



JUDICIAL COUNCIL
OF CALIFORNIA

TRIBAL COURT-STATE COURT FORUM

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

TRIBAL COURT-STATE COURT FORUM

OPEN MEETING AGENDA

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1))

THIS MEETING IS BEING CONDUCTED BY ELECTRONIC MEANS

THIS MEETING IS BEING RECORDED

Date: June 8, 2017
Time: 12:15–1:15 p.m.
Location: Conference Call
Public Call-In Number 1-877-820-7831 and enter Listen Only Passcode: 4133250

Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(2))

Public Comment

This meeting will be conducted by teleconference. As such, the public may only submit written comments for this meeting.

Written Comment

In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to forum@jud.ca.gov or mailed or delivered to 455 Golden Gate Avenue, San Francisco, CA 94102, attention: Ann Gilmour. Only written comments received by 12:15 p.m. on June 7, 2017 will be provided to advisory body members.

III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS 1-6)

Item 1

Approval of Minutes for April 13, 2017 Meeting

Item 2

Cochairs Report

- [Attorney General video](#)
- Addition of technology plan committee to [annual agenda](#)
- 2017-2018 Meeting dates and in person meeting date

Item 3

Legislative Update

- [AB 905](#)

Presenter: Dan Pone

Item 4

RUPRO Items

- SPR17-16 Indian Child Welfare Act: Amend Rule 5.552 to Allow Indian Child's Tribe Access to Court Records Consistent with Welfare and Institutions code Section 827
- SPR17-18 Family Law: Transfers of title IV-D Child Support Cases Between State and Tribal Court

Presenter: Ann Gilmour

Item 5

Traffic Initiative (Small Group Update)

Presenter: Ann Gilmour

Item 6

Upcoming Conferences

- [Beyond the Bench](#) Planning – December 18-20, 2017, San Diego
- Legal Aid Association of California and the Judicial Council [California Family Law and Self-Help Conference](#) – July 24, 2017, Los Angeles
- Native American Day – September 22, 2017

Presenter: Vida Castaneda

IV. ADJOURNMENT

Adjourn



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MINUTES OF OPEN MEETING

April 13, 2017

12:15-1:15 p.m.

By Conference Call

**Advisory Body
Members Present:**

Hon. Abby Abinanti, Co-chair, Hon. Dennis M. Perluss, Co-chair, Hon. Hilary A. Chittick, Hon. Cynthia Gomez, Hon. Anthony Lee, Hon. David Riemenschneider, Hon. John Sugiyama, Hon. Sunshine Sykes, Hon. Juan Ulloa, Hon. Christine Williams, and Hon. Christopher Wilson

**Advisory Body
Members Absent:**

Hon. April Attebury, Hon. Richard Blake, Ms. Jacqueline Davenport, Hon. Gail Dekreon, Hon. Leonard Edwards, Hon. Kimberly Gaab, Hon. Michael Golden, Mr. Olin Jones, Hon. Mark Juhas, Hon. Lawrence C. King, Hon. Susanne Kingsbury, Hon. William Kockenmeister, Hon. Patricia Lenzi, Hon. Lester Marston, Hon. Mark Radoff, Hon. Allen Sumner, Hon. Claudette White, Hon. Joseph Wiseman, and Hon. Zeke Zeidler

Others Present:

Ms.Carolynn Bernabe, Ms. Vida Castaneda, Ms. Charlene Depner, Ms. Ann Gilmour, Ms. Bonnie Hough, Mr. Dan Pone, and Ms. Anne Ronan

OPEN MEETING

Call to Order and Roll Call

The co-chairs called the meeting to order at 12:18 p.m.

Approval of Minutes

The forum approved the February 16, 2017 meeting minutes.

DISCUSSION AND ACTION ITEMS (ITEMS 1-7)

Item 1

Cochairs Report

- *Annual Agenda*

The Judicial Council's Executive & Planning Committee approved the forum annual agenda at its March 23rd meeting, and the final agenda is now posted on the forum's webpage. An item will be added to the agenda requested by the Information Technology Advisory Committee (ITAC), which will authorize work on implementing the council's recently enacted technology plan. This is a blueprint for implementing different technologies in the court. ITAC will initially be consulting with advisory groups regarding online access to court information for justice partners.

- *Letter to Tribal Leaders on Tribal Judge Vacancies*

On March 21, 2017, an invitation memo was sent to tribal leaders notifying them of the upcoming vacancies on the forum and inviting tribal leaders to nominate judges from their tribal courts to serve as members for the forum. The memo describes about the process for selecting members and includes the forum background materials.

Item 2

Update Status of AB905

Presenter: Dan Pone, OGA, Attorney

Mr. Dan Pone introduced himself and reported on the current status of AB 905. Sponsored by the California Law Revision Commission, this bill would lift the sunset on the Tribal Court Civil Money Judgement Act. The bill passed the Assembly Judiciary and Appropriations Committees. It is on the proposed consent calendar for the full Assembly next week. The bill is supported by the council, California Nations Indian Gaming Association (35 tribes), and the Luiseno Band of Mission Indians.

Item 3

California ICWA Compliance Task Force Report

Presenter: Abby Abinanti

Judge Abinanti reported the positive reception of the report at the state level. The Task Force chairs now want to move forward to implement the Task Force recommendations. Two of the most important recommendations are to provide tribes with representation in ICWA cases and to consolidate ICWA cases in court. Other recommendations to prioritize include providing more education for judges on ICWA. Some items mentioned on the report are already included in the forum's annual agenda.

Item 4

Traffic or Civil Harassment

Presenter: Judge Christine Williams

Judge Christine Williams outlined issues preventing tribal court traffic-related orders transmitted to DMV. There was a traffic work group several years ago that addressed this issue. There were several meetings including DMV representatives, but no resolution. The gap in enforcement when traffic stops are made on reservation has public safety implications. Judge Williams explained this was an issue for her when she was Judge at Hopland. Under the Hopland traffic code people were cited, for example for driving with a suspended license, but there was no way to notify DMV of the additional violation of driving without license. There was also no way to exchange information with the state court or DMV.

Cynthia Gomez, the Governor's Tribal Advisor, advised that several years ago she met with the DMV director and lawyers about the issue. They concluded that there would likely need to be legislative changes to resolve the problem because under current law, permitting access to confidential DMV records could create liability for the department.

Ms. Gilmour attended the in person Traffic Advisory Committee meeting on April 7, 2017, in which Judge Dekreon is a liaison for the forum. The committee is aware of the problem and is interested in working with the forum the on the issue. Once an appropriate working group is

formed, Judge Gomez will request a meeting and invite appropriate DMV personnel at the meeting.

Action item: Staff to send email to forum members outlining proposed small working group and request for volunteers.

Item 5

ICWA Regulation Implementation

Presenter: Ann Gilmour

The forum will be working with the Family and Juvenile Law Advisory Committee (FamJuv) in looking at a plan to ensure that California rules and forms comply with the requirements of the new ICWA regulations. Ms. Gilmour is preparing a memo to the forum and to FamJuv jointly to outline areas that need to be addressed. This memo will provide proposals, request volunteers from both committees and make recommendations on how to proceed jointly.

Judge Sugiyama requested staff to inform Corby Sturges, lead staff to the Probate and Mental Health Advisory Committee, which will propose similar revisions to the rule and forms with its subject areas.

Item 6

Beyond the Bench Planning

Presenter: Ann Gilmour

Ms. Gilmour reminded the forum of the deadline for workshop proposals. Members with suggestions, particularly on ICWA, should contact Ann Gilmour. Beyond the Bench will be held on December 19-20, 2017 with a preconference on December 18, 2017 in San Diego, CA.

Item 7

Other Business

The next forum call is on June 8, 2017 at 12:15 p.m.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 12:57 p.m.

Pending approval by the advisory body on June 8, 2017.

