. All semifinalist applicants will have a conference call interview with Project TEAM staff. Applications will be evaluated based on the following criteria:

1. Identification of leaders from both tribal and state or local jurisdiction and statement of commitment from leaders—20 points out of 100

Success of this project will be determined at least in part by the strength of leadership and the degree of commitment from these leaders. Applications must identify a leader from both the tribe and local government. Examples of designated leaders can include judges, elected/appointed officials, or department heads. Please include a name and full contact information for the designated tribal and local government leaders.

Leaders must also submit a statement of commitment where they describe their role in the project and describe the resources and abilities they will bring to the collaboration. Leaders must specifically state their willingness to commit time and staff to the three onsite meetings in either April, June and August 2015 or November 2015, January and March 2016.

2. Description of the problem—10 points out of 100

The description includes: A) a clear and compelling description of the problem faced by the community; and B) how it affects both the tribal and non-tribal population.

3. A description of the proposed joint collaboration—20 points out of 100

A clear outline of what the proposed collaboration will look like, what the goals and objectives of the project are, and what roles participants will play. Include information on both the collaboration's resources and strengths as well as potential barriers or challenges to implementation.

4. A list of proposed participants—10 points out of 100

Collaborations do better when support is broadly based and widespread and we will be looking for balanced participation from both tribal and local jurisdiction representative to the degree possible. Where possible, please identify participants by name and provide contact information. If recruitment is ongoing, projected participants may be identified by role (e.g., parole officer).

5. Background on the existing tribal—local community relationship as well as information on any existing or past collaborations—10 points out of 100.
 - Please include a general discussion of the tribal and local community relationship and how the state of the relationship may affect the project or be affected by it. Describe any existing or past collaborative efforts and what happened during those projects. Applications should include materials documenting support from the Tribal Council or other governing tribal authority and any equivalent political or judicial authority in the state or local government that would be required to proceed with the project.
6. The interview and assessment portion of the selection process will be worth 30 points out of 100.

The two-step review process of applications includes:

1) *Initial Review of Applications*

After the applications are received, an initial screening of these applications will be conducted using the above criteria. If an application scores above 50 points out of 70 based on the first five criteria above, the application will be forwarded for full Project TEAM staff review.

2) *Secondary Review of Applications Followed by Conference Call with Semifinalists*

The applications will then be reviewed by the full Project TEAM staff using the first five criteria above. The five top-scoring applications will be designated semifinalists. Project TEAM staff will contact the designated tribal and local leaders from the semifinalist applications for a phone interview and evaluation process. Designated leaders from semifinalist applications will be asked to complete the Wilder Collaboration Factors Inventory (a 15-minute survey) to assess the available resources and challenges for collaboration. During the phone interview, Project TEAM staff will measure commitment and availability of resources for success. The interview and assessment portion of the selection process will be worth 30 points out of 100. Phone interviews will take place during the week of February 16 through 20, 2015.

All applicants will be notified of the outcome of the application review process by March 2, 2015.

HOW TO SUBMIT AN APPLICATION

Applications are available on the Project TEAM [website](#). Applications should be submitted in Microsoft Word® or .pdf format to leof@ohsu.edu. Applications are due on January 30, 2015 by 5:00 p.m. PT. Only one application per project will be accepted.

CONTACT

For further information, please contact Allison Leof at leof@ohsu.edu or (503) 494-3805.



Pre-Grant Application Webinar: Project TEAM: Helping Tribes and State/Local Governments Create Joint Jurisdiction Collaborations

On Wednesday, January 7, 2015 at 3:00 p.m eastern time, please join us for an exciting webinar on tribal-state court collaboration presented by members of Project TEAM (Together Everyone Achieves More). Project TEAM is funded by the Bureau of Justice Assistance (BJA), Office of Justice Programs, U.S. Department of Justice to provide training and technical assistance (TTA) to sites who wish to design and implement joint jurisdiction justice projects. Project TEAM's model is based on the successful experience of Judge John Smith and Judge Corey Wahwassuck who created the nation's first joint jurisdiction court in Minnesota. The Cass County-Leech Lake Wellness Court was successful in reducing recidivism, improving public safety, and helping to significantly improve the relationship between the tribe and the surrounding community. In 2013, BJA funded Project TEAM to provide TTA to the Shingle Springs Band of Miwok Indians and El Dorado County Superior Court in California. Following TTA assistance, the tribe and county plan to launch a joint-jurisdiction juvenile and family wrap-around wellness court in the spring of 2015.

The BJA has authorized Project TEAM to provide TTA to two additional communities. The National Criminal Justice Association (NCJA) is hosting this webinar to introduce Project TEAM staff, describe the TTA services offered, and review the application procedure for TTA assistance.

Presenters on the webinar will include all Project TEAM staff led by Judges Corey Wahwassuck and John P. Smith, and Judges Christine Williams and Suzanne Kingsbury from the Shingle Springs-El Dorado County initiative.

To access the Request for Proposal and Project TEAM TTA application, please visit the Project TEAM [website](#). To register for the webinar, click [here](#). Any pre-webinar questions should be directed to Allison Leof at leof@ohsu.edu or at 503-494-3805.

These webinars are supported by Grant No. 2010-IC-BX-K054 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, the Community Capacity Development Office, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. Points of view or opinions in this document are those of the speakers and do not necessarily represent the official position or policies of the U.S. Department of Justice, the National Criminal Justice Association or the National Congress of American Indians.

Forum Meeting Schedule

1. February 12, 2015
2. April 16, 2015
- 3. June 11, 2015 (in-person)**
4. August 20, 2015
5. October 8, 2015
6. December 17, 2015
7. February 11, 2016 (tentative)
8. April 14, 2016 (tentative)
- 9. June 9, 2016 (in-person) (tentative)**
10. August 18, 2016 (tentative)
11. October 6, 2016 (tentative)
12. December 15, 2016 (tentative)
13. February 16, 2017 (tentative)
14. April 13, 2017 (tentative)
- 15. June 8, 2017 (in-person) (tentative)**
16. August 17, 2017 (tentative)
17. October 12, 2017 (tentative)
18. December 14, 2017 (tentative)