

September 17, 2013 Forum conference call notes

- 1) Next In-Person Meeting- March 4, 2013, San Francisco (Jenny)
Jenny to send follow up outlook calendar invitation to save the date in members' calendars.
- 2) Proposed Forum Rule (Cochair Report)

Background: The forum developed a proposal to establish the group as a permanent advisory committee to the California Judicial Council. After giving extensive input into the rule language, the CA Judicial Council agreed to have its internal committees author the proposal. The CA Judicial Council internal committees are the Rules and Projects Committee (RUPRO), the Executive and Planning Committee (E&P), and the Technology Committee. The proposal was circulated for public comment, and 15 comments were received. They were all positive and in support. The chairs of the three Judicial Council internal committees will review the comments and provide responses. Given the overwhelmingly positive response to the rule, the forum can expect that the chairs will recommend adoption of the rule to the Judicial Council

Next Step: The Judicial Council will consider adoption of the rule at its meeting in October (10/24-25)

- 3) Report on Cross-Cultural Court Exchange at Hoopa (Judge Blake and Judge Wilson)
Judges reported it was a success, with over 60 participants (agenda and materials were distributed as part of this conference call)
- 4) Sharing Resources on Elder Tribal Abuse, Stalking and Technology (Jenny)
Forum agreed to share resources on these subjects. Please send resources to Jenny who will include them in the forum's monthly electronic newsletter, the Forum E-Update.
- 5) CalOES Funding for tribal/state projects (distributed in advance of conference call) (Jenny)
Forum discussed how the projects were aligned with its annual agenda/workplan.
- 6) Violence Against Women Education Project (VAWEP) report (Judge Williams)
Judge Williams reported on the meeting she attended. For more information about VAWEP, please see annual report at:
www.courts.ca.gov/documents/VAWEPAnnualReport.pdf. She also described a new mobile application featuring resources on elder abuse. To download this app, see <http://www.centeronelderabuse.org/368ElderAbuseCA.asp>.
- 7) Report on California Department of Justice (DOJ) Meeting (cochairs)
Judge Blake and Justice Perluss reported on the meeting at DOJ, which was held on August 26, 2013. Thanks to forum member, Olin Jones, forum cochairs and staff met with Chief Deputy Duane Gillette, Deputy Attorney General Anthony Hakl, California Law Enforcement Telecommunications System (CLETS) director Julie Basco, CLETS

Committee Chair, and Sam Siegel to discuss this problem and the challenges local law enforcement face verifying and confirming tribal protective orders. The purpose of the meeting was to explore whether DOJ would launch an initiative to permit tribal courts in California to directly enter protective order information into the DOJ California Restraining and Protective Orders System (CARPOS) through California Law Enforcement Telecommunications System (CLETS) or the California judicial branch's California Courts Protective Order Registry (CCPOR).

In follow up to this meeting, Justice Perluss made a presentation to the Judicial Council's Criminal Law Advisory Committee to request that the committee support the forum's request. As a result of his presentation, the chair of the Criminal Law Advisory Committee joined in the forum cochairs' follow up letter to the Attorney General to request a meeting to determine what, if any, legislative changes would be necessary to give tribal courts authority to directly enter their protective orders into CARPOS. The letter underscores the need to find, as part of a solution, an approach, which will garner support for such a DOJ initiative and assure our justice partners that tribal court access to CARPOS is not tribal law enforcement access to CLETS.

