

CALIFORNIA TRIBAL COURT–STATE COURT FORUM

Forum E-Update

August 2014

TRIBAL COURT–STATE COURT FORUM

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Cochair

HON. DENNIS M. PERLUSS
Cochair

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FORUM PROPOSALS

(To view these and past proposals, see forum home page
<http://www.courts.ca.gov/3065.htm>)

SB 406: Tribal Court Civil Money Judgment Act, which will simplify and clarify the process by which tribal court civil money judgments are recognized and enforced in California. The Assembly and Senate passed the bill as amended, and it is before the Governor for his anticipated signature.
http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0401-0450/sb_406_bill_20140618_amended_asm_v96.pdf

AB 1618: Tribal Access to Confidential Juvenile Court Files, which provides tribal entities and officials with access to confidential juvenile court files and records for children who are members of the tribe or eligible for membership in the tribe. By explicitly including tribes, tribal officials, and tribal entities within the exception to the confidentiality of juvenile court files, the bill will solve a conflict between federal and state law on one side, and juvenile courts on the other.

Chaptered as Stats. 2014, Ch. 37, effective January 1, 2015.
http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1601-1650/ab_1618_bill_20140625_chaptered.pdf

SB 940 Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) Proposed for California: The California Judicial Council approved submission of comments to the California Law Revision Commission (CLRC) for adoption in California of a modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act to address issues involving conservatorships for members of Indian tribes located California. After the summer legislative recess, this bill will be heard by the Assembly and is currently on the consent calendar. The California Judicial Council supports this bill. This bill was amended in the Assembly and is now before the Senate.
http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0901-0950/sb_940_bill_20140611_amended_asm_v95.pdf

JUDICIAL COUNCIL

JUDICIAL COURT OPERATIONS

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Tribal/State Programs Link:

<http://www.courts.ca.gov/programs-tribal.htm>

IN THE NEWS

[Governor Brown Signs Compact with Viejas Band of Kumeyaay Indians](#)

Governor Edmund G. Brown Jr. signed an amended tribal-state gaming compact between the State of California and the Viejas Band of Kumeyaay Indians. This compact converts the Tribe's fixed revenue share payment to the state into a percentage-based payment in order to account for the impact on revenue caused by changing economic conditions and to enhance the economic development, long-term stability and self-sufficiency of the Tribe. The percentage-based payment structure ensures that the Tribe remains the primary beneficiary of its gaming operation as required by federal law.

[Letter of Support–To Extend Adoption Tax Credit to Tribal Children](#)

The National Indian Child Welfare Association (NICWA) is circulating a letter of support for S. 2570, the Tribal Adoption Parity Act. This bill would ensure that families who adopt children designated as "special needs" in tribal court are eligible for the same flat adoption tax credit as families who adopt children who are designated as "special needs" in state courts.

[Collaborative and Effective Evaluation in Tribal Communities: The Roles and Voices of Key Stakeholders](#)

This is a new publication. A Roadmap for Collaborative and Effective Evaluation in Tribal Communities, which promotes more collaborative and effective evaluation with tribal communities.

[Rising Waters, Rising Threats: The Human Trafficking of Indigenous Women in the Circumpolar Region of the United States and Canada](#)

By Victory Sweet (February 20, 2014). MSU Legal Studies Research Paper No. 12-01. Abstract at link and paper available at SSRN: <http://ssrn.com/abstract=2399074>

[Tribal Parole Pilot Program SWO chosen for Pilot Program](#)

Press Release: Desk of South Dakota Governor Dennis Daugaard Today, nearly 30 percent of the inmates in the South Dakota state prison system are Native American. More than half of parolees who abscond from the state parole supervision are Native Americans. In many of these cases, the absconders are returning to one of the reservations, where they often have homes and families. Unfortunately, because the state lacks jurisdiction on the reservations, state parole agents can no longer supervise parolees who return to a reservation. Under the South Dakota Public Safety Improvement Act, the state has established the state tribal parole pilot program to allow some Native American offenders to serve their parole supervision on the reservation. Seven tribes that expressed interest in participating in the pilot.

These programs are supported with funds from the Office on Violence Against Women, U.S. Department of Justice that are administered through the Governor's Office of Emergency Services (CalOES), the U.S. Department of Health and Human Services, Court Improvement Program, and the California Department of Social Services.

