



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

April 16, 2015

12:15-1:15 p.m.

By Conference Call

**Advisory Body
Members Present:**

Hon. Richard Blake, Cochair, Hon. Dennis M. Perluss, Cochair, Hon. Abby Abinanti, Hon. Kimberly A. Gaab, Hon. Michael Golden, Hon. Cynthia Gomez, Hon. Suzanne N. Kingsbury, Hon. Anthony Lee, Hon. Lester Marston, Hon. David E. Nelson, Hon. Deborah A. Ryan, Hon. Juan Ulloa, Hon. Christine Williams, Hon. Christopher G. Wilson, Hon. Joseph J. Wiseman, and Hon. Daniel Zeke Zeidler

**Advisory Body
Members Absent:**

Ms. April Attebury, Hon. Mitchell L. Beckloff, Hon. Jerilyn L. Borack, Ms. Jacqueline Davenport, Hon. Leonard P. Edwards, Hon. Bill Kockenmeister, Mr. Olin Jones, Hon. John L. Madigan, Hon. Kimberly J. Nystrom-Geist, Hon. Deborah L. Sanchez, Hon. Allen H. Sumner, Hon. Claudette C. White, and Hon. Sarah S. Works

Others Present:

Ms.Carolynn Bernabe, Ms. Vida Castaneda, Hon. Anita Fineday, Ms. Ann Gilmour, Ms. Anne Ronan, Mr. Scott Stevens, 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

No meeting minutes to approve.

DISCUSSION AND ACTION ITEMS (ITEMS 1-5)

Item 1

Cochairs Report

- The Executive & Planning Committee of the Judicial Council approved the 2015 forum annual agenda. During the meeting, the committee chair expressed his appreciation for the contribution and work of the forum.
- The Rules and Projects Committee of the Judicial Council approved for public circulation the forum's rule proposal, [Family and Juvenile Law: Transfers to Tribal Court Under Indian Child Welfare Act](#).
- In response to a recent shooting involving the possession of a gun in violation of a tribal protection order, the National American Indian Tribal Court Judges Association issued a press release calling for direct access to federal and state protection order registries. In the State of Washington, the Washington State Police controls access to the protection order

registry. Tribal police departments are restricted from accessing the system because the language of state law does not include tribes as approved agencies. Following the decision to bar tribes from entering tribal protection orders in the state database, some tribes in Washington developed a protocol with local county superior courts by which the county court clerk enters the tribal orders into the state system. This system is not flawless and can result in misses and delays in the registration of tribal protection orders. Similarly, in California, tribes do not have direct access to these databases; the forum has recommended and the California Judicial Council has implemented work-around solutions as in Washington.

The Bureau of Indian Affairs recently issued Indian Child Welfare Act [guidelines](#) and [proposed regulations](#). The forum reviewed a draft comment on the regulations, and after discussion, made several revisions relating to limiting judicial discretion, barring emergency removals longer than 30 days after a child is confirmed to be an Indian child, and other comments received from an appellate research attorney. The forum also discussed and rejected proposed revisions that were inconsistent with California statute and case law. Subsequent to the meeting and after the final version of the comment was approved by the forum and presented jointly to the California Judicial Council by the forum and the Family and Juvenile Law Advisory Committee with the recommendation that the council submit the comment to the Bureau of Indian Affairs, a number of tribal court judges submitted separate comments that were not in agreement with the comment submitted by the council.

- Discussed a proposed strategy to increase resources for tribal justice capacity in California. The strategy entails forming a Tribal Judicial Leadership Group that would seek support from all tribal court judges and tribal leadership of federally recognized tribes with tribal courts in California. This leadership group would then advocate with one voice for tribal court resources from the federal government, foundations, and other entities. The leadership group would start by adopting a resolution describing how tribal justice systems in California are disproportionately funded, as compared to tribes in other non-Public Law 280 states, and then seek adoption of the resolution by all tribal court judges and tribal leaders in California.

Item 2

Casey Family Programs

Presenter: Hon. Anita Fineday JD, MPA, Managing Director, Indian Child Welfare Program, Casey Family Programs

Judge Blake introduced Judge Anita Fineday, who is managing director of the Indian Child Welfare Program at Casey Family Programs and formerly Chief Judge for the White Earth Tribal Court for 14 years. Judge Fineday described the Casey Family Programs as the nation's largest operating foundation started by Jim Casey, who founded UPS. While it is a foundation, it does not award grants, but rather provides direct services aimed at safely reducing the need for foster care. With over 400 employees nationwide and field offices in Arizona, California, Colorado, Georgia, Idaho, New York, Texas, and Washington, Casey Family Programs focuses on promoting child welfare system improvement. In terms of improving compliance with the Indian Child Welfare Act, Casey Family Programs works with every state in the country and 6 tribes. One of Casey's current projects is assisting states, tribes, and counties in convening roundtables, bringing tribal and non-tribal community members together. Roundtables have been held in Arizona, Michigan, and Washington. In California, Casey will be working with the Los Angeles Superior Court's existing Roundtable.

