



JUDICIAL COUNCIL
OF CALIFORNIA

TRIBAL COURT-STATE COURT FORUM

www.courts.ca.gov/forum.htm
forum@jud.ca.gov

TRIBAL COURT-STATE COURT FORUM

MINUTES OF OPEN MEETING

February 11, 2016

12:15-1:15 p.m.

By Conference Call

**Advisory Body
Members Present:**

Hon. Abby Abinanti, Cochair, Hon. Dennis M. Perluss, Cochair, Hon. April Attebury, Ms. Jacqueline Davenport, Hon. Gail Dekreon, Hon. Leonard P. Edwards, Hon. Cynthia Gomez, Mr. Olin Jones, Hon. William Kockenmeister, Hon. Anthony Lee, Hon. Patricia Lenzi, Hon. Lester Marston, Hon. Mark Radoff, Hon. John H. Sugiyama, Hon. Sunshine Sykes, Hon. Juan Ulloa, Hon. Christine Williams, Hon. Joseph J. Wiseman, and Hon. Daniel Zeke Zeidler

**Advisory Body
Members Absent:**

Hon. Kimberly A. Gaab, Hon. Michael Golden, Hon. Mark Juhas, Hon. Suzanne N. Kingsbury, Hon. John L. Madigan, Hon. David E. Nelson, Hon. Allen H. Sumner, Hon. Claudette C. White, Hon. Christopher G. Wilson, and Hon. Sarah S. Works

Others Present:

Ms.Carolynn Bernabe, Ms. Vida Castaneda, Ms. Ann Gilmour, and Ms. Jennifer Walter

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:17 p.m., and staff called roll.

Approval of Minutes

The committee approved the December 17, 2015 minutes with correction on item 4 “Waiver of Fees” to say “in ICWA cases”.

DISCUSSION AND ACTION ITEMS (ITEMS 1-8)

Item 1

Cochairs Report

- *Welcome Judge Patricia Lenzi, Chief Judge, Cedarville Rancheria of Northern Paiute Indians Tribal Court*

Judge Abinanti and Justice Perluss welcomed Judge Lenzi to the forum and asked her to introduce herself. Judge Lenzi described her legal expertise and judicial experience. She is Chief Judge of the Cedarville Rancheria of Northern Paiute Indians Tribal Court, which has 28 members. She also serves as a tribal judge for the Colorado River Indian Tribes Tribal Court and appellate justice for the St Regis Mohawk Tribal Court. Previously, she was a state prosecutor in Alpine, Sacramento, and Yolo Counties. She has also served for a number of tribes as their attorney and prosecutor.

- *Process for Filling Forum Tribal Court Judge Vacancy*
Justice Perluss described the process for selection of Judge Lenzi to fill the tribal court judge vacancy and directed members to the meeting materials to view the memorandum and the cochair letters to tribal leaders describing the process.
- *Meeting with Justice Judith D. McConnell, Chair of [Power of Democracy Steering Committee](#) regarding potential forum/committee projects relating to the committee's civics learning and curriculum projects*
Judge Abinanti described her meeting with Justice McConnell and their discussion about developing a civic learning opportunity for native and nonnative youth to learn about state and tribal courts. Justice McConnell, who chairs the California Chief Justice's Democracy Steering Committee, was very receptive to marrying the Chief Justice's interests in civic education with the forum's area of interest. Judge Abinanti reported that she will be exploring a local initiative with Justice McConnell in Humboldt and Del Norte Counties.
- *California Attorney General's Office Convenes Meeting to Discuss Protection Orders Issued by Tribal Courts, March 15, 2016 (Cochairs seek data/stories to share at the meeting and will report back)*
Justice Perluss described the upcoming meeting convened by the California Attorney General's Office and provided background about the meeting. The forum has been actively engaging the California Department of Justice to give tribal access to its database, the California Restraining and Protective Order System (CARPOS). Since the forum's inception, tribal court judges have reported that tribal protection orders are not regularly enforced by local county law enforcement unless these orders are in CARPOS. State and federal officials have requested information to understand the scope of the problem. Should the meeting result in the justice partners calling for a legislative solution, data and anecdotal descriptions of the problem would be powerful when approaching a legislative sponsor and seeking support. Justice Perluss requested that forum members send stories to Ms. Walter.

Forum member Olin Jones also described the meeting and the need for stories. Mr. Jones was optimistic that the meeting would result in, what he referred to as, a policy pathway for a viable solution.

