

TRANSFER TO TRIBAL COURT OPERATING AGREEMENT
Between Dry Creek Rancheria Indian Child Welfare Department
And Sonoma County Human Services Department

I. Introduction

In cases involving an Indian child, the Dry Creek Rancheria Band of Pomo Indians (the Tribe) may petition the Superior Court of Sonoma County Juvenile Court (Sonoma County Juvenile Court) to transfer a case to the Dry Creek Rancheria Tribal Court (Dry Creek Tribal Court). This Transfer to Tribal Court Operating Agreement (TTC Agreement) provides guidelines for the Dry Creek Rancheria Indian Child Welfare Department (Dry Creek ICW) and Sonoma County Human Services Department, Family Youth and Children's Division (FY&C) to follow regarding the process of transferring a case to the Dry Creek Tribal Court. These guidelines will ensure that applicable cases transfer in a timely, efficient way and according to all applicable laws and rules of court.

II. General Provisions

- The Courts, both Dry Creek Tribal Court and Sonoma County Juvenile Court, have the final decision over which cases will transfer to the Tribal Court.
- The Sonoma County Juvenile Court must grant all petitions to transfer unless the Court finds that good cause exists not to transfer the proceedings.
- This TTC Agreement provides guidelines for transfer only between the Sonoma County Juvenile Court and the Dry Creek Tribal Court and not any other tribal or county courts or jurisdictions.
- Dry Creek ICW and FY&C developed these guidelines through consultation and collaboration. Further collaboration may be required to resolve any conflicts that may arise relating to these guidelines.
- Nothing in these guidelines shall supersede the safety of any child.

III. Early Communications Regarding Petition to Transfer

- a. Meeting of Parties to Discuss Possible Transfer
Parents, Indian Custodians and the Tribe are entitled to petition to transfer ICWA cases to Dry Creek Tribal Court. Either Dry Creek Tribal Court or Sonoma County Juvenile Court may deny these requests. Additionally, either parent can veto the transfer to Dry Creek Tribal Court. Minors cannot veto a transfer but may object, via their counsel, to a petition to transfer to Dry Creek Tribal Court. FY&C may also object to a petition to transfer.

In order to avoid unnecessary expense of time and resources, the parties to the ICWA case will meet to discuss the possibility of the case transferring as soon as it is known that any party is considering filing a petition to transfer or has filed a petition to transfer. [See c. Notice of Intent to Petition to Transfer below]. The meeting will include Dry Creek ICW, FY&C, and whenever possible, the parent(s), their counsel and minors' counsel. FY&C will request a continuance whenever needed in order to

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hold this meeting prior to the next hearing on the ICWA case in Sonoma County Juvenile Court.

- b. **File Review**
Prior to Dry Creek ICW filing a petition to transfer to Dry Creek Tribal Court, or upon learning that another party has filed a petition to transfer or intends to file a petition to transfer, Dry Creek ICW will send a request for a file review to FY&C in writing, including the name of the case and the case number. FY&C will make the file available for review by Dry Creek ICW. Dry Creek ICW can request a continuance in order to have time to review the file and determine if the Tribe supports transfer prior to the next hearing in Sonoma County Juvenile Court.
- c. **Notice of Intent to Petition to Transfer**
Prior to filing a petition to transfer to Dry Creek Tribal Court, Dry Creek ICW will serve all parties with a Notice of Intent to Petition to Transfer (Notice of Intent) the case to Dry Creek Tribal Court. The Notice of Intent will include a proposed meeting date, time and location to discuss the transfer request and process. [See Exhibit A: Sample Notice of Intent]
- d. **Pre-Petition Notice of Opposition**
FY&C will notify Dry Creek ICW within 10 business days of receiving the Notice of Intent to Petition whether they intend to oppose the petition to transfer. If FY&C does intend to file an opposition to transfer, the parties shall discuss FY&C's position in advance of filing an opposition to determine if FY&C's concerns with transferring the case can be resolved.

