

California Tribal Court/State Court Forum

Judicial Council Conference Center

San Francisco, California

January 13, 2011

10:00 a.m. to 4:00 p.m.

Present: Hon. Tani Cantil-Sakauye, Chief Justice of California and Chair of the Judicial Council, Hon. Richard C. Blake, Cochair, Hon. Richard D. Huffman, Cochair, Hon. Abby Abinanti, Hon. April Attebury, Hon. Jerilyn L. Borack, Hon. Anthony Brandenburg, Hon. Robert L. Dondero, Hon. Cynthia Gomez, Hon. Susanne Kingsbury, Hon. James R. Lambden, Hon. Robert Moeller, Hon. Lester Marston, Hon. David E. Nelson, Hon. Dennis M. Perluss, Hon. Steven Z. Perren, Hon. Deborah A. Ryan, Hon. Dean Stout, Hon. Juan Ulloa, and Hon. Christopher G. Wilson.

On the phone: Hon. Michael Golden

Guests: Hon. Pat Bresee, Mr. William Denke, Chief of Police, Sycuan Police Department, Mr. Jeffrey Johnson, AOC Information Services, Manager, Mr. Manny Lieras, American Indian Child Resource Center and youth dancers, and Ms. Amanda Nugent, Program Director for Access to Recovery Services in Sacramento.

Committee Counsel: Ms. Jennifer Walter

Staff: Mr. William C. Vickrey, Mr. Ronald B. Overholt, Ms. Vida Castaneda, Ms. Ann Gilmour, Ms. Diane Nunn, Mr. Patrick O'Donnell, Ms. Anne Ronan, and Mr. Courtney Tucker

Welcome and Introductions

The cochairs welcomed members and Judge Blake gave an invocation.

Forum Milestones

Justice Huffman and Judge Blake reported on the forum's milestones. Since its inception just six months ago, the forum has made great strides in (1) creating structure for operating; (2) ensuring transparency in its operations and communications to the state judicial branch and tribal communities in California; and (3) sharing resources and learning from one another.

Ms. Walter walked the members through the binder of materials for the meeting and encouraged new members to join one of the three working groups: (1) Education; (2) Legislation; (3) Protocols.

Justice Perluss and Ms. Ronan reported that, with the assistance of the Civil and Small Claims Advisory Committee, progress has been made to revise the forum's legislative proposal on the recognition and enforcement of civil protective orders.

Ms. Walter acknowledged the work of forum members, the relationships forged on committees, and noted that the work is made possible in large part by federal grants, such as the Violence Against Women Act funds administered by CalEMA.

Judge Blake and Justice Huffman outlined the forum's priorities as follows:

1. Recognition and Enforcement of Protective Orders

Judge Blake referenced the Native American Community Justice Project (NACJP) reports, distributed at the forum's first meeting, and indicated that the forum continues to use this statewide needs assessment to inform its activities to improve public safety for native victims of domestic violence. He advised members to consult these reports from time to time, because it is the forum's blueprint for implementing solutions. Judge Blake pointed out that approximately 500 native people participated in the NACJP in California, and their voices must guide us as we implement solutions.

Ms. Walter described that, during the morning, the forum would focus on identifying concrete steps the forum can take to address the following two questions:

- What can the forum do to ensure that tribal court protective orders are respected as valid court orders and enforced?
- How can tribal and state courts share their orders to avoid conflicting orders?

2. Child Welfare Cases:

Justice Huffman described the importance of compliance with the Indian Child Welfare Act (ICWA) and asked members to work creatively together to find ways for our judiciaries to share jurisdiction and maximize resources for the benefit of native children and families.

Ms. Walter described that, during the afternoon, the forum would take up issues relating to ICWA compliance and sharing/coordination/transfer of jurisdiction and services in child welfare cases.

3. Access to Tribe-Specific Data

Judge Blake described how the lack of tribe-specific data hinders tribal justice development and that the forum will consider at the end of the day steps that can be taken to advocate for tribe-specific data.

Ms. Walter reported that the AOC, in collaboration with the Tribal Law and Policy Institute, has identified national and statewide data sources, and will be sharing a chart summarizing the efforts thus far to identify sources of tribe-specific data.

