

California Tribal Court/State Court Coalition

Judicial Council Conference Center

San Francisco, California

June 29, 2010

10:00 a.m. to 4:00 p.m.

Present: Hon. Richard C. Blake, Cochair, Hon. Richard D. Huffman, Cochair, Chief Justice Ronald M. George, Mr. William C. Vickrey, Hon. Abby Abinanti, Hon. Jerilyn L. Borack, Hon. Anthony Brandenburg, Hon. Michael Golden, Hon. Charles Henry, Mr. Olin Jones, Hon. Lester Marston, Hon. Robert Moeller, Hon. Dennis M. Perluss, Hon. Steven Z. Perren, Hon. Deborah A. Ryan, Hon. Deborah L. Sanchez, Hon. Dean Stout, Hon. Juan Ulloa, Hon. Claudette E. White, Hon. Christine Williams, Hon. Christopher G. Wilson.

Committee Counsel: Ms. Jennifer Walter

Staff: Ms. Vida Castaneda, Ms. Donna Clay-Conti, Dr. Charlene Depner, Ms. Ann Gilmour, Ms. Susan M. McMullan, Ms. Diane Nunn, Mr. Patrick O'Donnell, Ms. Anne Ronan, Mr. Courtney Tucker.

Welcome and Introductions

The Chief Justice of California, Chief Justice Ronald M. George, launched the first meeting of the California Tribal Court/State Court Coalition (“Coalition”) by welcoming the members and thanking them for their service. He stated that the state courts are committed to a single fundamental mission: to improve access to justice for all Californians, a mission the state courts share with tribal courts. He specifically recognized Judge Blake for his initiative in opening the door to the possibilities of a closer working relationship between tribal and state courts. He noted that in addition to their service on this body, Judge Blake and Judge Brandenburg will be joining him on the California State-Federal Judicial Council. In closing, the Chief Justice of California remarked that this is an historic moment for California where tribal court judges and state court judges come together as equal partners to discuss experiences, work jointly to solve problems, create cooperative plans, and share resources and planning. He informed the members that he looked to them for recommendations to improve judicial administration in our communities and stressed that the work of this body will benefit not only the individuals who seek the protection and services of our courts, but also our communities and the state itself.

The cochairs then gave a heartfelt welcome to all the members and then each member introduced him or herself.

Coalition Structure Discussion

Members discussed the purpose, structure, and values of the coalition. Members reviewed the coalition’s proposed charge and scope of work. Some members gave positive feedback on the first draft and all agreed they wanted more time to review it. After some discussion about the coalition’s name, it was agreed that the coalition would be renamed to the “California Tribal Court/State Court Forum” due to concerns raised by some members about how the term “coalition” may be perceived in tribal communities.

Action Item: Members agreed to review the coalition's proposed charge and scope of work which was distributed at the meeting, make revisions, and propose guiding values and principles for discussion at the first regularly scheduled conference call on July 28, 2010.

Overview of California Tribal Courts

Judge Richard C. Blake provided background information on tribal courts operating in California. Several tribal court judges gave information about their particular courts. Members received a binder, entitled California Tribal Court Descriptions, containing tribal court information on the existing 19 tribal courts in California: Big Valley Rancheria Tribal Court; Bishop Paiute Indian Tribal Court; Blue Lake Rancheria Tribal Court; Chemehuevi Indian Tribal Court; Colorado River Indian Tribes Tribal Court; Fort Mojave Tribal Court; Hoopa Valley Tribal Court; Hopland Band of Pomo Indians Tribal Court; Inter-tribal Court of Northern California; Inter-tribal Court of Southern California; Karuk Tribal Court; Morongo Tribal Court; Quechan Tribal Court; Redding Rancheria Tribal Court; Resighini Rancheria Tribal Court; San Manuel Tribal Court; Smith River Rancheria Tribal Court; Washoe Tribal Court; and Yurok Tribal Court. Members also received law journal articles describing indigenous justice systems, and discussed briefly the difference between tribal and non-tribal justice systems.

Recognition and Enforcement of Protective Orders

Judge Blake and Justice Huffman introduced the topic.

Mr. Olin Jones discussed the magnitude of the problem and the specific challenges faced by Native American victims of family violence in accessing services, the courts and police protection. He provided the following statistics:

- Native women experience the highest rate of violence of any group in the United States;
- More than 1 in 3 American Indian/Alaska Native women will be raped during their lifetime
- 2.5 times more likely than non-Native women;
- Sexual violence is one of the most under reported crimes; and
- The majority of these crimes are committed by non-Natives.

Mr. Jones summarized the Administrative Office of the Courts' (AOC) Native American Community Justice Project, commended the AOC for adopting a strategic approach respecting tribal sovereignty and engaging the diverse tribal communities in California, and directed members to read the policy and research papers resulting from this project that was included in their meeting binders. Mr. Jones presented some of the key findings of the project and gave an account of his experience and the work that is being done by his office and by law enforcement to address the problem.

