



JUDICIAL COUNCIL
OF CALIFORNIA

TRIBAL COURT-STATE COURT FORUM

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TRIBAL COURT-STATE COURT FORUM

MINUTES OF OPEN MEETING

February 16, 2017

9:30am - 4:30pm

In Person

**Advisory Body
Members Present:**

Hon. Abby Abinanti, Co-chair, and Hon. Dennis M. Perluss, Co-chair, Hon. April Attebury (by phone), Ms. Jacqueline Davenport, Hon. Leonard Edwards, Hon. Cynthia Gomez (by phone), Mr. Olin Jones, Hon. Mark Juhas, Hon. Lawrence King, Hon. Anthony Lee, Hon. Patricia Lenzi, Hon. Lester Marston, Hon. Mark Radoff, Hon. David Riemenschneider, Hon. John Sugiyama, Hon. Sunshine Sykes, Hon. Juan Ulloa, Hon. Claudette White, Hon. Christine Williams, Hon. Christopher Wilson, Hon. Joseph Wiseman, and Hon. Zeke Zeidler

**Advisory Body
Members Absent:**

Hon. Richard Blake, Hon. Hilary Chittick, Hon. Gail Dekreon, Hon. Kimberly Gaab, Hon. Michael Golden, Hon. Suzanne Kingsbury, Hon. William Kockenmeister, Hon. Allen Sumner.

Others Present:

Mr. James Acres, Ms.Carolynn Bernabe, Ms. Vida Castaneda, Ms. Ann Gilmour, Mr. Anthony Hakl, Ms. Karen Hanna, Ms. Bonnie Hough, Ms. Kathleen Kenealy, Hon. Steff Padilla, Ms. Natasha Payes, Ms. Michelle Rainer, Ms. Mary Jane Risling, Ms. Virginia Rondero-Hernandez, Mr. Amit Rai, Ms. Elena Valdivia-Fortuna, and Ms. Jennifer Walter.

OPEN MEETING

Call to Order and Roll Call

The co-chairs called the meeting to order at 9:30 am

Approval of Minutes

The committee approved the December 12, 2016 minutes.

DISCUSSION AND ACTION ITEMS (ITEMS 1-8)

Invocation

Judge Abby Abinanti began the meeting with an invocation.

Welcome and Introductions

Justice Dennis Perluss and Judge Abby Abinanti welcomed participants. Justice Perluss welcomed the forum's newest member, Judge David Riemenschneider, and invited public comment.

Public Comment

Mr. James Acres submitted written comments and spoke about his experience as a litigant with the Tribal Civil Money Judgment Act. Mr. Acres shared that he appreciates the Act because it puts the public on notice that tribal court judgments are enforceable in state court. However, he described not having “a safe harbor” in state court to raise due process concerns in tribal court. He also expressed concern that the Act provides a 10-year period in which enforcement of tribal court judgments may be sought in state court.

SESSION 1: FORUM MEMBER PROJECT UPDATES

Educational Projects

Judge Abinanti described the California Civic Learning Summit convened by the California Chief Justice in Sacramento. The event brought together law, education, labor, business, community leaders, elected officials, and students to celebrate the civic learning and engagement projects in California. Judge Abinanti attended the Summit with forum staff to explore piloting a forum project related to civic engagement and laying the foundation for a truth and reconciliation project. The pilot team is comprised of Judge Abinanti, Judge Joyce Hinrichs, Superior Court of Humboldt County, and Mr. Colby Smart, County Office of Education. The project will use family engagement and voter registration at monthly maker faires (these are family-friendly gatherings that bring together tech enthusiasts, crafters, educators, tinkerers to showcase invention, creativity, and resourcefulness) and other local events to teach Native American history with the goal of eventually establishing a truth and reconciliation project related to California American Indian history and a statewide proposal to replace the 4th grade curriculum module on California missions. The pilot team will include youth representatives.

Partnerships—Enforcement of Tribal Protection Orders - Making Full Faith and Credit a Reality

Mr. Olin Jones and Ms. Kate Kenealy described the diverse leadership group, comprised of representatives from this forum, the U.S. Department of Justice, the California Department of Justice, the Office of Tribal Justice, tribal leaders, and tribal advocates, which came together to address a serious safety gap. Since its inception the forum has been working on ensuring that, consistent with the requirements of federal and state law, protection orders issued by tribal courts are fully recognized and enforced in California. Past initiatives have included education, promotion of cooperative arrangements between state and tribal courts and law enforcement agencies to have tribal orders entered into statewide databases, the adoption of rule 5.386, amendment of DV-600 form, and tribal court access to the California Courts Protective Order Registry. Despite these initiatives, there were still concerns that law enforcement officers on the ground were confused about their obligation to enforce tribal court protection orders. In response to this concern and as a result of this leadership group, in November 2016, the Attorney General’s Division of Law Enforcement issued Information Bulletin DLE-2016-03 to all state and local law enforcement agencies concerning their obligations with respect to enforcement of tribal court protection orders.