Judge Marston reported that the Chemehuevi Tribe and Hopland Tribe entered into an intergovernmental agreement with the local sheriff department. These tribal communities are not encountering problems with enforcement of tribal protection orders because the tribal court sends its orders to the local sheriff department and dispatch keeps a copy and enters them into CARPOS.

A discussion followed, and members concluded several problems with tribal courts not having direct access to CARPOS to enter their protection orders: (1) delay in orders being entered; (2) officer safety- without access to orders, law enforcement does not know the risk posed by restrained persons; and (3) revictimization.

Forum members expressed concern that a legislative solution would be opposed, and ultimately fail, and instead encouraged an alternative solution such as an Attorney General Opinion or other executive agency directive clarifying that all law enforcement jurisdictions in California must recognize and enforce a tribal protection order issued by a tribal court as required by federal and state law (See 18 U.S.C. § 2265 and California's Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (Fam. Code, §§ 6400–6409).)

Action Item: Forum members to send Jenny Walter instances where orders have not been enforced.

- *Conference of Chief Justices - Tribal Relations Subcommittee, February 1, 2016 – Chief Justices learn about forum*
Ms. Walter presented to Chief Justices and others from Washington, New Mexico, Minnesota, Alaska, and Oregon. They were very interested in the forum and its accomplishments. The Chief Justices were impressed at how much the forum has accomplished in its short five year history. Ms. Walter invited the Chief Justices to attend the June 2-3, 2016 “Big Forum” meeting in Los Angeles and explored the idea of holding a Western Regional meeting of forums. The Chief Justices were very receptive and asked lots of questions.

Item 2

Recognition of Parentage Orders by the California Department of Public Health (CDPH) and the Issuance of Birth Certificates Update

Presenters: Judge Cynthia Gomez

Dr. James Greene, Center for Health Statistics & Informatics, CDPH

Brandon Nunes, Chief Deputy Director of Operations, CDPH

*Jim Suennen, Tribal Liaison/Associate Secretary for External Affairs,
California Health and Human Services Agency*

During the forum conference call on December 17, 2015, we learned that the California Department of Public Health Division of Vital Statistics, the agency responsible for issuing and amending birth certificates, would not recognize tribal court orders of parentage because tribes are not mentioned in relevant Health and Safety Code provisions, specifically the sections defining “state” (see section 23) and the authority for amending birth certificates (section 102725). As a result, the forum asked Ms. Walter to work with the Judge Gomez to explore a solution in the form of an executive agency directive. Judge Gomez contacted the Secretary of the California Health and Human Services and representatives from the CDPH, and a solution was reached. Thanks to the leadership of Judge Gomez and the other presenters, CDPH issued a letter, dated February 9, 2016, clarifying that all jurisdictions in California must accept certified copies of orders that adjudicate issues of parentage issued by a tribal court with jurisdiction, pursuant to Health and Safety Code section 102725.

Action Item: Judge Gomez to forward a copy of the letter to Ms. Walter, who will send it to forum members.

Item 3

Judicial Council Appellate Advisory Committee’s Proposal to Amend Rules 8.400 and 8.407

Presenter: Heather Anderson, Supervising Attorney, Judicial Council’s Legal Services Office

The forum reviewed a proposal from the Judicial Council’s Appellate Advisory Committee for possible amendments to rule 8.400. The proposal would clarify that the juvenile appellate rules apply to appeals of orders terminating parental rights under Probate Code 1516.5 and that the normal record in juvenile appeals must include various ICWA notices and transcripts of certain hearings. Members generally supported the proposal, but suggested that only adding the transcript from the initial (detention) hearing would not be sufficient for the appellate court to

determine whether all required ICWA inquiries had been made. Judge Zeidler pointed out that oftentimes the parents are not at the initial hearing, and therefore, in these cases, it would be important to include the transcript of the hearing when they first appear and inquiry is made. Forum members agreed and recommended that the normal record in juvenile appeals also include transcripts of the hearing at which a parent first appears in the proceedings.

Item 4

Remote Court Appearances, Waivers, and Access Update

Presenters: Justice Perluss

Judge Mark Radoff

Justice Perluss and Judge Radoff talked to Curt Child of Court Call. They asked whether the arrangement that Los Angeles has with Court Call—waiver of fees for tribes in juvenile dependency cases—could be extended statewide as a public service. Mr. Child was receptive, and suggested that the forum explore a revenue source that might effectuate the waiver extension. Justice Perluss talked to Judge Amy Pellman, Los Angeles Superior Court, and learned that she was successful in obtaining the waiver for tribes because she identified such a revenue source. Court Call agreed to waive its fees for juvenile dependency cases for tribes in Los Angeles as part of an overall arrangement by which it received additional business under the court's contract from private adoption attorneys who requested this service.