Forum Meeting Schedule

2017–2018

| Date | |
|-----------|--|
| 1. | August 17, 2017 |
| 2. | October 12, 2017 |
| 3. | December 14, 2017 |
| 4. | February 1, 8, 15, 2018 (potential dates for in-person meeting) |
| 5. | April 12, 2018 |
| 6. | June 7, 2018 |
| 7. | August 16, 2018 |
| 8. | October 11, 2018 |
| 9. | December 13, 2018 |



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 15, 2017

Title

Indian Child Welfare Act: Amend Rule 5.552
to Allow Indian Child's Tribe Access to Court
Records Consistent with Welfare and
Institutions Code Section 827

Agenda Item Type

Action Required

Effective Date

January 1, 2017

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 5.552

Date of Report

June 2, 2017

Recommended by

Family and Juvenile Law Advisory
Committee

Hon. Jerilyn L. Borack, Cochair

Hon. Mark A. Juhas, Cochair

Contact

Ann Gilmour, Attorney, CFCC

415-865-4207 ann.gilmour@jud.ca.gov

Tribal Court-State Court forum

Hon. Abby Abinanti, Cochair

Hon. Dennis M. Perluss, Cochair

Executive Summary

The Family and Juvenile Law Advisory Committee (committee) and Tribal Court–State Court Forum (forum) jointly propose to amend California Rules of Court, rule 5.552 to conform to California statutory law. This proposal is in response to comments from practitioners and court staff advising that the discrepancies between the rule and statutory requirements were causing confusion.

Recommendation

In order to avoid confusion and conform rule 5.552 to section 827 of the Welfare and Institutions Code, the committee and forum recommend that effective January 1, 2018 the Judicial Council amend rule 5.552 as follows:

1. Delete subdivision (b) of the rule, which is duplicative of section 827(a). This deletion also addresses the inconsistency between the rule and section 827(f);
2. Reletter and amend subdivision (c) of the rule in light of the removal of subdivision (b);
3. Change references to “juvenile court record” in subdivision (c) to “juvenile case file” to be consistent with the rest of the rule. Effective 2009, this language was changed throughout the rule except in subdivision (c) which was inadvertently omitted;
4. Revise and reletter subdivision (d)(1)(C) of the rule to require notice to a child only when the child is 10 years of age or older, in conformity with sections 290.1 through 295;
5. Revise and reletter subdivision (f) of the rule to remove language that is duplicative of section 828; and
6. Delete subdivision (g) of the rule, which is duplicative of section 827(b)(2).

The text of the amended rule is attached at pages X-X.

Previous Council Action

Rule 5.552 was originally adopted effective July 1, 1992 as rule 1423 and has previously been amended effective January 1, 1994, July 1, 1995, July 1, 1997, January 1, 2001, January 1, 2004, January 1, 2007 and January 1, 2009. Effective January 1, 2015, Judicial Council sponsored legislation, Assembly Bill 1618 (Stats. 2014, ch. 57, § 1) added subdivision (f) to section 827 of the Welfare and Institutions Code¹ to clarify the right of an Indian child’s tribe to have access to the juvenile court file of a case involving that child.² At that time, no changes were made to rule 5.552 of the California Rules of Court, which implements this section.

Rationale for Recommendation

The proposed revisions to rule 5.552 are recommended to conform the rule to the statutory language and avoid confusion which has resulted in unnecessary court motions, and costs of service.

¹ Unless otherwise noted, all further statutory references are to the Welfare and Institutions Code.

² That proposal is available here <http://www.courts.ca.gov/documents/LEG13-03.pdf>

Contrary to section 827 as amended, rule 5.552 continues to require that representatives of an Indian child's tribe petition the juvenile court if the tribe wants access to the juvenile court file. This inconsistency has created confusion and results in unnecessary motions. In addition, court staff have noted that rule 5.552(d)(1)(C) requires that notice of a petition for disclosure be served on "[t]he child," while the relevant statutes stipulate that notice be served on a child 10 years of age or older.³ Commentators noted that serving notice on an infant or young child makes no sense and is a waste of resources.

In addition to these two inconsistencies, the committee and forum also recommend deleting language in the rule that is duplicative of statutory language. This follows the request of the Judicial Council Rules and Projects Committee that the Family and Juvenile Law Advisory Committee review rules to determine what language is unnecessarily duplicative of statutory language and recommend rule revisions as appropriate. Since repetitions of statutory text in the rules of court necessitate that they be amended whenever the underlying statutes are amended, deleting the duplicative language will reduce the frequency of rule amendments.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for comment during the spring 2017 comment session from February 27th to April 28th to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, court appointed special advocate programs, and other juvenile and family law professionals. In addition the proposal was circulated to tribal advocates, tribal leaders and others with a particular interest in tribal issues.

Eight comments were received during the comment period. Five commentators supported the proposal, two supported if amended and one did not indicate whether or not they supported the proposal. The bulk of the substantive comments centered on the issue of whether or not the language in the rule which duplicates statutory language should be retained or removed. . Of the eight comments received, three indicated that the duplicative language should be stripped out, three indicated that the duplicative language should be retained, and two took no position on this question.

The commentators indicating that the duplicative language should be taken out were: California Indian Legal Services; The Orange County Bar Association; and the Superior Court of California, County of San Diego.

³ See Welf. & Inst. Code, §§ 290.1-295.

The commentators indicating that the duplicative language should be retained were: The State Bar of California, Standing Committee on the Delivery of Legal Services; the Superior Court of California, County of Los Angeles; and the Superior Court of California, County of Riverside.

The commentators who urged that the language be retained argued that it is useful to litigants, particularly self-represented litigants, who may not have the access or capacity to seek out the statutory language and determine which category they fit into. Having the language in the rule is of assistance to them.

Alternatives

In light of the comments, the committee and forum considered whether or not those portions of the rule which duplicate statutory language should be retained or removed. While litigants and practitioners may prefer to have the statutory language repeated in the rule for ease of reference, ultimately the committee and forum decided that there was insufficient basis to outweigh the general policy that duplication of statutory language in the rules of court should be avoided. Such duplication risks creating uncertainty and confusion when there are minor inconsistencies in language or where there is a lag time between statutory changes and rule revisions.

Implementation Requirements, Costs, and Operational Impacts

No implementation costs or operational impacts are anticipated. The rule revisions conform the rule to the statutory language. It is expected that this will reduce confusion and unnecessary court applications.

Attachments and Links

1. Cal. Rules of Court, rules 5.552, at pages 5-9
2. Chart of comments, at pages 10-18

Rule 5.552 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1 **Title 5. Family and Juvenile Rules**

2
3 **Division 3. Juvenile Rules**

4
5 **Chapter 3. General Conduct of Juvenile Court Proceedings**

6
7 **Rule 5.552. Confidentiality of records (§§ 827, 828)**

8
9 (a) ***

10
11 ~~(b) — General provisions~~

12
13 ~~(1) — The following individuals and entities may inspect, receive, and copy the~~
14 ~~juvenile case file without an order of the juvenile court:~~

15
16 ~~(A) — Court personnel;~~

17
18 ~~(B) — The district attorney, a city attorney, or a city prosecutor authorized to~~
19 ~~prosecute criminal or juvenile cases under the law;~~

20
21 ~~(C) — The child who is the subject of the proceeding;~~

22
23 ~~(D) — The child's parents;~~

24
25 ~~(E) — The child's guardians;~~

26
27 ~~(F) — The attorneys for the parties, including any trial court or appellate~~
28 ~~attorney representing a party in the juvenile proceeding or related~~
29 ~~appellate proceeding;~~

30
31 ~~(G) — Judges, referees, other hearing officers, probation officers, and law~~
32 ~~enforcement officers who are actively participating in criminal or~~
33 ~~juvenile proceedings involving the child;~~

34
35 ~~(H) — The county counsel, city attorney, or any other attorney representing~~
36 ~~the petitioning agency in a dependency action;~~

37
38 ~~(I) — Members of child protective agencies as defined in Penal Code section~~
39 ~~11165.9; and~~

40
41 ~~(J) — The California Department of Social Services in order to carry out its~~
42 ~~duty to oversee and monitor county child welfare agencies, children in~~
43 ~~foster care or receiving foster care assistance, and out-of-state~~
44 ~~placements.~~
45

