



JUDICIAL COUNCIL  
OF CALIFORNIA

TRIBAL COURT-STATE COURT FORUM

[www.courts.ca.gov/forum.htm](http://www.courts.ca.gov/forum.htm)  
[forum@jud.ca.gov](mailto: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

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**Date:** August 17, 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

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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.

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

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**Call to Order and Roll Call**

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

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**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](mailto: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 August 16, 2017 will be provided to advisory body members.

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**III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS 1-8)**

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**Item 1**

Approval of Minutes for June 8, 2017 Meeting

**Item 2**

**Cochairs Report**

- Proposed Addition of Review and Response to California ICWA Compliance Task Force Report to [Annual Agenda](#)
- Proposed National Tribal Court Forum Summit – Palm Springs, December 2017

**Item 3**

**Legislative Update**

- [AB 905](#)

*Presenter: Daniel Pone, Attorney, Judicial Council's Governmental Affairs*

**Item 4**

**California Department of Social Services – Office of Tribal Affairs**

- Presentation on the new California Department of Social Services Office of Tribal Affairs and Tribal Consultation Policy

*Presenter: Heather Hostler, Bureau Chief of Office of Tribal Affairs, California Department of Social Services*

**Item 5**

**California Tribal Families Coalition and [California ICWA Compliance Task Force Report](#)**

- Overview of California ICWA Compliance Task Force Report Findings and Recommendations. Request for forum action.

*Presenter: Delia M. Sharpe, Executive Director, California Tribal Families Coalition*

**Item 6**

**Suggestions for Future Forum Activity**

- Possible legislation to provide funding for attorneys for tribes in ICWA cases.
- Possible request to state bar to create an Indian law specialization.

*Presenter: Judge Leonard Edwards, Ret.*

**Item 7**

**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 8**

**Recent and Upcoming Conferences**

- 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, Sacramento
- [Beyond the Bench](#) Planning – December 18-20, 2017, San Diego

*Presenter: Vida Castaneda*

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**IV. ADJOURNMENT**

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**Adjourn**



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TRIBAL COURT-STATE COURT FORUM

MINUTES OF OPEN MEETING

June 8, 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. April Attebury, Hon. Hilary A. Chittick, Ms. Jacqueline Davenport, Hon. Gail Dekreon, Hon. Leonard Edwards(Ret.), Hon. Kimberly Gaab, Hon. Lawrence C. King, Hon. Patricia Lenzi, Hon. Mark Radoff, Hon. David Riemenschneider, Hon. John Sugiyama, Hon. Christopher Wilson, and Hon. Joseph Wiseman*

**Advisory Body  
Members Absent:**

Hon. Richard Blake, Hon. Cynthia Gomez, Hon. Michael Golden, Mr. Olin Jones, Hon. Mark Juhas, Hon. Susanne Kingsbury, Hon. William Kockenmeister, Hon. Anthony Lee, Hon. Lester Marston, Hon. Allen Sumner, Hon. Sunshine Sykes, Hon. Juan Ulloa, Hon. Christine Williams, Hon. Claudette White, and Hon. Zeke Zeidler

**Others Present:**

Ms. Carolynn Bernabe, Ms. Vida Castaneda, Ms. Charlene Depner, Ms. Ann Gilmour, Mr. Dan Pone

OPEN MEETING

**Call to Order and Roll Call**

The co-chairs called the meeting to order at 12:17 p.m.

**Approval of Minutes**

The forum approved the April 13, 2017 meeting minutes.

DISCUSSION AND ACTION ITEMS (ITEMS 1-6)

**Item 1**

**Cochairs Report**

• **[Attorney General video](#)**

The link to the video is available in the [Tribal/State Programs Website](#) under Family Violence on the landing page and on [CJER Online](#) under Toolkits/Family/Domestic Violence. The video is nine minutes long, and forum members are encouraged to watch it. The Attorney General made a significant introduction on the importance of enforcement of tribal DV orders. If interested in obtaining a DVD copy of video that can be used as a teaching tool for conferences, please contact [Ann Gilmour](#) or [Carolynn Bernabe](#).

- ***Addition of technology plan committee to forum [annual agenda](#)***  
The forum's annual agenda was amended to authorize work implementing the council's cross-advisory committee group implementing different technologies in the court to increase court access. Judge Wiseman agreed to be the forum's representative to the Information Technology Advisory Committee (ITAC). Judge Wiseman will attend the in-person ITAC meeting on June 9, 2017 and will provide an update at the next call.
- ***2017-2018 Meeting dates and in person meeting date***  
The committee agreed to schedule the next in-person meeting for Thursday, February 15, 2018 in San Francisco. The forum was provided the meetings dates set through the end of 2018.

## **Item 2**

**Legislative Update:** [AB 905](#)

*Presenter: Dan Pone*

Mr. Dan Pone reported on the status of AB 905 sponsored by the California Law Revision Commission that would remove the sunset on the Tribal Court Civil Money Judgement Act. The bill is supported by the Judicial Council, California Nations Indian Gaming Association (35 tribes), the Luiseno Band of Mission Indians, Rincon Band, and Yurok. The bill passed the Assembly Judiciary and Appropriations Committees. It is on the consent calendar pending in Senate Judiciary set for hearing on June 13. After the Senate Judiciary Committee, it will go to the Appropriations Committee. Following passage by consent or on the senate floor, the bill will go to the Governor's desk. Mr. Pone will provide another update at the next forum meeting.

## **Item 3**

### **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**  
The original purpose of this proposal was to correct two specific inconsistency between the rule and section 827 of the Welfare and Institutions Code. In the course of developing the proposal, it was noted that much of the language in rule 5.552 is duplicative of the statute. RUPRO has given general direction that duplication of statutory language in rules of court should be avoided. Where rules that contain such duplication are being amended, consideration should be given to removing the duplicative language. When this proposal was sent out for public comment, commentators were specifically asked whether the duplicative language should be removed or retained. The comment period ended April 28, 2017. Eight comments were received. All commentators are supportive of the proposal. Three commentators indicated that the duplicative language should be stripped out. Three indicated that the duplicative language should be retained. Two took no position on this question. The Family and Juvenile Law Advisory Committee considered the comments and proposed responses received during the comment period. The committee discussed in particular the issue whether language that is duplicative of statute should be deleted to avoid the potential for conflict and the need for rule updating when the statute is revised, or should be kept in the rule for ease of reference by practitioners and self-

represented litigants as suggested by several commentators. After discussion of the pros and cons, the majority of the committee concluded that, consistent with general RUPRO direction, the language in the rule that duplicated statutory language should be removed. The forum agreed with this conclusion.

*Action item: Staff to finalize report to go to RUPRO and to Judicial Council for final amendment to the rule.*

- **SPR17-18 Family Law: Transfers of title IV-D Child Support Cases Between State and Tribal Court**  
This proposal was in response to recommendations made by parties involved in transfer cases from Yurok Child Support, Del Norte and Humboldt Counties. The proposal was circulated for public comment during the comment period ending April 28. The revised rule and comment chart reflect the technical changes made in response to comments received. There is only one substantive change. A question arose whether filing fees would be charged when a title IV-D child support case that includes child custody issues is transferred from a tribal court to the state court. Upon review of the relevant statutory law, staff could find no authority for the charging fees for these transfers. The Family and Juvenile Law Advisory Committee considered the comments and proposed responses received during the comment period and at their last call and approved moving forward as amended. The committee determined that there should be no filing fee for these transfers and that language and an advisory comment should be included in the rule of court to that effect. The forum concurred with this conclusion and approved the proposal.

*Action item: Staff to finalize report to go to RUPRO and to Judicial Council for final amendment to the rule.*

#### **Item 4**

##### **Traffic Initiative (Small Group Update)**

*Presenter: Ann Gilmour*

Ms. Ann Gilmour received a number of volunteers to serve on the traffic group. These include Judges Marston, Williams, Wiseman and Judge Dekreon who is the liaison with the Traffic Advisory Committee. Ann will find time that works for all.

#### **Item 5**

##### **Upcoming Conferences**

*Presenter: Vida Castaneda*

Ms. Vida Castaneda provided a status update on these events:

- **[Beyond the Bench](#) – December 18-20, 2017, San Diego**  
Preconference events begin on December 18, main conference December 19-20 at the Manchester Grand Hyatt. The theme is “*Uniting for a Better Future*,” which will bring together approximately 1200 participants including judges, attorneys, court staff, tribal and non-tribal, social workers, and probation officers. There will be a wide range of topic areas including juvenile, family, criminal probate, guardianship, conservatorship, tribal

court-state court jurisdiction, mental health, immigration, education, human trafficking, trauma, and racial justice. There will be three tribal-related workshops to include topics on ICWA Task Force report, ICWA Regulations and Guidelines, and Trafficking in tribal communities. Pre-registration open through June 30.

- ***Legal Aid Association of California and the Judicial Council [California Family Law and Self-Help Conference](#) – July 24, 2017, Los Angeles***

This event will be held at the California Endowment Building. Topics to include real property, pensions, military, traffic tickets, domestic violence/custody, and immigration. Two tribal related workshops will be presented, “Providing Effective Self-Help Services to Tribal Communities” and “Assisting and Understanding Victims Within the Native American Community”. There are scholarships available to tribal court judges, tribal court staff, and staff working on domestic violence program. If interested, please contact Laural Ayala, [laural.ayala@jud.ca.gov](mailto:laural.ayala@jud.ca.gov); 415-865-7459.

- ***Native American Day – September 22, 2017, 10:00 a.m. to 2:00 p.m.***

This event will be held at the state Capitol Building in Sacramento. This year marks the 50<sup>th</sup> anniversary and the theme is “Tribal Sovereignty: Past, Present, and Future.” There will be many resource tables from agencies throughout California, health-related information, an educational corner, and booths featuring live food demonstrations. The planning committee is in the process of finding speakers and cultural performers. Ms. Castaneda will provide more information to the forum in the next few months.

#### **Item 6**

##### **Other Business**

The next forum call is on August 17, 2017 at 12:15 p.m.

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#### **A D J O U R N M E N T**

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

Pending approval by the advisory body on August 17, 2017.



## JUDICIAL COUNCIL OF CALIFORNIA

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

Telephone 415-865-7446 • Fax 415-865-7664 • TDD 415-865-4272

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### MEMORANDUM

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Date

July 25, 2017

Action Requested

Approve an Addition to the Tribal Court –  
State Court Forum Annual Agenda

To

Executive and Planning Committee  
Hon. Douglas P. Miller, Chair

Deadline

August 24, 2017

From

Tribal Court–State Court Forum  
Hon. Dennis M. Perluss, Co-Chair  
Hon. Abby Abinanti, Co-Chair

Contact

Ann Gilmour, 415-865-4207  
ann.gilmour@jud.ca.gov

Subject

Request to Approve Addition to Annual  
Agenda

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#### Executive Summary

On March 21, 2017 the California ICWA Compliance Task Force published its report to the California Attorney General's Bureau of Children's Justice. The report includes a number of recommendations that are within the purview of the Judicial Branch such as recommendations for judicial education and revisions to rules of court. The Tribal Court – State Court Forum (Forum) requests approval to amend the Forum's annual agenda to add an item authorizing the Forum to review the California ICWA Compliance Task Force report and make recommendations on implementation as appropriate.

#### Action Requested

The Tribal Court – State Court Forum asks that Executive and Planning approve amending its 2017 Annual Agenda to add:

Item 8 H. (iii) Review the recommendations in the California ICWA Compliance Task Force Report to the California Attorney General's Bureau of Children's Justice 2017 and make



recommendations for legislative and rules and forms revisions and other implementation steps as appropriate.