EDUCATIONAL OPPORTUNITIES

New Website Launched—CJER Online

CJER Online consolidates all CJER websites into a single site for easy access to distance education, calendars, and registration. The new site is more accessible, user-friendly, and allows users to easily search CJER publications and distance education materials or register for programs.

The California Judicial Council's Center for Judiciary Education and Research (CJER) and Information Technology Services Office (ITSO) have been working to redesign the education portions of the Court Extranet and integrate them with the other CJER websites--staff education website, the programs calendar, and the course registration site--to create a single site. The concept was to create a user-friendly, integrated website for judicial education. <http://www2.courtinfo.ca.gov/cjer/cjeronline.htm>

Court Extranet:

The State Judicial Branch has a Court Extranet with educational and other resources for state court judges and tribal court judges. This website contains information relevant to all levels of judicial branch personnel and includes resources designed to meet education, facilities, financial, human resources, legal, special court projects, technology, and other informational needs. It also offers both current news and archived resources. For more information, please contact Carolyn Bernabe at 415-865-7556 or carolynn.bernabe@jud.ca.gov.

California Dependency Online Guide (CalDOG):

The State Judicial Branch has a Dependency Online Guide with dependency-related case law, legal materials, articles and other resources to California attorneys, judicial officers, social workers, tribal representatives, Court Appointed Special Advocates, and other child welfare professionals. This website contains up-to-date information for professionals working in child welfare, regardless of the size of the county, the employer, or the availability of legal and other resources in the local area. For more information, view the [CalDOG postcard](#). Subscriptions are free and available to professionals working in the field of juvenile dependency. [Log in or subscribe here](#).

Here is a sample of some of the key publications and case highlights that can be found on this website:

Publications:

[Straight Talk About Child Sexual Abuse: A Prevention Guide for Parents](#)

[Screening for Human Trafficking](#)

[Unaccompanied Minor Information and Resources](#)

Case law: Recently posted partial summaries of cases ordered published in May, June, & through July 22, 2014. Click on the case names below to access each case summary. The cases are:

[In re A.F., E058270](#), Orders removing siblings from de facto parents and denying 388 petition requesting placement of siblings with de facto parents reversed and remanded where: 1) court failed to consider whether removal and new placement were in siblings best interests; and 2) remand is necessary for the court to consider whether it is in siblings best interests to be returned to de facto parents and de facto parents be given a chance to adopt them, based on siblings circumstances on remand.

[In re G.P., D064965](#), Order terminating parental rights, and selection of adoption as permanent plan, affirmed, where: 1) court's findings under WIC 387 and determination that the beneficial relationship exception did not apply are supported by substantial evidence; and 2) parent invited the error he appeals, and regardless, the court's findings were sufficient to support termination of parental rights.

[In re G.B., A140107](#), Juvenile court's orders denying two 388 hearing requests by parent, and terminating parental rights, are affirmed, where: 1) failure to hold a hearing on modification requests does not amount to reversible error; 2) on the first 388, no abuse of discretion in finding parent failed to allege a prima facie case; 3) on the second 388, any possible abuse of discretion was harmless because parent had an opportunity to be heard; and 4) parental rights were properly terminated because substantial evidence supports the court's finding that the potential benefit to the children from a continuing relationship with parent was outweighed by benefits of adoption.

[Hector F. v. El Centro Elementary School District, D064035](#), In an action for damages on behalf of plaintiff's son and on plaintiff's own behalf, as a parent and taxpayer, requiring that defendant-school district comply with the requirements of the discrimination and harassment provisions of the Government Code and the Education Code, judgment dismissing plaintiff's claims is reversed and remanded, where: 1) court erred in sustaining defendant-school district's demurrer on the grounds plaintiff lacked standing; and 2) plaintiff's complaint argued a manifest public interest.

[San Joaquin Human Services Agency v. Superior Court, \(2014\) 227 Cal.App.4th 215](#), A petition for writ of mandamus challenging order continuing reunification services for parent is granted, where: 1) the findings in support of court's decision were not supported by substantial evidence; 2) the court failed to make required findings, and the facts necessary to make any of these required findings in evidence was insufficient; thus, 3) the court abused its discretion when it continued reunification services.

[In re I.P., \(2014\) 226 Cal.App.4th 1516](#), Order terminating parental rights is affirmed, where: 1) parent forfeited any argument related to a tribal customary adoption; 2) even without forfeiture of the argument, failure to address tribal customary adoption was harmless.