Recognition and Enforcement of Protective Orders

Overview

Judge Blake and Justice Huffman introduced the panel of presenters and directed members to the materials at Tab F of their binders. Judge Attebury and Judge Brandenburg described the problem. They explained that many tribal courts throughout the state are issuing protective orders, and that while the federal Violence Against Women Act (18 U.S.C. § 2265) mandates full faith and credit for protective orders, tribal protective orders are not always recognized or enforced. Part of the problem, they explained is that tribal courts and tribal law enforcement do not currently have an independent mechanism to enter their protective orders into the California Department of Justice (DOJ) database, CARPOS (California Restraining and Protective Order System) through CLETS (California Law Enforcement Telecommunications System; see Government Code Sections 15150 -15167 and Penal Code Sections 11079, 11105.)

Forum tribal members reported instances of lack of enforcement. Forum members discussed the practical problem faced by county and state law enforcement officers who report they cannot verify tribal court orders as valid orders if they are not in the statewide protective order database.

Judge Stout described how some jurisdictions are getting around the problem by having the parties register the tribal court order in state court. Judge Attebury said, that unfortunately, while this work-around solution has been implemented in some jurisdictions, it still results in delays in enforcement, because it takes time to mail or hand-deliver the copies of tribal protective orders to the state court.

Forum members also pointed out the potential problem of conflicting tribal and state protective orders, because they are unaware of their respective orders for protection. If the tribal protective order is not registered with the state court, the state court will not be aware of the tribal court order. Currently, there is no mechanism for tribal courts to view state court protective orders.

California Court Protective Order Registry (CCPOR)

Mr. Jeffrey Johnson described the CCPOR which is a state judicial branch project to create a statewide repository that provides complete, accessible information on restraining and protective orders. This repository contains up-to-date information, including order images that are readily available to state court judges and law enforcement in those jurisdictions that are participating in the project. Participating courts can:

- View order data and images from California superior courts participating in CCPOR;
- Gain secure Web site access to the repository;
- Access data and order images 24/7;
- Search state court orders in the repository by name, case number, and other criteria;
- Facilitate protective order sharing between courts; and
- Provide shared access to tribal law enforcement agencies.

Mr. Johnson gave a brief demonstration of how CCPOR works, and when he finished, forum members asked questions about how their courts could participate.

Tribal Police Department Pilot Project, Statewide and National Criminal Databases

Chief William Denke, Chief of Police, Sycuan Police Department, reported that access to criminal reporting data bases is a challenge and an obstacle to the fullest exercise of jurisdiction by tribal courts and tribal law enforcement. Victim and officer safety is negatively impacted by the lack of access to statewide criminal and protective order data bases by tribal courts and tribal police departments. Chief Denke described several initiatives are currently under way—

- Direct access by tribal law enforcement to the national criminal information center, a central database for tracking crime-related information maintained by the Federal Bureau of Investigation's Criminal Justice Information Services Division, and interlinked with similar systems that each state maintains, and
- Direct access by tribal law enforcement to the statewide database through application to the California DOJ.

Chief Denke described his police department's participation in a pilot program to give access to the statewide DOJ databases through the NCIS, and explained that such access was possible because his officers were also Special Law Enforcement Commission officers under the federal Bureau of Indian Affairs, with substantially the same federal authority as federal law enforcement.

Chief Denke referenced the Tribal Law and Order Act and specifically section 233 of the Act which grants access to national criminal information databases to Indian law enforcement agencies. He then described the extensive information contained in these national databases.

The National Crime Information Center (NCIC) database contains the following information on: wanted persons, serious offenders, missing persons, persons posing danger to President or other protected persons by secret service, members of violent criminal gangs, members of terrorists organizations, unidentified persons, interstate identification- interstate exchange of criminal history records, US Marshals Service Witness Security Program for those who have been charged with serious offenses, stolen vehicles, stolen boats, stolen articles, foreign fugitives, sex offenders, protection orders, and supervised release.

The National Law Enforcement Telecommunications System (NLETS) is the secure information sharing system for state and local law enforcement agencies. It provides electronic messaging to allow information exchange between state, local, and federal agencies and support services to justice-related computer programs. The network is operated by NLETS, a non-profit corporation owned and operated by the states and funded solely by fees for service. The network operates primarily through a secure private network through which each state has an interface to the network, and all agencies within the state operate through this portal. The federal and international components operate very similarly. Users include all U.S. states and territories, Federal agencies with a justice mission, and certain international agencies. Information exchange is voluntary and includes everything from motor vehicle registrations, driver's data,

Interpol warrants, Canadian 'Hot File' records, and U.S. Citizenship and Immigration Services (USCIS) databases, to state criminal history records. Nearly 90 million messages are sent each month.