#### Basis for Request

On March 21, 2017, the California ICWA Compliance Task Force published its report to the California Attorney General's Bureau of Children's Justice. The report sets out a number of areas in which the Task Force states that California is failing to comply with the requirements of the Indian Child Welfare Act. The report includes a number of recommendations for improved compliance that are within the purview of the Judicial Branch. These recommendations include:

- Recommendation 1: Remediation of Tribal Inequity in California Courts:
  - Tribal Access to Records - Tribes should be guaranteed access to paperwork, pleadings and minutes; Sanctions for non-production; and Tribes should be treated as governmental entity exempt from copying fees.
  - Appointment of Counsel or Resources to Retain Counsel for Tribes
  - Waiver of Pro Hac Vice for Out-of-State Tribal Attorneys
  - Right of Tribes to Participate (pages 94-96)
  
- Recommendation 6: Judicial Competency  
The Judicial Council should amend California Rule of Court 10.462 to include ICWA training for bench officers that is sufficient and ongoing to preside over ICWA cases and how they are different from other child custody proceedings. (page 97);
  
- Recommendation 7: ICWA Competency for Advocates, Party Representatives and Social Workers  
Revise the Rules of Court to effectively mandate ICWA competency for legal counsel, social workers, CASAs, and others. Expand the Rule to require compliance with specific substantive, procedural and cultural components of the ICWA. (page 97);
  
- Recommendation 15: Enforce and Implement the Judicial Council Strategic Plan and Operational Plan.  
The Judicial Council adopted a Strategic Plan for California's Judicial Branch in 2006. In 2008, an Operational Plan was adopted to accomplish the goals identified in the Strategic Plan. Of the six goals, each of which is important, two stand out for Tribes: Goal I: Access, Fairness and Diversity, and Goal IV: Quality of Justice and Service to the Public. Tribes should be a part of the discussion and implementation of these goals, as well as the others, to ensure this population is heard by our judiciary. (page 99)
  
- Recommendation 16: Consolidated Courts  
The model where all ICWA cases are heard in a single department, and by a single bench officer, creates an economy of scale. It may not be feasible in all counties, particularly small counties, but it could be limited to counties which annually reach a threshold number of ICWA. (page 100)

- **Recommendation 17: Concurrent Jurisdiction Court**  
We recommend that the Judicial Council provide technical support to tribes and counties in the development of concurrent jurisdiction courts. (page 100)

The Tribal Court – State Court Forum annual agenda currently encompasses some related items including:

- **Item 2: Policy Recommendation: Rules and Forms – ICWA**  
Review newly adopted *Regulations for State Courts and Agencies in Indian Child Custody Proceedings* (as published in the Federal Register on March 20, 2015, (Vol. 80 FR No. 54 14880)) and approved Bureau of Indian Affairs Guidelines (as published in the Federal Register on December, 30, 2016, (Vol. 81 FR No. 251 96476) for possible amendments to Title 5. Family and Juvenile rules relating to the ICWA;
- **Item 3: Policy Recommendation: Rule and Forms – Juvenile Records**  
Revise California Rules of Court, rule 5.552 to conform to the requirements of subdivision (f) of section 827 of the Welfare and Institutions Code, which was added effective January 1, 2015, to clarify the right of an Indian child’s tribe to have access to the juvenile court file of a case involving that child. At that time, no changes were made to California Rules of Court, rule 5.552, which implements section 827 of the Welfare and Institutions Code. 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.
- **Item 8 H. (ii): Policy Recommendation: H. Other**  
Make a recommendation to the California State Bar Association to waive pro hac vice fees for out-of-state counsel representing tribes in ICWA cases.
- **Item 10. B (ii) Increase Tribal/State Partnerships: B. Education and technical assistance to promote partnerships and understanding of tribal justice systems**  
Make a recommendation to Judicial Council staff to provide technical assistance to evaluate the joint jurisdictional court and to courts wishing to replicate the model.

These do not encompass all of the areas within the purview of the Judicial Branch where the California ICWA Compliance Task Force Report to the California Attorney General’s Bureau of Children’s Justice 2017 has recommended action.

### **Tribal Court – State Court Forum Annual Agenda request**

The Tribal Court – State Court Forum asks that Executive and Planning approve adding to its 2017 Annual Agenda:

- Item 8 H. (iii) Review the recommendations in the California ICWA Compliance Task Force Report to the California Attorney General’s Bureau of Children’s Justice 2017 and make

recommendations for legislative and rules and forms revisions and other implementation steps as appropriate.

A proposed amended annual agenda is attached with the proposed addition highlighted at pages 10 through 11.

**Link to Report**

1. California ICWA Compliance Task Force Report to the California Attorney General's Bureau of Children's Justice 2017 (<https://turtletalk.files.wordpress.com/2017/03/icwa-compliance-task-force-final-report-2017.pdf>)

**Tribal Court–State Court Forum (forum)**  
**Annual Agenda—2017**

**Approved by E&P: March 23, 2017 [Amendment approved April 24, 2017]**

**I. ADVISORY BODY INFORMATION**

<b>Chair:</b>	Hon. Abby Abinanti, Chief Judge, Yurok Tribal Court and Hon. Dennis M. Perluss, Presiding Justice, Court of Appeal, Second Appellate District, Division Seven
<b>Staff:</b>	Ms. Ann Gilmour, Attorney II, Center for Families, Children & the Courts
<b>Advisory Body’s Charge:</b> <p>The forum makes recommendations to the Judicial Council for improving the administration of justice in all proceedings in which the authority to exercise jurisdiction by the state judicial branch and the tribal justice systems overlaps.</p> <p>In addition to the general duties and responsibilities applicable to all advisory committees as described in rule 10.34, the forum must:</p> <ol style="list-style-type: none"><li>1. Identify issues of mutual importance to tribal and state justice systems, including those concerning the working relationship between tribal and state courts in California;</li><li>2. Make recommendations relating to the recognition and enforcement of court orders that cross jurisdictional lines, the determination of jurisdiction for cases, and the sharing of services among jurisdictions;</li><li>3. Identify, develop, and share with tribal and state courts local rules of court, protocols, standing orders, and other agreements that promote tribal court–state court coordination and cooperation, the use of concurrent jurisdiction, and the transfer of cases between jurisdictions;</li><li>4. Recommend appropriate activities needed to support local tribal court–state court collaborations; and</li><li>5. Make proposals to the Governing Committee of the Center for Judicial Education and Research on educational publications and programming for judges and judicial support staff.</li></ol> <p>[Excerpted from California Rules of Court, rule 10.60]</p>	

### **Advisory Body's Membership:**

Twenty-nine positions—29 members representing the following categories:

- Thirteen tribal court judges (nominated by their tribal leadership, representing 13 of the 23 tribal courts currently operating in California; these courts serve approximately 39 tribes)
- Director of the California Attorney General's Office of Native American Affairs (ex officio)
- Tribal Advisor to the California Governor (ex officio)
- One appellate justice
- Seven chairs or their designees of the following Judicial Council advisory committees:
  - Access and Fairness Advisory Committee
  - Governing Committee of the Center for Judicial Education and Research (CJER)
  - Civil and Small Claims Advisory Committee
  - Criminal Law Advisory Committee
  - Family and Juvenile Law Advisory Committee
  - Probate and Mental Health Advisory Committee
  - Traffic Advisory Committee
- Five trial court judicial officers (selected from local courts in counties where tribal courts are situated and one from Los Angeles\*)
- One retired judge (advisory)

\*Judge D. Zeke Zeidler, who was originally appointed as the designee of the Access and Fairness Advisory Committee, is finishing out his term, which expires on September 14, 2017.

**Subgroups/Working Groups:** Participate in the joint ad hoc rules and forms subcommittee to implement *Tactical Plan for Technology, 2017-2018*.<sup>1</sup>

### **Advisory Body's Key Objectives for 2017:**

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

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<sup>1</sup> This addition to the Annual Agenda was approved by the Executive and Planning Committee on April 27, 2017.

## II. ADVISORY BODY PROJECTS

#	Project <sup>2</sup>	Priority <sup>3</sup>	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
1.	<p><b>Policy Recommendations:</b></p> <p><b>A. Legislation</b></p> <p><i>Major Tasks:</i></p> <p>(i) Indian Child Welfare Act (ICWA): Review newly adopted <i>Regulations for State Courts and Agencies in Indian Child Custody Proceedings</i> (as published in the Federal Register on March 20, 2015 (Vol. 80 FR No. 54 14880) approved Bureau of Indian Affairs Guidelines (as published in the Federal Register on December, 30, 2016 (Vol. 81 FR No. 251 96476), and statewide Indian Child Welfare Task Force Report on the Indian Child Welfare for possible recommendations to the Judicial Council for sponsored legislation or legislative positions on bills</p>	1(a)	<p>Judicial Council Direction:</p> <p>Strategic Plan Goal I: Access, Fairness, and Diversity</p> <p>Operational Plan Objective 2: Identify and eliminate barriers to court access at all levels of service; ensure interactions with the court are understandable, convenient, and perceived as fair.</p> <p>Strategic Plan Goal II: Independence and Accountability. Operational Plan Objective 3</p> <p>Strategic Plan Goal III: Modernization of Management and Administration Operational Plan Objective 5</p>	January 1, 2019	Recommendations submitted to the Judicial Council for consideration by the Legislature and the Governor.

<sup>2</sup> All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or a *program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

<sup>3</sup> For non-rules and forms projects, select priority level 1 (must be done) or 2 (should be done). For rules and forms proposals, select one of the following priority levels: 1(a) Urgently needed to conform to the law; 1(b) Urgently needed to respond to a recent change in the law; 1(c) Adoption or amendment of rules or forms by a specified date required by statute or council decision; 1(d) Provides significant cost savings and efficiencies, generates significant revenue, or avoids a significant loss of revenue; 1(e) Urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; 1(f) Otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk; 2(a) Useful, but not necessary, to implement statutory changes; 2(b) Helpful in otherwise advancing Judicial Council goals and objectives.

#	Project <sup>2</sup>	Priority <sup>3</sup>	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	<p>that will be introduced to comply with the federal law.</p> <p>(ii) Judge-to-Judge Communications: Develop legislative proposal modeled after California Code of Civil Procedure section 1740, which authorizes a state court, after notice to all parties, to attempt to resolve any issues raised regarding a tribal court judgment by contacting the tribal court judge who issued the judgment. The proposal would also require a court to permit the parties to participate in the judge-to-judge communication and to prepare a record of any communication with the tribal court.</p> <p>(iii) Make recommendation to implement a streamlined process to recognize and enforce non-money judgments issued by a tribal court (incremental strategy building on the success of council-sponsored legislation, SB 406, see page 16 for status of project).</p> <p>(iv) Explore use of state funding in connection with the service of process or notices for state court domestic violence restraining</p>	2	<p>Strategic Plan Goal VI: Branchwide Infrastructure for Service Excellence Operational Plan Objective 4</p> <p>Origin of Project: Forum</p> <p>Resources: Forum and Policy Coordination and Liaison Committee (PCLC)</p> <p>Judicial Council Staffing: Center for Families, Children &amp; the Courts (CFCC) and Governmental Affairs</p> <p>Key Objective Supported: 1</p>		

#	Project <sup>2</sup>	Priority <sup>3</sup>	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	orders to pay for service of tribal protection orders.				
2.	<p><b>Policy Recommendation: B. Rules and Forms – ICWA</b></p> <p>Review newly adopted <i>Regulations for State Courts and Agencies in Indian Child Custody Proceedings</i> (as published in the Federal Register on March 20, 2015, (Vol. 80 FR No. 54 14880) and approved Bureau of Indian Affairs Guidelines (as published in the Federal Register on December, 30, 2016, (Vol. 81 FR No. 251 96476) for possible amendments to Title 5. Family and Juvenile rules relating to the ICWA.</p>	1(a)	<p>Judicial Council Direction: Strategic Plan Goal II: Operational Plan Objective 3</p> <p>Strategic Plan Goal III: Operational Plan Objective 5</p> <p>Strategic Plan Goal VI: Operational Plan Objective 4</p> <p>Origin of Project: Federal Law</p> <p>Resources: Family and Juvenile Law Advisory Committee and Forum</p> <p>Judicial Council Staffing: CFCC and LS</p> <p>Key Objective Supported: 1</p>	January 1, 2018	Rule and form recommendations that comply with federal rules and guidelines implementing ICWA
3.	<p><b>Policy Recommendation: C. Rule and Forms – Juvenile Records</b></p> <p>Revise California Rules of Court, rule 5.552 to conform to the requirements of subdivision (f) of section 827 of the Welfare and Institutions Code, which was added effective January 1, 2015, to clarify the right of an Indian child’s tribe to have access to the</p>	1(a)	<p>Judicial Council Direction: Strategic Plan Goal II: Operational Plan Objective 3</p> <p>Strategic Plan Goal III: Operational Plan Objective 5</p> <p>Strategic Plan Goal VI: Operational Plan Objective 4</p> <p>Origin of Project: Justice partners have commented that the rule is</p>	January 1, 2018	Rule recommendations that comply with statute.



#	Project <sup>2</sup>	Priority <sup>3</sup>	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	juvenile court file of a case involving that child. At that time, no changes were made to California Rules of Court, rule 5.552, which implements section 827 of the Welfare and Institutions Code. 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.		<p>contrary to statute and has created confusion.</p> <p>Resources: Family and Juvenile Law Advisory Committee and Forum</p> <p>Judicial Council Staffing: CFCC and LS</p> <p>Key Objective Supported: 1</p>		
4.	<p><b>Policy Recommendation: D. Rule and Forms – Child Support</b></p> <p>Revise California Rule of Court, rule 5.372 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. Since implementation of the rule of court, 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</p>	1(a)	<p>Judicial Council Direction: Strategic Plan Goal II: Operational Plan Objective 3</p> <p>Strategic Plan Goal III: Operational Plan Objective 5</p> <p>Strategic Plan Goal VI: Operational Plan Objective 4</p> <p>Origin of Project: This proposal grew out of the cross-court educational exchange convened by Judge Abinanti and Judge Wilson. Representatives of the State Department of Child Support Services, local county child support agencies, the tribal child support program, the tribal court, the state</p>	January 1, 2018	Rule recommendations that implement federal law.