Policies

- Child Welfare: Protecting Children and Tribal Access to the Child Abuse Central Index

- Child Welfare: Tribal Access to Juvenile Court File - Rule 5.552
- Child Support: Transfer Between Tribal and State Courts - Rule 5.372
- Civil Money Judgments: Lifting the Sunset on SB 406

Justice Perluss directed members to their ebinders to view the forum's pending policy recommendations.

SESSION 2: PARTNERSHIP WITH THE CALIFORNIA SOCIAL WORK EDUCATION CENTER (CALSWEC)

Ms. Rondero-Hernandez, Executive Director, California Social Work Education Center (CalSWEC), provided an overview of the CalSWEC, its purpose, and goals for the future. Ms. Rondero-Hernandez emphasized the need to collaborate and build stronger partnerships between CalSWEC, tribal communities, and the courts. Ms. Michelle Rainer, Coordinator, SERVE, described the SERVE program (formerly the American Indian Recruitment Program), which supports the Title IV-E schools of social work in CalSWEC's consortium. Its goal is to support the Title IV-E graduate and undergraduate social work programs currently operating within the CalSWEC consortium by assisting with capacity and relationship building with tribal entities and organizations within each region. Eligible American Indian students can receive financial support as full- or part-time social work students with an emphasis on children and families in the Title IV-E Stipend Program. Ms. Rainer and Ms. Rondero-Hernandez requested assistance in encouraging Native American students to apply to bachelors and masters social work programs and offered their assistance in aligning social work education and practice with what judges need to know to make informed decisions in juvenile dependency cases.

SESSION 3: INDIAN CHILD WELFARE ACT (ICWA) LEGISLATIVE AND RULE DISCUSSION

Judge Leonard Edwards and Judge Pat Lenzi facilitated a discussion on the procedural and substantive requirements of the Indian Child Welfare Act (ICWA) as interpreted by the new federal ICWA regulations (effective December 12, 2016). Members reviewed the highlighted topics and issues prepared by staff and agreed on several areas where current California law and practice may not be consistent with the requirements of the new regulations. The forum acknowledged there was extensive work to be done with justice partners, and agreed to collaborate with the California Indian Court Judges Association, the California Department of Social Services, and other Judicial Council advisory committees and divisions, including the Family and Juvenile Law Advisory Committee and the Center for Judicial Education and Research. The forum decided to form a working group to determine those areas where implementation of the new regulations may require either legislative changes, rules and forms changes, or education and training to align California law and practice with the federal requirements.

Action Item: The following forum members volunteered to form an ad hoc ICWA working group: Judge Leonard Edwards, Judge Mark Juhas, Judge Pat Lenzi, and Judge Claudette White.

WORKING LUNCH: TRIBAL JUSTICE DOCUMENTARY AND PANEL DISCUSSION

- What State Court Can Learn from Tribal Courts
- Developing Curriculum to Complement the Documentary

- Educating Foundations

Jenny Walter introduced the film by thanking Judge Abinanti and Judge White and their tribal communities for allowing such an intimate glimpse into the workings of two tribal justice systems in California. She provided background on how the film came about. Early in the forum's history, members recognized that judicial education on tribal/state concerns could not be achieved without raising visibility of tribal justice systems and the inter-dependence and inter-jurisdictional issues faced by tribal and state justice systems. As a result, the forum initiated the idea for a documentary on tribal justice. Ms. Walter assisted in obtaining funding, identified a filmmaker, a producer, and several tribal advisors. She consulted on the film's production and sought funding that would help with distribution and education. One of the funders is the Corporation for Public Broadcasting, which will air the film on POV and develop companion materials to complement the film. There will be an opportunity for the forum to provide input into these materials.

Participants viewed the Tribal Justice documentary and discussed how the film can be used to promote understanding of tribal justice systems and the need for cross-system collaboration. Judge Sunshine Sykes and Judge Christopher Wilson shared their perspectives on what state courts can learn from tribal courts and explored with forum members whether state courts can incorporate aspects of tribal justice and tap the strengths of the community when it hears cases involving tribal members.

Members also discussed using the film to educate foundations about tribal courts and brainstormed ideas for screening the film.