Mr. Jones and Judge Borack facilitated a discussion on the challenges facing Native American victims of family violence. Members discussed local intergovernmental agreements that are working to ensure the recognition and enforcement of tribal court protective orders. Members agreed that the coalition/forum should identify statewide strategies for improving full-faith and credit and enforcement of tribal court protective orders, including potentially recommending legislation, rules of court, court forms, and developing curriculum for judges. Justice Huffman

asked the chairs of the relevant Judicial Council Advisory Committees in attendance to ask their respective committees to consider the issue.

Members described some of the local protocols that are working in their jurisdictions. Judge Moeller described the Chemehuevi Intergovernmental Agreement; Judge Blake described the cross-deputization agreements with the Hoopa Tribe; and Judge Stout described the local protocol with the Washoe Tribe and the Bishop Paiute Tribe to ensure that their tribal court protective orders are registered with the state court using Judicial Council form DV-600 as a pragmatic solution to ensuring that these orders are entered into the California Law Enforcement Telecommunications System (CLETS).

Action Item: Members will identify and discuss strategies for improving full-faith and credit and enforcement of tribal court protective orders, such as (1) potential legislation to authorize tribal court entry of tribal protective orders into CLETS and (2) potential rule of court to provide guidance that the registration option through form DV-600 is available as a pragmatic solution pending a more permanent legislative solution. Place on agenda at a future conference call meeting.

Meeting with the Lakota Delegation

Mr. William C. Vickrey made remarks on the importance of the work of the coalition/forum and welcomed the Lakota Nation tribal delegation. Mr. Vickrey stated that he was pleased to see that the work that was begun during the meeting of December 21, 2009 had come to fruition with the Chief Justice of California's appointment of this coalition/forum. He echoed the Chief Justice's commitment to and support of this important effort to improve collaboration between California's state and tribal courts and he gave a personal account of his work in Utah and how he developed an interest in and respect for tribal courts. Mr. Vickrey welcomed the delegation from the Lakota Nation and pointed out that as we in California tackle the issues confronting us, it is important to draw upon and learn from the successful models of collaboration across the country.

Judge Blake introduced and further welcomed the following visiting members of the Lakota Nation tribal delegation: Chief Judge Saunie Wilson; Ms. Elizabeth Lorina, Tribal Attorney, Oglala Lakota Tribal Court; and Ms. Jolene Abourezek, Tribal Social Worker, Oglala Nation Tiospaye Resource and Advocacy Center. The Lakota delegation shared that they are visiting California because they have many and children in foster care in California and resources to reunite those children with family who can give them a sense of belonging to their Tribe. They are exploring the possibility of holding tribal court proceedings in California in order to take jurisdiction over cases involving their children who reside in California.

Sharing Resources

Judge Blake and Judge Wilson facilitated a discussion on how local and state courts working together can creatively find ways to share resources. The discussion turned to the resource needs of many tribal courts in California and how this body can serve to identify and leverage funds to support tribal justice systems. Judge Henry listed the ways that the AOC has provided resources, such as sharing training and other resources, reimbursement of expenses to attend educational events (e.g. the Beyond the Bench Conference in June 2010), grant-writing workshops, letters of

support for tribal applications for federal grants, and providing Judicial Council forms in a format for tribal courts to adapt. In the context of sharing resources, Judge Henry touched on how tribal courts reflect the values and concerns of their local communities, and how these values are resources that tribal communities have to share with non-tribal justice systems. Members agreed that tribal courts and state courts have much to learn from each other. Judge Henry raised as a guiding principle for the work of the coalition the principles of the Great Law of Peace of the *Haudenosaunee* and the Two Row Wampum Treaty.

Judge Stout described the local tribal/state court collaboration he and Judge Kockenmeister have. Judge White and Judge Ulloa described their collaborative efforts. Judge Blake and Judge Wilson gave highlights of their collaboration.

Ms. Jennifer Walter acknowledged that it is through these cooperative ventures, both on the part of local tribal and state courts, and the members of this forum that we will be able to succeed maximizing our resources and solving problems facing both tribal and state judicial systems.

Action Item: Members agreed to seek ways to continue sharing and learning from one another. Consider the principles of the Great Law of Peace of the *Haudenosaunee* and the Two Row Wampum Treaty as guiding the work of the coalition at the first regularly scheduled conference call on July 28, 2010.

Enforcement of Other Orders

Judge Blake and Justice Huffman introduced the topic of recognition of parallel judgments and provided the following information. Tribes are not considered to be “states” for the purposes of the U.S. Constitution Article IV Full Faith and Credit requirement. There are several areas (child custody which is addressed by both the Indian Child Welfare Act and the Uniform Child Custody Jurisdiction and Enforcement Act; child support; domestic violence protective orders) where federal law has mandated full faith and credit and enforcement of tribal court orders by states and state courts. Outside of those specific case types, tribal court orders are entitled to comity.