#	Project <sup>2</sup>	Priority <sup>3</sup>	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	<p>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. Based on the experience with the transfers that have taken place so far, the participants of a cross-court educational exchange have suggested amendments to rule 5.732 to streamline the process, reduce confusion, and ensure consistency and efficient use of court resources.</p>		<p>courts, and Judicial Council staff met to review the case transfer procedures; and justice partners proposed a number of revisions to improve the transfer process.</p> <p>Resources: Family and Juvenile Law Advisory Committee and Forum</p> <p>Judicial Council Staffing: CFCC and LS</p> <p>Key Objective Supported: 1</p>		
5.	<p><b>Policy Recommendation: E. Rules and Forms – Public Access to Electronic Court Records.<sup>4</sup></b></p> <p>Participate in the joint ad hoc subcommittee to work with the Information Technology Advisory Committee (ITAC) and others to develop rules, standards, and guidelines for online access to court records for parties, their attorneys, and justice partners as set out in the Judicial Council’s <i>Tactical Plan for Technology, 2017-2018</i>.</p>	1 (a)	<p>Judicial Council Direction: Strategic Plan Goal II: Operational Plan Objective 3</p> <p>Strategic Plan Goal III: Operational Plan Objective 5</p> <p>Strategic Plan Goal VI: Operational Plan Objective 4 Origin of Project: Request of the Information Technology Advisory Committee.</p>		

<sup>4</sup> This addition to the Annual Agenda was approved by the Executive and Planning Committee on April 27, 2017.

#	Project <sup>2</sup>	Priority <sup>3</sup>	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
6.	<p><b>Policy Recommendation:</b>  <b>F. Tribal Access to the Child Abuse Central Index (Index)</b></p> <p>The Index is used to aid law enforcement investigations and prosecutions, and to provide notification of new child abuse investigation reports involving the same suspects and/or victims. Information is also used to help screen applicants for licensing or employment in child care facilities, foster homes, and adoptive homes. The purpose of allowing access to this information on a statewide basis is to quickly provide authorized agencies, including tribal agencies, with relevant information regarding individuals with a known or suspected history of abuse or neglect. While tribal agencies can obtain information from the Index, they cannot readily submit information to the Index.</p> <p>This practice poses several problems: (1) suspected or known abusers may remain in the home of a child posing safety risks; (2) unnecessary duplication of effort by agencies; (3) delays in entry into the Index due to double investigations; and (4) barriers to sharing information among tribal and nontribal agencies that</p>	2	<p>Judicial Council Direction:  Strategic Plan Goal II:  Operational Plan Objective 3</p> <p>Strategic Plan Goal III:  Operational Plan Objective 5</p> <p>Strategic Plan Goal VI:  Operational Plan Objective 4</p> <p>Origin of Project: California Indian Legal Services brought this topic of mutual concern to tribal and state courts to the forum's attention at one of its meetings.  Resources: Forum and California Department of Justice</p> <p>Judicial Council Staffing: CFCC</p> <p>Key Objective Supported: 1</p>	2017	<p>California Department of Justice to give tribal access to the Index and local tribal and county child welfare agencies to share relevant information from the Index.</p>

#	Project <sup>2</sup>	Priority <sup>3</sup>	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	should be working together to protect children. The forum recommends exploring executive branch action to permit tribal access to the Index.				
7.	<p><b>Policy Recommendations:</b>  <b>G. Technological Initiatives</b></p> <p><i>Major Tasks:</i></p> <p>(i) Recommend Judicial Council continue giving tribal courts access to the California Courts Protective Order Registry (CCPOR).</p> <p>(ii) Explore development of an electronic application to improve inquiry and notice under ICWA.</p>	2	<p>Judicial Council Direction:  Strategic Plan Goal II:  Operational Plan Objective 3</p> <p>Strategic Plan Goal III:    Operational Plan Objective 5:  Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases.  Strategic Plan Goal VI:    Operational Plan Objective 4:  Implement new tools to support the electronic exchange of court information while balancing privacy and security.</p> <p>Origin of Project: Forum</p> <p>Resources: Forum</p> <p>Judicial Council Staffing: CFCC and Information Technology</p>	Ongoing	<p>(i) State and tribal courts will be able to see each other's protective orders, to avoid conflicting orders, and to promote enforcement of these orders.</p> <p>(ii) Application will be developed and will improve inquiry and notice practices under ICWA.</p>

#	Project <sup>2</sup>	Priority <sup>3</sup>	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			Collaborations: Stanford Design Center  Key Objective Supported: 1		
8.	<b>Policy Recommendation: H. Other</b>  <i>Major Tasks:</i> (i) Prepare a request to the California Supreme Court’s Advisory Committee on the Code of Judicial Ethics to amend the canons to permit with appropriate safeguards a judge who sits concurrently on a tribal court and a state court to fundraise on behalf of a tribal court. (ii) Make recommendation to the California State Bar Association to waive pro hac vice fees for out-of-state counsel representing tribes in ICWA cases.  (iii) Review the recommendations in the California ICWA Compliance Task Force Report to the California Attorney General’s Bureau of Children’s Justice 2017 and make recommendations for legislative and rules and forms revisions and other	2	Judicial Council Direction: Strategic Plan Goal II Operational Plan Objective 3  Origin of Project: Forum cochair  Resources: Forum and California Supreme Court’s Advisory Committee on the Code of Judicial Ethics  Judicial Council Staffing: CFCC  Collaborations:  Key Objective Supported: 2 Increase Tribal/State partnerships that identify issues of mutual concern and proposed solutions.	2017	Request prepared and submitted.  Amended canon permitting judges who sit concurrently on tribal court and a state court to fundraise on behalf of a tribal court.
	(iii) Review the recommendations in the California ICWA Compliance Task Force Report to the California Attorney General’s Bureau of Children’s Justice 2017 and make recommendations for legislative and rules and forms revisions and other	2	Judicial Council Direction: Committee charge under rule 10.60  Origin of Project: California ICWA Compliance Task Force Report to the California Attorney General’s Bureau of Children’s Justice 2017.	2019	

#	Project <sup>2</sup>	Priority <sup>3</sup>	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	<p>implementation steps as appropriate.</p>		<p>Judicial Council Staffing: CFCC</p> <p>Collaborations:</p> <p>Key Objective Supported:</p> <ul style="list-style-type: none"> <li>• Identify issues of mutual importance to tribal and state justice systems, including those concerning the working relationship between tribal and state courts in California;</li> <li>• Make recommendations relating to the recognition and enforcement of court orders that cross jurisdictional lines, the determination of jurisdiction for cases, and the sharing of services among jurisdictions; and</li> <li>• Identify, develop, and share with tribal and state courts local rules of court, protocols, standing orders, and other agreements that promote tribal court–state court coordination and cooperation, the use of concurrent jurisdiction, and the transfer of cases between jurisdictions.</li> </ul>		

#	Project <sup>2</sup>	Priority <sup>3</sup>	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
9.	<p><b>Increase Tribal/State Partnerships: A. Sharing Resources and Communicating Information About Partnerships</b></p> <p><i>Major Tasks:</i></p> <p>(i) Identify Judicial Council and other resources that may be appropriate to share with tribal courts.</p> <p>(ii) Identify tribal justice resources that may be appropriate to share with state courts.</p> <p>(iii) Identify grants for tribal/state court collaboration.</p> <p>(iv) Share resources and information about partnerships through Forum E-Update, a monthly electronic newsletter.</p> <p>(v) Publicize these partnerships at conferences, on the Innovation Knowledge Center (IKC), and at other in-person or online venues.</p>	2	<p>Judicial Council Direction: Strategic Plan Goal I: Access, Fairness, and Diversity</p> <p>Operational Plan Objectives 1, 2, 4:</p> <ul style="list-style-type: none"> <li>• Ensure that all court users are treated with dignity, respect, and concern for their rights and cultural backgrounds, without bias or appearance of bias, and are given an opportunity to be heard.</li> <li>• Expand the availability of legal assistance, advice and representation for litigants with limited financial resources.</li> </ul> <p>Strategic Plan Goal IV: Quality of Justice and Service to the Public.</p> <p>Operational Plan Objectives 1, 3:</p> <ul style="list-style-type: none"> <li>• Foster excellence in public service to ensure that all court users receive satisfactory services and outcomes.</li> <li>• Develop and support collaborations to improve court practices to leverage and share resources and to create tools to educate court stakeholders and the public.</li> </ul>	Ongoing	Increased Tribal/State partnerships for sharing resources and communicating information.

#	Project <sup>2</sup>	Priority <sup>3</sup>	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			<p>Origin of Projects: Forum and California State-Federal Judicial Council</p> <p>Resources: Forum</p> <p>Judicial Council Staffing: CFCC</p> <p>Collaborations: Local tribal and state courts</p> <p>Key Objective Supported: 2</p>		
10.	<p><b>Increase Tribal/State Partnerships:</b></p> <p><b>B. Education and technical assistance to promote partnerships and understanding of tribal justice systems</b></p> <p><i>Major Tasks:</i></p> <p>(i) Make recommendation to Judicial Council staff to continue providing educational and technical assistance to local tribal and state courts to address domestic violence and child custody issues in Indian country.</p> <p>(ii) Make recommendation to Judicial Council staff to provide technical assistance to evaluate the joint jurisdictional court and to courts wishing to replicate the model.</p>	2	<p>Judicial Council Direction:</p> <p>Strategic Plan Goal I Operational Plan Objectives 1, 2, 4</p> <p>Strategic Plan Goal IV Operational Plan Objectives 1, 3</p> <p>Origin of Projects: Forum and California State-Federal Judicial Council</p> <p>Resources: Forum</p> <p>Judicial Council Staffing: CFCC</p> <p>Collaborations: Local tribal and state courts</p> <p>Key Objective Supported: 2</p>	Ongoing	Increased Tribal/State partnerships for educational and technical assistance.



#	Project <sup>2</sup>	Priority <sup>3</sup>	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	<p>(iii) Make recommendation to the Judicial Council staff to continue developing civic learning opportunities for youth that exposes them to opportunities and careers in tribal and state courts.</p> <p>(iv) Make recommendation to explore, at the option of tribes, opportunities for state and federal court judges to serve as a tribal court judge.</p>				
11.	<p><b>Increase Tribal/State Partnerships: C. Tribal/State collaborations that increase resources for courts</b></p> <p>Develop and implement strategy to seek resources for tribal/state collaborations.</p>	2	<p>Judicial Council Direction: Strategic Plan Goal IV Operational Plan Objectives 1, 3</p> <p>Origin of Projects: Forum</p> <p>Resources: Forum</p> <p>Judicial Council Staffing: CFCC</p> <p>Collaborations: Local tribal and state courts</p> <p>Key Objective Supported: 2</p>	Ongoing	Tribal/State collaborations that increase resources for courts.
12.	<p><b>Education: A. Judicial Education</b></p> <p><i>Major Tasks:</i></p> <p>(i) In collaboration with the CJER Curriculum Committees, consult on and participate in making</p>	2	<p>Judicial Council Direction: Strategic Plan Goal V Operational Plan Objective 1: Provide relevant and accessible education and professional development opportunities for all judicial officers (including court-</p>	Ongoing, completion date depends on funding.	CJER toolkits, located on the Judicial Resources Network, will be updated to include federal Indian law. Ten-minute educational video to be posted online and shared

#	Project <sup>2</sup>	Priority <sup>3</sup>	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	<p>recommendations to revise the CJER online toolkits so that they integrate resources and educational materials from the forum’s online federal Indian law toolkit. Forum judges are working together with committee representatives from the following curriculum committees: (1) Access, Ethics, and Fairness, (2) Civil, (3) Criminal, (4) Family, (5) Juvenile Dependency and Delinquency, and (6) Probate.</p> <p>(ii) Develop a ten-minute mentor video on the Information Bulletin relating to the recognition and enforcement of tribal protection orders, issued by the California Office of the Attorney General. This Information Bulletin was the culmination of work by the forum in partnership with the California Department of Justice (DOJ), the California State Sheriffs’ Association, the U.S. Attorney General’s Office, and other justice partners.</p>		<p>appointed temporary judges) and court staff.</p> <p>Origin of Projects: Forum and California State-Federal Judicial Council Resolution (June 1, 2012)</p> <p>Resources: CJER, Forum, and DOJ</p> <p>Judicial Council Staffing: CFCC and CJER</p> <p>Key Objective Supported: 3</p>		<p>statewide with justice partners.</p>
13.	<p><b>Education:</b> <b>B. Education –Documentary</b></p> <p>Having consulted on and participated in the production of a</p>	2	<p>Judicial Council Direction: Strategic Plan Goal V Operational Plan Objective 1</p>	2017	<p>Wide distribution of the film and use of training materials that complement the film.</p>

#	Project <sup>2</sup>	Priority <sup>3</sup>	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
	documentary about tribal justice systems in California, the forum will be exploring ways to use the film to educate judges and justice partners on tribal justice systems. The forum will consider consulting on the development of online curriculum to complement the film.		<p>Origin of Projects: Forum and California State-Federal Judicial Council Resolution (June 1, 2012)</p> <p>Resources: Forum</p> <p>Judicial Council Staffing: CFCC</p> <p>Key Objective Supported: 3</p>		
14.	<p><b>Education</b></p> <p><b>C. Truth and Reconciliation</b></p> <p>Consider collaboration among the three branches of state government in partnership with tribal governments to promote a truth and reconciliation project that acknowledges California’s history, as described in Professor Benjamin Madley’s book, <i>An American Genocide: The United States and the California Indian Catastrophe</i>, with respect to indigenous peoples, fosters an understanding of our shared history, and lays a foundation for reconciliation, which promotes a call to action.</p>	2	<p>Judicial Council Direction: Strategic Plan Goal I Operational Plan Objectives 1, 2, 4</p> <p>Strategic Plan Goal IV Operational Plan Objectives 1, 3</p> <p>Judicial Council Direction: Strategic Plan Goal V Operational Plan Objective 1</p> <p>Origin of Projects: Forum Resources: Forum</p> <p>Judicial Council Staffing: CFCC</p> <p>Collaborations: Tribal Governments and State Government</p> <p>Key Objective Supported: 2</p>		

### III. STATUS OF 2016 PROJECTS:

[List each of the projects that were included in the 2016 Annual Agenda and provide the status for the project.]