IV. Filing Petition to Transfer and Response

- a. **Filing a Petition to Transfer**
Dry Creek ICW will file petitions to transfer using Judicial Council Form ICWA-050 *Notice of Petition and Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction* and attach written documentation showing willingness to accept transfer of the case. [See Exhibit B: Sample Petition with attached Sample Court Order]
- b. **Opposing a Petition to Transfer**
 - i. **Burden of Establishing Good Cause**
Sonoma County Juvenile Court must grant the petition to transfer unless the court finds good cause not to transfer the proceeding. In compliance with California Rules of Court rule 5.483(f), the burden of establishing good cause to deny the petition to transfer is on the party opposing the transfer. If the

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court believes or any party asserts that good cause to deny the petition to transfer exists, the reasons for that belief or assertion must be stated in writing, in advance of the hearing, and made available to all parties who are requesting the transfer, and the petitioner must have the opportunity to provide information or evidence in rebuttal of the belief or assertion.

ii. Good Cause Not to Transfer

Socioeconomic conditions and the perceived adequacy of tribal social services or judicial systems may not be considered in a determination that good cause exists. Good cause not to transfer the proceeding may exist if:

- a) The proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition within a reasonable time after receiving notice of the proceeding, provided the notice complied with section 224.2 of the WIC. It shall not, in and of itself, be considered an unreasonable delay for a party to wait until reunification efforts have failed and reunification services have been terminated before filing a petition to transfer.
- b) The Indian child is over 12 years of age and objects to the transfer.
- c) The parents of the child over five years of age are not available and the child has had little or no contact with the child's tribe or members of the child's tribe.
- d) There are other circumstances specific to the case that Sonoma County Juvenile Court finds rise to the level of good cause not to transfer.

iii. Opposition to Transfer

FY&C shall assert in writing in a pleading entitled "Opposition to Transfer to Tribal Court" the reasons they believe that good cause exists to deny the petition to transfer.

iv. Filing and Service

FY&C shall file with the court and serve on the parties the Opposition to Transfer to Dry Creek Tribal Court at least ten (10) days in advance of the hearing so that Dry Creek ICW may have time to prepare a response.

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- V. Order on Petition to Transfer (California Rules of Court rule 5.483(g))**
- a. Sonoma County Juvenile Court Order Denying/Granting Petition
The court must issue its final order on the Judicial Council Form ICWA-060 *Order on Petition to Transfer Case Involving an Indian Child to Tribal Jurisdiction*. [See Exhibit C. Order on Petition]
 - b. Dry Creek Tribal Court Order Accepting Jurisdiction and Custody Transfer
Following the hearing on the petition to transfer, if the transfer is granted, Dry Creek ICW shall produce an order signed by Dry Creek Tribal Court Judge stating that Dry Creek Tribal Court has accepted the transfer of jurisdiction and designating a tribal representative to take physical custody of the child.
- VI. Procedures After Transfer - Transfer Granted**
- a. Copy of FY&C File
Once the Sonoma County Juvenile Court grants a petition to transfer, FY&C shall deliver a copy of the entire file regarding the current case, including all relevant CWS/CMS info not otherwise in the file, and all history regarding siblings and half siblings. If delivered via mail, these documents will be sent return receipt requested to Dry Creek ICW. If hand delivered, Dry Creek ICW will sign a receipt for the documents.
 - b. Dry Creek Tribal Court Case Number
Dry Creek ICW shall provide FY&C confirmation in writing that the case has been entered into the Dry Creek Tribal Court System and provide the Dry Creek Tribal Court Case number for the case.
 - c. Update Case Status in CWS/CMS
FY&C will update the CWS/CMS system to display that the case has been transferred to the Dry Creek Tribal Court. A telephone number for Dry Creek ICW and Dry Creek Tribal Court will be included.
- VII. Procedures After Transfer - Transfer Denied**
- a. Resume ICWA Compliance in Sonoma County Juvenile Court
A case that is denied transfer to Dry Creek Tribal Court is still an ICWA case in Sonoma County Juvenile Court. ICWA shall apply to the remainder of the case whether the Tribe continues to participate in the case or not. The parties shall continue to collaborate in the best interest of the child for the duration of the case.

