



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

April 14, 2016

12:15-1:15 p.m.

By Conference Call

**Advisory Body
Members Present:**

Hon. Dennis M. Perluss, Cochair, Hon. April Attebury, Ms. Jacqueline Davenport, Hon. Gail Dekreon, Hon. Leonard P. Edwards, Hon. Cynthia Gomez, Hon. William Kockenmeister, Hon. Anthony Lee, Hon. Patricia Lenzi, Hon. David E. Nelson, Hon. Mark Radoff, Hon. John H. Sugiyama, Hon. Sunshine Sykes, Hon. Juan Ulloa, Hon. Claudette C. White, Hon. Christine Williams, Hon. Joseph J. Wiseman, and Hon. Daniel Zeke Zeidler

**Advisory Body
Members Absent:**

Hon. Abby Abinanti, Hon. Kimberly A. Gaab, Hon. Michael Golden, Mr. Olin Jones, Hon. Mark Juhas, Hon. Suzanne N. Kingsbury, Hon. John L. Madigan, Hon. Lester Marston, Hon. Allen H. Sumner, 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 February 11, 2016 minutes.

DISCUSSION AND ACTION ITEMS (ITEMS 1-8)

Item 1

Cochairs Report

Justice Perluss provided the following updates:

- *California Judicial Council Meeting: [Honoring Judge Richard Blake and Presentation](#)*
The council honored Judge Blake for his inaugural role in serving as forum Cochair. The forum's presentation to the council was very well-received.
- *California Supreme Court Cases*
Two cases involving the Indian Child Welfare Act, *In re Isaiah W.*; *Los Angeles County Department of Children and Family Services v. Ashlee R.*, S221263 and *In re Abigail A. et al.*; *Sacramento County Department of Health and Human Services v. Joseph A. et al.*, S220187, are scheduled for oral arguments before the Supreme Court of California, on Tuesday, May 3, 2016, at 1:30 p.m., in San Francisco.

- *Alaska v. Central Council of Tlingit and Haida Indian Tribes, Alaska Supreme Court No. S-14935*

The Alaska Supreme Court recently held that Alaska's child support enforcement agency must recognize and enforce support orders entered by Native American tribal courts. After determining that tribal courts have inherent subject-matter jurisdiction to determine support obligations owed to children who are members of (or eligible for membership in) the tribe, the court ruled that their orders must be treated in the same manner as all other foreign support orders under the Uniform Interstate Family Support Act.

- *Big Forum Meeting on June 2-3, 2016*
California is hosting a national gathering of tribal/state court forums. Forum members are invited to attend and travel expenses will be paid using grant funds. Please R.S.V.P. to Jenny Walter if you plan to attend.
- *Forum In-Person Meeting on June 9, 2016*
Our next in-person meeting is in Los Angeles. If members have not already done so, please R.S.V.P. to Jenny Walter. The draft agenda for the meeting is attached. If you have items you would like added to the agenda, contact Jenny Walter.
- *Native American Indian Court Judges Association (NAICJA) Conference on October 19-21, 2016 at Morongo (Riverside County)*
The annual NAICJA Conference is in California this year. The forum will be planning a presentation.

Item 2

Forum Collaboration with NAICJA and Casey Family Programs to convene two Indian Child Welfare Act Roundtables (the first one will be in conjunction with NAICJA Conference (October 18th and the second one will be in the north- location and date to be determined))

Ms. Nikki Borchardt Campbell, Executive Director, National American Indian Court Judges Association (NAICJA) described her organization. Established in 1969, NAICJA is a national association comprised of tribal justice personnel & others devoted to supporting and strengthening tribal justice systems through education, information sharing, and advocacy. Mr. Sheldon Spotted Elk, Director, Indian Child Welfare at Casey Family Programs described Casey Family Programs, which is the nation's largest operating foundation focused on safely reducing the need for foster care and building Communities of Hope for children and families across America. Both organizations have teamed up to promote dialogue, conduct needs assessments, and help jurisdictions improve compliance with the Indian Child Welfare Act. They will be working with the forum to plan two ICWA roundtables. The first will be in the south and will be on October 18th right before the NAICJA Conference at Morongo. The second will be in the north at a location to be determined by the forum, NAICJA and Casey Family Programs.

Item 3

Approval of Minutes for February 11, 2016

The minutes were approved upon a motion by Judge Radoff, which was seconded by Judge Zeidler.

Item 4

Report on Meeting Convened by California Department of Justice (DOJ), March 15, 2016

Judge Patricia Lenzi, Justice Dennis Perluss, and Jenny Walter reported on the meeting convened by the California Attorney General's Office to address lack of recognition and enforcement of tribal protection orders in violation of state and federal full faith and credit statutes.