#	Project	Completion Date/Status
1.	<p><b>Policy Recommendations:</b></p> <p><b>A. Legislative Study</b>  <a href="#">SB 406</a>, Judicial Council-sponsored legislation, included a “sunset” provision (Code of Civ. Proc. § 1742) providing that the legislation will expire on January 1, 2018, unless legislative action is taken to extend it.</p> <p><b>B. Promote Policy</b>            The California Department of Public Health would not issue a birth certificate based on a tribal parentage order. The forum worked with the executive branch to issue an agency directive that would recognize tribal parentage orders.</p>	<p>A. October 6, 2016/Study completed and upon recommendation by the California Law Review Commission, Legislature is likely to remove the sunset provision.</p> <p>B. February 9, 2016/California Department of Public Health – Vital Records (CDPH-VR) issued an All County Letter clarifying its policy regarding the acceptance of Tribal Court Orders relating to adjudications of facts of parentage.</p>
2.	<p><b>Policy Recommendation:</b></p> <p><b>C. Rules and Forms–Indian Child Welfare Act (ICWA)</b></p> <p>1. In response to the California Supreme Court decision in <i>In re Abbigail A.</i> (2016) (Cal.5<sup>th</sup> 83), the forum recommend amending California Rules of Court, rule 5.482, by deleting subdivision (c) of that rule, which the Supreme Court held is invalid. The Family and Juvenile Law Advisory Committee and Probate and Mental Health Advisory Committee joined in this recommendation, and on July 29, 2016, the Judicial Council adopted this recommendation.</p> <p>2. Forum reviewed pending <i>Regulations for State Courts and Agencies in Indian Child Custody Proceedings</i> (as published in the Federal Register on March 20, 2015, (Vol. 80 FR No. 54 14880) and approved <a href="#">Bureau of Indian Affairs Guidelines</a> (as published in the Federal Register on December 30, 2016, (Vol. 81 FR No. 251 96476) for possible amendments to Title 5. Family and Juvenile rules relating to ICWA.</p>	<p>1. July 29, 2016/Effective date of August 15, 2016</p> <p>2. Ongoing</p>

3.	<p><b>Policy Recommendations:</b></p> <p><b>D. Technological Initiatives</b></p> <ol style="list-style-type: none"> <li>1. Consulted with the California Attorney General’s Office regarding access to California Law Enforcement Telecommunications System (CLETS) by tribal courts. This consultation, which included federal and other state justice partners, resulted in an Informational Bulletin issued by the California Department of Justice. This Information Bulletin clarifies that verification of a tribal protection order in any statewide database (e.g., CLETS) is not a precondition to recognition and enforcement of these orders.</li> <li>2. Recommended Judicial Council staff continue giving tribal courts access to the California Courts Protective Order Registry (CCPOR).</li> <li>3. Due to lack of staffing resources, the forum did not explore the development of an electronic application to improve inquiry and notice under ICWA.</li> </ol>	<ol style="list-style-type: none"> <li>1. November 29, 2016/Information Bulletin issued by the California Department of Justice.</li> <li>2. Ongoing</li> <li>3. Project will be undertaken next year if prioritized by the forum.</li> </ol>
4.	<p><b>Policy Recommendation:</b></p> <p><b>E. Other</b></p> <p>Due to lack of staffing resources and competing priorities, the forum did not prepare a request to the California Supreme Court’s Advisory Committee on the Code of Judicial Ethics to amend the canons to permit a judge who sits concurrently on a tribal court and a state court to fundraise on behalf of a tribal court.</p>	<p>Project will be undertaken next year if prioritized by the forum.</p>
5.	<p><b>Increase Tribal/State Partnerships:</b></p> <p><b>A. Sharing Resources and Communicating Information About Partnerships</b></p> <ol style="list-style-type: none"> <li>1. Disseminated information to tribal court judges and state court judges on a monthly basis through the Forum E-Update, a monthly electronic newsletter with information on the following: <ul style="list-style-type: none"> <li>• Grant opportunities;</li> <li>• Publications;</li> </ul> </li> </ol>	<p>Ongoing</p>

	<ul style="list-style-type: none"> <li>• News stories; and</li> <li>• Educational events.</li> </ul> <p>2. Fostered tribal court/state court partnerships, such as the Superior Court of Los Angeles County’s Indian Child Welfare Act Roundtable and the Bay Area Collaborative of American Indian Resources—court-coordinated community response to ICWA cases in urban areas.</p>	
6.	<p><b>Increase Tribal/State Partnerships:</b></p> <p><b>B. Education and Technical Assistance to Promote Partnerships and Understanding of Tribal Justice Systems</b></p> <ol style="list-style-type: none"> <li>1. Continue to provide the <a href="#">State/Tribal Education, Partnerships, and Services (S.T.E.P.S.) to Justice—Domestic Violence</a> and <a href="#">Child Welfare</a> programs and provide local educational and technical assistance services.</li> <li>2. Continue the first joint jurisdictional court in California. The Superior Court of El Dorado County, in partnership with the Shingle Springs Band of Miwok Indians, is operating a family wellness court. Next year, will provide technical assistance to evaluate the joint jurisdictional court. (See <a href="#">Court Manual</a>).</li> <li>3. Establish partnership between the Superior Court of Humboldt County and the Yurok Tribal Court to develop a civics learning opportunity for youth in the region.</li> </ol>	Ongoing
7.	<p><b>Increase Tribal/State Partnerships:</b></p> <p><b>C. Tribal/State Collaborations that Increase Resources for Courts</b></p> <p>Obtained funding from the U.S. Department of Justice, Office on Violence Against Women, which is administered through the California Office of Emergency Services (Cal OES). This funding pays for the <a href="#">S.T.E.P.S. to Justice—Domestic Violence</a> and associated travel expenses for judges to participate in cross-court educational exchanges. These exchanges are judicially led and shaped by the host judges (one tribal court judge and one state court judge) and enable the judges to continue the dialogue on</p>	Ongoing

	<p>domestic violence and elder abuse in tribal communities, which began as part of a statewide needs assessment. At these exchanges, judges utilize a checklist of problems and solutions identified through the needs assessment to determine how they can work together to address these issues locally.</p> <p>Obtained funding from the California Department of Social Services. This funding pays for the associated travel expenses for forum members to improve compliance with ICWA.</p>	
8.	<p><b>Education</b></p> <p><b>A. Judicial Education</b></p> <ol style="list-style-type: none"> <li>1. Made recommendations to CJER to incorporate federal Indian law into all appropriate educational publications and programming for state court judges and advise on content; revisions to include federal Indian law; and the inter-jurisdictional issues that face tribal and state courts.</li> <li>2. Convened a cross-court educational exchange at Hopland for over 60 participants on behalf of the Superior Court of Mendocino County and the Northern California Intertribal Court System. The focus was domestic violence prevention and child welfare.</li> <li>3. Participated in a meeting convened by the National Council of Juvenile and Family Court Judges to develop resources to address ICWA and domestic violence cross-over issues in Indian country.</li> <li>4. Hosted a national gathering of tribal/state court forums at the Second Appellate District of the Court of Appeal in Los Angeles.</li> <li>5. Held annual in-person meeting, which also serves as an educational program.</li> <li>6. Presented to the California Commission on Access to Justice.</li> <li>7. Convened a cross-court educational exchange in Klamath on child support.</li> </ol>	<ol style="list-style-type: none"> <li>1. Ongoing, completion date depends on resources to incorporate recommendations.</li> <li>2. December 2016</li> <li>3. April 2016</li> <li>4. June 2016</li> <li>5. June 2016</li> <li>6. September 2016</li> <li>7. October 2016</li> </ol>

	<p>8. Prepared a judicial job aid on the new federal regulations and guidelines on ICWA.</p> <p>9. Sponsored two judicial educational programs:</p> <p>(1) Pre-Institute ICWA Roundtable This roundtable brought together California tribal and state court judges as well as nationally known experts to explore, through interactive case scenarios, legal topics such as new federal mandates under ICWA, recent case law developments, and how to avoid reversals in these cases. The focus was on practical implications of recent development to juvenile child welfare courts in California. The roundtable complemented the Juvenile Law Institute workshop on ICWA</p> <p>(2) Juvenile Law Institute Workshop on ICWA This workshop covered the new comprehensive federal ICWA regulations, which became effective December 12, 2016. In addition, the workshop discussed significant recent cases, including two important California Supreme Court cases, and highlighted important practice changes as a result of the new federal requirements.</p>	<p>8. November 2016</p> <p>9. December 5, 2016</p>
9.	<p><b>Education</b></p> <p><b>D. Documentary</b> Consult on and participate in the production of a documentary describing tribal justice systems and highlighting collaboration between these systems and the state justice system.</p>	<p>February 2017/Documentary is completed. Accepted for distribution through Corporation for Public Broadcasting, Point of View series. Submission to film festivals pending.</p>
10.	<p><b>Education</b></p> <p><b>E. ICWA Roundtable</b> Cosponsored the Pre-Institute ICWA Roundtable (see item 8 above) in collaboration with CASEY Family Programs and the National American Indian Judges Association.</p>	<p>December 5, 2016</p>



#### IV. Subgroups/Working Groups - Detail

**Subgroups/Working Groups:** *None*

## Assembly Bill No. 905

### CHAPTER 168

An act to amend Sections 1714, 1716, 1717, 1730, 1731, 1732, 1733, 1737, and 1741 of, to amend the heading of Title 11 (commencing with Section 1710.10) of Part 3 of, to amend the heading of Chapter 1 (commencing with Section 1710.10) of Title 11 of Part 3 of, to add Section 1725 to, to add the heading of Chapter 3 (commencing with Section 1730) of Title 11 of Part 3 to, and to repeal Sections 1714 and 1742 of, and to repeal the heading of Title 11.5 (commencing with Section 1730) of Part 3 of, the Code of Civil Procedure, relating to civil procedure.

[Approved by Governor August 7, 2017. Filed with  
Secretary of State August 7, 2017.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 905, Maienschein. Money judgments of other jurisdictions.

Existing law establishes procedures for California courts to recognize money judgments of courts from other states, foreign countries, and tribal courts.

This bill would revise and recast these provisions.

Existing law, the Uniform Foreign-Country Money Judgments Recognition Act, requires a California court to recognize a foreign-country judgment unless a specified exception applies, including instances in which the foreign court lacks personal jurisdiction over the defendant.

This bill would specify that a foreign court lacks personal jurisdiction over a defendant if the court lacks personal jurisdiction under its own laws or California's laws.

Existing law, the Tribal Court Civil Money Judgment Act, provides for the enforceability of tribal court money judgments in California, except as specified. That act, among other things, prescribes the procedure for applying for recognition and entry of a judgment based on a tribal court money judgment, and requires this application to be executed under penalty of perjury. The act provides that it will remain in effect until January 1, 2018. After that date, tribal court money judgments will be governed by the above-described Uniform Foreign-Country Money Judgments Recognition Act.

This bill would eliminate the Tribal Court Civil Money Judgment Act's sunset date. By extending the provisions of the act, this bill would expand the scope of the crime of perjury and thus impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. The heading of Title 11 (commencing with Section 1710.10) of Part 3 of the Code of Civil Procedure is amended to read:

#### TITLE 11. MONEY JUDGMENTS OF OTHER JURISDICTIONS

SEC. 2. The heading of Chapter 1 (commencing with Section 1710.10) of Title 11 of Part 3 of the Code of Civil Procedure is amended to read:

##### CHAPTER 1. SISTER STATE MONEY JUDGMENTS

SEC. 3. Section 1714 of the Code of Civil Procedure, as amended by Section 2 of Chapter 243 of the Statutes of 2014, is amended to read:

1714. As used in this chapter:

(a) "Foreign country" means a government other than any of the following:

- (1) The United States.
- (2) A state, district, commonwealth, territory, or insular possession of the United States.
- (3) A federally recognized Indian nation, tribe, pueblo, band, or Alaska Native village.
- (4) Any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(b) "Foreign-country judgment" means a judgment of a court of a foreign country.

SEC. 4. Section 1714 of the Code of Civil Procedure, as added by Section 3 of Chapter 243 of the Statutes of 2014, is repealed.

