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INVITATION TO COMMENT SPR13-17

Title	Action Requested
Family Law: New Rule for Title IV-D Case Transfers to Tribal Court	Review and submit comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 5.380	January 1, 2014
Proposed by	Contact
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Executive Summary and Origin

The Tribal Court/State Court Forum and the Family and Juvenile Law Advisory Committee jointly propose a new California rule of court that would provide a consistent procedure for the discretionary transfer of title IV-D child support cases from the state superior courts to tribal courts when there is concurrent jurisdiction over the matter in controversy. This proposal was initiated as a result of meetings between the Yurok Tribe, federal Office of Child Support Enforcement, and the California Department of Child Support Services (DCSS). Subsequently, the proposal for a rule of court for transferring title IV-D proceedings between state and tribal courts was adopted as part of the annual agenda for both the California Tribal Court/State Court Forum and the Family and Juvenile Law Advisory Committee.

Background

This proposal is responding to a need for consistent procedures for determining the orderly transfer of title IV-D child support cases from the state superior court to the tribal IV-D child support court when there is concurrent subject matter jurisdiction.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) P.L. No. 104-193 as amended by the Balanced Budget Act of 1997 P.L. No. 105-33 (111 Stat. 251), authorized the direct federal funding of tribal child support programs. Prior to the passage of

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 These proposals are circulated for comment purposes only.

PRWORA, tribal members seeking child support program services only had the option of applying to state title IV-D programs for assistance in establishing and enforcing child support orders. After the enactment of PRWORA, a number of tribes located outside of California applied for and received federal funding to develop tribal title IV-D child support programs. The first tribe located in California to receive federal funding for a tribal title IV-D child support program was the Yurok Tribe.

The Yurok Tribe began receiving grant funding from the federal Office of Child Support Enforcement for startup planning for a tribal child support program on August 1, 2011. The Yurok will need to have comprehensive direct services available by August 1, 2013. The beginning of title IV-D funding for tribal child support programs has created the need for a statewide rule of court to aid in the orderly transfer of appropriate cases from the superior court to the tribal court. While the Yurok Tribe is the first tribe located in California to begin a federally funded child support program, the proposed rule is drafted in anticipation that other tribes may develop such programs in the future. Some of the factors considered in developing this rule are as follows:

- When tribal IV-D child support programs have been developed in other states, states and tribes have followed similar procedures of developing state rules of court and tribal/state IV-D agency protocol agreements to provide for the orderly transfer of court cases and child support services management responsibility.¹
- In addition to a statewide rule of court to order the processes between the superior court and the tribal court, the state title IV-D program and the tribal IV-D program will be concurrently executing protocol agreements to set forth the agencies' respective responsibilities regarding the process of transferring child support services case management responsibilities from the state to the tribe. Some examples of protocol provisions would include the process for identifying the specific tribal IV-D cases/parties that would be noticed of the intent to request case transfer, the number of cases selected for transfer, and how often the case transfers occur. These protocols may vary from tribe to tribe as new tribal programs come on board and protocol agreements are negotiated with DCSS.
- It is anticipated that the tribal IV-D agency and state IV-D agency will exchange information to identify child support cases with existing child support orders that would be appropriate for transfer from the superior court to the tribal court. The rule is intentionally broad to allow the tribal IV-D agency and DCSS to develop protocols to meet the unique needs of each of the tribal IV-D programs and DCSS. Further, although it is anticipated that either a tribal IV-D agency or a state IV-D agency will be the party

¹ According to the federal Office of Child Support Enforcement, there are currently 52 tribal IV-D agencies located in the United States.

initiating case transfer, the rule allows for flexibility to allow a party to request transfer where appropriate.