Representatives from the U.S. Department of Justice, the California Sheriffs Association

(CSSA), California Indian Legal Services, the Yurok Tribal Court, and tribal advocates participated. Despite agreement on the law, the position of California DOJ and CSSA is that law enforcement will not recognize or enforce any protection order, tribal or nontribal, unless it is in the California Restraining and Protective Order System (CARPOS), which can be viewed through the California Law Enforcement Telecommunications System (CLETS). No solutions were offered to give tribal courts access to CLETS to enter their orders into CARPOS. Forum members were directed to the letter from the forum cochairs offering pragmatic solutions and requesting a response within thirty days of the meeting.

Item 5

Report on Joint Jurisdictional Court

Ms. Jackie Davenport, Judge Suzanne Kingsbury, and Judge Christine Williams reported on their Family Wellness Court (FWC), which has been in operation for one year. The FWC has heard a range of case types, including a truancy referral from the School Attendance Review Board, one dependency and several delinquency cases. Some of the first participants to be referred to the court are graduating. One participant took less than a year to graduate, and another is graduating in May or June. One family declined to participate in the FWC because of the number of hearings and the level of participation and engagement required by the court. The judges explained that the FWC is able to address core issues impacting children and families; while this takes hard work—on the part of the participants, with judicial attention and culturally appropriate services—children and families have better outcomes. The judges reported that the FWC is well-received in both the tribal and nontribal communities. Attorneys are pleased to come to the court on tribal lands because they see that they are part of a solution in providing true wraparound services. Court administrative services are freely shared; on occasion a state court clerk will fill in for the tribal court clerk. By modeling local judicial and court administration collaboration, the FWC has strengthened tribal and county relationships.

Ms. Davenport described the types of operational issues that they are addressing, such as adapting mandatory council forms for use in the FWC, ensuring statutory findings and orders, sharing state court resources (court clerk and reporter are provided by state court), coordinating with sheriff for transportation of in-custody participants, developing scripts for state court judges that they can use when making a referral on the record to the FWC, and developing performance measures.

Shingle Springs Band of Miwok Indians will be hosting a celebration of the FWC on April 27, 2016. For more information about the Family Wellness Court, see www.shinglespringsrancheria.com/tribal-court/ or www.eldoradocourt.org/documents/pdf/FWC_Manual.pdf.

Item 6

Report on Yurok Tribal Meth Summit February 27, 2016

This item was deferred.

Item 7

Cross Court Educational Exchange on Domestic Violence and Child Welfare

Judge Nelson and Judge Wiseman reported that the event was a resounding success with more than sixty participants. They described the event. The first session included a lively discussion on the jurisdictional landscape existing in California Indian country relating to both criminal and civil jurisdiction. Participants explored case scenarios and grappled with civil/regulatory versus criminal/prohibitory distinctions, which led to a greater understanding of how Public Law 280

affects access to justice and appreciation for the need for cooperation between tribal, state and federal authorities to ensure access to justice for Native Americans in California. During the second session, participants gained a greater understanding of the two tribal justice systems in the county: the Round Valley Tribal Court and the NCICS, which operates with a governing body—the Judicial Council—that is appointed by the governing bodies of the four consortium tribes with different tribal codes and tribally specific services. During the third session, moderated by Judge David Riemenschneider, panelists addressed three topics: (1) a statewide perspective on full faith and credit under the Violence Against Women Act- how it should work and challenges statewide; (2) local challenges and exploring workaround solutions-- rule 5.386 of the California Rules of Court and an existing local protocol together with access to the California Courts Protective Order Registry can be used to protect the public; and (3) the collaboration between county and tribal probation to develop a batterer intervention program that is culturally responsive and tribally specific. The fourth session focused on law enforcement collaboration and coordination to address domestic violence in tribal communities in Mendocino County. Through a panel discussion, using a hypothetical case involving criminal assault and traffic violations for speeding and drunk driving, participants explored legal questions relating to law enforcement’s authority to detain and arrest and related questions of court jurisdiction.

During lunch, generously provided by the Hopland Tribe, participants heard remarks from Congressman Jared Huffman and Ms. Tricia Tingle, Bureau of Indian Affairs, Office of Tribal Justice Support.

During the afternoon, participants described ways that the tribal and state justice systems might collaborate across jurisdictions in criminal cases. The judges facilitated a dialogue among the panelists and exchange participants to explore how cases could be coordinated to improve public safety and accountability for the benefit of all citizens. Panelists discussed hypothetical cases involving decisions about intake, investigation, filing, notification of justice partners (cross notification across tribal/state/county jurisdictional lines), and disposition/sentencing. Participants learned about opportunities for coordination, challenges to cross-jurisdictional cooperation, benefits of coordinating justice system responses to leverage resources (for example, through the use of deferred entry of judgment), and the imposition of creative sanctions to improve outcomes. Participants shared how culturally appropriate services could be provided when the tribal and state justice systems come together at regular system meetings, drawing on shared restorative and wellness principles to hold offenders accountable. Participants also learned about the limitations of prosecutorial discretion in terms of felony charges, waitlists for alcohol and drug treatment programs, and statutory obstacles in fashioning creative cross-jurisdictional solutions in certain felony cases.