At the end of this panel discussion, the forum identified the following action items to begin addressing the problem of recognition and enforcement of protective orders.

Action Items:

1. Explore proposed rule of court to implement Inyo Superior Court's protocol statewide, consider allowing for electronic or fax filing of DV-600 by tribal courts rather than leaving it to the parties.
2. Explore feasibility of tribal court read-only access to CCPOR in pilot court jurisdictions.
3. Send letter to the California Department of Justice offering education on tribal court/state court concerns and requesting tribal court access to CARPOS through CLETS.

California Rural Indian Health Board, Access to Recovery Program

Judge Blake and Justice Huffman extended a warm welcome to Ms. Amanda Nugent, Program Director for Access to Recovery, who shared information on resources available to native youth in California. She distributed informational packets that described the residential, outpatient, dental and recovery support services available for free to all Native Americans in California.

Welcoming Remarks from the Chief

Justice Huffman introduced the Honorable Tani Cantil-Sakauye, Chief Justice of California and Chair of the Judicial Council. The Chief Justice thanked Justice Huffman and Judge Blake for inviting her to this forum meeting. She stated that, ten days ago she was sworn in as Chief Justice, and on that first day, it was her honor to administer the oaths of office to Governor Brown, to Attorney General Kamala Harris, and to other state constitutional officers. Over the last week she met with many legislators and court leaders. And today, she said she had the distinct honor of welcoming everyone to the second gathering of the Tribal Court/State Court Forum. She said she eagerly accepted the invitation, because she felt the forum was an extraordinary group. The Chief stated that the issues that concern the forum are the very same issues that she devoted herself to as a trial court judge in Sacramento. Child welfare, domestic violence, and sexual assault are difficult cases for all of our communities. But, she said she is heartened by this partnership to address these issues in California's Native American communities.

The Chief closed by saying, she looked forward to receiving the forum's recommendations to improve judicial administration and especially in those cases where our judicial systems share jurisdiction. She told the members that their work would benefit not only the individuals who seek the protection and services of our courts, but also our communities and the state itself.

The Chief stayed for part of the forum meeting, and before leaving she joined in one of the dances performed over lunch.

Working Lunch

During lunch, the youth dancers from the American Indian Child Resource Center Dancers and Drummers performed native ceremonial dances and drumming. Mr. Manny Lieras, a counselor at the Center, explained that the youth dancers are part of *Native Boogie and Beats*, a cultural collaboration of Native American Singers, Dancers and Artists from the greater San Francisco Bay Area. Guided by their mission: *honoring our ancestors and their teachings through cultural expressions of the past, present and future*, the group strives to educate people of the songs, dances, art, food, and ways of life of the Indigenous Peoples of America. The group was founded to promote and celebrate the beauty and pageantry of Native American social dance and singing styles commonly viewed at Pow Wows.

Judge Blake and Justice Huffman thanked the dancers for sharing the ceremonial dances and drumming, and gave each of them a certificate of appreciation.

Also during lunch, forum members viewed the recently produced public service announcement (PSA), *Faces*, created in an effort to raise awareness about the disproportionate number of Native American children under the jurisdiction of the juvenile courts in California. Ms. Walter introduced Vida Castaneda, her colleague in the Tribal Projects Unit, who is active in the American Indian Enhancement Project (AIEP), which produced the PSA as part of the California Disproportionality Project, a Breakthrough Series Collaborative. Ms. Castaneda described the work of the AIEP and its partners funded through the Annie E. Casey Foundation, the California Department of Social Services, Casey Family Programs, and the Stuart Foundation. She reported that it has been a very successful collaboration between the Administrative Office of the Courts Tribal Projects Unit, California Social Work Education Center, Child and Family Policy Institute of California, California Child Welfare Co-Investment Partnership, the National Resource Center for Tribes, Tribal STAR, and Shenandoah Films.