8) Upcoming Conferences

Judge Blake and Judge Williams described two upcoming conferences:

- 28th Annual California Indian Conference and Gathering
October 3-5, 2013 in Sacramento, CA

The California Indian Conference and Gathering is an annual event for the exchange of views and information among academics, educators, California Indians, students, tribal nations, native organizations and community members focusing on California Indians. For more information see this link:

<http://californiaindianconference.org/>

- 2013 National Tribal Judicial Conference & NAICJA Annual Meeting
October 9-11, 2013 in Cabazon, CA

The National American Indian Court Judges Association (NAICJA) is pleased to announce that the 2013 National Tribal Judicial Conference & NAICJA Annual Meeting will be held at the Morongo Casino Resort & Spa in Cabazon, California on October 9 – 11, 2013. This theme for this year's conference is *Renewing and Strengthening Tribal Justice System Foundations*. The Conference is open to the public and will provide information, training and networking opportunities for judges, court personnel and other persons interested in American Indian & Alaska Native tribal justice systems. For more information see this link:

<http://naicja.org/events/2013conference>

- 9) HR 3030 (Introduced August 2, 2013, referred to House Ways and Means) (Jenny)
On behalf of Judge Abinanti, Jenny described HR 3030 and requested that members consider sending letters of support for HR 3030.

This bill would amend the Internal Revenue Code and the Social Security Act to ensure that tribal child support enforcement agencies have the authority to access parent locator services, which are currently only available to state and local governments but not tribes.

Also, the tax code would be amended to allow tribal child support enforcement agencies to enforce orders for support through the authority to withhold past due child support payment from the federal income tax returns of parents with past due obligations.

Letters of support should be directed to:

- Chairman Dave Camp, Ways and Means Committee Office, 1102 Longworth House Office Building, Washington D.C. 20515
- Tony Cardenas, California, 29th District, Subcommittee on Indian and Alaska Native Affairs, Committee on Natural Resources, 9300 Laurel Canyon Blvd., Second Floor, Arleta, CA 91331
- Doug LaMalfa, California, 1st District, Subcommittee on Indian and Alaska Native Affairs, Committee on Natural Resources, 1453 Downer Street, Suite A, Oroville, CA 95965
- Raul Ruiz, California, 36th District, 777 East Tahquitz Canyon Way, Suite 338, Palm Springs, CA 92262

For more information on this bill:

http://waysandmeans.house.gov/uploadedfiles/national_congress_of_american_indians_17.pdf and <http://www.govtrack.us/congress/bills/113/hr3030>

10) Other Announcements/Information

Judge Marston shared these announcements:

- Information on 638 contracting

Most tribal justice systems are funded with tribal resources, grants, and funds through the Tribal Priority Allocation portion of the tribe's Indian Self-Determination Act, 25 U.S.C. § 450f (2000), a contract with the government (which authorizes the process popularly known as "638" contracting). Judge Marston reported that California tribal courts are not receiving 638 funds. As a related issue, Judge Marston reported on a recent case upholding the denial of 638 contracts for tribal law enforcement in PL 280 States. This case is summarized below and the opinion can be found at the link.

- *Los Coyotes v. Sally Jewel*, Case No. 11-57222; D.C. No. 3:10-cv-01448-AJB-NLS
<http://cdn.ca9.uscourts.gov/datastore/opinions/2013/09/04/11-57222.pdf>

From the court's syllabus:

The panel reversed the district court's summary judgment in favor of the Los Coyotes Band of Cahuilla and Cupeño Indians, and the court's finding that the U.S. Secretary of the Interior violated the Indian Self-Determination and Education Assistance Act, the Administrative Procedure Act, and the Fifth Amendment's guarantee of equal protection when the Secretary declined to enter into a self-determination contract with the Tribe to fund law enforcement on the Los Coyotes Reservation.

The panel held that the Secretary properly rejected the Tribe's contract request. The panel also held that the Tribe's reliance on the Indian Self Determination and

Education Assistance Act was misplaced because the Act allows the Tribe to take control of existing programs and obtain funds that the Bureau of Indian Affairs (“BIA”) would otherwise spend on those programs, but here there was no existing BIA program, and therefore nothing to transfer to the Tribe. The panel further held that the Administrative Procedure Act did not authorize the court to review the BIA’s allocation of law enforcement funding in Indian Country. Finally, the panel held that the BIA’s funding policy did not violate the Fifth Amendment’s equal protection guarantee.