



JUDICIAL COUNCIL
OF CALIFORNIA

TRIBAL COURT-STATE COURT FORUM

www.courts.ca.gov/forum.htm
forum@jud.ca.gov

TRIBAL COURT-STATE COURT FORUM

MINUTES OF OPEN MEETING

February 19, 2015

12:15-1:15 p.m.

By Conference Call

**Advisory Body
Members Present:**

Hon. Dennis M. Perluss, Cochair, Hon. Abby Abinanti, Ms. Jacqueline Davenport, Hon. Kimberly A. Gaab, Hon. Suzanne N. Kingsbury, Hon. Anthony Lee, Hon. Deborah A. Ryan, Hon. Deborah L. Sanchez, Hon. Christine Williams, Hon. Christopher G. Wilson, and Hon. Daniel Zeke Zeidler

**Advisory Body
Members Absent:**

Hon. Richard Blake, Cochair, Ms. April Attebury, Hon. Mitchell L. Beckloff, Hon. Jerilyn L. Borack, Hon. Leonard P. Edwards, Hon. Bill Kockenmeister, Hon. Michael Golden, Hon. Cynthia Gomez, Mr. Olin Jones, Hon. John L. Madigan, Hon. Lester Marston, Hon. David E. Nelson, Hon. Kimberly J. Nystrom-Geist, Hon. Allen H. Sumner, Hon. Juan Ulloa, Hon. Claudette C. White, Hon. Joseph J. Wiseman, and Hon. Sarah S. Works

Others Present:

Ms.Carolynn Bernabe, Ms. Vida Castaneda, Ms. Kimberly DaSilva, Ms. Ann Gilmour, Ms. Marcia Hurd, Mr. Courtney Tucker, and Ms. Jennifer Walter

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:17 p.m., and took roll call.

Approval of Minutes

The Tribal Court-State Court Forum October 9, 2014 and December 18, 2014 meeting minutes.

DISCUSSION AND ACTION ITEMS (ITEMS 1-5)

Item 1

Cochairs Report

- Annual Agenda

Presenters: Hon. Dennis M. Perluss
Ms. Jennifer Walter

Ms. Walter described the forum's annual agenda and highlighted that the first part of the document lists the forum's projects for the coming year and the second part describes the forum's accomplishments. She explained that this year's annual agenda groups projects under three forum objectives that are aligned with the California Judicial Council's strategic plan. These three objectives are as follows:

1. Make policy recommendations that enable tribal and state courts to improve access to justice, to issue orders, and to enforce orders to the fullest extent allowed by law.
2. Increase tribal/state partnerships that identify issues of mutual concern and proposed solutions.
3. Make recommendations to committees developing judicial education institutes, multi-disciplinary symposia, distance learning, and other educational materials to include content on federal Indian law and its impact on state courts, including interjurisdictional issues.

Justice Perluss expressed that this new way of organizing projects under policy recommendations, tribal state partnerships, and judicial education will be easier for members, the council, and the public to follow. Ms. Walter walked the members through the document and then asked for their input. Forum members raised the serious fiscal challenge that tribes in California, as a Public Law 280 State, have in building tribal justice capacity. Members expressed appreciation for the Forum E-Update that lists grant opportunities for tribal courts, state courts, and tribal/state partnerships, but expressed the need for the identification of additional resources. Members discussed the need for a strategy that involves partnering with the federal government, the state, and private foundations to address the lack of funding for tribal justice systems nationwide. One member mentioned that the Judicial Council staff agency sometimes has funding opportunities that can be shared with tribal courts. For example, existing funding for pretrial release and reentry courts may provide an opportunity for tribal courts and state courts to partner to leverage these funds. After discussion, the forum agreed to revise the annual agenda to include two new projects: (1) under other policies, to develop a proposal to promote the education of federal Indian law in California law schools and (2) under tribal/state partnerships, develop and implement a strategy to increase resources for tribal courts and tribal court/state court partnerships.

Action Items: Staff directed to revise the annual agenda, send article on Federal Indian Law and the State Bar to the forum, and explore funding through reentry courts and other opportunities.

Item 2

[Attorney General Holder Announces ICWA Initiative](#)

Presenter: Marcia Hurd, Senior Counsel to the Director, Office of Tribal Justice
United States Department of Justice

Ms. Hurd gave a brief summary of her professional background as a prosecutor in Montana (7 years) represented social services agencies, guardian ad litem (2 years) for abused and neglected children, and U.S. Department of Justice (DOJ) in Montana (14 years), and most recently with DOJ-main justice, within the Office of Tribal Justice, which is the smallest office at DOJ. With only eight attorneys, the Office of Tribal Justice serves as the primary point of contact for Indian tribes, with the Department, as well as the resident legal experts to the U.S. Attorney General on issues pertaining to federal Indian law.