[In re Abbigail A., \(2014\) 226 Cal.App.4th 1450](#), Order requiring active effort by Department of Health and Human Services to enroll children in the tribe of their paternal great-aunt and great-grandmother is reversed and remanded, where: 1) CRC 5.482(c) and 5.484(c)(2) include the duty to enroll children in the appropriate tribe among the active efforts an agency must make on behalf of children who are eligible for tribal membership but who are not "Indian children" as defined in by Indian Child Welfare Act (ICWA) and state law; 2) ICWA and state law are inconsistent with the legislative definition of the class of protected Indian children, thus the Judicial Council lacked authority to expand the definition; therefore, 3) new judgment is required that does not provide the children with any of the protections for an Indian child under ICWA or state law, until such time that the presumed father or the children have in fact become enrolled members of the tribe.

[In re J.L., \(2014\) 226 Cal.App.4th 1429](#), Order declining jurisdiction and dismissing the petition is reversed and remanded, where: 1) there was substantial, evidence that child's parent who has been in and out of prison throughout the child's life, left child for two years with relatives who physically and sexually abused child; and 2) the record lacks substantial evidence to support the order of dismissal.

[In re Jonathan P., \(2014\) 226 Cal.App.4th 1240](#), Order denying 388 seeking custody of child or family reunification services, is reversed and remanded, where: 1) any harm resulting from the failure to apply section 361.2 to parent's request for custody did not result in prejudice, but 2) the juvenile court erred in denying parent reunification services.

[In re J.C., \(2014\) 226 Cal.App.4th 503](#), Termination of parental rights affirmed where: 1) mother's 388 petition failed to establish child's need for permanency and stability would be advanced by an order returning child to mother; and 2) no abuse of discretion in finding that parental benefit exception did not apply.

[In re I.G., \(2014\) 226 Cal.App.4th 380](#), Return of child to parent and termination of dependency reversed and remanded where: it is an abuse of discretion to make findings that a child is at risk at home, yet returns the child home and terminates dependency.

[In re I.R., \(2014\) 226 Cal.App.4th 201](#), Reversal of orders placing children in long-term foster care as a permanent plan where: 1) there was a lack of substantial evidence in findings regarding 366.26(c)(1)(B)(i) and 366.26(c)(1)(B)(v) and 2) the juvenile court abused its discretion in ordering a permanent plan of long-term foster care; thus the juvenile court is directed to enter orders terminating parental rights and place children for adoption.

[Jason P. v. Danielle S., \(2014\) 226 Cal.App.4th 167](#), In a paternity action to establish paternity of a child conceived through in vitro fertilization (IVF) using donated sperm, trial court erred in concluding Family Code section 7613 precluded sperm donor father's claims, where: 1) 7613(b) does not preclude sperm donor father from establishing that he is a presumed parent under section 7611(d) based upon post-birth conduct; thus here, sperm donor father was denied the opportunity to present evidence to show that he is the child's presumed father under section 7611(d).

[In re J.C., \(2014\) 226 Cal.App.4th 503](#), Termination of parental rights affirmed where: 1) mother's 388 petition failed to establish child's need for permanency and stability would be advanced by an order returning child to mother; and 2) no abuse of discretion in finding that parental benefit exception did not apply.

[In re Isabella F., \(2014\) 226 Cal.App.4th 128](#), Court's jurisdictional findings reversed and remanded, where the record lacks substantial evidence supporting the findings that the child suffered serious physical harm and faced a substantial risk of further harm.

[In re M.V., \(2014\) 225 Cal.App.4th 1495](#), The juvenile court's order dismissing dependency jurisdiction declaring child to be a ward of the court, and placing in out-of-home care is affirmed, where: 1) the timeliness of the Welfare and Institutions Code section 241.1 assessment in this appeal cannot be challenged; 2) record supports court's 241.1; hence not an abuse of discretion; and 3) challenges to the underlying conviction, to which she agreed to plead guilty, fail.

[K.I. v. Wagner, \(2014\) 225 Cal.App.4th 1412](#), An individual who is denied state or local social services may challenge the denial through an administrative hearing process administered by the state Director of Social Services (Director). If the party receives an unfavorable administrative decision, the exclusive remedy is a petition for writ of mandate in the superior court. (Welf. & Inst. 2 Code,1 § 10962.) Section 10962 governs this judicial review process and provides: "The applicant or recipient shall be entitled to reasonable attorney's fees and costs, if he obtains a decision in his favor."