Rule 5.552 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1 ~~(2) The following individuals and entities may inspect the juvenile case file~~
2 ~~without a court order and may receive a copy of the juvenile case file~~
3 ~~pursuant to a court order:~~

4
5 ~~(A) All persons and entities listed in Welfare and Institutions Code sections~~
6 ~~827 and 828 who are not listed in (b)(1) above; and~~

7
8 ~~(B) An Indian child's tribal representative if the tribe has intervened in the~~
9 ~~child's case.~~

10
11 ~~(3) Authorization for any other person or entity to inspect, obtain, or copy~~
12 ~~juvenile case files may be ordered only by the juvenile court presiding judge~~
13 ~~or a judicial officer of the juvenile court.~~

14
15 ~~(4) Juvenile case files may not be obtained or inspected by civil or criminal~~
16 ~~subpoena.~~

17
18 ~~(5) When a petition is sustained for any offense listed in section 676, the~~
19 ~~charging petition, the minutes of the proceeding, and the orders of~~
20 ~~adjudication and disposition that are contained in the juvenile case file must~~
21 ~~be available for public inspection, unless the court has prohibited disclosure~~
22 ~~of those records under that section.~~

23
24
25 **(e)(b) Petition**

26
27 Juvenile case files may only be obtained or inspected in accordance with sections
28 827 and 828. They may not be obtained or inspected by civil or criminal subpoena.
29 With the exception of those persons permitted to inspect juvenile case files ~~court~~
30 ~~records~~ without court authorization under sections 827 and 828, every person or
31 agency seeking to inspect or obtain juvenile case files ~~court records~~ must petition
32 the court for authorization using *Petition for Disclosure of Juvenile Case File* (form
33 JV-570).

34
35 (1) The specific ~~records~~files sought must be identified based on knowledge,
36 information, and belief that such ~~records~~files exist and are relevant to the
37 purpose for which they are being sought.

38
39 (2) Petitioner must describe in detail the reasons the ~~records~~files are being sought
40 and their relevancy to the proceeding or purpose for which petitioner wishes
41 to inspect or obtain the ~~records~~files.

42
43 **(d)(c) Notice of petition for disclosure**

44
45 (1) ***

46

Rule 5.552 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1 (A)-(B) ***

2 (C) The child if the child is 10 years of age or older;

3
4 (D)-(I) ***

5
6 (2) ***

7
8 (3) If the petitioner does not know the identity or address of any of the parties in
9 ~~(d)~~(c)(1) above, the clerk must:

10
11 (A)-(B) ***

12
13 (4) ***

14
15 **(e)(d) Procedure**

16
17 (1) ***

18
19 (2) If petitioner shows good cause, the court may set a hearing. The clerk must
20 notice the hearing to the persons and entities listed in ~~(d)~~(c)(1) above.

21
22 (3)-(8) ***

23
24 **(f)(e) Reports of law enforcement agencies (§ 828)**

25
26 ~~Except for records sealed under section 389 or 781, or Penal Code section 1203.45,~~
27 ~~information gathered and retained by a law enforcement agency regarding the~~
28 ~~taking of a child into custody may be disclosed without court authorization to~~
29 ~~another law enforcement agency, including a school district police or security~~
30 ~~department, or to any person or agency that has a legitimate need for the~~
31 ~~information for the purposes of official disposition of a case.~~

32
33 ~~(1) If the law enforcement agency retaining the report is notified under section~~
34 ~~1155 that the child has escaped from a secure detention facility, the agency~~
35 ~~must release the name of the child and any descriptive information on~~
36 ~~specific request by any agency or individual whose attempts to apprehend the~~
37 ~~child will be assisted by the information requested.~~

38
39 ~~(2) In the absence of a specific request, the law enforcement agency retaining the~~
40 ~~report may release information about a child reported to have escaped from a~~
41 ~~secure detention facility if the agency determines that the information is~~
42 ~~necessary to assist in the apprehension of the child or the protection of~~
43 ~~members of the public from substantial physical harm.~~

44
45 ~~(3) Except as authorized under section 828, all others seeking to inspect or obtain~~
46 ~~such reports information gathered and retained by a law enforcement agency~~

Rule 5.552 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1 regarding the taking of a child into custody must petition the juvenile court
2 for authorization, using *Petition to Obtain Report of Law Enforcement*
3 *Agency* (form JV-575).

4
5 **~~(g)~~—School notification**

6
7 ~~When a child enrolled in a public school is found to have committed one of the~~
8 ~~offenses described in section 827(b)(2), the court must provide written notice of the~~
9 ~~offense and the disposition to the superintendent of the school district within seven~~
10 ~~days. The superintendent must disseminate information to the principal of the~~
11 ~~school the child attends, and the principal may disseminate information to any~~
12 ~~teacher or administrator for the purposes of the rehabilitation of the child or the~~
13 ~~protection of other students and staff.~~

14
15 **~~(h)~~(f) Other applicable statutes**

16
17 Under no circumstances must this rule or any section of it be interpreted to permit
18 access to or release of records protected under any other federal or state law,
19 including Penal Code section 11165 et seq., except as provided in those statutes, or
20 to limit access to or release of records permitted under any other federal or state
21 statute, ~~including Government Code section 13968.~~
22

SPR17-16**Indian Child Welfare Act: Amend Rule 5.552 to Allow Indian Child’s Tribe Access to Court Records Consistent with Welfare and Institutions Code Section 827**

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|----|---|-----------------|--|---|
| 1. | California Indian Legal Services, By Jedd Parr, Directing Attorney Sacramento | A | <p>California Indian Legal Services agrees with the proposal to delete subsection (b) from Rule 5.552, which would achieve the stated purpose of eliminating the conflict between that subsection and WIC 827(f).</p> <p>We note that the Judicial Council has invited comment on whether practitioners prefer subsection (b) to be retained, in light of the complexity of WIC 827. If subsection (b) is indeed retained, it should be modified to comply with WIC 827(f), by stating that in cases where a child is a member of or eligible for membership in a tribe, persons serving the tribe, reservation, or tribal court in capacities similar to those listed at WIC 827(f) are entitled to inspect or receive a copy of the case file without a court order.</p> | <p>No response required.</p> <p>The committee and forum decided to remove the language which was duplicative of statute. As noted this eliminated the conflict with WIC 827(f).</p> |
| 2. | Executive Committee of the Family Law Section of the State Bar of California By Saul Bercovitch, Assistant General Counsel, Office of General Counsel, The State Bar of California | A | The Executive Committee of the Family Law Section supports this rule change as proposed. | No response required. |
| 3. | Orange County Bar Association, By Michael L. Baroni, President Newport Beach | A | <p>Does the rule appropriately address the stated issue? Yes</p> <p>Given the complexity of Welfare and Institutions Code Section 827, would practitioners prefer that the rule retain the existing language in subdivisions (b), (f), and</p> | <p>No Response required.</p> <p>The committee and forum decided not to retain the statutory language.</p> |

SPR17-16

Indian Child Welfare Act: Amend Rule 5.552 to Allow Indian Child’s Tribe Access to Court Records Consistent with Welfare and Institutions Code Section 827

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|----|--|-----------------|--|---|
| | | | (g) even if it is duplicative of the statutory language? No. The existing language contains conflicts and different terms that are potentially confusing. The rule should be consistent throughout subdivisions, even if the language is duplicative. | |
| 4. | State Bar of California, By Sharon Djemal, Chair, Standing Committee on the Delivery of Legal Services. | A | Specific Comments • <u>Does the proposal appropriately address the stated purpose?</u> Yes, the proposal appropriately addresses the stated purpose with respect to when a child that is the subject of the juvenile case file must be served with notice. However, removal of language that is duplicative of Welfare and Institutions Code section 827 creates confusion and causes potential additional barriers for self-represented litigants. When a rule is not clear on its face as to whom it applies, then it creates confusion. If the rule states that juvenile case files may only be obtained or inspected in accordance with sections 827 and 828, this would require everyone who is reading the rule to then look up those code sections to determine if they meet the statutory requirements to have access to the case files, whether they have the right to access the case files without a court order, or whether a court order is required before they may have access. For self-represented litigants (either people who | The committee and forum considered whether the statutory language should be retained in light of this comment and those of other commentators. In the end the committee and forum concluded that the continuing risk of confusion caused by duplicating statutory language which is subject to change was more problematic than the concerns expressed by the commentator. The committee and forum did not feel there was sufficient basis to depart from the general policy of avoiding duplicating statutory language in the rules. |