During the last session, a panel of experts on the Indian Child Welfare Act addressed how other jurisdictions have come together to support Indian children and families involved in the child welfare system. This session explored how funding under title IV-E of the Social Security Act could potentially follow the child in child welfare cases that are transferred from the state court to the tribal court. Additionally, participants learned about innovative models in Minnesota and California (specifically as between Alpine County and the Washoe Tribe), and sparked interest among participants in how such models and ways of approaching title IV-E funding could be adapted in Mendocino County.

At the end of the exchange, participants reflected on what they had learned during the sessions and from each other. Following a discussion facilitated by Judge Nelson, Judge Wiseman, and Ms. Jenny Walter, the participants identified the steps they wanted to take to: (1) strengthen their existing tribal/state/county collaborations, (2) advance local and statewide policies; and (3) improve access to their tribal and state justice systems through education and resource development.

Materials can be accessed here:

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

Username: forum

Password: forum123

Item 8

Status Report on Forum/CJER Collaboration

Judge Nelson reported that he and Judge Matthew McGlynn (Center for Judiciary Education and Resources (CJER) Curriculum Committee) have completed their review of the CJER online toolkits relating to juvenile dependency and delinquency cases, and have made recommendations to include parts of the Federal Indian Law Toolkit and cross-reference others. Judge Nelson invited forum members to share their reports on the status of their collaboration on the other toolkits. Ms Walter offered to assist Judge Beckloff, Judge Juhas, Judge Marston, Judge Radoff, and Judge Wiseman, who have volunteered to work on updating the other toolkits with CJER.

Item 9

Report on Responses to SB 406 Study

Ms. Walter reported on the status of the SB 406, a collaboration with U.C. Davis School of Law. She described the purpose of the three surveys and summarized the survey information received. Directing members to the materials in their e-binders, she reported that the response rate for state court judges is 64% and that Professor Florey and she were working together to increase the response rate. The response rate from tribal court judges is 30% and 0% for tribal practitioners. Although the tribal practitioner survey was emailed to the 200 plus membership of the California Indian Lawyers Association, the tribal court judges on the call agreed that they would help by sending the survey to their colleagues and the attorneys who practice in their courts. Judge Lenzi and Judge Radoff underscored the importance of the study and their willingness to do outreach to increase the response rates.

Item 10

Court Improvement Program- Collaborative Opportunity

Ms. Walter described a funding opportunity to support the creation of effective practice model partnerships between state courts and/or Court Improvement Program, state child welfare agency and a tribe, group of tribes, tribal child welfare agency and/or tribal courts for effective implementation of the Indian Child Welfare Act (ICWA). She reported that applicants who are awarded the grant could receive up to \$500,000 per year over five years. She directed members to the information in their meeting materials proposing ICWA projects. She described briefly the four purpose areas that she was contemplating pursuing in organizing the grant application:

- Relationship building such that tribal voices are consistently and meaningfully included in all partnerships engaged in ICWA system change at the statewide and local levels;
- Policy changes are identified, coordinated, and implemented;
- Education on ICWA is delivered in a coordinated way to judges, attorneys, and social workers consistent with federal and state mandates; and

- Technology is being used to flag ICWA requirements, collect tribe-specific ICWA data, and achieve interoperability among tribal/state/court databases.

Ms. Walter described how this grant would enable the forum to build on existing policy work in the area of ICWA, especially in light of the new Bureau of Indian Affairs (BIA) ICWA Guidelines and the proposed BIA ICWA regulations. This grant would also enable the forum to implement its educational recommendations. And because the draft statewide ICWA Task Force report identified the lack of reliable, meaningful and accessible statewide data on Indian children as a problem for ICWA compliance in California, the grant would enable the Judicial Council staff agency to hire a technologist to develop standards for data collection, data sharing, interoperability, and automation—among the courts as well as between the courts and the California Department of Social Services’ new system of child welfare case management system.

Also, the forum has identified several projects that are innovative, but without funding. Ms. Walter explained that we have been unable to implement or duplicate these projects, such as tribal representation in juvenile dependency cases and expanding the joint jurisdictional model of the FWC. Forum members discussed the grant opportunity and agreed it was an excellent opportunity for these purposes, especially the tribal representation project. Ms. Walter encouraged forum members to support the Judicial Council, as the State’s Court Improvement Program, to apply for the funding. She explained that the Judicial Council would be sure to establish a statewide ICWA Implementation Partnership, including at a minimum a representative of the Tolowa Dee-ni’ Nation (Tribal Court Improvement Program in California), the forum, the California Department of Social Services, the Child Welfare Directors Association, California Tribal Court Judges Association and the Statewide ICWA Workgroup. The ICWA Implementation Partnership would be the primary “steering committee” for the grant throughout the five year period.

Two tribal court judges expressed support for the concept proposal. Ms. Walter said that she would be reaching out to forum members for letters of support.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 1:15 p.m.

Pending approval by the advisory body on June 9, 2016.