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VIII. Procedures for Referral After Transfer to Tribal Court

a. Notice of Referral

If FY&C receives a referral on a case that has been transferred to tribal court, FY&C will contact Dry Creek ICW immediately via the telephone number provided in the CWS/CMS system. If it is afterhours or the call reaches a voicemail, FY&C will leave a message alerting Dry Creek ICW to the referral, including all information necessary to investigate and requesting confirmation that the child is still under the Dry Creek Tribal Court jurisdiction. Dry Creek ICW will respond to the voicemail as soon as possible confirming jurisdiction and receipt of the referral information.

b. Joint Investigation – Siblings

If FY&C receives a referral relating to a sibling of a child whose case was transferred to Dry Creek Tribal Court, FY&C and Dry Creek ICW will conduct a joint investigation. After collaborating on the initial investigation, the parties will determine whether to file an Indian child custody petition and which court to file in.

c. Emergency Referrals/No Response

If the referral is an emergency and/or FY&C has not heard from the tribe in two (2) hours after leaving a message regarding the referral, Sonoma County CWS will provide emergency services pursuant to WIC § 305.5(a) & (f), including removal if necessary to prevent imminent physical damage or harm to the child. Any emergency removal or placement will terminate immediately upon any of the following conditions:

- i. The threat of imminent physical damage or harm has ended and the child can be safely released to a parent, guardian or Indian Custodian.
- ii. Dry Creek ICW has contacted FY&C and confirmed ongoing jurisdiction in the Dry Creek Tribal Court and FY&C and Dry Creek ICW have arranged for Dry Creek ICW to resume physical custody of the child under the ongoing jurisdiction of the Dry Creek Tribal Court.

IX. Procedures to Ensure Uninterrupted Benefits

FY&C and Dry Creek ICW shall work together, before and after transfer, to ensure that the child and related parties continue to receive any benefits that they may remain eligible for once the case transfers.

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X. Transferring to Sonoma County Juvenile Court


- a. Lack of Governing Rule or Law
From time to time, Dry Creek Tribal Court may decide that it is necessary to transfer a case to Sonoma County Juvenile Court. Absent any governing Federal, California, or Tribal rules or laws the parties agree to treat the case as a new referral according to the process set out below in order to ensure the safe and efficient transfer of cases to Sonoma County Juvenile Court.
- b. Dry Creek ICW Referral to FY&C
Dry Creek ICW will make a referral to FY&C stating that Dry Creek Tribal Court is seeking to relinquish jurisdiction to the Sonoma County Juvenile Court and that it is the opinion of the Dry Creek Tribal Court and Dry Creek ICW that there is a need for FY&C to re-open the case and state the reasons why.
- c. Investigation Determination
FY&C will evaluate the referral and determine whether or not to initiate an investigation.
 - i. If FY&C decides not to initiate an investigation, they will notify Dry Creek ICW. Dry Creek Tribal Court will then decide whether or not to dismiss the case.
 - ii. If FY&C decides to initiate an investigation, the parties will meet and confer to determine how to proceed with the investigation jointly. Dry Creek ICW will assist FY&C in the initial investigation in any way possible, including making available all Dry Creek Tribal Court files and Dry Creek ICW files and reports.
- d. Petition Determination
Following any investigation, FY&C will make a decision whether or not to file a petition in Sonoma County Juvenile Court. FY&C will inform Dry Creek ICW of their decision as soon as possible.
 - i. If FY&C decides to file a petition the Dry Creek Tribal Court will issue an order dismissing the case in tribal court effective the same day FY&C files a petition in Sonoma County Juvenile Court. To the extent possible, Dry Creek ICW will recommend findings and orders consistent with the findings and orders that are required in Sonoma County Juvenile Court for the Dry Creek Tribal Court to include in its order dismissing the case.

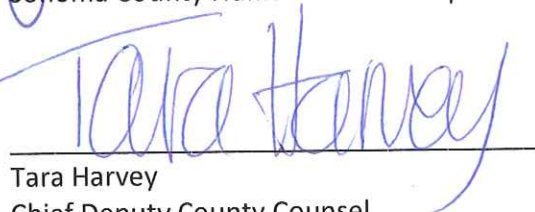
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- ii. If FY&C does not file a petition, Dry Creek Tribal Court will then decide whether to dismiss the case.

 8/22/11

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