SPR17-16

Indian Child Welfare Act: Amend Rule 5.552 to Allow Indian Child’s Tribe Access to Court Records Consistent with Welfare and Institutions Code Section 827

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|--|-------------|----------|---|--------------------|
| | | | <p>do not have access to a legal aid attorney, or people who choose to self-represent), removal of the language may create an unintended barrier if they do not have the ability to access the code sections. Self-represented litigants residing in rural areas may have the ability to travel to their local court to read the rules of court, but they may not have law libraries or even internet access to look up the code sections referenced in the rules of court. To prevent confusion for court staff, self-represented litigants and representatives of an Indian child’s tribe, and to prevent unnecessary court motions and notices, rule 5.552 should contain the duplicative language from section 827. This would make rule 5.552 clear on its face as to which agencies and people have the right to access juvenile case files, when access is allowed without a court order, and when a court order is required before access is allowed.</p> <ul style="list-style-type: none">• <u>Given the complexity of Welfare and Institutions Code section 827, would practitioners prefer that the rule retain the existing language in subdivisions (b), (f), and (g) even if it is duplicative of the statutory language?</u> <p>Given section 827’s complexity, rule 5.552 should retain the duplicative language in section 827.</p> <p>Additional Comments</p> | |

SPR17-16

Indian Child Welfare Act: Amend Rule 5.552 to Allow Indian Child’s Tribe Access to Court Records Consistent with Welfare and Institutions Code Section 827

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|----|--|----------|---|---|
| | | | <p>The Invitation to Comment asks whether practitioners prefer the rule to retain the duplicative language from section 827, given that section’s complexity. Self-represented litigants benefit from rules that are clear and easily understood; not rules that refer them to another code section that they have to look up.</p> | |
| 5. | <p>Superior Court of California, County of Los Angeles By Sandra Pigati-Pizano, Management Analyst, Management Research Unit</p> | AM | <p>Comments: The duplication of the WIC § 827(a) portion in the rule is helpful and should remain rather than be eliminated (with updates to be consistent). The information is so dense that it is easier to review the rule with the entitled parties list rather than having to go back and forth between WIC § 827 and Rule 5.552 to piece it together.</p> <p>Suggested Modifications: Rule 5.552 Original (b) - Leave the duplicative language to allow for easy review of the list of entitled parties when reviewing the rest of the rule. New (b) - This section should stand out. Some are not aware of the subpoena not being applicable to juvenile records and often there are attempts to request records in this fashion. New (e) - Los Angeles County uses WIC § 827.9 for access to law enforcement reports and the JV-575 petition form.</p> <p>Request for Specific Comments:</p> | <p>See response to comments from the State Bar above.</p> <p>See response to comments from the State Bar above.</p> <p>This section applies only to Los Angeles County per subsection (p) and does not require rule revision.</p> |

SPR17-16

Indian Child Welfare Act: Amend Rule 5.552 to Allow Indian Child’s Tribe Access to Court Records Consistent with Welfare and Institutions Code Section 827

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|--|-------------|----------|---|--------------------|
| | | | <p>Does the proposal appropriately address the stated purpose? Yes. Given the complexity of Welfare and Institutions Code section 827, would practitioners prefer that the rule retain the existing language in subdivisions (b), (f), and (g) even if it is duplicative of the statutory language? Because WIC § 827 is complex, the duplicative language is helpful. It should, however, be updated to be consistent when there are changes to 827. Would the proposal provide cost savings? If so, please quantify. It is not likely that there would be cost savings. What would courts require in order to implement this proposal? 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. The courts would require additional training of staff, revision of processes and procedures such as staff manuals. Would an effective date six months from Judicial Council approval of this proposal provide sufficient time for implementation?</p> | |

SPR17-16

Indian Child Welfare Act: Amend Rule 5.552 to Allow Indian Child’s Tribe Access to Court Records Consistent with Welfare and Institutions Code Section 827

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|----|---|-----------------|---|---|
| | | | <p>Yes.</p> <p>How well would this proposal work in small courts? Large courts?</p> <p>The proposal should work well within small or large courts.</p> | |
| 6. | <p>Superior Court of California, County of Orange</p> <p>By Cynthia Beltran, Administrative Analyst, Family Law and Juvenile Court.</p> | NI | <p>Q: What would the implementation requirements be for courts?</p> <p>In order to implement, information regarding amendment would need to be communicated to staff and judges. Procedures would also need to be revised.</p> <p>Q: Would six months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes, an effective date of six months would be sufficient time for implementation.</p> | <p>No response required.</p> <p>No response required.</p> |
| 7. | <p>Superior Court of California, County of Riverside</p> <p>By Susan D. Ryan, Chief Deputy of Legal Services</p> | A | <p><u>Does the proposal address the stated purpose?</u></p> <p>Yes.</p> <p><u>Given the complexity of WIC 827, would practitioners prefer that the rule retain the existing language in subdivisions (b), (f), and (g) even if it is duplicative of the statutory language?</u></p> <p>Yes. Practitioners would prefer consistency in the code, even if it means the language is duplicative.</p> | <p>No response required.</p> <p>See response to State Bar of California.</p> |

SPR17-16

Indian Child Welfare Act: Amend Rule 5.552 to Allow Indian Child’s Tribe Access to Court Records Consistent with Welfare and Institutions Code Section 827

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|----|---|----------|---|---|
| | | | <p><u>Would the proposal provide cost savings?</u></p> <p>No.</p> <p><u>What would the implementation requirements be for courts?</u></p> <p>Minimal time needed to inform bench officers and staff of the changes.</p> <p><u>Would six months be sufficient time to implement?</u></p> <p>Yes.</p> <p><u>How well would this proposal work in courts of different sizes?</u></p> <p>No difference.</p> | <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p> |
| 8. | Superior Court of California, County of San Diego By Mike Roddy, Executive Officer | AM | <ul style="list-style-type: none"> • The old subdivision (b) is not necessary. It is a good idea to remove it and avoid having to make changes every time the statutes change. • In addition to WIC 827, there are other statutes that address the confidentiality and release of juvenile case files, most notably WIC 827.10. WIC 828 addresses the law enforcement report (not the case file) and is covered later in rule 5.552. Our court recommends removing WIC 828 from the new subdivision (b) and adding at least WIC 827.10. | <p>The old subdivision (b) has been removed.</p> <p>Article 22 of Chapter 2, Part 1, Division 2 of the Welf. & Inst. Code §§ 825-832 contain various provisions governing the records of children who are wards or dependents. Section 827 specifically addresses court case files and who can have access. Section 827.10 addresses when the child welfare agency is authorized to permit access to its files and records and §828 addresses sharing of information related to information gathered by a</p> |

SPR17-16

Indian Child Welfare Act: Amend Rule 5.552 to Allow Indian Child's Tribe Access to Court Records Consistent with Welfare and Institutions Code Section 827

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|--|-------------|----------|--|--|
| | | | <ul style="list-style-type: none">• Government Code section 13968 was repealed many years ago. | law enforcement agency, including by court order. Reference to this section has been removed in response to this comment. |

To add a page number, you click in the box with the # below (don't highlight "#"), select Insert – Page Number – Format Page Number – Start at [pick the first page number for the comment chart] - OK; then select Page Number – Current position – Plain number. Then simply delete the # character. (DELETE this box, too!)
NOTE - you **cannot** simply type into the page number box to change it, you do have to go through Format Page Number dialog.