Action Step: Forum to pursue statewide contract.

Item 5

Cross Court Educational Exchange on Child Support

Presenters: Judge Abinanti

Materials can be accessed here:

<https://ftp.jud.ca.gov/>

Username: forum

Password: forum123

Judge Abinanti described the child support exchange as very successful. Before the exchange, the local child support agencies had stopped raising cases for transfer. After the exchange, transfers recommenced. The local partners have agreed to meet quarterly and develop local educational materials. Also, participants at the exchange made policy recommendations in the form of rule changes to improve the transfer process. Staff will be bringing forward a rule proposal as a result of this exchange.

Item 6

Youth Courts and Judicial Council Services: Invitation to Conference, February 18, 2016, San Diego

Presenter: Donna Strobel, Analyst, Judicial Council's Center for Families, Children & The Courts

The California Association of Youth Courts in collaboration with the Judicial Council's Center for Families, Children & the Courts is hosting an all-day roundtable on creating a youth court. This roundtable is the first in a series of the 2016 regional roundtables that highlight promising practices in youth courts and is open to all interested court staff, and justice and community

partners who are considering starting a youth court in their jurisdiction. The roundtable will be held on February 18, 2016 at the Hall of Justice in San Diego.

Action Item: Forum members who are interested in attending the youth courts roundtable should let Ms. Walter or Ms. Strobel know.

Item 7

[In Re Abbigail A.](#)

Presenter: Ann Gilmour

Ms. Ann Gilmour gave an update on the status of the two Indian Child Welfare Act cases pending before the California Supreme Court.

The case of In re Isaiah W. raises the issue whether ICWA inquiry and notice violation issues are forfeited if a party fails to appeal the juvenile court's initial order finding that notice under ICWA is unnecessary, which would preclude that party from raising those issues in a later appeal of an order terminating parental rights? This case is fully briefed, but has not yet been set for oral argument. Information on the in re Isaiah W. case may be found at http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2087704&doc_no=S221263

The second case, In re Abbigail A., raises the following issue: do rules 5.482(c) and 5.484(c)(2) of the California Rules of Court conflict with Welfare and Institutions Code section 224.1, subdivision (a), by requiring the juvenile court to apply the provisions of the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) to a child found by a tribe to be eligible for tribal membership if the child has not yet obtained formal enrollment? This case is not yet fully briefed. An amicus brief on behalf of the United States was filed on January 13, 2016. The time for filing of responses was extended to March 3, 2016. At this time it is expected the case will be fully briefed.

Information on the In re Abbigail A. case may be found at

http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2083411&doc_no=S220187

Item 8

Recognition of Tribal and Foreign Court Money Judgments:

(1) [California Law Review Study](#) (CLRS) and Hearing (2) Forum Surveys

Presenters: Judge Les Marston

Ann Gilmour

Jennifer Walter

Ms. Walter described SB 406, the CLRS study, and the forum's collaboration with U.C. Davis School of Law. Ms. Gilmour attended the CLRS hearing on February 4, 2016 and reported that CLRS has just begun to grapple with the tribal issues. The Legislature will decide whether to sunset the bill on January 1, 2018. Its decision will be based on the CLRS study and any information the forum provides to CLRS and the Legislature. CLRS is holding a number of hearings to develop its findings and recommendations, which it will submit to the Legislature on January 1, 2017.

Judge Marston reported his conversation with CLRS staff who explained that there will be ample opportunity to provide written comment. Judge Marston agreed to prepare written comments for the forum to review and consider submitting to CLRS.

Ms. Walter encouraged forum members to complete the surveys, which include draft survey tools for tribal court judges, state court judges, and tribal court practitioners to determine the impact of SB 406.

Action Item: Judge Marston agreed to prepare written comments for the forum to consider. survey tools to be entered into survey monkey and emailed to target audiences. Judge Marston volunteered to call tribal court judges to increase response rate. Ms. Walter will seek volunteers to make follow-up calls to tribal practitioners. U.C. Davis and council staff will make follow-up calls to state court judges.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 1:12 p.m.

Pending approval by the advisory body on April 14, 2016.