

California Tribal Court/State Court Forum

Conference Call

August 25, 2010

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

Present: Hon. Abby Abinanti, Hon. Richard C. Blake, Hon. Jerilyn L. Borack, Hon. Michael Golden, Hon. Charles N. Henry, Hon. Richard D. Huffman, Mr. Olin Jones, Hon. Lester J. Marston, Hon. Dennis M. Perluss, Hon. Steven Z. Perren, Hon. Deborah A. Ryan, Hon. Dean Stout, Hon. Claudette White, Hon. Christopher G. Wilson, and Hon. Christine Williams.

Judge-In-Residence: Hon. Leonard P. Edwards

Committee Counsel: Ms. Jennifer Walter

Staff: Ms. Vida Castaneda, Ms. Ann Gilmour, Ms. Susan McMullen, and Ms. Anne Ronan.

Welcome and Introductions

The cochairs welcomed the Forum members. After everyone introduced themselves, Justice Huffman reviewed the following agenda topics and goals for the meeting: (1) to review and adopt values and principles to guide the forum's work; (2) to learn about and discuss the problem of lack of tribal access to tribe-specific data; (3) to receive a status report on the legislation proposed by the Chemehuevi Tribe relating to the enforcement of orders; (4) to discuss CalEMA funding for a training for forum members based on the needs assessment conducted as part of the Native American Community Justice Project.

Principles and Values

Justice Perren recommended a number of revisions to the draft values and principles, which the members discussed and adopted as follows:

Principle number 11.

Tribal and State justice systems will necessarily look different because there are procedural ~~and~~ substantive and cultural differences in how they deliver justice ~~which relate to the difference between cultures.~~

Principle number 12.

Tribal and State justice systems both value justice, however, they may not always agree on what those justice systems look like ~~or what justice is in a particular situation.~~

Principle 14.

Tribal Courts and the Courts of the State of California and their justice partners have much to learn from one another, and when difference occur, tribal and state court judges agree to discuss ~~communicate about~~ those differences and convene justice partners to discuss them ~~those~~ differences.

Principle 15.

The desire for consensus and community-wide harmony serve as a philosophical ~~example of indigenous principles that tribal and state court judges can use to communicate and transcend those differences~~ basis for tribal and state court judges to use to bridge those differences.

Members discussed deleting principle number 13— *Neither Tribal nor State justice systems have an exclusive franchise on the best way to deliver justice*— as redundant and well-covered in other principles, but concluded that the point was important enough to emphasize and would serve to educate others since the forum’s values and principles are a public document.

Members discussed deleting the word, *religion*, from principle 15— *Mutual respect implies understanding and acceptance of the other person’s culture, religion, and background*. To summarize, the reasons in support of deletion related to: (1) the overriding constitutional principle requiring separation of Church and State and (2) the fact that the statement assumes that everyone is religious. The reasons in opposition to deleting the term related to: (1) the fact that Native American culture and beliefs are inextricably bound up with religion and spirituality and (2) Tribal governmental institutions are not bound by the Constitutional separation of Church and State and the federal government by enacting the American Indian Religious Freedom Act recognizes that a policy of neutrality on religious matters has not been sufficient to protect the religious freedom of American Indians.

In the discussion that followed, it was suggested that the word, *religion*, be replaced with *beliefs*.¹

Members discussed clarifying the value relating to *Closing Justice Gaps* and identified some of the state court access issues summarized in the Native American Community Justice Project Research Report, such as the complex maze of jurisdictional issues, the distance between tribal lands and the nearest state courthouse, the lack of knowledge in tribal communities about how to access and use the state courts and court-connected services, the lack of adequate services and resources to meet the needs of Native people. The cochairs directed staff to rework this value and recirculate the document for further comment.

Action Item: Staff will revise proposed principles and values, circulate the document for additional feedback and then finalize the document at its next conference call meeting on September 22, 2010.