Child Welfare Cases

AOC's Tribal Projects Unit Collaboration to Address Disproportionality

Ms. Castaneda reported on the disproportional numbers of native children in the child welfare system. She shared the following statistics. California has the largest American Indian population in the nation with an estimated 443,719 Tribal residents (Census Bureau, 2009)¹. While this group represents only 1.2% of the state's total population, it is one with historic and current challenges that are significant for social work practice (Census Bureau, 2009; Cross, Brown, Day, et al., n.d.)². Approximately twice as many American Indian children are under the jurisdiction of the California child welfare system than would be expected based on the number

¹ U.S. Census Bureau, Population Division, "Estimates of the Resident Population by Race and Hispanic Origin for the United States and States: July 1, 2008," release date: May 14, 2009, www.census.gov/popest/states/asrh/SC-EST2008-04.html, updated Dec. 22, 2009

² Cross, S. L., Brown, E. F., Day, P. A., Limb, G. E., Pellebon, D. A., Proctor, E. C., et al. (n.d.). *Final report: Status of Native Americans in social work higher education*. Council on Social Work Education Task Force on Native Americans in Social Work Education. Retrieved November 2, 2010 from <http://www.cswe.org/File.aspx?id=25694>.

of American Indian children in California (Needell, B, Webster, D, Armijo, M, et al., 2010)³. Given this disparity, many California child welfare social workers are faced with caseloads that include tribal youth.

Ms. Castaneda also reported that the American Indian Enhancement (AIE) Toolkit intended to put a county's ICWA-related efforts in perspective and to assist in making informed strategic decisions. Every county is doing something to ensure ICWA compliance. Every county is working toward reducing overall costs, preventing new cases from entering the system, reducing length of time in placement of current cases, and reducing the disproportionality of active child welfare cases. The American Indian Enhancement (AIE) Toolkit has been designed to assist county directors, managers, and supervisors in coordinating their ICWA efforts in a way that helps achieve these same desired outcomes. This is done by putting current efforts in context of a continuum. As a result of the 2008-2009 Breakthrough Series Collaborative to address disproportionality the American Indian Enhancement team learned many lessons from Alameda, Fresno, Placer, San Diego, and San Francisco counties. Essentially, those counties that have awareness of their local tribal resources; positive relationships with tribal representatives and tribal communities; involve tribal representatives in their systems review efforts; and have established collaborative efforts with tribes and AI/AN communities, have a stronger potential to address and reduce the disproportionate numbers of AI/AN children under their care. The AIE Toolkit is a resource for counties that does not intend to create additional work, but instead to put into context the work that is currently being undertaken and provides resources to strengthen culturally appropriate inquiry, placement, and to enhance collaboration. The toolkit includes definitional tools, engagement and communication tools, assessment tools, evaluation tools, additional resources, and more. For more information about the AIE Toolkit, Ms. Castaneda directed forum members to their binder of materials.

Indian Child Welfare Curriculum and Resources

Commissioner Pat Bresse described the curriculum development work undertaken by the AOC's Tribal Projects Unit, and highlighted the advanced modules relating to active efforts, jurisdiction, and procedural issues. She directed members to an example module in their binders, and invited forum members to serve as faculty and co-train with other judges, using this curriculum.

Tribal Court Appointed Special Advocate (CASA)

Judge Attebury described tribal CASA programs and the fiscal challenges faced by tribal courts that want to develop these programs. Like state CASA programs, these tribal programs provide volunteer advocacy for abused or neglected Native American children; tribal advocates ensure that Indian children are receiving culturally appropriate services in state court and/or culturally sensitive representation in tribal court proceedings. While there is limited technical assistance

³ U.S. Census Bureau, Population Division, "Estimates of the Resident Population by Race and Hispanic Origin for the United States and States: July 1, 2008," release date: May 14, 2009, www.census.gov/popest/states/asrh/SC-EST2008-04.html, updated Dec. 22, 2009

from the National CASA Association and the AOC, and some limited competitive federal grants to start up a tribal CASA program, there is no funding from the California Legislature for tribal CASA programs as there is for local state court-connected programs. Judge Attebury recommended a separate funding source to support tribal CASA in California and legislation to remove the prohibition on multiple CASA programs in a given county.

Juvenile, Family, and Family Violence Cases

Judge Blake and Justice Huffman thanked Judge Abinanti and Judge Ulloa for facilitating the forum discussion on the topic of sharing/coordination/transfer of jurisdiction and maximizing services.

Judge Abinanti and Judge Ulloa explained that tribal courts, state courts, county agencies, and tribal agencies may be working with the same Indian children and families on a variety of issues.

Where tribal and state courts have concurrent jurisdiction, the traditional approach would be to choose between the tribal or state court to exercise jurisdiction over specific factual circumstances. In determining how tribal courts and state courts in California can most effectively work together, this model of jurisdiction (i.e. either/or but not dual jurisdiction) may be an appropriate approach in many case types.