- The hearings on the request for case transfer will be heard in the superior court by the child support commissioner. The cost of the hearing and transferring the file to the tribal court are reimbursable by the title IV-D grant as a title IV-D function.
- The proposed protocol between the Yurok tribal child support agency and DCSS also sets out that if both parties object to the case transfer from state to tribal court, the tribal child support agency will rescind the transfer request and no motion for the case transfer will be filed. If neither party objects to the case transfer, the matter will still go before the superior court for a ruling for a finding of concurrent jurisdiction and an order for case transfer. If only one party objects, the matter will go before the superior court for a hearing on the issue of case transfer.
- The issue of concurrent jurisdiction between state and tribal courts is governed by various statutes and case law, for example:
 - In 1953, through the enactment of Public Law No. 83-280 (P.L. 280) (18 U.S.C. § 1162 and 28 U.S.C. § 1360), Congress extended to six states (including California) state jurisdiction over many crimes and some civil matters when the cause of action arose in Indian Country. While P.L. 280 extended state jurisdiction in specified areas, it did not diminish any inherent tribal court jurisdiction. Federal courts have specifically found that tribal courts have concurrent jurisdiction over domestic relations actions as long as they are willing to assume jurisdiction. *Sanders v. Robinson* (9th Cir. 1988) 864 F.2d 630.
 - The Full Faith and Credit for Child Support Orders Act, P.L. No. 103-383 (28 U.S.C. § 1738(B)) (FFCCSOA) mandates full faith and credit for child support orders between tribal and state courts. The mutual recognition of child support orders issued by a tribal or state court aided the ability of these orders to be transferred from an issuing court to another court for effective enforcement of those orders.

The Proposal

This proposal for a new rule of court is necessary for the following three reasons:

1. It is responsive to identified concerns of tribal and state courts and the Department of Child Support Services.
2. It is responsive to a new legal situation in California. Although the laws themselves are not new, the legal situation is new because there has never before been a tribal title IV-D agency in California.
3. It will benefit tribal and state courts, tribal and state title IV-D child support programs and the litigants by providing a consistent statewide process for the transfer from

superior courts to tribal courts of child support–related court cases that are currently receiving state title IV-D child support services.

Specific rule provisions proposed

New rule 5.380 would provide the following:

- The party in a title IV-D child support proceeding in the superior court must disclose in the first pleading, in an attached declaration, or under oath if there is any related action in tribal court;
- Parties will be given notice of their right to object to the transfer of a case from superior court to tribal IV-D court;
- The superior court may, on the motion of any party, transfer the child support and custody provisions of a case that is receiving state title IV-D services to a tribal court located in California that is also operating a program under title IV-D funding;
- The superior court must make a threshold finding that concurrent jurisdiction exists between the tribal court and the superior court;
- If concurrent jurisdiction is found to exist, the transfer must occur unless a party objects in a timely manner;
- If any party makes an objection, the superior court shall conduct a hearing on the objection;
- If any party makes an objection, specific factors will be considered by the superior court in making a determination regarding case transfer. For example, a party may object because the superior court or the tribal court does not have certain enforcement remedies available or the party raises a specific state or tribal law that would disadvantage the party;
- The superior court must issue a final order on the request to transfer; and
- The superior court clerk must deliver a copy of the entire file to the clerk of the tribal court.

Alternatives Considered

The Family and Juvenile Law Advisory Committee and the Tribal Court/State Court Forum considered taking no action to develop a statewide rule of court but allowing each trial court to develop a local rule to transfer governmental child support cases to the tribal courts. This option was not considered practicable because while a tribe may be located in a single county, its members may be found throughout the state. The Yurok Tribe expects that it may have members

with child support cases in counties throughout the state. Therefore, it is not practical to anticipate each of California's approximately 110 federally recognized tribes working out individual agreements with local courts in the 58 counties. There needs to be a uniform statewide rule. Because this proposed rule is one of first impression in California, there is a benefit in developing a statewide rule to be circulated to solicit comment and discussion statewide. This will ensure that the transfer rule will reflect the needs of the state trial courts and the tribal courts. The committee and forum further concluded that the failure to enact a statewide rule would increase costs to the local courts by requiring each court to go through the process to develop its own local rule.

Implementation Requirements, Costs, and Operational Impacts

The implementation requirements, costs, and operational impacts should be minimal because even without a statewide rule, courts would still transfer cases to the tribal courts. Existing Judicial Council forms can be used for filing the request for case transfer with the superior court and for issuing orders after the hearing. Implementation of the rule may require some training of staff in a new case transfer procedure for those courts that will be transferring cases. These one-time operational costs would be outweighed by the benefit to individual courts of not individually developing and enacting local rules of court. Justice partners, including the Department of Child Support Services and the tribal IV-D programs, would have costs associated with creating notice forms and informational materials on the objection process. DCSS and the only current tribal IV-D court recognize these costs and are nevertheless supportive of a statewide rule. Absent a statewide rule of court, there would be additional costs to justice partners including the tribal courts, the California Department of Child Support Services, and local child support agencies in having to train their staff in multiple local procedures.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following:

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- Would the fact that the superior court has title IV-D child support grant funding available for all child support related court costs be sufficient to address any concerns regarding the cost of copying the superior court file before transferring the case to the tribal court?
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.

- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

Attachments and Links

1. Cal. Rules of Court, rule 5.380, at page 7

1 Rule 5.380 of the California Rules of Court would be adopted, effective January 1, 2014,
2 to read:

3
4 **Rule 5.380. Transfer of title IV-D case to a tribal court**

5
6 **(a) Purpose**

7
8 This rule is intended to define the procedure for transfer of title IV-D child support
9 cases from a California superior court to a tribal court.

10
11 **(b) Definitions**

12
13 For the purposes of this rule:

14
15 (1) “Tribal court” includes any tribal court of a federally recognized Indian tribe
16 located in California that is receiving funding from the federal government to
17 operate a child support program under title IV-D of the Social Security Act
18 (42 U.S.C. § 654 et al.).

19
20 (2) “Superior court” is a superior court of the State of California.

21
22 (3) “Related case” is a tribal court case that involves the same parties or the
23 parties’ minor children and includes parentage, child support,
24 custody/visitation, or guardianship issues.

25
26 **(c) Disclosure of related case**

27
28 A party must inform the superior court regarding any related action in tribal court
29 as soon as the party becomes aware of that action. The information must be
30 provided in a first pleading with an attached declaration, or if discovered later by
31 declaration or by testimony under oath. The party must provide the names and
32 addresses of the parties to the action, the name and address of the tribal court where
33 the action is filed, the case number of the tribal court action, and the name of judge
34 assigned to the tribal court action, if known.

35
36 **(d) Notice of intent to request case transfer**

37
38 At least 30 days before filing a motion requesting case transfer of a child support
39 matter from a superior court to a tribal court, the state title IV-D agency or the
40 tribal IV-D agency must provide the parties with written notice of their right to
41 object to the case transfer and the procedures to make such an objection.

42
43 **(e) Motion requesting case transfer**

1
2 A motion requesting case transfer must include a proof of service form showing the
3 manner in which the notice of intent to request case transfer was made to the parties
4 and the date that notice was provided. The motion must also state whether any
5 party provided with notice objected to the proposed case transfer, the identity of
6 any party objecting, and the reason indicated for the objection.

7
8 **(f) Determination of concurrent jurisdiction**

9
10 The superior court may, on the motion of any party or an agency providing title
11 IV-D services, after notice to the parties of their right to object, transfer a child
12 support and custody provision of an action in which the state is providing services
13 under California Family Code section 17400 to a tribal court, as defined in (b). This
14 provision applies to both prejudgment and postjudgment cases. When ruling on a
15 motion to transfer, the superior court must first make a threshold determination that
16 concurrent jurisdiction exists. If concurrent jurisdiction is found to exist, the
17 transfer will occur unless a party has objected in a timely manner. Upon the filing
18 of a timely objection to the transfer, the superior court will conduct a hearing on the
19 record considering all the relevant factors set forth in (g).

20
21 **(g) Evidentiary considerations**

22
23 In making a determination on the application for case transfer, the superior court
24 must consider:

- 25
26 (1) The nature of the action and the interests and identities of the parties;
27
28 (2) The convenience of the parties and witnesses;
29
30 (3) Whether state or tribal law will apply to the matter in controversy;
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32 (4) The remedy available in such superior court or tribal court; and
33
34 (5) Any other factors deemed necessary by the superior court.

35
36 **(h) Order on request to transfer**

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38 The superior court must issue a final order on the request to transfer including a
39 determination of whether concurrent jurisdiction exists. If the superior court grants
40 the request to transfer the case, the clerk of the court must send a copy of the order
41 to the tribal court.

42
43 **(i) Proceedings after order granting transfer**

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Once the superior court receives confirmation from the tribal court of its intent to accept transfer, the clerk of the superior court must provide a copy of the entire file, including all pleadings and orders, to the clerk of the tribal court.