SEC. 5. Section 1716 of the Code of Civil Procedure is amended to read:

1716. (a) Except as otherwise provided in subdivisions (b), (c), (d), and (f), a court of this state shall recognize a foreign-country judgment to which this chapter applies.

(b) A court of this state shall not recognize a foreign-country judgment if any of the following apply:

- (1) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law.
- (2) The foreign court did not have personal jurisdiction over the defendant.
- (3) The foreign court did not have jurisdiction over the subject matter.

(c) (1) A court of this state shall not recognize a foreign-country judgment if any of the following apply:

(A) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(B) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(C) The judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state or of the United States.

(D) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.

(E) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

(F) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(G) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(2) Notwithstanding an applicable ground for nonrecognition under paragraph (1), the court may nonetheless recognize a foreign-country judgment if the party seeking recognition of the judgment demonstrates good reason to recognize the judgment that outweighs the ground for nonrecognition.

(d) A court of this state is not required to recognize a foreign-country judgment if the judgment conflicts with another final and conclusive judgment.

(e) If the party seeking recognition of a foreign-country judgment has met its burden of establishing recognition of the foreign-country judgment pursuant to subdivision (c) of Section 1715, a party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subdivision (b), (c), or (d) exists.

(f) A court of this state shall not recognize a foreign-country judgment for defamation if that judgment is not recognizable under Section 4102 of Title 28 of the United States Code.

SEC. 6. Section 1717 of the Code of Civil Procedure is amended to read:

1717. (a) For the purpose of paragraph (2) of subdivision (b) of Section 1716, a foreign court lacks personal jurisdiction over a defendant if either of the following conditions is met:

(1) The foreign court lacks a basis for exercising personal jurisdiction that would be sufficient according to the standards governing personal jurisdiction in this state.

(2) The foreign court lacks personal jurisdiction under its own law.

(b) A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction under paragraph (1) of subdivision (a) if any of the following apply:

(1) The defendant was served with process personally in the foreign country.

(2) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant.

(3) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.

(4) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country.

(5) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign country.

(6) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action or claim for relief arising out of that operation.

(c) The list of bases for personal jurisdiction in subdivision (b) is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subdivision (b) as sufficient for the purposes of paragraph (1) of subdivision (a).

SEC. 7. Section 1725 is added to the Code of Civil Procedure, to read:

1725. (a) If all of the following conditions are satisfied, a person against whom a foreign-country defamation judgment was rendered may seek declaratory relief with respect to liability for the judgment or a determination that the judgment is not recognizable under section 1716:

(1) The person is a resident or other person or entity amenable to jurisdiction in this state.

(2) The person either has assets in this state that may be subject to an enforcement proceeding to satisfy the foreign-country defamation judgment or may have to take actions in this state to comply with the foreign-country defamation judgment.

(3) The publication at issue was published in this state.

(b) A court of this state has jurisdiction to determine a declaratory relief action or issue a determination pursuant to this section and has personal jurisdiction over the person or entity who obtained the foreign-country defamation judgment.

(c) This section shall apply to a foreign-country defamation judgment regardless of when it was rendered.

SEC. 8. The heading of Title 11.5 (commencing with Section 1730) of Part 3 of the Code of Civil Procedure is repealed.

SEC. 9. The heading of Chapter 3 (commencing with Section 1730) is added to Title 11 of Part 3 of the Code of Civil Procedure, to read:

#### CHAPTER 3. TRIBAL COURT CIVIL MONEY JUDGMENT ACT

SEC. 10. Section 1730 of the Code of Civil Procedure is amended to read:

1730. This chapter shall be known and may be cited as the Tribal Court Civil Money Judgment Act.

SEC. 11. Section 1731 of the Code of Civil Procedure is amended to read:

1731. (a) This chapter governs the procedures by which the superior courts of the State of California recognize and enter tribal court money judgments of any federally recognized Indian tribe. Determinations regarding recognition and entry of a tribal court money judgment pursuant to state law shall have no effect upon the independent authority of that judgment. To the extent not inconsistent with this chapter, the Code of Civil Procedure shall apply.

(b) This chapter does not apply to any of the following tribal court money judgments:

(1) For taxes, fines, or other penalties.

(2) For which federal law requires that states grant full faith and credit recognition, including child support orders under the Full Faith and Credit for Child Support Orders Act (28 U.S.C. Sec. 1738B).

(3) For which state law provides for recognition, including child support orders recognized under the Uniform Child Custody Jurisdiction and Enforcement Act (Part 3 (commencing with Section 3400) of Division 8 of the Family Code), other forms of family support orders under the Uniform Interstate Family Support Act (Part 6 (commencing with Section 5700.101) of Division 9 of the Family Code).

(4) For decedents' estates, guardianships, conservatorships, internal affairs of trusts, powers of attorney, or other tribal court money judgments that arise in proceedings that are or would be governed by the Probate Code.

(c) Nothing in this chapter shall be deemed or construed to expand or limit the jurisdiction of either the state or any Indian tribe.

SEC. 12. Section 1732 of the Code of Civil Procedure is amended to read:

1732. For purposes of this chapter:

(a) "Applicant" means the person or persons who can bring an action to enforce a tribal court money judgment.

(b) "Civil action or proceeding" means any action or proceeding that is not criminal, except for those actions or proceedings expressly excluded by subdivision (b) of Section 1731.

(c) "Due process" includes, but is not limited to, the right to be represented by legal counsel, to receive reasonable notice and an opportunity for a hearing, to call and cross-examine witnesses, and to present evidence and argument to an impartial decisionmaker.

(d) "Good cause" means a substantial reason, taking into account the prejudice or irreparable harm a party will suffer if a hearing is not held on an objection or not held within the time periods established by this chapter.

(e) "Respondent" means the person or persons against whom an action to enforce a tribal court money judgment can be brought.

(f) “Tribal court” means any court or other tribunal of any federally recognized Indian nation, tribe, pueblo, band, or Alaska Native village, duly established under tribal or federal law, including Courts of Indian Offenses organized pursuant to Part 11 of Title 25 of the Code of Federal Regulations.

(g) “Tribal court money judgment” means any written judgment, decree, or order of a tribal court for a specified amount of money that was issued in a civil action or proceeding that is final, conclusive, and enforceable by the tribal court in which it was issued and is duly authenticated in accordance with the laws and procedures of the tribe or tribal court.

SEC. 13. Section 1733 of the Code of Civil Procedure is amended to read:

1733. (a) An application for entry of a judgment under this chapter shall be filed in a superior court.

(b) Subject to the power of the court to transfer proceedings under this chapter pursuant to Title 4 (commencing with Section 392) of Part 2, the proper county for the filing of an application is either of the following:

- (1) The county in which any respondent resides or owns property.
- (2) If no respondent is a resident, any county in this state.

(c) A case in which the tribal court money judgment amounts to twenty-five thousand dollars (\$25,000) or less is a limited civil case.

SEC. 14. Section 1737 of the Code of Civil Procedure is amended to read:

1737. (a) Any objection to the recognition and entry of the tribal court money judgment shall be served and filed within 30 days of service of the notice of filing. If any objection is filed within this time period, the superior court shall set a time period for replies and set the matter for a hearing. The hearing shall be held by the superior court within 45 days from the date the objection is filed unless good cause exists for a later hearing. The only grounds for objecting to the recognition or enforcement of a tribal court money judgment are the grounds set forth in subdivisions (b), (c), and (d).

(b) A tribal court money judgment shall not be recognized and entered if the respondent demonstrates to the superior court that at least one of the following occurred:

- (1) The tribal court did not have personal jurisdiction over the respondent.
- (2) The tribal court did not have jurisdiction over the subject matter.
- (3) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law.

(c) (1) The superior court shall decline to recognize and enter a tribal court money judgment if any one of the following grounds applies:

(A) The defendant in the proceeding in the tribal court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(B) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(C) The judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of the state or of the United States.

(D) The proceeding in the tribal court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that tribal court.

(E) In the case of jurisdiction based on personal service only, the tribal court was a seriously inconvenient forum for the trial of the action.

(F) The judgment was rendered under circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(G) The specific proceeding in the tribal court leading to the judgment was not compatible with the requirements of due process of law.

(H) The judgment includes recovery for a claim of defamation, unless the court determines that the defamation law applied by the tribal court provided at least as much protection for freedom of speech and the press as provided by both the United States and California Constitutions.

(2) Notwithstanding an applicable ground for nonrecognition under paragraph (1), the court may nonetheless recognize a tribal court money judgment if the applicant demonstrates good reason to recognize the judgment that outweighs the ground for nonrecognition.

(d) The superior court may, in its discretion, decline to recognize and enter a tribal court money judgment if the judgment conflicts with another final and conclusive judgment.

(e) If objections have been timely filed, the applicant has the burden of establishing that the tribal court money judgment is entitled to recognition. If the applicant has met its burden, a party resisting recognition of the tribal court money judgment has the burden of establishing that a ground for nonrecognition exists pursuant to subdivision (b), (c), or (d).

SEC. 15. Section 1741 of the Code of Civil Procedure is amended to read:

1741. (a) The Uniform Foreign-Country Money Judgments Recognition Act (Chapter 2 (commencing with Section 1713)) applies to all actions commenced in superior court before January 1, 2015, in which the issue of recognition of a tribal court money judgment is raised.

(b) This chapter applies to all actions to enforce tribal court money judgments as defined herein commenced in superior court on or after January 1, 2015. A judgment entered under this chapter shall not limit the right of a party to seek enforcement of any part of a judgment, order, or decree entered by a tribal court that is not encompassed by the judgment entered under this chapter.

SEC. 16. Section 1742 of the Code of Civil Procedure is repealed.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime



within the meaning of Section 6 of Article XIII B of the California Constitution.

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**The California Department of Social Services (CDSS)**  
**Tribal Consultation Policy (TCP)**  
**Approved by CDSS Executive Leadership, Effective June 6, 2017**

Sections:

1. Purpose
2. Scope
3. Philosophy
4. Political/ Legal Foundations
5. Definitions
6. Establishment of Tribal/State Workgroups and/or Taskforces
7. Tribal Liaison
8. Areas of Consultation
9. CDSS Budget Formulation
10. Process and Procedure
11. Parties to Consultation
12. Conflict Resolution
13. Performance, Transparency, Evaluation, Recording and Reporting
14. Amendments

1. PURPOSE:

The mission of the CDSS is to serve, aid and protect needy and vulnerable children and adults in ways that strengthen and preserve families, encourage personal responsibility and foster independence. The CDSS provides administration and oversight of programs that affect nearly three million of California's most vulnerable residents and is charged with implementation of federal legislation impacting Tribes and Indians, such as the Indian Child Welfare Act (ICWA), 25 U.S.C. §1901, et seq., codified into California law through Senate Bill (SB) 678. The purpose of this policy is to guide consultations between the CDSS and sovereign federally recognized Tribes in California on policies and procedures that affect Tribes and Indians in California, in recognition of statutory mandates and Federal and State Executive Directives to establish a formal government-to-government Tribal Consultation Policy (TCP).

2. SCOPE:

This policy applies to all Divisions of the CDSS and shall serve as a guide for Tribes to participate in Department and Division policy development to the greatest extent practicable and permitted by law.

### 3. PHILOSOPHY:

This Policy is based on the following foundations:

- a. Values and Principles: This Policy anticipates a deliberate inclusive participatory process that aims to create effective collaboration and collective informed decision-making. All parties in the process should promote respect, shared responsibility and an open and free exchange of information. Meaningful consultation begins at the earliest possible phases of a project or program planning and continues through each phase of development and implementation. This policy is anticipated to promote positive, achievable, durable outcomes and is to be conducted in a timely, respectful, and meaningful manner using open communication.
- b. Tribal Sovereignty: This Policy is not intended to waive or diminish any Tribal governmental rights, including treaty rights, sovereign immunities, or jurisdiction. Tribes exercise inherent sovereign powers over their members and territory with distinct governing systems. The CDSS recognizes that Tribal cultures are unique, with their own distinct history and traditions. The CDSS understands that Tribes are interested in CDSS policies or programs that may affect the Tribe, their members and the Native American population in California.
- c. Except to the extent already established by law, this Policy is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the CDSS or any CDSS representative. The CDSS does not waive any applicable privilege that it may hold, such as the CDSS' deliberative process privilege, including but not limited to the CDSS' confidential recommendations to the Administration on proposed legislation or budget proposals. This policy is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, agents, or employees.

