



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: August 30, 2012

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Title	Agenda Item Type
Report from the California Tribal Court/State Court Forum	Information Only
Submitted by	Date of Report
California Tribal Court/State Court Forum	July 23, 2012
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### **Executive Summary**

The California Tribal Court/State Court Forum (forum) submits this report to inform the Judicial Council about the latest activities of the forum, the status of California's tribal communities and tribal courts, and some of the interjurisdictional issues facing tribal and state court judges in California.

### **Previous Council Action**

The forum was established in May 2010 by former Chief Justice Ronald M. George and has been continued by current Chief Justice Tani G. Cantil-Sakauye. We submit this informational report about our presentation<sup>1</sup> to the council at the request of the Executive and Planning Committee. During our report this past January 23 on the forum's activities for calendar years 2010 and 2011, Justice Douglas P. Miller, chair of the Executive and Planning Committee, recommended that the forum be established as a permanent entity and that the council learn more about tribal courts and the jurisdictional issues facing tribal and state justice systems in California.

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<sup>1</sup> See [Tab A](#) for PowerPoint handout

## **Forum overview**

The forum is a coalition of judges of the tribal courts situated in California and California state courts and other stakeholders.<sup>2</sup> The members come together as equal partners to address issues common to their justice systems relating to the recognition and enforcement of court orders that cross jurisdictional lines, the determination of jurisdiction for cases that might appear in either court system, and the sharing of services between jurisdictions.

The forum's 27 members comprise 11 tribal court judges representing 13 of the 20 tribal courts that currently serve 39 tribes in California; the tribal advisor to the Governor; the director of the California Attorney General's Office of Native American Affairs; 14 state court judges, including the chairs of the Judicial Council's Family and Juvenile Law Advisory Committee, Access and Fairness Advisory Committee, Civil and Small Claims Advisory Committee, Probate and Mental Health Advisory Committee, Traffic Advisory Committee, and vice-chair of the Criminal Law Advisory Committee; and representatives of the local state courts in counties where many of the tribal courts are situated.

Consistent with the judicial branch's respect for tribal sovereignty, appointments of tribal court judges to the forum are based on the nominations received from tribal governments with tribal courts. As a coalition and not an entity under the council, the forum was created to equally serve the state judicial branch and the tribal justice systems in California, not as the instrument of either justice system. For this reason, the forum is not codified in the California Rules of Court nor overseen by any standing council committee, because such governance under the state court system would undermine the egalitarian spirit in which the forum was established.

The forum is convened for the express purpose of improving working relationships among its members and enabling the courts of each system to issue and enforce their respective orders to the fullest extent allowed by law in order to benefit California's tribal communities.

## **California's Native American population**

California has more American Indian/Alaskan Native (AI/AN) residents than any other state, with 12 percent of the total AI/AN-alone population of the United States living here. According to the 2010 census, more than 720,000 AI/AN (alone or in combination with another race) reside in California, in both rural and urban communities. More than half of the AI/AN population living in California are members of tribes located outside of California.<sup>3</sup>

## **Tribal courts in California**

Of the one 109 federally recognized tribes in California, 39 have either a tribal court or access to a tribal court through an intertribal court coalition.<sup>4</sup> Seven tribes participate in the Intertribal

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<sup>2</sup> See [Tab B](#) for more information about the forum.

<sup>3</sup> See [Tab C](#) for more information about California's tribal communities.

<sup>4</sup> See [Tab D](#) for more information about tribal justice systems in California.

Court of Northern California, 12 tribes in the Intertribal Court of Southern California, and 4 tribes in the Northern California Intertribal Court System. Tribal court profiles with specific descriptions of each court are maintained in the California Tribal Courts Directory at [www.courts.ca.gov/14400.htm](http://www.courts.ca.gov/14400.htm), and an interactive map showing the locations of these courts can be found on the tribal projects page at [www.courts.ca.gov/programs-tribal.htm](http://www.courts.ca.gov/programs-tribal.htm).

The existence and authority of tribal courts arise from the sovereignty of Indian tribes. The tribal governing body, the tribal council, enacts the code and court procedures used by the tribal court. Many tribes incorporate customary law into written codes or provide a tribal court procedure for the use of unwritten tribal customs.

Currently, tribal courts in California hear a broad range of case types, including child abuse and neglect cases, domestic violence and protective orders, domestic relations, contract disputes and other civil cases for money judgments, unlawful detainers, property disputes, nuisance abatement, and possession of tribal lands, name changes, and civil harassment protective orders.

### **Jurisdiction**

The subject matter jurisdiction of each tribal court is defined by the tribe that establishes it. The extent to which tribes may exercise personal jurisdiction over individual litigants is defined in a body of federal law. As a general rule, tribes may exercise full civil and criminal jurisdiction over Indians within the tribe's reservation or trust lands, commonly called "Indian Country." Tribes have no criminal jurisdiction over non-Indians. Tribes may exercise civil jurisdiction over non-Indians generally only where the non-Indians have entered into consensual relationships with the tribe or its members through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or affects the political integrity, economic security, or health and welfare of the tribe.

The general rule is that states have no jurisdiction over the activities of Indians and tribes in Indian Country. Public Law 280 (Pub.L. No. 83-280, 18 U.S.C. § 1162, 28 U.S.C. § 1360)<sup>5</sup> created an exception to this rule in certain states, including California. The federal government transferred jurisdiction to these states over all criminal offenses involving Indians on tribal lands, and it opened state courts as forums for civil litigation that had previously only been brought in tribal or federal courts. The effect of PL 280 is that state and tribal courts share jurisdiction in many areas of criminal and civil law.<sup>6</sup>

### **Funding**

All forum activities and staff support are grant-funded by the Office on Violence Against Women, U.S. Department of Justice that are administered through the California Emergency

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<sup>5</sup> See 18 U.S.C. § 1162, 25 U.S.C. §§ 1321–1326, and 28 U.S.C. § 1360.

<sup>6</sup> See [Tab E](#) for more information on jurisdiction.

Management Agency (Cal-EMA), the Court Improvement Program of the U.S. Department of Health and Human Services, and the California Department of Social Services.

## **Conclusion**

Since its establishment in May 2010, the forum has made considerable strides in understanding and addressing some of the jurisdictional challenges facing tribal and state court judges, most notably in the area of domestic violence.<sup>7</sup> What we have learned is that, as stated in the resolution adopted by the California State-Federal Judicial Council, only together can we meet the needs of California's Native American citizens by directly communicating, sharing resources, and providing more judicial education.<sup>8</sup>

## **Attachments**

Binder of Materials: *Report from the California Tribal Court/State Court Forum*

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<sup>7</sup> See [Tab F](#) for more information on the forum's accomplishments and pending projects.

<sup>8</sup> See [Tab G](#) for resolution and draft agenda for judicial symposium.