[In re Felicity S., \(2014\) 225 Cal.App.4th 1389](#), Court concluded child's appellate counsel should not be publicly admonished for the manner in which she represented the child, hence Order to Show Cause discharged.

MORE EDUCATIONAL OPPORTUNITIES

[14th National Indian Nations Conference](#)

December 11-13 2014

Agua Caliente Reservations, CA

GRANT OPPORTUNITIES**Office of Tribal Self-Governance Program Planning Cooperative Agreement**

Deadline: August 29, 2014

The purpose of this Planning Cooperative Agreement is to provide resources to tribes interested in entering a Tribal Self-Governance Program (TSGP) and to existing Self-Governance tribes interested in assuming new or expanded Programs Services Functions and Activities (PSFAs). Title V of the Indian Self-Determination and Education Assistance Act (ISDEAA) requires a tribe or tribal organization to complete a planning phase to the satisfaction of the tribe. The planning phase must include legal and budgetary research and internal tribal government planning and organization preparation relating to the administration of health care programs. The planning phase helps tribes make informed decisions about which PSFAs to assume and what organizational changes or modifications are necessary to successfully support those PSFAs. A thorough planning phase improves timeliness and efficiency of negotiations and ensures that the tribe is fully prepared to assume the transfer of IHS PSFAs to the tribal health program. A Planning Cooperative Agreement is not a prerequisite to enter the TSGP and a tribe may use other resources to meet the planning requirements. Tribes that receive a Planning Cooperative Agreement are not obligated to participate in the TSGP and may choose to delay or decline participation based on the outcome of their planning activities. This also applies to existing Self-Governance Tribes exploring the option to expand their current PSFAs or assume additional PSFAs.

<http://www.ihs.gov/dgm/documents/HHS-2014-IHS-TSGP-0001.pdf>

American Indian/Alaska Native EHS Expansion and EHS-Child Care Partnerships

Deadline: October 6, 2014

The Administration for Children and Families (ACF) announces the availability of \$14,683,125 to be competitively awarded for the purpose of expanding access to high-quality, comprehensive services to low-income infants and toddlers and their families through Early Head Start-Child Care (EHS-CC) Partnerships, or through the expansion of Early Head Start services. ACF solicits applications from public entities or private non-profit organizations, including community-based or faith-based organizations, or for-profit agencies that meet eligibility for applying as stated in section 645A of the Head Start Act. For more information, interested applicants should visit <http://eclkc.ohs.acf.hhs.gov/hslc/hs/grants/ehs-ccp>. Please note that the funding opportunity number (FON) has changed to HHS-2015-ACF-OHS-HI-R11-0825. <http://www.acf.hhs.gov/grants/open/foa/view/HHS-2015-ACF-OHS-HI-R11-0825>

Collaborative Partnership on Alcohol and Health Disparity Research Center

Deadline: December 18, 2014

This Funding Opportunity Announcement (FOA) invites applications for the implementation of partnership awards between institutions serving communities with alcohol use related health disparities and other institutions with extensive alcohol research programs, including NIAAA-funded alcohol research centers and consortia. For the purpose of this FOA, the term Institutions that serve Underserved Communities and Populations (IUCP) will refer to academic or other organizations serving scientifically and medically underserved communities and populations, and Alcohol Research Centers (ARC) will refer to institutions with extensive alcohol research programs including NIAAA-funded alcohol research centers. This FOA is designed to facilitate planning and implementation of collaborative partnerships between IUCP and ARC to promote targeted research to reduce alcohol-related health disparities in underserved populations (e.g., African Americans, Asians, Hispanics, Native Americans, Alaska Natives, Native Hawaiians, Pacific Islanders), as well as promote alcohol research expertise and infrastructure development at IUCP. Minority Serving institutions are particularly encouraged to consider applying for this opportunity, because these institutions have historically trained professionals from diverse backgrounds who provide health care to minority and underserved populations and are uniquely positioned to engage these populations in research and in the translation of research advances into culturally appropriate, measurable and sustained improvements in health outcomes.

<http://grants.nih.gov/grants/guide/rfa-files/RFA-AA-15-003.html>