

California Tribal Court/State Court Forum

Judicial Council Conference Center

San Francisco, California

July 5, 2011

12:00 p.m. to 1:00 p.m.

Present: Hon. Jerilyn L. Borack, Hon. Michael Golden, Hon. Cynthia Gomez, Mr. Olin Jones, Hon. Suzanne N. Kingsbury, Hon. David E. Nelson, Hon. Steven Z. Perren, and Hon. Juan Ulloa

Committee Counsel: Ms. Jennifer Walter

Staff: Ms. Heather Anderson, Ms. Vida Castaneda, Ms. Ann Gilmour, Ms. Bonnie Hough, and Ms. Kimberly Papillion

Welcoming Remarks and Introductions

Ms. Walter opened the meeting and reviewed the agenda items: (1) discussion of staff's proposed responses to comments received on the two forum proposals— Protective Orders: Registration and Enforcement of Protective Orders Issued by Tribal Courts and Appellate Procedure: Ensuring Tribal Receipt of Records on Appeal of Juvenile Cases and (2) brainstorming workshop ideas for Beyond the Bench, scheduled for December 14 – 16, 2011.

Protective Orders: Registration and Enforcement of Protective Orders Issued by Tribal Courts

Forum members discussed the proposals, comments, and staff's proposed responses to those comments and had no changes to this proposal.

Next Steps: The Family Law Advisory Committee will review the proposal, comments, and staff's proposed responses on Thursday, July 14, 2011. If the advisory committee has proposed changes, staff will make those and bring the revised proposal back to the forum for its review. Once the proposal is reviewed and approved by both the forum and the advisory committee, it will be forwarded to the Rules and Forms Committee of the Judicial Council for its consideration on October 28, 2011.

Appellate Procedure: Ensuring Tribal Receipt of Records on Appeal of Juvenile Cases

Forum members discussed the proposals, comments, and staff's proposed responses to those comments. Forum members had several questions and suggested revisions. Specifically with respect to subsection 8.409 (d) (1) (B) one forum member expressed concern that the reference to tribe which appears at line 22 of the current proposal is abrupt and lacking context.

The forum also discussed the issue raised by the Superior Court of San Diego County at comment 7 concerning whether the transcript needs to be sent to the tribal chair by registered or certified mail, return receipt requested. Forum members asked staff to determine whether under the Indian Child Welfare Act, this requirement applies not only to notices of proceedings, but to all other documents associated with the litigation.

Following the discussion by the forum, staff have confirmed that federal and state law (25 USC 1912 (a); 25 C.F.R. 23.11 and Welf. & Inst. Code 224.2) require notice of proceedings to be sent to the tribal chairman or other designated agent by registered or certified mail, return receipt requested. It does not appear that this requirement would extend to the appellate record. In light of this it seems that the second sentence in Rule 8.409 (d) (1) (B) which staff suggested might added in light of the comments from the Superior Court of San Diego County is in fact unresponsive and unnecessary. Staff therefore suggest removing this sentence and also revising the Committee Response to the comment of the Superior Court of San Diego County. To respond to this comment, staff instead suggests that the committee consider adding clarifying language in the Advisory Comment.

Staff also raised the question of seeking recovery of costs for the preparation of the transcript, and noted that the current statute provides for cost recovery only from appellant, and not from other parties. Staff asked the forum to consider recommending a legislative proposal to extend cost recovery to all parties, including tribes. One member expressed the importance of taking cost saving measures, but noted that sometimes the expense of seeking reimbursement of such costs can be more than the actual cost of preparing the transcript. This member asked staff for clarification on whether the current statute mandates cost recovery or is discretionary. Staff cited Welfare and Institutions Code section 800(e) which provides that “[t]he record shall be prepared and transmitted immediately after filing of the notice of appeal, without advance payment of fees. If the appellant is able to afford counsel, the county may seek reimbursement for the cost of the transcripts under [subdivision \(c\) of Section 68511.3 of the Government Code](#) as though the appellant had been granted permission to proceed in forma pauperis.” After discussion, forum members directed staff to explore with the appropriate advisory committees the development of a legislative proposal to authorize such costs recovery from all parties.

Next Steps:

(1) Staff to draft revisions based on discussion, and recirculate to forum members for their consideration. A revised version will be circulated to the Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee for their review on Thursday, July 14, 2011. Once the proposal is reviewed and approved by both the forum and the advisory committees, it will be forwarded to the Rules and Forms Committee of the Judicial Council for its consideration on October 28, 2011.

(2) Staff to explore with the Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee developing legislation to authorize the court to seek reimbursement from all parties for the cost of preparing the transcripts on appeal.

Post Forum Meeting- Draft Revisions to Proposal

Based on the forum’s direction to staff and follow-up research, staff recommend that the proposed rule be revised to read:

(B) One copy of each transcript to the appellate counsel for the appellant, the respondent, and the minor, and, the minor’s Indian tribe, if the tribe has intervened.
Notice to intervening tribes must be sent by registered or certified mail with return

~~receipt requested to the tribal chairperson, unless the tribe has designated another agent for service.~~

Staff recommend that the Committee Response to comment 7 read:

Pursuant to federal and state law (25 U.S.C. 1912 (a); 25 C.F.C. 23.11; Welf & Inst. Code section 224.2, only Notice of Hearings must be sent by registered or certified mail with return receipt requested addressed to the tribal chairperson, unless the tribe has designated another agent for service. Therefore the forum and the committee do not believe that this requirement extends to the appellate record. For clarity the forum and committee have revised the proposal to add language to the Advisory Committee Comment addressing this issue.

Staff recommend that the Advisory Committee Comment for Rule 8.409 be revised as follows:

Advisory Committee Comment

Subdivision (a). Subdivision (a) calls litigants' attention to the fact that a different rule (rule 8.416) governs *sending* the record in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties. Rule 8.408(b) governs *preparing and certifying* the record in those appeals. (See rule 8.416(c)(1) ["The record must be prepared and certified as provided in rule 8.409(b)".])

Subdivision (d). Subsection (1) (B) clarifies that when a minor's Indian tribe has intervened in the proceedings, the tribe is a party who must receive a copy of the appellate record. However, 25 U.S.C. 1912 (a), 25 C.F.R. 23.11 and Welf. & Inst. Code 224.2 which require that notices be sent to a tribe by registered or certified mail return receipt requested and addressed to the tribal chairperson, unless the tribe has designated another agent for service, do not apply to the sending of the appellate record.

Beyond the Bench Conference- Brainstorming

The forum discussed the enormous benefits for state court judges to visit and observe tribal courts. Without funding to facilitate these types of visits, one member suggested having an actual or mock tribal court proceeding at Beyond the Bench. Forum members generally liked the idea and directed staff to ask the Education Committee of the Forum to explore whether such a plenary or workshop session would be feasible.