Judge Abinanti and Judge Ulloa reported that Tribal Projects staff has looked at a number of models from throughout the country which create mechanisms for how to approach this kind of allocation of jurisdiction (Arizona, Minnesota, North Dakota, Oklahoma, Washington, and Wisconsin.)

Forum members have also identified a number of case types – particularly juvenile and family law cases – in which children and families may be best and most efficiently served by exercise of jurisdiction by both tribal and state courts and/or provision of services from both county and tribal agencies. Forum members are interested in exploring creative ways for the cooperative and/or joint exercise of jurisdiction and resources to achieve the best outcomes for individuals, children and families coming before the courts while being mindful of the different requirements that state and tribal courts operate under concerning jurisdiction, due process, etc. (See *In re. M.M.* 154 Cal.App.4th 897; *Doe v. Mann* 415 F.3d 1038; *U.S. v. Cavanaugh* 680 F.Supp.2d 1062; and *U.S. v. Shavanaux Slip Copy*, 2010 WL 4038839)

Judge Abinanti and Judge Ulloa pointed out that there are a number of examples that we may be able to draw upon to guide our efforts to develop protocols, rules, legislation, memoranda of understanding/intergovernmental agreements that will support and strengthen working relationships that allow those interacting with the courts to “have the best of both worlds”.

With the help of Ms. Walter and Ms. Gilmour, we have identified the following examples:

1. Leech Lake/Cass County (Minnesota) model for the joint exercise of jurisdiction.

In 2006 the Leech Lake Band of Ojibwe Tribe and Cass County established a “joint jurisdiction” wellness court. Wellness Court sessions run simultaneously in the tribal and district court courtrooms. Participants appearing before the court have the option of appearing for court hearings at either location, whichever is most convenient. The courtrooms themselves are connected by interactive videoconferencing for hearings.

2. Dual jurisdiction between dependency and delinquency pursuant to Welfare and Institutions Code section 241.1.
Provides a mechanism for evaluation, discussion and consideration of which status (delinquency or dependency) would best meet the needs of the particular child and the interests of justice.
3. Interstate Compact on the Placement of Children –provides a mechanism to place children in the child welfare system out of state.
Provides a mechanism and procedure for children and families under the jurisdiction of one court to be provided with services in another jurisdiction.
4. Uniform Child Custody Jurisdiction and Enforcement Act – provides a mechanism judges from different jurisdictions to confer on best way of proceeding with a particular case;
Provides guidelines for determining which court should exercise jurisdiction over a child custody matter; ensures full faith and credit; and provides a mechanism for judicial discussion and cooperation to resolve issues.
5. Tribal Customary Adoption
Pursuant to Welfare and Institutions Code section 366.24 and related provisions which allow a tribe and state court to each exercise jurisdiction within their respective spheres to create a permanency option which neither alone could accomplish.

Judge Abinanti and Judge Wilson facilitated a discussion on hypothetical juvenile, family law, and domestic violence cases to illustrate how their two court systems would benefit from developing protocols to share, coordinate, and transfer jurisdiction in these types of cases. Such protocols would foster communication, build court-to-court relationships, and maximize services for the benefit of native persons who come before both justice systems. They directed members to their binder of materials for the hypothetical cases.

Action Items:

1. Continue drafting case scenarios for use in judicial curricula, and explore video-taping these scenarios for use at judicial trainings and distance learning opportunities.
2. Refer to Protocol Working Group for more discussion about the development of protocols and tribal court/state court collaborations.

Tribe-Specific Data

James Mensing, researcher at Center for Families, Children & the Courts, distributed a chart containing data national and statewide data sources, with contacts, and information on how to access the data. The chart is intended as an overview of all available national and statewide data

on Native Americans relating to (1) general crime, (2) ICWA, (3) violence against women victimization, (4) health, and (5) elder abuse. The chart was developed in collaboration with the Tribal Law and Policy Institute, and is distributed to the forum, because one of the forum's priorities is to foster the collection of and access to tribe-specific data. Toward that end, staff has prepared the chart, a draft letter of request for tribe-specific data, and draft data form for forum members to use in requesting data. Mr. Mensing directed members to their binder of materials for these documents.

Closing

The cochairs closed the meeting, thanking members for the progress made in developing possible statewide solutions to ensure recognition and enforcement of tribal protection and other orders. Some of these solutions include legislative, rule, and form proposals, as well as exploring the feasibility of tribal court access to the California Courts Protective Order Registry (CCPOR). Forum members vowed to go back to their local courts and continue to work across their court systems to find ways to share jurisdiction and maximize resources.