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 |
| June 2, 2017 | Please review before May 25 meeting |
| To | Deadline |
| Family and Juvenile Law Advisory Committee | May 25, 2017 |
| From | Contact |
| Gary Slossberg, Attorney Center for Families, Children and the Courts | Gary Slossberg, Attorney 916-263-0660 gary.slossberg@jud.ca.gov |
| Subject | |
| Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court | |

Since the Family and Juvenile Law Advisory Committee last considered this proposal, a question has arisen among staff regarding whether the transfer of title IV-D child support cases from tribal courts to state courts should trigger a filing fee, when such transfers are at the request of a private litigant and when the underlining cases contain custody provisions. Upon review of the relevant statutory law, staff could find no statutory authority for the charging of fees for these transfers. As such, staff recommends the addition of the following language at subsection (i)(4) and the following advisory comment:

No filing fee shall be charged for the transfer of a title IV-D child support case from a tribal court.

Advisory Committee Comment

This rule applies only to Title IV-D Child Support cases. In the normal course, transfers from tribal court are initiated by the local child support agencies. Per Government Code §§6103.9 and 70672, local child support agencies are exempt from payment of filing fees. The rule

makes it clear that this exemption also applies when an eligible case is being transferred from a tribal court.

Rationale for Recommendation

The vast majority of transfers of title IV-D cases are at the request of the IV-D agency, who pursuant to current law is exempt from all filing fees.¹ Likewise, there are no fees for motions or other papers regarding parentage or child support issues filed by private litigants in title IV-D actions.²

However, filings on other issues (like custody) by private litigants in title IV-D cases are subjected to a fee. For instance, a litigant filing a motion to establish or modify custody in a title IV-D action is required to pay the first paper fee (currently set at \$435) as well as any other required motion fees.

Nonetheless, the transfer of title IV-D cases between the tribal court and state court truly is an instance of first impression. First, transfers of IV-D cases generally do not include the transfer of jurisdiction of the custody provisions in the case, as can occur with tribal transfers. Second, unlike a change of venue between counties or a transfer between U.S. states via UIFSA, here the transfer is between the state and a sovereign entity, the tribe. There are no statutes that require fees for the transfer of cases between state courts and tribal courts, and there is no clear analogy from which to presume that fees should be charged. Consequently, there does not appear to be any statutory authority to charge fees.

Additionally, the nature of tribal transfers should make the workload on the state courts less burdensome than it is in other types of transfers. As with a change of venue, significant time can be spent by clerks in the transferring court copying and organizing files and by clerks in the receiving court creating a new file once the case documents are received. With tribal transfers of title IV-D cases, the case will be returning to the court in which it was initiated. As both the

¹ Gov. Code § 6103.9 exempts local child support agencies from the payment of any filing fees, stating at subsection (a) that, “[n]otwithstanding any other provision of law, except as provided in this section, the local child support agency and the district attorney shall be exempt from the payment of any fees, including fees for service of process and filing fees, in any action or proceeding brought for the establishment of a child support obligation or the enforcement of a child or spousal support obligation.”

² Gov. Code § 70672 states, “[n]otwithstanding any other provision of law, no fee shall be charged to file a first paper or any subsequent pleading or document on issues relating to parentage or support in a case in which a Title IV-D child support agency is providing services under Section 17400 of the Family Code.”

tribal and state courts share concurrent jurisdiction, the state court maintains the original file. Therefore, the workload should be limited to the addition of documents added to the case while under the jurisdiction of the tribal court, which should be minimal.

Importantly, since the IV-D program receives federal funding for staff working on title IV-D cases, clerks working on a transfer of a case from a tribal court already are being compensated for their work by the federal funding. If fees were to be collected, it might trigger a requirement to reimburse the federal government to avoid double-charging for the same work.

Of note, at the Cross-Cultural Exchange regarding title IV-D case transfers between the Yurok Tribe and the state, both sides agreed that there should be no fees for these transfers. A clarification in the rule that there are no filing fees in tribal transfers would respect the cooperative spirit of this arrangement, which is expected to be replicated in future agreements about tribal courts and the state.

For the reasons noted above, staff recommends the inclusion of the proposed language regarding filing fees in the transfer of title IV-D cases from tribal courts to state courts.



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 15, 2017

| | |
|--|--|
| Title | Agenda Item Type |
| Family Law: Transfers of title IV-D Child Support Cases Between State and Tribal Court | Action Required |
| | Effective Date |
| | January 1, 2018 |
| Rules, Forms, Standards, or Statutes Affected | Date of Report |
| Amend Cal. Rules of Court, rule 5.372 | June 2, 2017 |
| Recommended by | Contact |
| Family and Juvenile Law Advisory Committee | Ann Gilmour, Attorney II CFCC, 415-865-4207 ann.gilmour@jud.ca.gov |
| Hon. Jerilyn L. Borack, Cochair | |
| Hon. Mark A. Juhas, Cochair | |
| Tribal Court-State Court forum | |
| Hon. Abby Abinanti, Cochair | |
| Hon. Dennis M. Perluss, Cochair | |

Executive Summary

The Family and Juvenile Law Advisory Committee (committee) and the Tribal Court-State Court Forum (forum) propose amendments to rule 5.372 governing discretionary transfer of title IV-D child support cases from the state courts to tribal courts in cases of concurrent jurisdiction. The amendments would allow transfers from the tribal court to the state court, clarify the contents and procedures for motions to transfer, and modify the factors and procedures for ruling on motions to transfer. These proposed amendments are based on suggestions received from those involved in transfers between the state courts in Humboldt and Del Norte Counties and the Yurok Tribal Court.

Recommendation

The committee and the forum recommend that effective January 1, 2018 the Judicial Council amend rule 5.372 as follows:

1. Amending the title and subdivision (a) to clarify that a title IV-D child support case may be transferred between tribal and state courts in both directions. The prior rule had only envisioned a title IV-D child support case being transferred from the state court to the tribal court. However, the goal is to ensure that a title IV-D child support case will be in the jurisdiction (tribal or state) that is best able to serve the family and protect the best interests of the child. As a family's circumstances change, a case that may have initially been best served by tribal court jurisdiction may transition to one that is best served by state court jurisdiction. The Full Faith and Credit for Child Support Orders Act mandates full faith and credit for child support orders between tribal and state courts, thereby contemplating movement in either direction. 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;
2. Adding new subdivision (i), which describes the state court procedure when a tribal court with concurrent jurisdiction decides it is in the child's best interest for the case to be heard in state court and stipulates that such transfers are exempt from the payment of any filing fees which might otherwise apply;
3. Revising subdivision (h) to add the exception in new subdivision (i), which authorizes the filing of a motion to transfer a case back to state court when a tribal court determines that it is not in the best interest of the child or the parties to retain jurisdiction;
4. Amending subdivision (e) to:
 - Allow the state court to suggest transfer to tribal court on its own motion should circumstances suggest to the court that tribal court jurisdiction may be in the child's best interest;
 - Require that certain information be included in the motion to transfer to tribal court. This information is fundamental to the court's determination of concurrent jurisdiction;
 - Specify the forms of evidence that the court may rely on when making its ruling on a transfer motion;
 - Recognize a presumption of tribal court jurisdiction if the child involved in the case is a tribal member or eligible for tribal membership. This is consistent with legal principles that generally recognize tribal subject matter jurisdiction over children who are members or eligible for membership in the tribe;
 - Specify the time limit within which any objection to the transfer to tribal court must be brought; and

- Provide that the objecting party has the burden of proof to establish that there is good cause not to transfer the matter to tribal court. This is consistent with state implementation of the Indian Child Welfare Act of 1978 (ICWA); and

5. Amending subdivision (f) to:

- Remove some of the factors to be considered in making a determination to transfer to tribal court. The original list of factors was drawn from a Wisconsin rule that governs the transfer of general civil matters where there is concurrent tribal and state court jurisdiction. Not all of those factors were relevant to the consideration of the more specific title IV-D child support case type. In particular, the nature of the action, the interests of the parties, and whether state or tribal law will apply are all the same in these child support cases. The inclusion of these on the list of factors to be considered was confusing and an inefficient use of court resources;
- Specify that the court may not consider the perceived adequacy of the tribal justice system in determining whether to transfer the case. This is consistent with state and federal law under the ICWA; and
- Permit the state court judge to contact the tribal court judge to resolve procedural issues consistent with procedures contained in the Uniform Child Custody Jurisdiction and Enforcement Act and the Tribal Court Civil Money Judgment Act.