### 4. POLITICAL/LEGAL FOUNDATIONS:

1. President Clinton's Executive Order 13175, November 6, 2000;
2. President Bush's Presidential Memorandum, Government-to-Government Relationship with Tribal Governments, September 23, 2004;
3. United States (U.S.) Health and Human Services Tribal Consultation Policy (established in 2005, and amended in 2010);

4. SB 678, codification of ICWA into California law; 2006;
5. President Obama's Executive Memorandum "Tribal Consultation," November 5, 2009;
6. 42 U.S.C. 622, State Plans for Child Welfare Services require Tribal Consultation, 2009; and
7. California Gubernatorial Executive Order B-10-11, September 19, 2011, and subsequent development of the California Health and Human Services (CHHS) Tribal Consultation Policy

5. DEFINITIONS:

- a. Collaboration: Working together in a meaningful effort to create a positive outcome. Collaboration occurs with authorized representatives from each party who effectuate the policy objectives determined in the consultation described under the Process and Procedure section.
- b. Consultation: A formal process of government-to-government communication which emphasizes trust, respect, and shared responsibility. It is an equitable, open and free exchange of information and opinion among parties, with the goal of leading to mutual understanding, comprehension, and informed decision-making.
- c. Federally Recognized Tribe: Native American Tribe with whom the Federal Government maintains an official government-to-government relationship usually established by a federal treaty, statute, executive order, court order, or a federal administrative action. The Bureau of Indian Affairs maintains and regularly publishes the list of federally recognized Indian Tribes in the Federal Register.
- d. Indian Organizations: A group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians who serve and advocate concerns and issues impacting tribes and Indians in California. The CDSS does not participate in government-to-government consultation with these entities. The CDSS may communicate with these groups. While this interaction and collaboration with Indian organizations is important, it does not constitute Tribal consultation except pursuant to and within the express terms of a tribal resolution or letter from the Chairperson designating an organization as a Tribal Designee to represent the tribe in its consultation with CDSS.

- e. Indians: American Indians and Alaska Natives (AI/AN), also referred to as Native Americans, refers to any descendant of a tribe indigenous to the United States.
- f. Significant actions: “Significant actions” refer to policies or program activities that have Tribal implications, and (2) have substantial direct effects (a) on one or more Indian Tribe(s), or (b) on the relationship between the State Government and Indian Tribes, or (c) on the distribution of power and responsibilities between the State Government and Indian Tribes, or (3) has an effect on Indians in California.
- g. To the Extent Practicable and Permitted by Law: Refers to situations where the opportunity for consultation is limited because of constraints of time, budget, legal authority, or other situations beyond the control of the parties.
- h. Tribal Representative or Tribal Designee: The elected Tribal Chairperson or his/her designee by resolution or letter. The CDSS will use the contact list of Tribal Chairpersons maintained by the Governor’s Tribal Advisor and available on its website.
- i. Tribal Liaison: One or more staff designated by the CDSS to carry out responsibilities defined in Section 7 of this policy.

6. ESTABLISHMENT OF TRIBAL/STATE WORKGROUPS AND/OR TASKFORCES:

The need to develop or revise a policy and/or program that requires subject matter expertise may be identified by the CDSS or by a Tribe or Tribes. This provision allows for the establishment of workgroups or taskforces approved through tribal consultation that can advise, develop recommendations and/or provide expertise on particular technical, legal, regulatory or policy issues. This consultation policy is not intended to preclude collaborative relationships between the CDSS and Indian Tribes or Indian organizations outside of the processes described in this policy. The CDSS stakeholder engagement activities serve as forums to bring together state, county, tribal and American Indian community resources to help identify and address opportunities and key areas of concern that affect the wellbeing of Indians and Tribes in California. The feedback and recommendations received through such activities inform the parties on issues relevant to American Indians and Tribes and support the CDSS’ formal consultation with federally recognized Tribes in California.

7. TRIBAL LIAISON:

The Director shall designate a Departmental Tribal Liaison to act as the Director's representative in matters pertaining to this Policy. The Tribal Liaison shall be at the executive level and may be the Director or a designated representative of the CDSS executive team, and shall be responsible for ensuring that the CDSS programs are engaging with Tribes consistent with this Policy. A Tribal Liaison who is a designated representative of the CDSS executive team may from time to time delegate Liaison responsibilities internal to the CDSS' functions to designated CDSS staff. The Tribal Liaison shall periodically update the Director and CHHS Secretary on tribal consultation efforts and the implementation of this Policy. Updating may include the scope of consultation efforts and their effectiveness, and the topics on which Tribes were consulted.

8. AREAS FOR CONSULTATION:

It is the CDSS policy that, to the extent practicable and permitted by law, consultation with Indian Tribes shall occur before any significant action is taken.

9. CDSS BUDGET FORMULATION:

Tribes can submit to the CDSS any concerns and requests regarding budget formulation, however, state confidentiality requirements associated with the budget development process may exclude the CDSS from consulting on budget items that will affect Tribes.

10. PROCESS AND PROCEDURE:

a. Outreach

The CDSS shall consult with Tribes and make relevant information available at the earliest possible time, and allow a reasonable opportunity for Tribes to respond and substantively engage in planning, program, regulatory, or other processes.

The CDSS shall maintain a tribal affairs webpage on its website that will include the following:

- The name and contact information of the Department's Tribal Liaison.
- The Department's current Tribal Consultation Policy.

Instructions for how to subscribe to department list servers, when available, for various programs and topics that may be of interest to Tribes and other American Indians.

b. Initiating Consultation

A significant action may be identified by CDSS and/or an Indian Tribe(s). Tribes may initiate consultation with the CDSS by contacting the Tribal Liaison, and in the absence, thereof, the Director. The Tribal Liaison may be reached via email at [Tribal.Consultation@dss.ca.gov](mailto:Tribal.Consultation@dss.ca.gov). The CDSS may initiate consultation by reaching out to tribes using the list of Tribal Chairpersons maintained by the Governor's Tribal Advisor and available on its website. To facilitate the Tribal Liaison's oversight responsibilities and reporting responsibility as specified in Section 7, a Notice of the CDSS/Tribal Consultation shall be completed when a consultation is initiated and forwarded to the Liaison within 14 days.

c. Consultations

Consultation mechanisms include but are not limited to one or more of the following:

- Mailings
- E-mail
- Teleconference
- Face-to-face meetings between the CDSS and Indian Tribes
- Roundtables
- The CDSS Tribal Consultation Summit
- Other regular or special CDSS consultation sessions
- Tribally approved and constituted workgroups or taskforces

Efforts shall be made by the parties to define and document the complexity, time constraints, and implications of the issues upon which consultation occurs.

The CDSS will communicate and collaborate with Tribes in a manner that is timely and respectful. Internal processes and timelines will be clearly identified; relevant staff will be available to explain processes and timelines, as needed.

d. Timely Notice

The CDSS recognizes that Tribes may be located in diverse or remote regions throughout California thereby necessitating the need for clear and adequate notice prior to consultation or meetings that may require travel by tribal representatives. Contact with Tribes shall be initiated as early and as promptly as possible to provide ample time for Tribes to have substantive input. Tribal requests for additional time to prepare for or attend a consultation session or in-person meeting will be honored whenever possible.

e. Tribal Consultation Summit

The CDSS will periodically consult with the Governor's Tribal Advisor to determine whether to hold a Tribal Consultation Summit meeting with Tribal leaders to provide general updates on CDSS activities even if there are no currently pending matters that are in the consultation process. The Governor's Tribal Advisor shall be consulted to secure guidance on the purpose, process for planning and running of the Summit. The CDSS will have participants at the Summit who have decision-making authority.

**11. PARTIES TO CONSULTATION:**

The government-to-government relationship between the state and federally recognized Indian Tribes dictates that the principle focus for CDSS consultation is Indian Tribes, individually or collectively. Tribal representatives of all federally recognized Tribes within California will be invited to the Summit. The results of these meetings are intended to help guide the CDSS on policy and program development.

**12. CONFLICT RESOLUTION:**

Tribes and the CDSS may not always agree. A Tribe may invoke the conflict resolution process by filing a written Notice of Conflict Impasse with the Tribal Liaison. Any Notice of Conflict Impasse shall be filed no later than 60 days after the impasse is identified. Thereafter, the Tribal Liaison shall offer mediation with the Governor's Tribal Advisor. The goal will be to accomplish the following:

1. Clarify all aspects of the issue(s) over which there is disagreement;
2. Explore the alternative position(s) available;
3. Clarify the reasons over positions taken; and



4. Attempt to reach a consensus that does not conflict with goals already established via the consultation process or that conflict with the CDSS' responsibilities and duties as dictated by federal or state laws and regulations.

Nothing in this policy is intended to prevent a Tribe from seeking otherwise available options for having alternative positions and options evaluated on issues over which there is dispute.

### 13. PERFORMANCE, TRANSPARENCY, EVALUATION AND REPORTING:

The CDSS Tribal Consultation Records shall be posted on the CDSS' Tribal Affairs website. Additionally, reports shall be produced following each consultation and, when a Summit has occurred, after each Summit, and will include a description of the issue(s) that were the subject of consultation, specific recommendations and any follow-up. The CDSS shall solicit Tribal Reports on satisfaction with the consultations and Summits, what Tribes felt was meaningful, and what could be improved in future meetings. A Tribe may submit a report at the consultation or Summit, or no more than 60 days of its conclusion. Tribal feedback will be included in dissemination of meeting content, with identities and all other confidential information protected upon request. The Summit reports shall be posted on the CDSS' tribal affairs website.

### 14. ADOPTION, AMENDMENTS AND REVISIONS

This Tribal Consultation Policy shall become effective upon approval by the CDSS executive leadership, and the date of said approval shall be noted in the Title of the document. Any parties to consultation may propose, in writing or during the Summit, amendments to this Tribal Consultation Policy. Proposed amendments shall be considered and adopted by the CDSS executive leadership after consultation and full consideration in light of the spirit and provisions of this policy. The CDSS retains the right to not agree to amendments that would impede the duties and obligations for which it is responsible under laws and regulations applicable to its work. In addition to this process, the CDSS and Tribal representatives formally shall review and, if necessary, revise the Tribal Consultation Policy a minimum of once every five years.

Department of Legal Specialization  
The State Bar of California  
180 Howard St,  
San Francisco CA 94105-1639

Attention: Natalie Leonard

## REQUEST FOR NEW CERTIFICATION CATEGORY

Dear Department of Legal Specialization:

On behalf of the Tribal Court – State Court Forum, I request that the State Bar create an additional category of legal specialization – Native American Law. There are many reasons why such a new category would improve the law, the legal system, and the administration of justice.

Over the past 5 years, our work at the Forum has convinced us that the bar needs a larger cadre of attorneys who have significant expertise in Native American Law. The Forum has been a leader in changes in the law to reflect attention to the rights of Native Americans. Many attorneys are not aware of these changes, and a larger group of experts in this expanding area of the law would benefit both litigants and judicial officers. In short, this is an under-served area of the law.

Litigation involving Native American Law has increased dramatically over the past 10 years. Of course issues involving the Indian Child Welfare Act (ICWA) are prominent in the juvenile dependency courts. An attorney cannot competently practice in dependency court without a detailed knowledge of the ICWA. Juvenile court judges know the complexity of the ICWA as hundreds of trial court cases have been reversed in the appellate courts.

Moreover, California has gone beyond the federal statute and created additional rights for Native Americans in juvenile delinquency, family, and probate law. There are also new laws regarding civil proceedings and the enforcement of tribal court orders in the Superior Court.

Training for this specialization will not be a problem. Several sources are able to provide excellent training in Native American Law including CJER, Tribal Star, the National Association of Counsel for Children (NACC), and California Indian Legal Services among others. Some of the experts will be able to assist the State Bar prepare examinations that will test the expertise of applicants for certification.

Creating a certification category will go a long way to provide support for an under-served population in California. The State Bar will be making a significant contribution to the legal system.

Thank you for consideration of this proposal. Please contact me if you have any questions.

Sincerely Yours

## PROPOSED LEGISLATION

The legislature hereby finds:

1. Implementation of the Indian Child Welfare Act (ICWA) has been difficult for the California trial courts. The appellate court have reversed many cases involving the ICWA.
2. Indian Tribes have a significant interest in cases involving the ICWA.
3. Attorneys do not represent Indian Tribes in cases involving the ICWA. This is because the tribes do not have the resources to provide attorneys in these cases.

**THEREFORE:** It is hereby enacted that \$1,000,000 be allocated to the Judicial Council for the purpose of providing attorneys for Indian Tribes in cases involving the ICWA. The Judicial Council shall identify attorneys who demonstrate expertise in the ICWA, shall establish a system of appointing attorneys in cases involving the ICWA, and shall equitably distribute these funds to attorneys who represent Indian Tribes in these cases.

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Recommend JC approval (has circulated for comment)**

**RUPRO Meeting:** July 26, 2017

**Title of proposal** *(include amend/revise/adopt/approve + form/rule numbers):*

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

*Committee or other entity submitting the proposal:*

Family and Juvenile Law Advisory Committee and Tribal Court-State Court Forum

*Staff contact (name, phone and e-mail):* Ann Gilmour, 415-865-4207 [ann.gilmour@jud.ca.gov](mailto:ann.gilmour@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: December 15, 2016

Project description from annual agenda: Revise CRC 5.552

To conform to the requirements of subparagraph (f) of section 827 of the Welfare and Institutions Code which was added effective January 1, 2015 to clarify the right of an Indian child's tribe to have access to the juvenile court file of a case involving that child. At that time, no changes were made to California Rules of Court rule 5.552 which implements section 827 of the Welfare and Institutions Code. 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.