Action Item: To screen the film, contact the filmmaker, Anne Makepeace, at makepeace.anne@gmail.com. Tribal/State Programs will also have a copy of the film, as will Judge Abinanti and Judge White.

SESSION 4: TRIBAL/STATE/COURT DATA EXCHANGES IN CHILD WELFARE CASES

Ms. Karen Hanna, County Consultant (Los Angeles), Mr. Amit Rai, Interfaces Lead, Child Welfare Digital Services, and Ms. Mary Jane Risling, Tribal Consultant, with Child Welfare Digital Services gave an overview of the new case management system in development by California Child Welfare Digital Services to replace the legacy system, CWSCMS (Child Welfare System Case Management System). The new system will include a number of portals by which courts and other system users will be able to interface with the new system. Currently, staff of California Child Welfare Digital Services is working with eight local courts on specifications for the court interface and interoperability between the new system and the various electronic court case management systems, which have been adopted by the California courts. The federal government has released new Adoption and Foster Care Analysis and Reporting System (AFCARS) requirements that include data elements related to ICWA. Many of the required data elements will be contained in court orders. Child Welfare Digital Services staff hope that court forms can be created in such a way that these required data elements can be extracted by the new system. Forum members expressed some concern that the new system is

being designed for social services with little consideration of system accessibility by other case participants, such as tribes. The presenters addressed these concerns by describing that the new system envisions that parties and other justice partners would have access through secure portals that would permit different levels of access depending on their role in the case. Forum members appreciated having an opportunity to give input into the new system.

Partnership With California Attorney General's Office

Judge Abinanti and Justice Perluss presented Mr. Anthony Hakle, Deputy Attorney General, Mr. Olin Jones, Director, Native American Affairs Office, and Kate Kenealy, Chief Deputy Attorney General, of the California Department of Justice with certificates honoring them for their leadership and contribution to improving the enforcement of tribal protection orders in California.

SESSION 5: JUDGE TO JUDGE COMMUNICATIONS IN NON-MONEY JUDGMENT CASES

Hon. Joseph Wiseman, Chief Judge, Northern California Intertribal Court System

Judge Joseph Wiseman facilitated a discussion on the value of judge-to-judge communications in non-money judgment cases and explored whether such communications were ethical. Several forum members reported that in cases where state and tribal courts have concurrent jurisdiction, it is sometimes necessary to exchange information. There is statutory authority for court-to-court communication in a number of case types including the Uniform Child Custody Jurisdiction Enforcement Act and the Tribal Court Civil Money Judgment Act. Judge Wiseman suggested that it would be useful to have wider authority to permit judge-to-judge communication. Forum members discussed the limits that the canons of Judicial Ethics place on judges' ex parte communications, specifically canon 3B(7). Forum members did not endorse a general policy (legislative or rule) going beyond what is currently permitted by statute or canon concerning communication between state and tribal court judges. Forum members did support exploring methods to clarify the extent to which of judge-to-judge communications were permissible in juvenile and family cases.

Action Item: Staff to explore legislative proposals for juvenile and family cases, the text of which was provided in the ebinder. Forum staff will work with staff of the Family and Juvenile Law Advisory Committee to explore these policy recommendations.

SESSION 6: INCREMENTAL APPROACH TO RECOGNITION AND ENFORCEMENT OF NON-MONEY JUDGMENTS - WHICH CASE TYPES?

[Note: SB 406 survey respondents recommended the following case types: probate case, trespass cases, conservatorship cases, contract cases, and family law cases.]

Judge Lester Marston and Judge Mark Radoff facilitated a discussion on the forum's incremental strategy to recommend legislation that would build on the approach taken in SB 406. After discussion, the forum agreed to explore seeking a legislative recommendation to establish a streamlined procedure for recognition of either civil harassment or traffic tribal cases in state court. Staff requested that the tribal court judges on the forum provide relevant tribal codes, data and case examples to illustrate the need.

Action Item: Tribal Court forum members agreed to forward to staff tribal codes, the number of traffic and civil harassment cases heard annually, and case summaries to illustrate the need.

SESSION 7: ENHANCING TRIBAL-STATE COLLABORATION

Due to weather and flight delays, Mr. Jerry Gardner, Director, Tribal Policy Institute, was unable to attend. He shared materials.

SESSION 8: FORUM PRIORITIES 2017-2018 AND ANNUAL AGENDA/WORK PLAN

The forum reviewed the annual agenda, which will be presented to the Executive and Planning Committee for approval at its meeting on March 23, 2017.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 4:20 p.m.

Approved by the advisory body on April 13, 2017.