Civil Money Judgments

Ms. Ann Gilmour described the legislative proposal which Judge Marston drafted on behalf of the Chemehuevi Tribe regarding enforcement of civil money judgments issued by tribal courts. It was decided that the draft legislation would be discussed in more detail as part of a future conference call when Judge Marston could be present.

Action Item: Place on agenda at a future conference call meeting.

Child Custody and Support

Judge Borack and Judge White facilitated the discussion on mutual recognition and enforcement of child custody and support orders. Judge White described her tribal court’s practice and how it is subject to change as a result of tribal governmental changes. Justice Huffman asked that the chairs of relevant Judicial Council advisory committees examine what changes may be possible to council rules and forms to better foster full faith and credit and recognition of tribal custody and support orders and specifically look at changes to council forms implementing the Uniform

Child Custody and Jurisdiction and Enforcement Act (UCCJEA) to ensure that they include orders from tribal courts.

Action Item: Family and Juvenile Law Advisory Committee to review rules and forms.

Traffic

Judge Brandenburg and Commissioner Ryan facilitated the discussion, and presented issues concerning traffic and motor vehicle regulation on Indian lands. Members discussed the issue of dual prosecution in tribal and state court. Members also discussed the line between those laws which are “civil regulatory”, and therefore do not apply on tribal lands, and those that are “criminal prohibitory” and do apply. Judge Blake raised the challenges of ensuring adequate deterrence and protection against habitual driving under the influence (DUI) offenders when tribal courts do not have criminal jurisdiction over non-Indians and have no mechanism for having their findings recognized by the California Department of Motor Vehicles (DMV). This discussion led to the question of whether and how tribal court DUI-type violations can be reported to the DMV just as the state courts generally report them. In his court, Judge Blake has decided that all DUIs should be referred to the local police to be punished as a criminal matter. Judge Abinanti described the Yurok Tribe’s Wellness Court and that the Yurok Tribe is exploring the issuance of its own driver’s licenses and plates and regulations in order to address what is a public health problem in Indian Country through court-connected treatment programs of the Yurok Tribal Wellness Court. This discussion led to the question of whether and how these tribally issued driver’s licenses and license plates would receive recognition outside of tribal lands.

Action Item: Obtain assistance from the DMV to facilitate reporting of tribal court judgments to the DMV and improve tribal court access to the DMV records.

Trespass and Warrants

Justice Perren facilitated the discussion on trespass and warrants. The meeting materials presented the issue of trespass by posing the question of whether local county law enforcement can assist to remove an individual who is trespassing on tribal lands. Members discussed that tribes, as sovereign entities, have the right to control who enters their tribal lands, and that in some cases, tribes will specifically exclude certain individuals from their tribal lands. For example, an order of “exclusion” can be a remedy that a tribal government or tribal court uses against an individual found to have committed family violence on tribal lands. This discussion led to jurisdictional questions about California as a Public Law 280 State.

Action Item: Place on agenda at a future conference call meeting. Consider education on Public Law 280 for interested members.

Sharing/Allocation/Transfer of Jurisdiction

Judge Blake and Judge Wilson opened the discussion with the idea and local practice that state and tribal courts are finding new ways of working in order to tackle the complex jurisdictional issues in times when both state and tribal courts are facing budget shortfalls. Tribal and state courts have similar needs to access substance abuse programs, probation services, and other services. They are both responsible for meeting the needs of clients who live within the other’s

jurisdiction. Finding creative ways to share, allocate, and transfer jurisdiction, as well as leverage court-connected services is our goal. Judge Stout echoed this sentiment, observing that state and tribal courts can find new ways of working together to share jurisdiction, when appropriate, for example in juvenile cases, in a manner similar to how some local state courts are handling dual jurisdiction (dependency and delinquency) cases.

Judge Blake referred members to the Teague Protocol (included in the meeting materials) as an approach which he would like to see emulated in California.

Judge Abinanti and Judge Wilson discussed the problem of tribal access to juvenile records and referred the members to the legislative proposal (included in meeting materials) to give tribal access to juvenile court records, not only when there is a pending state juvenile court matter, but also when there is not pending state court case, and the tribal court is deciding whether to take jurisdiction or has taken jurisdiction and is making placement or other orders. The members reached consensus that the Welfare and Institutions Code section 827 should be amended to allow for tribal access particularly for tribal courts with dependent children either in tribal or state court proceedings. Justice Huffman referred the legislative proposal to the Family and Juvenile Law Advisory Committee for further discussion and possible recommendation to the Judicial Council for legislative action.

Action Item: Legislative proposal referred to the Family and Juvenile Law Advisory Committee. Consider incorporating the idea of finding creative ways to share, allocate, and transfer jurisdiction, as well as leverage court-connected services as a guiding value at our next meeting on Values and Guiding Principles.

Adjourned

Judge Blake and Justice Huffman thanked members for their participation, and directed members to the last page in their meeting materials where they could find the coalition/forum's schedule of monthly conference calls and twice yearly in-person meetings.