



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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<b>Date</b> December 14, 2015	<b>Action Requested</b> Please review
<b>To</b> Members of the Tribal Court–State Court Forum	<b>Deadline</b> December 17, 2016
<b>From</b> Hon. Abby Abinanti, Cochair Hon. Dennis M. Perluss, Cochair	<b>Contact</b> Jennifer Walter, Supervising Attorney 415-865-7687 phone 415-865-7217 fax jennifer.walter@jud.ca.gov
<b>Subject</b> Recognition of Tribal Court Parentage Order by the California Department of Public Health	

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The charge of the Tribal Court–State Court Forum (forum) is to improve the administration of justice in all proceedings in which the authority to exercise jurisdiction by the state and the tribal justice systems overlap. Staff to the forum received a request to assist a tribal court in California with the recognition of a tribal court order of parentage regarding a tribal member father. Upon receipt of the parentage order, the father and tribal court asked the California Department of Public Health (CDPH) to amend the children’s birth certificates to add the father’s name so that the father, who has custody of the children under an order of the tribal court, could enroll them in school, etc. CDPH advised that the executive agency had legal authority to recognize only a parentage determination from a state court and not a tribal court.

Tribes retain inherent authority over domestic relations matters involving their members. Federal and state law recognize this authority in a number of statutes that require recognition and enforcement of tribal court orders in the area of domestic relations. The Indian Child Welfare Act (25 U.S.C. §§ 1901 – 1963) specifically mandates at §1911(d) that states “...shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit

to the public acts, records, and judicial proceedings of any other entity.” The Full Faith and Credit for Child Support Orders Act, P.L. No. 103-383 (28 U.S.C. § 1738(B)) (FFCCSOA) similarly mandates full faith and credit for child support orders between tribal and state courts. Similarly, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) adopted into California law at Family Code § 3400 et seq. and the Uniform Interstate Family Support Act adopted into California law at Family Code §4900 et seq. mandate recognition of tribal court orders in these areas. Although the authority to make both child custody and child support orders necessarily implies an authority to make parentage determinations, California statutes concerning recognition of parentage determinations (Uniform Parentage Act – Family Code § 7600 et seq.) do not mention tribes. In fact, unlike the other uniform codes adopted by the California Legislature, these Family Code sections do not have a full faith and credit provision. It seems inconsistent and inefficient that California law recognizes the authority of tribes and tribal courts to make child custody and support determinations, but not parentage determinations. Moreover, it undermines tribal-state relationships and causes confusion. The California Department of Public Health Division of Vital Statistics, the agency responsible for issuing and amending birth certificates, will not recognize tribal court orders of parentage, because tribes are not mentioned in the Health and Safety Code provisions, specifically the definitions section defining state (see section 23) or the authority for amending birth certificates (section 102725).

We bring this issue to your attention for discussion at the forum’s next meeting, and recommend that the forum explore an executive agency directive that would recognize tribal parentage orders and tribal consultation on the adoption of uniform codes in California to address full faith and credit for tribal court orders.