Access to Tribe-Specific Data

Ms. Walter introduced the topic and explained why the AOC hired Tribal Law and Policy Institute to work with its researchers to begin addressing the problem of the lack of tribal access to data. She referenced the Native American Community Justice Project (NACJP) and the important role the Tribal Law and Policy Institute and other tribal consultants played in helping the AOC understand the problem. She introduced the two co-presenters, James F. Mensing, Senior Research Analyst with the Administrative Office of the Courts’ Center for Families, Children & the Courts, and Heather Valdez Singleton, Deputy Director of the Tribal Law and Policy Institute in Los Angeles California.

¹ Since this meeting, forum members decided it would be worthwhile to retain the word, *religion*, and reopen the discussion at the next conference call.

Ms. Singleton summarized the research relating to the lack of data that was documented in the NACJP reports, and specifically some of the problems in collecting data on criminal justice issues in Indian country and how there are additional obstacles in California as a Public Law 280 State. She explained that because first responders to calls from a reservation dealing with family violence are usually county deputy sheriffs, it is within county sheriff's departments that reservation level data can be found, but many sheriffs in the state, however, do not keep separate data at the reservation level; instead data is often lumped together into a larger "beat" that includes surrounding non-Indian communities. Similarly, when it comes to child welfare data, the California Department of Social Services' Child Welfare System/Case Management System does not break out by Tribe the children in its database.

This lack of data (crime statistics, family violence, and child welfare) specific to Native Americans has at least two serious implications: (1) it makes the magnitude of the problem difficult to assess because it is not documented; and (2) it creates obstacles for tribes to secure funding to address family violence issues because most grant proposals require that the potential grantee provide data to document the problem.

Ms. Singleton described the two goals of the current project—to identify the sources of data and how to access that data. There are six types of data the project is looking at: (1) child welfare; (2) elder abuse; (3) juvenile delinquency; (4) family violence; (5) crime; and (6) health. The project will produce a report with recommendations and annotated bibliography on data sources, and a virtual Native American data community which it is hoped will be updated by the community.

Forum members expressed interest in reading the report and adopting recommendations to improve the collection of the different types of tribe-specific data and the access to such data by tribes, tribal courts, and state courts.

Action Item: Staff will distribute draft reports to the forum and place on the agenda for next steps.

Status Report on Chemehuevi Legislative Proposal

Judge Marston reported that the Chemehuevi Tribe is still pursuing a legislative sponsor for its proposal, and believes the Chemehuevi Tribe's representative will carry the legislation in January. Judge Marston welcomed forum members' feedback on the proposal.

CalEMA Funding

Ms. Walter reported that the AOC received funding to conduct a training for tribal court and state court judges based on the needs assessment conducted as part of the Native American Community Justice Project. Ms. Walter informed members that they will have an opportunity to identify the specific training topics consistent with the following CalEMA funding goals: to increase state court understanding of tribal justice systems and to identify emerging issues and to propose mutually agreed upon solutions within the areas of domestic violence, sexual assault, teen dating violence, stalking, and elder abuse.

Ms. Walter thanked Judge Blake for graciously offering to host this training at Hoopa at one of the forum's in-person meetings. Judge Blake described some of the planning he has already undertaken for the training, which will likely be at the forum's June 2011 meeting. Some of these plans include: (1) a presentation and no host hors d'ouvres at Blue Lake Casino where members would stay the night before the training; (2) two vans would take members from Blue Lake to Hoopa, a drive of 45 minutes; (3) court observations; (4) a presentation by Northern Tribal Court Coalition members on their tribal justice systems; (5) visits to court-connected tribal organizations as they relate to improving practice and procedure in case types with allegations of domestic violence, sexual assault, teen dating violence, stalking, and elder abuse; (6) possibly a museum tour; and (6) a traditional salmon meal with tribal regalia.

Forum members thanked Judge Blake and offered to help training topics and planning.

Other Items

Judge Blake asked if there were additional items members wished to raise before the end of the meeting, and one member reported that federal court is holding hearings at the Hopland Tribal Court every other month.

Adjourned

Judge Blake adjourned the meeting and thanked members for their participation.

Next Meetings:

September 22, 2010 for Conference Call Meeting

September 30, 2010 for Webinar on Public Law 280

Thank you for your continued use of land lines when participating in conference calls as unfortunately the use of cell phones creates interference and difficulty hearing.