Approved by E & P as item II 3 on Annual Agenda at a meeting March 23, 2017.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)



## JUDICIAL COUNCIL OF CALIFORNIA

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

[www.courts.ca.gov](http://www.courts.ca.gov)

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on September 14–15, 2017

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Title	Agenda Item Type
Indian Child Welfare Act: Tribal Access to Court Records	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 5.552	January 1, 2017
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	July 11, 2017
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Mark A. Juhas, Cochair	Ann Gilmour, 415-865-4207 <a href="mailto:ann.gilmour@jud.ca.gov">ann.gilmour@jud.ca.gov</a>
Tribal Court–State Court Forum	
Hon. Abby Abinanti, Cochair	
Hon. Dennis M. Perluss, Cochair	

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### **Executive Summary**

The Family and Juvenile Law Advisory Committee and Tribal Court–State Court Forum jointly recommend amending the rule regarding the confidentiality of juvenile court records to conform to the current statutory language in the Welfare and Institutions Code. These amendments will eliminate discrepancies between the rule and statutory requirements that practitioners and court staff advised were causing confusion.

### **Recommendation**

The Family and Juvenile Law Advisory Committee and Tribal Court–State Court Forum recommend that the Judicial Council, effective January 1, 2018, amend rule 5.552 of the California Rules of Court as follows:

1. Delete subdivision (b) of the rule, which is duplicative of section 827(a) of the Welfare and Institutions Code. 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 records” in subdivision (c) to “juvenile case files” to be consistent with the rest of the rule. Effective 2009, this language was changed throughout the rule except in subdivision (c), which inadvertently remained unchanged;
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;
6. Delete subdivision (g) of the rule, which is duplicative of section 827(b)(2); and
7. Revise and reletter subdivision (h) in light of the deletion of other subdivisions and to remove reference to Government Code section 13968 which was repealed.

The text of the proposed amendments to the rule is attached at pages 5–8.

### **Previous Council Action**

Rule 5.552 of the California Rules of Court was originally adopted as rule 1423 effective July 1, 1992, 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, the Judicial Council sponsored legislation—Assembly Bill 1618 (Stats. 2014, ch. 57, § 1)—that added subdivision (f) to section 827 of the Welfare and Institutions Code to clarify the right of an Indian child’s tribe to have access to the juvenile case file of a case involving that child.<sup>1</sup> At that time, no changes were made to rule 5.552, 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.

Contrary to section 827 of the Welfare and Institutions Code 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

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<sup>1</sup> That proposal is available at <http://www.courts.ca.gov/documents/LEG13-03.pdf>.

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.<sup>2</sup> Commenters 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 Family and Juvenile Law Advisory Committee and Tribal Court–State Court Forum also recommend deleting language in the rule that is duplicative of statutory language. This follows the request of the Judicial Council’s 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 to the standard mailing list for family and juvenile law proposals during the spring 2017 invitation-to-comment cycle from February 27 to April 28. 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 commenters supported the proposal, two supported it if amended, and one did not indicate whether he or she supported the proposal. The bulk of the substantive comments centered on the issue of whether the language in the rule that duplicates statutory language should be retained. Of the eight commenters, three indicated that the duplicative language should be stripped, three indicated that it should be retained, and two took no position on this question.

The commenters who indicated that the duplicative language should be taken out were California Indian Legal Services, the Orange County Bar Association, and the Superior Court of San Diego County. Those who indicated that the duplicative language should be retained were the State Bar of California’s Standing Committee on the Delivery of Legal Services, the Superior Court of Los Angeles County, and the Superior Court of Riverside County.

The commenters 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 in. Having the language in the rule is of assistance to them.

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<sup>2</sup> See Welf. & Inst. Code, §§ 290.1–295.

In light of the comments, the Family and Juvenile Law Advisory Committee and Tribal Court–State Court Forum considered whether those portions of the rule that duplicate statutory language should be retained. 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.

### **Alternatives Considered**

The committee and forum considered taking no action at this time. However, as discussed above, rule 5.552 as currently drafted is inconsistent with statutory law. The inconsistency has caused confusion and results in unnecessary court motions and notices, which is an inefficient use of judicial and party resources. The committee and forum also considered whether to leave in the language that is duplicative of statutory law, as some commentators have observed that it helps explain and clarify the statutory requirements that are otherwise confusing. The committee and forum seek comments on this option.

### **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, rule 5.552, at pages 5–8
2. Chart of comments, at pages 9–16



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

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

2  
3 (a) \* \* \*

4  
5 **(b) General provisions**

6  
7 (1) ~~The following individuals and entities may inspect, receive, and copy the~~  
8 ~~juvenile case file without an order of the juvenile court:~~

9  
10 (A) ~~Court personnel;~~

11  
12 (B) ~~The district attorney, a city attorney, or a city prosecutor authorized to~~  
13 ~~prosecute criminal or juvenile cases under the law;~~

14  
15 (C) ~~The child who is the subject of the proceeding;~~

16  
17 (D) ~~The child's parents;~~

18  
19 (E) ~~The child's guardians;~~

20  
21 (F) ~~The attorneys for the parties, including any trial court or appellate~~  
22 ~~attorney representing a party in the juvenile proceeding or related~~  
23 ~~appellate proceeding;~~

24  
25 (G) ~~Judges, referees, other hearing officers, probation officers, and law~~  
26 ~~enforcement officers who are actively participating in criminal or~~  
27 ~~juvenile proceedings involving the child;~~

28  
29 (H) ~~The county counsel, city attorney, or any other attorney representing~~  
30 ~~the petitioning agency in a dependency action;~~

31  
32 (I) ~~Members of child protective agencies as defined in Penal Code section~~  
33 ~~11165.9; and~~

34  
35 (J) ~~The California Department of Social Services in order to carry out its~~  
36 ~~duty to oversee and monitor county child welfare agencies, children in~~  
37 ~~foster care or receiving foster care assistance, and out-of-state~~  
38 ~~placements.~~

39  
40 (2) ~~The following individuals and entities may inspect the juvenile case file~~  
41 ~~without a court order and may receive a copy of the juvenile case file~~  
42 ~~pursuant to a court order:~~  
43

1 (A) ~~All persons and entities listed in Welfare and Institutions Code sections~~  
2 ~~827 and 828 who are not listed in (b)(1) above; and~~

3  
4 (B) ~~An Indian child's tribal representative if the tribe has intervened in the~~  
5 ~~child's case.~~

6  
7 (3) ~~Authorization for any other person or entity to inspect, obtain, or copy~~  
8 ~~juvenile case files may be ordered only by the juvenile court presiding judge~~  
9 ~~or a judicial officer of the juvenile court.~~

10  
11 (4) ~~Juvenile case files may not be obtained or inspected by civil or criminal~~  
12 ~~subpoena.~~

13  
14 (5) ~~When a petition is sustained for any offense listed in section 676, the~~  
15 ~~charging petition, the minutes of the proceeding, and the orders of~~  
16 ~~adjudication and disposition that are contained in the juvenile case file must~~  
17 ~~be available for public inspection, unless the court has prohibited disclosure~~  
18 ~~of those records under that section.~~

19  
20 **(e)(b) Petition**

21  
22 Juvenile case files may only be obtained or inspected in accordance with sections  
23 827 and 828. They may not be obtained or inspected by civil or criminal subpoena.  
24 With the exception of those persons permitted to inspect juvenile court records case  
25 files without court authorization under sections 827 and 828, every person or  
26 agency seeking to inspect or obtain juvenile court records case files must petition  
27 the court for authorization using *Petition Request for Disclosure of Juvenile Case*  
28 *File* (form JV-570).

29  
30 (1) The specific ~~records~~ files sought must be identified based on knowledge,  
31 information, and belief that such ~~records~~ files exist and are relevant to the  
32 purpose for which they are being sought.

33  
34 (2) Petitioner must describe in detail the reasons the ~~records~~ files are being  
35 sought and their relevancy to the proceeding or purpose for which petitioner  
36 wishes to inspect or obtain the ~~records~~ files.

37  
38 **(d)(c) Notice of petition for disclosure**

39  
40 (1) \* \* \*

41  
42 (A)–(B) \* \* \*

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

2  
3 (D)–(I) \* \* \*

4  
5 (2) \* \* \*

6  
7 (3) If the petitioner does not know the identity or address of any of the parties in  
8 ~~(d)~~(c)(1) above, the clerk must:

9  
10 (A)–(B) \* \* \*

11  
12 (4) \* \* \*

13  
14 **(e)(d) Procedure**

15  
16 (1) \* \* \*

17  
18 (2) If petitioner shows good cause, the court may set a hearing. The clerk must  
19 notice the hearing to the persons and entities listed in ~~(d)~~(c)(1) above.

20  
21 (3)–(8) \* \* \*

22  
23 **(f)(e) Reports of law enforcement agencies (§ 828)**

24  
25 ~~Except for records sealed under section 389 or 781, or Penal Code section 1203.45,~~  
26 ~~information gathered and retained by a law enforcement agency regarding the~~  
27 ~~taking of a child into custody may be disclosed without court authorization to~~  
28 ~~another law enforcement agency, including a school district police or security~~  
29 ~~department, or to any person or agency that has a legitimate need for the~~  
30 ~~information for the purposes of official disposition of a case.~~

31  
32 (1) ~~If the law enforcement agency retaining the report is notified under section~~  
33 ~~1155 that the child has escaped from a secure detention facility, the agency~~  
34 ~~must release the name of the child and any descriptive information on~~  
35 ~~specific request by any agency or individual whose attempts to apprehend the~~  
36 ~~child will be assisted by the information requested.~~

37  
38 (2) ~~In the absence of a specific request, the law enforcement agency retaining the~~  
39 ~~report may release information about a child reported to have escaped from a~~  
40 ~~secure detention facility if the agency determines that the information is~~  
41 ~~necessary to assist in the apprehension of the child or the protection of~~  
42 ~~members of the public from substantial physical harm.~~

1           (3) Except as authorized under section 828, all others seeking to inspect or obtain  
2           such reports information gathered and retained by a law enforcement agency  
3           regarding the taking of a child into custody must petition the juvenile court  
4           for authorization, using *Petition to Obtain Report of Law Enforcement*  
5           *Agency* (form JV-575).  
6

7           **(g) School notification**  
8

9           ~~When a child enrolled in a public school is found to have committed one of the~~  
10          ~~offenses described in section 827(b)(2), the court must provide written notice of the~~  
11          ~~offense and the disposition to the superintendent of the school district within seven~~  
12          ~~days. The superintendent must disseminate information to the principal of the~~  
13          ~~school the child attends, and the principal may disseminate information to any~~  
14          ~~teacher or administrator for the purposes of the rehabilitation of the child or the~~  
15          ~~protection of other students and staff.~~  
16

17          **~~(h)~~(f) Other applicable statutes**  
18

19          Under no circumstances must this rule or any section of it be interpreted to permit  
20          access to or release of records protected under any other federal or state law,  
21          including Penal Code section 11165 et seq., except as provided in those statutes, or  
22          to limit access to or release of records permitted under any other federal or state  
23          statute, including Government Code section 13968.  
24

**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 (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
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 that 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**

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	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, Standing Committee on the Delivery of Legal Services By Sharon Djemal, Chair,.	A	<p><b>Specific Comments</b></p> <ul style="list-style-type: none"> <li>• <u>Does the proposal appropriately address the stated purpose?</u></li> </ul> <p>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.</p> <p>For self-represented litigants (either people who</p>	<p>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 that 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.</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>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"> <li>• <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></li> </ul> <p>Given section 827’s complexity, rule 5.552 should retain the duplicative language in section 827.</p> <p><b>Additional Comments</b></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**

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	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><b>Comments:</b> 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><b>Suggested Modifications:</b> <b>Rule 5.552</b> <b>Original (b)</b> - Leave the duplicative language to allow for easy review of the list of entitled parties when reviewing the rest of the rule. <b>New (b)</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. <b>New (e)</b> - Los Angeles County uses WIC § 827.9 for access to law enforcement reports and the JV-575 petition form.</p> <p><b>Request for Specific Comments:</b></p>	<p>See response to comments from the State Bar of California’s Standing Committee on the Delivery of Legal Services above.</p> <p>See response to comments from the State Bar of California’s Standing Committee on the Delivery of Legal Services 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**

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	Commentator	Position	Comment	Committee Response
			<p><b>Does the proposal appropriately address the stated purpose?</b>                      Yes.  <b>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?</b>                      Because WIC § 827 is complex, the duplicative language is helpful. It should, however, be updated to be consistent when there are changes to 827.  <b>Would the proposal provide cost savings? If so, please quantify.</b>                      It is not likely that there would be cost savings.  <b>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.</b>                      The courts would require additional training of staff, revision of processes and procedures such as staff manuals.  <b>Would an effective date six months from Judicial Council approval of this proposal provide sufficient time for implementation?</b></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**

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>Yes.</p> <p><b>How well would this proposal work in small courts? Large courts?</b></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 anmd Juvenile Court.</p>	NI	<p><b>Q: What would the implementation requirements be for courts?</b></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><b>Q: Would six months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</b></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 it if means the language is duplicative.</p>	<p>No response required.</p> <p>See response to State Bar of California of California’s Standing Committee on the Delivery of Legal Services above.</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**

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	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"> <li>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.</li> <li>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.</li> </ul>	<p>The old subdivision (b) has been removed.</p> <p>Article 22 of Chapter 2, Part 1, Division 2 of the Welf. &amp; 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 (\*).