Judge Fineday also described the role of Casey in sponsoring Native youth to attend the Generation Indigenous Native Youth Challenge at the 2015 United National Indian Tribal Youth (UNITY) Midyear Conference where Native youth and organizations across the country came together to become a part of the Administration's Generation Indigenous (Gen-I) initiative by joining the National Native Youth Network — a White House effort in partnership with the Aspen Institute's Center for Native American Youth and the U.S. Department of the Interior. Judge Fineday also described Casey's Judicial Engagement Team, led by Judge Macias, and some of their work with Tribal Star in San Diego.

Item 3

Discussion about Promoting Indian Law Proficiency for Law Students

Presenter: Hon. Abby Abinanti

[Paul Spruhan Article: "Indian Law on State Bar Exams In the Age of the Uniform Bar Examination" by Matthew L.M. Fletcher](#)

Judge Abinanti opened the discussion by asking forum members whether they would support the inclusion of federal Indian law on the California bar exam. After discussion, forum members agreed and recommended that the forum send a letter to the California Bar Examiners (CBE) making this request.

Action Item: Jenny Walter to draft a letter to the CBE

Item 4

California Tribal Court Opinions—Discussion About Establishing a Voluntary Repository for Tribal Court Cases

Existing Databases for Tribal Court Opinions

[Native American Rights Fund- National Indian Law Library](#)

[Native American Rights Fund - Tips on How to Find Tribal Court Opinions](#)

[Tribal Law and Policy Institute](#)

Versuslaw.com

Westlaw and Lexis

Presenters: Hon. Joseph J. Wiseman
Ms. Jennifer Walter

Judge Wiseman opened the discussion by asking whether forum members would find it useful to have a California database or reporter for tribal court opinions or at least case summaries. Forum members raised issues about the cost of, and limited case decisions reported in, some of the databases. After discussion, forum members agreed it would be valuable for both tribal and state court judges to have a database or reporter for California tribal court opinions.

Action Item: Judge Wiseman to learn more about the existing databases and report back the process by which they will accept for publication opinions from tribal courts in California.

Item 5

[Rule 5.660\(d\)\(3\)](#)- Proposal to Amend to Include ICWA Education

Presenter: Hon. Christopher Wilson

Judge Wilson proposed that the forum recommend a rule revision to include mandatory education on ICWA for children's and parents' attorneys. After discussion, the forum concluded it would support this proposal.

Action Item: Jenny Walter to draft proposal and work with cochairs to explore best approach to recommending proposal.

Item 6

California Department of Social Services (CDSS) Tribal Consultation Policy

Presenter: Mr. Scott Stevens

Mr. Stevens described the impetus for establishing a tribal consultation policy. He explained that Governor Jerry Brown's Executive Order B-10-11 established that all state agencies develop a tribal consultation policy and appoint a tribal liaison to facilitate effective communication between Tribal Governments and state agencies and departments. Mr. Stevens described the CDSS tribal consultation policy, which the agency established in 2013 and unveiled at ICWA statewide conference in June 2013. The agency held four listening sessions with tribes and drafted the policy, making revisions consistent with tribal input. Mr. Stevens described some of the challenges in developing such a policy in California with 110 federally recognized tribes and urban Indians from federally recognized tribes out-of-state. He expressed appreciation for the agency's partners, including the Inter-tribal Friendship House, the American Indian Enhancement Team, Tribal Star, and Casey, as well as Vida Castaneda from the Tribal/State Programs at the Judicial Council of California. He described the agency's outreach efforts to the urban Indian populations in Los Angeles and the Bay Area. The agency will either adapt the current tribal consultation policy to include urban Indians or adopt a second policy. The updated consultation policy or policies will be made available after review by the California Health and Human Services Department.

Item 7 (Deferred)

Bishop Paiute Tribe- County Law Enforcement Relations

Presenter: Hon. William Kockenmeister

[Complaint filed by California Indian Legal Services- Bishop Paiute Tribe v. Inyo County \(E.D. Cal.\)](#)

Related Articles:

[Tension Between Tribe and California Sheriff](#)

Courthouse News Service (March 11, 2015)

[Bishop Tribe supports officer; Inyo County has response](#)

Sierra Wave Media (February 17, 2015)

[Tribal Cop Facing Charges](#)

The Inyo Register (January 28, 2015)

Item 8

[Blue Lake Tribe's Legislative Proposal to Amend the Vehicle Code to Authorize the Department of Motor Vehicles to Accept a Marriage License Issued by a Tribal Court](#)

Presenter: Hon. Lester J. Marston

Judge Marston described the legislative proposal (AB 445) and explained that it would be amended by the author to include a revision to the Family Code providing expressly that a tribal court judge has the authority to solemnize a marriage. He also described the case that gave rise to the legislative proposal. Judge Marston represented a tribal member who was refused a drivers license and passport under her married name because the Department of Motor Vehicle

would not accept a tribal court order solemnizing her marriage and changing her last name to her husband's. She was also unable to obtain a passport without a CA drivers license. Judge Marston reported that he will forward the amended proposal after it is heard by the Judiciary Committee. After discussion, the forum decided to circulate the legislative proposal for forum review, and at that time, likely recommend that the Judicial Council of California support the bill.

Action Item: Judge Marston to notify Jenny Walter when the bill has been amended so that it may be circulated to the forum for members' consideration.

Item 9 (Deferred)

Recognition and Enforcement of Tribal Protective Orders

Presenter: Mr. Olin Jones

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 1:17 p.m.

Approved by the advisory body on June 11, 2015.