6. Adding an Advisory Committee Comment to address the issue of filing fees when a case is transferred from tribal court.

The text of the amended rules and the new and revised forms are attached at pages 6–9.

Previous Council Action

The Judicial Council adopted California Rules of Court, rule 5.372, effective January 1, 2014, in response to the need for consistent procedures for determining the orderly transfer of title IV-D child support cases from the state court to the tribal court when there is concurrent subject matter jurisdiction.

Rationale for Recommendation

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),¹ as amended by the Balanced Budget Act of 1997,² authorized the direct federal funding of tribal child support programs. Before the passage of PRWORA, tribal members seeking child support program services only had the option of applying to state title IV-D programs for assistance in establishing and enforcing child support orders. After the enactment of PRWORA, a number of tribes located outside of California applied for and received federal funding to develop tribal title IV-D child support programs. The first tribe located in California to receive federal funding for a tribal title IV-D child support program was the Yurok Tribe.

¹ Pub.L. No. 104-193 (Aug. 21, 1996) 110 Stat. 2105.

² Pub.L. No. 105-33 (Aug. 5, 1997) 111 Stat. 251.

The Yurok Tribe began receiving grant funding from the federal Office of Child Support Enforcement for startup planning for a tribal child support program on August 1, 2011. The Yurok Tribe had comprehensive direct services available by August 1, 2013. The beginning of title IV-D funding for tribal child support programs created the need for a statewide rule of court to aid in the orderly transfer of appropriate cases from the state court to the tribal court. Rule 5.372 was adopted to meet this need. While the Yurok Tribe is the first tribe located in California to begin a federally funded child support program, rule 5.372 was drafted in anticipation that other tribes may develop such programs in the future.

Since implementation of rule 5.372 on January 1, 2014, over 40 cases have been considered for transfer between the state courts in Humboldt and Del Norte Counties and the Yurok Tribal Court. The Yurok Tribe intends to seek transfer of cases currently under the jurisdiction of state court in the following counties: Lake, Mendocino, Shasta, Siskiyou, and Trinity. In addition, at least one other tribe located in Southern California is expected to soon begin handling title IV-D child support cases.

Representatives of the state Department of Child Support Services, local county child support agencies, the tribal child support program, the tribal court, the state courts, and Judicial Council staff met to review the case transfer procedures at a cross-court educational exchange on October 26, 2016. Based on the experience with the transfers that have taken place so far, the participants made a number of suggestions to improve the transfer process, including amendments to rule 5.372 to streamline the process, reduce confusion, and ensure consistency and efficient use of court resources.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for comment during the spring 2017 comment session from February 27th to April 28th to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, court appointed special advocate programs, and other juvenile and family law professionals. In addition the proposal was circulated to tribal advocates, tribal leaders and others with a particular interest in tribal issues. Ten comments were received. Four commentators approved of the proposal. Four approved with proposed amendments and two did not indicate whether or not they approved. A number of clarifying revisions were made in response to the comments.

In addition, subdivision (h) was revised and an Advisory Committee Comment was added to address the issue of filing fees when a title IV-D child support case is transferred from tribal court to a superior court. Several members of the committee expressed concern that without such provisions transfers of eligible title IV-D child support cases from tribal court might be subject to

filing fees which would not apply were the cases initiated directly by a local child support agency.

Implementation Requirements, Costs, and Operational Impacts

The implementation requirements, costs, and operations impacts should be minimal, because the rule clarifies the process and requirements for transfer of these title IV-D child support cases between tribal and superior courts.

Attachments and Links

1. Cal. Rules of Court, rules 5.372 at pages 6–8
2. Chart of comments, at pages 10–22

Rule 5.372 of the California Rules of Court would be amended, effective January 1, 2018, to read:

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Title 5. Family and Juvenile Rules

Division 1. Family Rules

Chapter 10. Government Child Support Cases (Title IV-D Support Cases)

Rule 5.372. Transfer of title IV-D cases between ~~to a tribal court~~ and state court

(a) Purpose

This rule is intended to define the procedure for transfer of title IV-D child support cases ~~from~~ between a California superior court ~~to~~ and a tribal court.

(b)–(d) * * *

(e) Determination of concurrent jurisdiction by a superior court

(1) The superior court may, on its own motion or on the motion of any party and after notice to the parties of their right to object, transfer a child support and custody provision of an action in which the state is providing services under ~~California~~ Family Code section 17400 to a tribal court, as defined in (a). This provision applies to both prejudgment and postjudgment cases.

(2) The motion for transfer to a tribal court must include the following information:

- (A) Whether the child is a tribal member or eligible for tribal membership;
- (B) Whether one or both of the child’s parents is a tribal member or eligible for tribal membership;
- (C) Whether one or both of the child’s parents lives on tribal lands or in tribal housing, works for the tribe, or receives tribal benefits and/or services;
- (D) Whether there are other children of the obligor subject to child support obligations;
- (E) Any other factor supporting the child’s or parents’ connection to the tribe.

1 (3) When ruling on a motion to transfer, the superior court must first make a
2 threshold determination that concurrent jurisdiction exists. Evidence to
3 support this determination may include:

4
5 (A) Evidence contained within the motion for transfer;

6
7 (B) Evidence agreed to by stipulation of the parties; and

8
9 (C) Other evidence submitted by the parties or by the tribe.

10
11 The court may request that the tribal child support agency or the tribal court
12 submit information concerning the tribe's jurisdiction.

13
14 (4) There is a presumption of concurrent jurisdiction if the child is a tribal
15 member or eligible for tribal membership. If concurrent jurisdiction is found
16 to exist, the transfer to tribal court will occur unless a party has objected ~~in a~~
17 ~~timely manner~~ within 20 days after service of **notice of the right to object**
18 **referenced in subdivision (e)(1) above.** On the filing of a timely objection to
19 the transfer, the superior court must conduct a hearing on the record
20 considering all the relevant factors set forth in (f). The objecting party has the
21 burden of proof to establish good cause not to transfer to tribal court.

22
23 **(f) Evidentiary considerations**

24
25 (1) In making a determination on the **application motion** for case transfer, the
26 superior court must consider:

27
28 ~~(1) The nature of the action;~~

29
30 ~~(2) The interests of the parties;~~

31
32 (A) The identities of the parties;

33
34 (B) The convenience ~~of~~ to the parties and witnesses;

35
36 ~~(5) Whether state or tribal law will apply;~~

37
38 (C) The remedy available in the superior court or tribal court; and

39
40 (D) Any other factors deemed necessary by the superior court.

41
42 (2) In making a determination on the **motion** for case transfer, the superior court
43 may not consider the perceived adequacy of tribal justice systems.

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(3) The superior court may, after notice to all parties, attempt to resolve any procedural issues by contacting the tribal court concerning a motion to transfer. The superior court must allow the parties to participate in, and must prepare a record of, any communication made with the tribal court judge.

(g) Order on request to transfer

If the superior court denies the request for transfer, the court must state on the record the basis for denying the request. If the superior court grants the request for transfer, it must issue a final order on the request to transfer including a determination of whether concurrent jurisdiction exists.

(h) Proceedings after order granting transfer

Once the superior court has granted the application to transfer, and has received confirmation that the tribal court has accepted jurisdiction, the superior court clerk must deliver a copy of the entire file, including all pleadings and orders, to the clerk of the tribal court within 20 days of confirmation that the tribal court has accepted jurisdiction. With the exception of a filing by a tribal court as described by subdivision (i) of this rule, the superior court may not accept any further filings in the state court action in relation to the issues of child support and custody that were transferred to the tribal court.