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

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Recommend JC approval (has circulated for comment)**

**RUPRO Meeting:** July 26, 2017

**Title of proposal** (*include amend/revise/adopt/approve + form/rule numbers*):

Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court

*Committee or other entity submitting the proposal:*

Family and Juvenile Law Advisory Committee and Tribal Court-State Court Forum

*Staff contact (name, phone and e-mail):* Ann Gilmour, 415-865-4207 [ann.gilmour@jud.ca.gov](mailto:ann.gilmour@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by RUPRO: December 15, 2016

Project description from annual agenda: .Revise California Rule of Court, rule 5.372 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. Since implementation of the rule of court, 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. Based on the experience with the transfers that have taken place so far, the participants of a cross-court educational exchange have suggested amendments to rule 5.732 to streamline the process, reduce confusion, and ensure consistency and efficient use of court resources.

Approved by E & P as item II 3 on Annual Agenda at a meeting March 23, 2017.

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 14–15, 2017

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Title	Agenda Item Type
Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 5.372	January 1, 2018
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	July 12, 2017
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Mark A. Juhas, Cochair	Ann Gilmour, Attorney II
	415-865-4207
	<a href="mailto:ann.gilmour@jud.ca.gov">ann.gilmour@jud.ca.gov</a>
Tribal Court–State Court Forum	
Hon. Abby Abinanti, Cochair	
Hon. Dennis M. Perluss, Cochair	

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### **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 between state courts and 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 Family and Juvenile Law Advisory Committee and the Tribal Court – State Court Forum recommend that effective January 1, 2018, the Judicial Council amend rule 5.372 to:

1. Provide by the language in the title and subdivision (a) that a title IV-D child support case may be transferred between tribal and state courts in both directions. When adopted, the current 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.
2. Add 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 that might otherwise apply.
3. Revise 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. In (e):
  - 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.
  - 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).
5. In (f) to:

- Remove some of the factors to be considered in making a determination to transfer to tribal court.
  - 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.
  - 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. Add 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 6–8.

### **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),<sup>1</sup> as amended by the Balanced Budget Act of 1997,<sup>2</sup> 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.

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.

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

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



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 consistent and efficient use of court resources. The group recommended clarifying that transfers could happen both to and from a tribal court. 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. The group also recommended revising the list of factors that the state court could consider when 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.

### **Comments, Alternatives Considered, and Policy Implications**

The proposal was circulated for comment during the spring 2017 comment session—from February 27 to April 28—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 they approved. A number of clarifying revisions were made in response to the comments. Subdivision 5.372(e)(2)(C) was revised to include receipt by the parents of tribal services as among the factors that could be considered when determining whether the tribal court has concurrent

jurisdiction. Subdivision 5.372(i)(3) was revised to replace the word may with must. Subdivision 5.37(e) was revised to include a deadline for objection to transfer.

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 operational 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, rule 5.372 at pages 6–8
2. Chart of comments, at pages 9–19

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

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

2  
3 **Division 1. Family Rules**

4  
5 **Chapter 10. Government Child Support Cases (Title IV-D Support Cases)**

6  
7 **Rule 5.372. Transfer of title IV-D cases between ~~to a tribal court~~ and state court**

8  
9 **(a) Purpose**

10  
11 This rule is intended to define the procedure for transfer of title IV-D child support  
12 cases ~~from~~ between a California superior court ~~to~~ and a tribal court.

13  
14 **(b)–(d) \* \* \***

15  
16 **(e) Determination of concurrent jurisdiction by a superior court**

17  
18 **(1)** The superior court may, on its own motion or on the motion of any party and  
19 after notice to the parties of their right to object, transfer a child support and  
20 custody provision of an action in which the state is providing services under  
21 ~~California~~ Family Code section 17400 to a tribal court, as defined in (a). This  
22 provision applies to both prejudgment and postjudgment cases.

23  
24 **(2)** The motion for transfer to a tribal court must include the following  
25 information:

26  
27 **(A)** Whether the child is a tribal member or eligible for tribal membership;

28  
29 **(B)** Whether one or both of the child's parents are tribal members or  
30 eligible for tribal membership;

31  
32 **(C)** Whether one or both of the child's parents live on tribal lands or in  
33 tribal housing, work for the tribe, or receive tribal benefits or services;

34  
35 **(D)** Whether there are other children of the obligor subject to child support  
36 obligations;

37  
38 **(E)** Any other factor supporting the child's or parents' connection to the  
39 tribe.

40  
41 **(3)** When ruling on a motion to transfer, the superior court must first make a  
42 threshold determination that concurrent jurisdiction exists. Evidence to  
43 support this determination may include:

1  
2 (A) Evidence contained within the motion for transfer;

3  
4 (B) Evidence agreed to by stipulation of the parties; and

5  
6 (C) Other evidence submitted by the parties or by the tribe.

7  
8 The court may request that the tribal child support agency or the tribal court  
9 submit information concerning the tribe's jurisdiction.

10  
11 (4) There is a presumption of concurrent jurisdiction if the child is a tribal  
12 member or eligible for tribal membership. If concurrent jurisdiction is found  
13 to exist, the transfer to tribal court will occur unless a party has objected ~~in a~~  
14 timely manner within 20 days after service of notice of the right to object  
15 referenced in subdivision (e)(1) above. On the filing of a timely objection to  
16 the transfer, the superior court must conduct a hearing on the record  
17 considering all the relevant factors set forth in (f). The objecting party has the  
18 burden of proof to establish good cause not to transfer to tribal court.

19  
20 (f) **Evidentiary considerations**

21  
22 (1) In making a determination on the ~~application~~ motion for case transfer, the  
23 superior court must consider:

24  
25 (1) ~~The nature of the action;~~

26  
27 (2) ~~The interests of the parties;~~

28  
29 (A) The identities of the parties;

30  
31 (B) The convenience of the parties and witnesses;

32  
33 (5) ~~Whether state or tribal law will apply;~~

34  
35 (C) The remedy available in the superior court or tribal court; and

36  
37 (D) Any other factors deemed necessary by the superior court.

38  
39 (2) In making a determination on the motion for case transfer, the superior court  
40 may not consider the perceived adequacy of tribal justice systems.

41  
42 (3) The superior court may, after notice to all parties, attempt to resolve any  
43 procedural issues by contacting the tribal court concerning a motion to

1                    transfer. The superior court must allow the parties to participate in, and must  
2                    prepare a record of, any communication made with the tribal court judge.

3  
4    **(g) Order on request to transfer**

5  
6                    If the superior court denies the request for transfer, the court must state on the  
7                    record the basis for denying the request. If the superior court grants the request for  
8                    transfer, it must issue a final order on the request to transfer including a  
9                    determination of whether concurrent jurisdiction exists.

10  
11    **(h) Proceedings after order granting transfer**

12  
13                    Once the superior court has granted the application to transfer, and has received  
14                    confirmation that the tribal court has accepted jurisdiction, the superior court clerk  
15                    must deliver a copy of the entire file, including all pleadings and orders, to the clerk  
16                    of the tribal court within 20 days of confirmation that the tribal court has accepted  
17                    jurisdiction. With the exception of a filing by a tribal court as described by  
18                    subdivision (i) of this rule, the superior court may not accept any further filings in  
19                    the state court action in relation to the issues of child support and custody that were  
20                    transferred to the tribal court.

21  
22    **(i) Transfer of proceedings from tribal court**

23  
24                    (1) If a tribal court determines that it is not in the best interest of the child or the  
25                    parties for the tribal court to retain jurisdiction of a child support case, the  
26                    tribe may, upon noticed motion to all parties and the state child support  
27                    agency, file a motion with the superior court to transfer the case to the  
28                    jurisdiction of the superior court along with copies of the tribal court's order  
29                    transferring jurisdiction and the entire file.

30  
31                    (2) The superior court must notify the tribal court upon receipt of the materials  
32                    and the date scheduled for the hearing of the motion to transfer.

33  
34                    (3) If the superior court has concurrent jurisdiction, it must not reject the case.

35  
36                    (4) No filing fee may be charged for the transfer of a title IV-D child support  
37                    case from a tribal court.

38  
39                    Advisory Committee Comment

40                    This rule applies only to title IV-D child support cases. In the normal course, transfers from tribal court are  
41                    initiated by the local child support agencies. Under Government Code sections 6103.9 and 70672, local  
42                    child support agencies are exempt from payment of filing fees. The rule makes it clear that this exemption  
43                    also applies when an eligible case is being transferred from a tribal court.

**SPR-17-18**

**Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
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 "...or services."
2.	California Indian Legal Services, By Denise H. Bareilles, Senior Staff Attorney Humboldt County	A	<b>Recommendations</b> <b>(i) Transfer of proceedings from tribal court</b> 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 Transfer from tribal court to state court may be processed and litigated twice. Subparagraph 1 presumes that the Motion for Case Transfer is occurring in	The rule does not assume that there has been litigation on the issue in tribal court, it merely 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

**SPR-17-18**

**Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)**

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

	Commentator	Position	Comment	Committee Response
			<p>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.</p> <p>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 for Case Transfer from tribal court to state court is litigated once in either state or tribal court.</p> <p><b>(h) Proceedings after order granting transfer</b> 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</p>	<p>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. 4<sup>th</sup> 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>

**SPR-17-18**

**Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)**

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

	Commentator	Position	Comment	Committee Response
			<p>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><b>(e) Determination of concurrent jurisdiction by a superior court</b></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 post judgment cases.</p> <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</p>	<p>No revisions were made in response to this comment because no revisions were made to (i).</p>



**SPR-17-18**

**Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)**

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

	Commentator	Position	Comment	Committee Response
			<p>parents’ connection to the tribe.  <i>Comment #3:</i> We are supportive of the proposed change with the following modification, 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.  <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 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>Subdivision (e) (2) (C) was revised to reference both benefits 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>

**SPR-17-18**

**Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)**

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

	Commentator	Position	Comment	Committee Response
			<p>Conclusion</p> <p>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.	<p>Executive Committee of the Family Law Section of the State Bar of California</p> <p>By Saul Bercovitch, Assistant General Counsel, Office of General Counsel, The State Bar of California</p>	A	<p>The Executive Committee of the Family Law Section (FLEXCOM) supports the changes to California Rules of Court set out 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 “. . . <del>may</del> <b>shall</b> not reject the case.”? If this is mandatory, then the language used should clearly convey that.</p>	<p>No response required.</p> <p>No response required.</p> <p>The proposal was revised in response to this comment.</p> <p>The proposal was revised to use “must” before “not” in response to this comment.</p>
4.	<p>Gloege, Naomi J., Rules Attorney, Aderant</p>	NI	<p>I am writing to comment on the proposed amendments to CRC 5.372, out for comment</p>	

## SPR-17-18

### Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)

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

	Commentator	Position	Comment	Committee Response
			<p>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 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</p>	<p>The proposal has been revised in response to this comment.</p>

**SPR-17-18**

**Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)**

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

	Commentator	Position	Comment	Committee Response
			<p><u>service of notice of the right to object to transfer. ...</u> (Emphasis added).</p> <p>Thank you for your time and consideration.</p>	
5.	<p>Orange County Bar Association By Michael L. Baroni, President Orange County</p>	AM	<p>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).</p> <p>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.”</p>	<p>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).</p>
6.	<p>Superior Court of California, County of Los Angeles By Sandra Pigati-Pizano, Management Analyst, Management Research Unit</p>	AM	<p><b>Rule 5.372</b> 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. <b>(f) (1)</b> (page 7) - change the word “application” to “motion.” Elsewhere in the rule “motions” are discussed but not “applications.” <b>(f) (2)</b> (page 7) - change the word “application” to “motion.” Same reason. <b>(i) (1)</b> (page 8) - to “may,...file a motion....”</p>	<p>The proposal was revised in response to this comment.</p> <p>The proposal was revised in response to this comment.</p> <p>The proposal was revised in response to this</p>

**SPR-17-18**

**Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			add “with the Superior Court.”	comment
7.	Superior Court of California, County of Orange By Cynthia Beltran, Administrative Analyst, Family Law and Juvenile Court	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 transfers between the state courts in Humboldt and Del Norte Counties and the Yurok Tribal Court.	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 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	A	Q: Does the proposal appropriately address	No response required.

**SPR-17-18**

**Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
	By Mike Rodd, Executive Officer		<p>the stated purpose?</p> <p>Yes.</p> <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>	

**SPR-17-18**

**Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)**

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

	Commentator	Position	Comment	Committee Response
			Should be the same for all courts affected.	
10.	Yurok Child Support Services By Jennifer J. Burgess, Program Manager	AM	<p>Rule 5.372. Transfer of title IV-D cases 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</p>	<p>There is no plan to formalize a process for court to court communication or to develop a form.</p>

**SPR-17-18**

**Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court (Amend Cal. Rules of Court, rule 5.372)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			to adopt UIFSA. Also, possibly identifying the 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.	