

# Judicial Council of California • Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

[www.courtinfo.ca.gov/invitationstocomment/](http://www.courtinfo.ca.gov/invitationstocomment/)

---

## INVITATION TO COMMENT

**SPR11-12**

---

Title	Action Requested
Juvenile Law: Ensuring Tribal Receipt of Appellate Records	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Rule 8.409	January 1, 2012
Proposed by	Contact
Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair	Heather Anderson, 415-865-7691, heather.anderson@jud.ca.gov
Family and Juvenile Law Advisory Committee Hon. Kimberly J. Nystrom-Geist, Cochair Hon. Dean Stout, Cochair	Jennifer Walter, 415-865-7687 jennifer.walter@jud.ca.gov
California Tribal Court/State Court Forum Hon. Richard C. Blake, Cochair Hon. Richard D. Huffman, Cochair	

---

### Summary

This proposal would revise the rule governing sending the record in juvenile appeals to clarify that if an Indian tribe has intervened in a case, a copy of the record of that case must be sent to that tribe. This change is in response to a request by the Tribal Court/State Court Forum and is needed to ensure that a tribe that has become a party to a case through intervention receives a copy of the record, as do other parties to a juvenile court proceeding.

### Discussion

In May 2010, former Chief Justice Ronald M. George established the California Tribal Court/State Court Forum to discuss issues of mutual importance to tribal and state justice systems. This forum is composed of tribal court judges from throughout the state, local state court judges, a member of the Judicial Council, chairs of several Judicial Council advisory committees, and the director of Native American Affairs for the State Attorney General's Office. The forum is

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

charged with identifying issues concerning the working relationship between tribal and state courts and recommending ways to address these issues.

One of the issues identified involves receipt of the record on appeal by an Indian tribe that has intervened in a juvenile case involving an Indian child. Under state statutes, an Indian child's tribe has the right to intervene at any point in a custody proceeding involving that Indian child (Welf. & Inst. Code, § 224.4). This right is part of state and federal laws designed to protect the essential tribal relations and best interest of Indian children (see Welf. & Inst. Code, § 224 et seq., and the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.)).

To effectively participate in the appellate process, an Indian tribe that has intervened in a case must timely receive a copy of the record on appeal along with the other parties in the case. Currently, however, rule 8.409(d), regarding sending the record in juvenile appeals, requires that copies of the record be sent to the appellate counsel only for the appellant, the respondent, and the minor. This proposal would amend rule 8.409 to specifically require that a copy of the record also be sent to appellate counsel for any Indian tribe that has intervened in the case or, if the tribe is not represented, to the tribe itself.

Rule 8.409 of the California Rules of Court would be amended, effective January 1, 2012, to read:

**Title 8. Appellate Rules**

**Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

**Chapter 5. Juvenile Appeals and Writs**

**Article 2. Appeals**

**Rule 8.409. Preparing and sending the record**

**(a)–(c) \* \* \***

**(d) Sending the record**

(1) When the transcripts are certified as correct, the superior court clerk must immediately send:

(A) \* \* \*

(B) One copy of each transcript to the appellate counsel for the appellant, the respondent, ~~and~~ the minor, and, if the tribe has intervened, the minor's Indian tribe.

(2) If appellate counsel has not yet been retained or appointed for the appellant, the respondent, or the minor when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the district appellate project. If a tribe that has intervened is not represented by counsel when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the tribe.

## Item SPR11-12 Response Form

**Title:** **Juvenile Law: Ensuring Tribal Receipt of Appellate Records** (amend Cal. Rules of Court, rule 8.409)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: [www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

Email: [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

Mail: Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

<b>DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011</b>
---

*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.*