(i) Transfer of proceedings from tribal court

- (1) If a tribal court determines that it is not in the best interest of the child or the parties for the tribal court to retain jurisdiction of a child support case, the tribe may, upon noticed motion to all parties and the state child support agency, file a motion with the superior court to transfer the case to the jurisdiction of the superior court along with copies of the tribal court’s order transferring jurisdiction and the entire file.
- (2) The superior court must notify the tribal court upon receipt of the materials and the date scheduled for the hearing of the motion to transfer.
- (3) If the superior court has concurrent jurisdiction it shall not reject the case.
- (4) No filing fee shall be charged for the transfer of a title IV-D child support case from a tribal court.

Advisory Committee Comment

1 This rule applies only to Title IV-D Child Support cases. In the normal course, transfers from tribal court
2 are initiated by the local child support agencies. Per Government Code §§6103.9 and 70672, local child
3 support agencies are exempt from payment of filing fees. The rule makes it clear that this exemption also
4 applies when an eligible case is being transferred from a tribal court.

ITC number

Title of proposal (rule and forms numbers, not in boldface)

Simple comment chart template—your first choice in comment charts

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|----|---|-----------------|---|---|
| 1. | Burgess, Jennifer J., Program Manager, Yurok Child Support Services Humboldt County | AM | Suggest change of term/word used in Rule 5.372 (e)(2)(C) "Whether one or both of the child's parents lives on tribal lands or in tribal housing, works for the tribe, or receives tribal benefits". Suggest/request change of word used from "benefit" to services. Services provides a broader description and is a more appropriate term than "benefits". | The proposal was revised in response to this comment to add "...and/or services." |
| 2. | California Indian Legal Services, By Denise H. Bareilles, Senior Staff Attorney Humboldt County | A | Recommendations (i) Transfer of proceedings from tribal court 1. If a tribal court determines that it is not in the best interest of the child or the parties for the tribal court to retain jurisdiction of a child support case, the tribe may, upon noticed motion to all parties and the state child support agency, file a motion to transfer the case to the jurisdiction of the superior court along with copies of the tribal court's order transferring jurisdiction and the entire file. 2. The superior court must notify the tribal court upon receipt of the materials and the date scheduled for the hearing of the motion to transfer. 3. If the superior court has concurrent jurisdiction it may not reject the case. <i>Comment #1:</i> The provision above allows interpretation that the Motion for Case | The rule does not assume that there has been litigation on the issue in tribal court, it merely |

ITC number

Title of proposal (rule and forms numbers, not in boldface)

Simple comment chart template—your first choice in comment charts

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|--|-------------|----------|---|---|
| | | | <p>Transfer from tribal court to state court may be processed and litigated twice.</p> <p>Subparagraph 1 presumes that the Motion for Case Transfer is occurring in the tribal court and that a final tribal court order is being issued by the tribal court judge to transfer the case and related files to the state court.</p> <p>Subparagraph 2 also presumes that a Motion for Case Transfer is being filed in the state court. The motion should be heard in the court that last had jurisdiction over the child support matter.</p> <p>Subparagraph 1 should be modified to include that the tribal court must notify the state court of the date scheduled for the hearing of the motion for transfer, and this same language should be removed from subparagraph 2. Another option to clarify where the Motion for Case Transfer from tribal court to state court will be filed may be to keep the provision more general to allow both options, and then give the state and tribal Title IV-D agencies the ability to determine in an intergovernmental agreement where this motion would be filed.</p> <p>We are supportive of the proposed change based on clarifying in the rule that the Motion</p> | <p>acknowledges that the tribal court will have had to give up jurisdiction over the case in order for the state court to resume jurisdiction. That is why there must be an order from the tribal court order acknowledging that the case should go back to state court. The state court has no authority to order the tribal court to return the case. (<i>In re. M.M.</i> (2007) 154 Cal.App. 4th 897)</p> <p>No changes were made in response to this comment. It is not anticipated that the superior court would participate in the tribal court deliberations about whether the case should remain in tribal court or return to superior court. The goal is to ensure that if a case is no longer appropriate for tribal court jurisdiction it does not fall through the cracks and there is a mechanism to have it return to superior court jurisdiction.</p> |

ITC number

Title of proposal (rule and forms numbers, not in boldface)

Simple comment chart template—your first choice in comment charts

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|--|-------------|----------|---|--|
| | | | <p>for Case Transfer from tribal court to state court is litigated once in either state or tribal court.</p> <p>(h) Proceedings after order granting transfer</p> <p>Once the superior court has granted the application to transfer, and has received confirmation that the tribal court has accepted jurisdiction, the superior court clerk must deliver a copy of the entire file, including all pleadings and orders, to the clerk of the tribal court. With the exception of a filing by a tribal court as described by subdivision (i) of this rule, the superior court may not accept any further filings in the state court action in relation to the issues of child support and custody that were transferred to the tribal court.</p> <p><i>Comment #2:</i> The above language would need to be reconciled based on the modified language in provision (i).</p> <p>(e) Determination of concurrent jurisdiction by a superior court</p> <p>(1) The superior court may, on its own motion or on the motion of any party and after notice to the parties of their right to object, transfer a child support and custody provision of an action in which the state is providing services under Family Code section 17400 to a tribal court, as defined in (a). This provision applies to both prejudgment and postjudgment cases.</p> | <p>No revisions were made in response to this comment because no revisions were made to (i).</p> |

ITC number

Title of proposal (rule and forms numbers, not in boldface)

Simple comment chart template—your first choice in comment charts

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
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| | | | <p>(2) The motion for transfer to a tribal court must include the following information:</p> <p>A. Whether the child is a tribal member or eligible for tribal membership;</p> <p>B. Whether one or both of the child’s parents is a tribal member or eligible for tribal membership;</p> <p>C. Whether one or both of the child’s parents lives on tribal lands or in tribal housing, works for the tribe, or receives tribal benefits.</p> <p>D. Whether there are other children of the obligor subject to child support obligations;</p> <p>E. Any other factor supporting the child’s or parents’ connection to the tribe.</p> <p><i>Comment #3:</i> We are supportive of the proposed change with the following modification,</p> <p>Provision (2)(C) –Whether one or both of the child’s parents lives on tribal lands, in tribal housing or communities, works for the tribe, or receives tribal services, benefits, or resources.</p> <p><i>Comment #4:</i> California Rule of Court 5.372 was specifically written to apply to California tribes that are actively administering a Title IV-D agency and court. It is important to emphasize that there are tribes in California that exercise child support jurisdiction exclusively on tribal dollars without Title IV-D funds. Some of these tribes choose to operate in this manner so that they may apply</p> | <p>Subdivision (e)(2)(C) was revised to reference both benefits and/or resources.</p> <p>As noted, rule 5.372 was written only to apply to Title IV-D child support cases. It is beyond the scope of this proposal to address non-Title IV-D child support cases.</p> |

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| | | | <p>tribal laws without being subject to federal Title IV-D regulation. There is a gap in the system for these non IV-D tribal courts. These courts may be garnishing wages for foreign enforcement but they are not included in this rule to support case transfers to their courts to allow them to work all aspects of the case, including modifications (i.e., transfer of continuing exclusive jurisdiction over the child support order). This is not good policy because there is an expectation of enforcement of foreign orders while at the same time not allowing the tribe to exercise its full jurisdiction over the child support matter. The non IV-D tribal court will have difficulty hearing a child support case that was initiated in the county system because it will be unclear as to which court has jurisdiction when a party thereafter petitions the tribal court to hear the matter.</p> <p>Conclusion While we did not comment on every proposed change, we do support all of them consistent to the above comments. The proposed changes promotes tribal self-governance, and provides additional clarity and efficiency in processing Title IV-D tribal child support case transfers between tribal and state courts.</p> | |
| 3. | Executive Committee of the Family Law Section of the State Bar of California | A | The Executive Committee of the Family Law Section (FLEXCOM) supports the changes to California Rules of Court set out | No response required. |