In December 2014, at the Tribal Nations Conference, the Attorney General announced the ICWA Initiative to promote compliance with the Indian Child Welfare Act.

The initiative involves the following 3 DOJ departments: OTJ, Civil Rights Division, and the Environmental and Natural Resources Division. The initiative will be holding a summit in

March and will bring together Health and Human Services, the Department of the Interior, and OTJ. The purpose of this summit is to bring all involved cabinet level departments together to coordinate and focus their resources on ICWA compliance. By December 2015, each department will have a strategic plan that can be implemented in a coordinated fashion with the other departments to improve compliance with ICWA.

The topics for the summit, which are also the activities of the Initiative, are as follows: (1) data gathering; (2) training for judges, parents, and state attorneys; (3) legal practice-- actively investigating ICWA cases and bringing civil rights cases, filing amicus briefs, and intervening; and (4) funding.

Ms. Hurd also informed members that HHS has developed judicial training that will be rolled out by the ABA and the National Council on Juvenile and Family Court Judges. David Kelly at Health and Human Services is the contact for this judicial education.

Ms. Hurd asked members what type of training should be offered in California. Members raised the need for specialized, mandatory training for attorneys representing Indian children and Indian parents. The discussion turned quickly to the two key components of the Initiative: civil rights and funding. Members discussed how the federal law created a right and conferred party status on tribes, but failed to provide funding for tribes to pay for lawyers. Members expressed doubt that training for lay tribal advocates would change anything and urged that this gap in funding be addressed. Given that the agency, parents, and children all have attorneys and tribes do not, no amount of training can create a level-playing field, and the result is devastating to tribes, because they continue to lose their children in state court proceedings.

Ms. Hurd concluded by inviting members to share ideas with her to further the forum-DOJ collaboration and offered to introduce the forum to federal representatives to continue the funding dialogue raised in agenda item 1.

Action Items: Ms. Walter to follow up with Ms. Hurd.

Item 3

Indian Child Welfare Act: Update on Proposed Draft Transfer Rule

Presenter: Ms. Ann Gilmour

Ms. Gilmour presented the revised draft transfer rule proposal after receiving input from the Appellate Advisory Committee, Family and Juvenile Law Advisory Committee, Probate Advisory Committee, and Mental Health Advisory Committee. The amendments are proposed in response to provisions of 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, and in response to the decision of the first district Court of Appeal in *In re. M..M.* (2007)154 Cal.App.4th 897, which implicates an objecting party's right to appeal a decision granting a transfer to tribal court.

Judge Zeidler asked staff to delete the word, *court*, in rule 5.483(g)(2)(D) to clarify that the child's case file is intended by the rule.

Action Items: Ms. Gilmour to make revision to rule 5.483(g)(2)(D) and continue working with the other committees to prepare the proposal for public circulation.

Item 4

Blue Lake Tribe's Legislative Proposal to Amend Family Code to Authorize Tribal Court Judges to Solemnize a Marriage

Presenter: Hon. Lester J. Marston

Action Item: Deferred to the next meeting.

Item 5

CJER Governing Board Meeting Update

Presenter: Hon. Kimberly A. Gaab

Judge Gaab, who is a member of the forum and the CJER Governing Committee (committee), gave an update on the forum's request to the committee that it consider integrating federal Indian law into CJER educational programs and resources. Members of that committee acknowledged the need to have these resources and welcomed the forum's judicial toolkit on federal Indian law, which is posted online at <http://www.courts.ca.gov/27002.htm>. The committee agreed that its members who are on curriculum committees will use the toolkit as a roadmap to develop a plan for how federal Indian law will be incorporated into existing CJER materials and programming.

Item 6

Brainstorming Workshop Ideas for Beyond the Bench 23: User Experience

Dec. 2-4, 2015 in Southern California

Facilitator: Ms. Ann Gilmour

Ms. Gilmour described Beyond the Bench, an annual conference sponsored by the Center for Families, Children & the Courts that brings together multidisciplinary audiences to develop a systemic perspective on common issues. This year's conference's theme will be the court user and will feature 75 concurrent sessions. After reviewing some of the topics identified for this year's conference, Ms. Gilmour solicited additional topics and offered to assist forum members in submitting workshop proposals.

Action Item: Members to submit workshop proposals

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 1:11 p.m.

Approved by the advisory body on June 11, 2015.