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| | By Saul Bercovitch, Assistant General Counsel, Office of General Counsel, The State Bar of California | | <p>in this proposal. Please see below for our comments and suggestions.</p> <p>As for the specific inquiry, we believe that the proposed amendments appropriately address the stated purpose. Please consider the following recommendations:</p> <p>In 5.372(h), add a reasonable time limit by which the superior court clerk must deliver a copy of the entire file to the Tribal Court. This is to give priority to such cases in view of court backlogs and avoid any delays in addressing modification requests and enforcement of support orders in Tribal Courts (consider current delays in transfer of files when a motion to change venue is granted).</p> <p>In 5.372(i)(3), should it read “. . . may shall not reject the case.”? If this is mandatory, then the language used should clearly convey that.</p> | <p>No response required.</p> <p>The proposal was revised in response to this comment.</p> <p>The proposal has been revised in response to this comment.</p> |
| 4. | Gloege, Naomi J., Rules Attorney, Aderant | NI | <p>I am writing to comment on the proposed amendments to CRC 5.372, out for comment until 4/28/17, and proposed to be effective 1/1/18.</p> <p>According to SPR 17-18 Invitation to Comment, CRC 5.372(e) is being amended in part to “specify the time limit within which any</p> | |

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| | | | <p>objection to the transfer to tribal court must be brought.” As proposed CRC 5.372(e)(4) will state in part as follows:</p> <p>“There is a presumption of concurrent jurisdiction if the child is a tribal member or eligible for tribal membership. If concurrent jurisdiction is found to exist, the transfer to tribal court will occur unless a party has objected within 20 days after service of notice. ...”</p> <p>It is not clear as written what specific notice triggers the 20 day deadline to object. Is it the “notice of right to object to transfer” or some other notice? As this may cause some confusion, I respectfully propose that the specific type of notice be identified in subdivision (e)(4) so that it is clear what notice triggers the objection deadline.</p> <p>For example, CRC 5.372(e)(4) could be amended to state in part as follows: ““There is a presumption of concurrent jurisdiction if the child is a tribal member or eligible for tribal membership. If concurrent jurisdiction is found to exist, the transfer to tribal court will occur unless a party has objected within 20 days after <u>service of notice of the right to object to transfer</u>. ...” (Emphasis added).</p> <p>Thank you for your time and consideration.</p> | <p>The proposal has been revised in response to this comment.</p> |

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| 5. | Orange County Bar Association By Michael L. Baroni, President Orange County | AM | Does the rule appropriately address the stated issue? Yes, except for subdivision (f). If the issue is whether or not to transfer an action from the Superior Court to a Tribal Court then one of the Evidentiary Considerations must be whether the child at issue is a tribal member or eligible for tribal membership. (See subdivision (e)(4) regarding the presumption for transfer). Suggested modification of Rule 5.372 would be to have the following language under Subdivision (f) (1) (C) “Whether the child(ren) at issue is/are member(s) of the tribe or eligible for tribal membership.” | The issue of children’s relationship to the tribe is central to the determination of whether or not the tribe has concurrent jurisdiction and must be considered by the superior court under subdivision (e)(2)(A) and does not need to be considered again under subdivision (f)(1). |
| 6. | Superior Court of California, County of Los Angeles By Sandra Pigati-Pizano, Management Analyst, Management Research Unit | AM | Rule 5.372 Please consider including how much time the court should wait for acceptance of jurisdiction by the tribal court. (section (h)) The following changes are suggested in the interest of clarity and consistency. (f) (1) (page 7) - change the word “application” to “motion.” Elsewhere in the rule “motions” are discussed but not “applications.” (f) (2) (page 7) - change the word “application” to “motion.” Same reason. (i) (1) (page 8) - to “may,...file a motion....” add “with the Superior Court.” | The proposal was revised in response to this comment. The proposal was revised in response to this comment. The proposal was revised in response to this comment |
| 7. | Superior Court of California, County of Orange By Cynthia Beltran, Administrative | NI | Does this rule apply to all tribal and state courts? At a recent AB 1058 meeting, the understanding was that this rule only applied to | Currently Yurok is the only tribe with a title IV-D program. To date the rule has only been used between the Yurok tribe and Del Norte and |

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| | Analyst, Family Law and Juvenile Court | | transfers between the state courts in Humboldt and Del Norte Counties and the Yurok Tribal Court. | Humboldt superior courts. The rule itself is, however, of general application. If more tribes develop title IV-D child support programs or if Yurok begins seeking transfer from cases outside of Del Norte and Humboldt county, this rule would apply to those cases. |
| 8. | Superior Court of California, County of Riverside By Susan D. Ryan, Chief Deputy of Legal Services | A | <p><u>Does the proposal address the stated purpose?</u> Yes.</p> <p><u>Would the proposal provide costs savings?</u> No.</p> <p><u>What would the courts require in order to implement this proposal?</u> The court would be required to train staff members (court services assistants, and supervisors), and draft new procedures.</p> <p><u>Would six months provide sufficient time for implementation?</u> Six months would be sufficient for court implementation. However, tribal to court collaboration would require a lengthier implementation period to work out protocol with individual tribes.</p> <p><u>How well would this proposal work in courts of different sizes?</u> Due to continued staffing shortages, these types of changes or additions to workload could lead to processing backlogs.</p> | No response required. |
| 9. | Superior Court of California, County of San Diego By Mike Rodd, Executive Officer | A | <p>Q: Does the proposal appropriately address the stated purpose?</p> <p>Yes.</p> | No response required. |

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| | | | <p>Q: Would the proposal provide cost savings? If so, please quantify.</p> <p>The proposed rule change streamlines the process with specific requirements and instructions that are easy to follow. This should result in less confusion about how to handle these cases and result in expediency in court hearings and transfer of cases.</p> <p>Q: What would the courts require in order to implement this proposal?</p> <p>Forms to use for motions, orders, and notice of confirmation of acceptance of jurisdiction; training for judicial officers, courtroom clerks, and court operations clerks.</p> <p>Q: Would an effective date six months from Judicial Council approval of this proposal provide sufficient time for implementation?</p> <p>Only if forms mentioned above have been created and approved.</p> <p>Q: How well would this proposal work in small courts? Large courts?</p> <p>Should be the same for all courts affected.</p> | |
| 10. | Yurok Child Support Services | AM | Rule 5.372. Transfer of title IV-D cases | |

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| | By Jennifer J. Burgess, Program Manager | | <p>between to a tribal court and state court While in agreement with all of the proposed changes to Rule 5.372, I do have a procedural concern regarding the proposed change of process in (h) Proceedings after order granting transfer. The proposed addition is in the first sentence. “Once the superior court has granted the application to transfer; and has received confirmation that the tribal court has accepted jurisdiction, the superior court clerk must deliver a copy of the entire file, including all pleadings and orders, to the clerk of the tribal court.”</p> <p>I’m wondering if there will be a proposed process for court to court communication for the confirmation of the transfer process. I am aware there is a drafted, non-mandatory model Order After Hearing (FL 687) that have been put to use in Humboldt Superior Court for the transfer to tribal court process. This drafted format indicates the clerk to prepare and send the file directly to the tribal court. I’m wondering if there will possibly be a new mandatory transmittal form drafted and put into place by the Judicial Council to accommodate the process involved with confirmation between the courts, as outlined in the proposed change of section (h). Maybe something built similar to an FL-590A UIFSA Child Support Order Jurisdictional Attachment, but specific to Rule 5.372, inclusive of the fact that tribes are not required to adopt UIFSA. Also, possibly identifying the</p> | <p>There is no plan to formalize a process for court to court communication of develop a form.</p> |

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| | | | burden of transmittal regarding the form would be helpful. Meaning would the clerk's offices be transmitting this form as a court to court communication, or would the IV-D Agency be transmitting this form. Thank you for your attention to our comment and questions. | |

To add a page number, you click in the box with the # below (don't highlight "#"), select Insert – Page Number – Format Page Number – Start at [pick the first page number for the comment chart] - OK; then select Page Number – Current position – Plain number. Then simply delete the # character. (DELETE this box, too!)

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